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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
J Michael Baxley, Circuit Court Judge

Case No 04-CP-22-0955

David Ashenfelder,

Respondent-Appellant,

v

City of Georgetown,

Appellant-Respondent

RECORD ON APPEAL

Andrew F Lindemann
DAVIDSON & LINDEMANN, P A
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant-Respondent

David J Gundling
GUNDLING LAW FIRM, P A
Post Office Drawer 2547
Pawleys Island, South Carolina 29585
(843) 237-3400

Counsel for Respondent-Appellant

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STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GEORGETOWN

CASE NO 2004CP2200955

THE COURT OF COMMON PLEAS

David Ashenfelder vs City of Georgetown

CHECK ONE

- ☐ JURY VERDICT This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ DECISION BY THE COURT This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b) SCRPC, ☐ Rule 41(a) SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j) SCRPC ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
- ☐ Other

IS ORDERED AND ADJUDGED

☐ See attached order

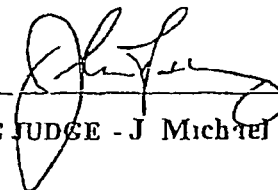
☐ Statement of Judgment by the Court

Hung jury after 4 day trial mistrial declared

FILED
CLERK OF COURT
ALMA Y WHITE
2007 OCT 15 AM 8 39
GEORGETOWN COUNTY SC

Dated at Georgetown, South Carolina, this 9th Day of October, 2007

Court Reporter Grace Hurley


PRESIDING JUDGE - J. Michael Baxley

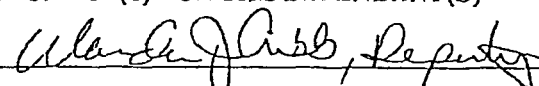
This judgment was entered on the 9th Day of October 2007 and a copy mailed first class this 10th Day of October 2007 to attorneys of record or to parties (when appearing pro se) as follows

David J Gundling ATTORNEY AT LAW P O
DRAWER 2547 PAWLEYS ISLAND SC
295850000

Andrew F Lindemann ATTORNEY AT LAW
P O BOX 8568 COLUMBIA SC 292020000
Marvin Lee Robertson Jr Robertson Law Firm
P O Box 2110 Mt Pleasant, SC 29465-2110

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Alma Y White - Clerk of Court

SCRP APP 24/FORM 4

leased the billboard to a local realtor for \$7 800 a year in order to generate retirement income

On January 13, 2002, a motorist drove his automobile into the billboard and knocked down the billboard Gerald Freeman, Director of Development of the City of Georgetown, and L Boyd Johnson City Administrator, decided that the billboard should be removed Although Ashenfelder had asserted his ownership of the billboard and requested a lease of the real property in letters to the city years before the accident, the City of Georgetown tore down the billboard without giving him any notice

Ashenfelder first learned that the billboard had been removed when he drove by its location on January 24, 2003 Ashenfelder contacted the city and requested that he be permitted to put up a new billboard The city denied his request In his deposition, L Boyd Johnson stated that the city chose to not permit Ashenfelder to replace the billboard because the billboard was on city property and did not meet the city's zoning codes

On December 1, 2004, the plaintiffs sued the City of Georgetown for negligence, conversion, violation of 42 U S C §1983, fifth amendment taking without just compensation, and estoppel The plaintiff asserted a prescriptive easement and sought billboard replacement, actual and punitive damages, costs, attorneys fees, and a declaratory judgment

Pursuant to 18 U S C §§1441 and 1446, the City of Georgetown removed the suit to federal court on the basis of 28 U S C §1331 federal question jurisdiction Under 28 U S C §1441(c) a defendant may remove a whole case if the case contains "a separate and independent claim" or cause of action within federal question jurisdiction The case was properly removed The City of Georgetown has moved for summary judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall be

rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. The courts have held that summary judgment is authorized only where the moving party is entitled to judgment as a matter of law, where it is clear what the truth is, and where no genuine issue remains for trial. Poller v. Columbia Broadcasting Sys. Inc., 368 U.S. 464 (1962).

The plaintiffs claim that their billboard was removed without due process and assert a claim under 42 U.S.C. §1983. The Supreme Court has held that a state official's random and unauthorized act which causes the deprivation of a property interest does not violate due process where the state furnishes a post-deprivation remedy. Parratt v. Taylor, 451 U.S. 527, 543 (1981). Parratt, a prisoner, sued prison officials pursuant to 42 U.S.C. §1983 when his hobby kit that he ordered from a mail order company was lost. The Court concluded that Parratt's proper remedy was to sue in state court under the Nebraska Tort Claims Act. Id.

Three years later, the Court applied the Parratt doctrine to intentional conduct. Hudson v. Palmer, 468 U.S. 517, (1984). The Court reasoned that a state cannot anticipate and control random and unauthorized intentional acts, and therefore, the state should be able to remedy its random and unauthorized intentional acts. In 1986, the Supreme Court overruled Parratt in part, holding that a "mere lack of due care [does not] 'deprive' an individual of life, liberty, or property under the Fourteenth Amendment." Daniels v. Williams, 474 U.S. 327, 330-31 (1986). The Court subsequently narrowed the Parratt doctrine, holding it inapplicable in cases in which the State accorded officials broad power and little guidance in effecting the deprivation. Zinermon v. Burch, 494 U.S. 113, 138 (1990). In Zinermon, a mental patient brought suit under

42 U S C §1983 claiming that personnel at a Florida state hospital deprived him of his liberty when he consented to admission for mental treatment while incompetent. The plaintiff claimed that the state hospital personnel abused their broad power under Florida law. The Court held that the Parratt doctrine did not preclude the §1983 claim because the conduct of the hospital personnel was not random and unauthorized. The following factors were critical in giving the patient a §1983 cause of action: (1) the deprivation was foreseeable, (2) predeprivation process was possible, and (3) the conduct was not unauthorized within the meaning of Parratt. Id. at 136-38. Because Florida gave broad discretion to state hospital personnel, the state could foresee that abuse of the discretion would infringe on a patient's liberty interest. Therefore, a state may be liable for the acts of state officials who act within their state authorized power and discretion.

In this case, the City of Georgetown intentionally disposed of the billboard without notifying the plaintiff, thus depriving him of his alleged property interest in the billboard without prior notice or a hearing. This deprivation was random and unauthorized within the meaning of Parratt. Pursuant to the non-discretionary procedures established by the South Carolina Code and the Code of the City of Georgetown, the plaintiff was entitled to notice prior to the billboard's removal and possibly some form of compensation. S C CODE ANN §57-25-190, GEORGETOWN CODE §1001.13. The deprivation in this case was random because the act was not foreseeable or predictable. Zinermon at 136. The deprivation was unauthorized because the city acted in contravention of both the South Carolina Code and the Georgetown Code.

The South Carolina legislature and Department of Transportation comprehensively regulate billboards to prevent distraction of motor vehicle operators, prevent confusion with

regard to traffic signs, and preserve the scenic and aesthetic features of areas adjacent to highway rights of way S C CODE ANN §§ 57-25-110 to 57-25-220 The owner of a billboard must acquire a permit annually from the South Carolina Department of Transportation S C CODE ANN 57-25-150 South Carolina law dictates the size, placement, and removal of billboards S C CODE ANN 57-25-140

The South Carolina Code provides that no sign lawfully in existence on November 3, 1971, or lawfully erected after November 2, 1971, shall be removed only with payment of just compensation Compensation must be paid to the owner of the sign and the owner of the real property on which the sign is located S C CODE ANN §57-25-190(A),(B)

The plaintiffs allege that their §1983 claim is saved by the Zinermon principle They claim that the deprivation was foreseeable, predictable, and within the discretion of the defendants because the Georgetown Code allows city officials to remove signs without compensation when the South Carolina Department of Transportation relinquishes jurisdiction City of Georgetown Code, Article X §1001 202 This argument is unavailing First, The South Carolina Department of Transportation did not relinquish jurisdiction over the plaintiff's billboard The plaintiffs acquired a permit annually since at least 1976 Second, Georgetown City officials were not given broad power and discretion Rather, South Carolina statutes and city ordinances comprehensively regulate the plaintiffs' billboard In addition, the South Carolina Code protects owners from billboard removal by government officials §57-25-190(A),(B)

The three Zinermon factors do not save the plaintiff's §1983 claim in this case First, the deprivation of plaintiffs' billboard was unforeseeable because the city officials violated both the

South Carolina Code and the Georgetown Code Second, predeprivation process was provided for by law, but the city officials violated the law Third, the city officials' conduct was unauthorized within the meaning of Parratt because the conduct violated the South Carolina Code and Georgetown Code

The South Carolina Code requires government officials to compensate a sign owner prior to removal S C CODE ANN §57-25-190(C) The Georgetown City officials violated this law because they did not compensate any owner before removing the billboard The officials claim that the billboard endangered the public According to the Georgetown Code, in the case of public endangerment, city officials must erect barricades and give the sign owner notice before eliminating the threat Section 1001 13 of the Georgetown Code provides

All signs are required to be maintained in such a manner as to protect the general public and adjacent property from damage and blight All signs and supports, structures, braces, guys, and anchors, thereof shall be kept in good repair, refurbished from time to time, as necessary, and perpetually maintained in safe condition, free from deterioration, defective or missing parts, or peeling or faded paint, and able to meet the structural standards described in the building code Any sign not in compliance with this provision is hereby declared to be a nuisance

If a sign or any part thereof is declared to be a nuisance, the Zoning Administrator shall notify the appropriate person(s) in writing that the condition must be corrected within a specified period If no action is taken within the time period by the person(s) charged with maintaining such sign, the Zoning Administrator shall initiate such action to have the sign removed at the person(s) expense, in addition to being subject to Section 1106 of this Ordinance

In the event that the Zoning Administrator determines that such sign or parts thereof constitute an immediate threat to the public, he/she shall arrange for barricades to prevent public injury The person(s) charged with maintaining such sign shall be given twenty-four hours to eliminate the threat or the Zoning Administrator shall initiate action described in the preceding paragraph The Zoning Administrator shall document the reason(s) such sign is declared to be an immediate threat to public safety

The city in no way followed its own ordinance The Administrator made no effort to contact the

plaintiff No barricades were erected No documentation regarding the immediacy of the threat has been presented to this Court

The Parratt doctrine excludes the plaintiffs' §1983 claim because they have an adequate state remedy The South Carolina Tort Claims Act provides individuals with a remedy for tortious acts committed by a governmental entity, its employees, or agents S C CODE ANN §15-78-20(b) The Act provides "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein " S C CODE ANN §15-70-40 In addition, South Carolina billboard regulations provide compensation to billboard owners when the state removes a billboard S C CODE ANN §57-25-190 (A) (B) Therefore, the plaintiffs could also sue for violations of South Carolina billboard regulations

The plaintiff bears the burden of proving the inadequacy of the available state remedies Yates v Jamison, 782 F 2d 1182, 1187-88 (4th Cir 1992) The plaintiffs claim that suing under South Carolina state law is inadequate because the defendant has raised legislative immunity and sovereign immunity in its answer This argument is unavailing because the South Carolina Tort Claims Act is a limited waiver of immunity S C CODE ANN § 15-78-20(b) The plaintiffs claim that the South Carolina Tort Claims Act provides an inadequate remedy because it disallows punitive damages, which the plaintiffs could recover under §1983 S C CODE ANN §15-78-120(b) The Supreme Court has held that "[a]lthough state remedies may not provide the respondent with all the relief which may have been available if he could have proceeded under §1983, that does not mean that the state remedies are not adequate to satisfy the requirements of

due process” Parratt v. Taylor, 451 U.S. at 544. The Fourth Circuit Court of Appeals has found South Carolina remedies sufficient to compensate plaintiffs for deprivation of property under color of state law. See Bogart v. Chappell, 396 F.3d 548, 563 (2005). The plaintiffs fail to show that a meaningful postdeprivation remedy for the loss is unavailable.

The remaining federal question is the plaintiffs’ allegation of an unlawful taking of their property in violation of the Fifth Amendment to the United States Constitution. This claim is not ripe for adjudication. The Fifth Amendment proscribes a taking without just compensation. Williamson County Reg. I Planning Comm’n v. Hamilton Bank, 473 U.S. 172, 194 (1985). “If the government has provided an adequate process for obtaining compensation, and if resort to that process ‘yield[s] just compensation,’ then the property owner ‘has no claim against the Government’ for the taking.” Id. at 194-195, citing Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1013 (1984). Therefore, “if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.” Williamson County Reg. I Planning Comm’n v. Hamilton Bank, 473 U.S. at 195.

South Carolina provides for compensation for governmental takings through an inverse condemnation action. See Byrd v. City of Hartsville, 620 S.E.2d 76 (2005). In addition, the South Carolina Tort Claims Act and South Carolina billboard regulations provide state remedies for the plaintiffs’ loss. Therefore, the plaintiffs’ Fifth Amendment takings claim is dismissed because it is not ripe.

A district court may decline to exercise supplemental jurisdiction over a state law claim if the court has already dismissed all claims over which it has original jurisdiction. 28 U.S.C.

§1367(c)(3) (2000), see also Doe v. Montgomery County Md., 47 Fed Appx 260 (4th Cir 2002) Because the plaintiffs have no §1983 claim or Fifth Amendment takings claim this action is remanded to the South Carolina Court of Common Pleas

IT IS SO ORDERED



C WESTON HOUCK
UNITED STATES DISTRICT JUDGE

March 16, 2006
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

David Ashenfelder and Jade Inns, Inc , d/b/a
Georgetown Motel,

Plaintiffs,

V5

City of Georgetown, a body politic,

Defendant

Civil Action No 2 05-007-CWH

ORDER

On January 3, 2005, the plaintiffs commenced this action claiming that the City of Georgetown wrongfully removed their billboard. On March 16, 2006, the Court granted summary judgment to the defendant as to the federal claims and remanded the action to the South Carolina Court of Common Pleas. On March 30, 2006, the defendant moved to alter or amend judgment pursuant to Rule 59(e), claiming that the Court ruled on state law claims and that these rulings would have a preclusive effect in state court. This matter is now before the Court for disposition.

The Fourth Circuit Court of Appeals has recognized that there are only “three grounds for amending an earlier judgment (1) to accommodate an intervening change in controlling law, (2) to account for new evidence not available at trial, or (3) to correct a clear error of law or prevent manifest injustice.” Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). The Court determines that none of these grounds apply in this case.

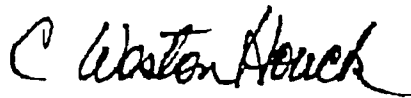
The defendant s claim that the Court made preclusive findings as to the plaintiffs' state

claims is without merit and does not entitle the defendant to the relief sought. In its motion for summary judgment, the defendant bore the burden of demonstrating the absence any genuine issue of material fact. Adickes v S H Kress & Co., 398 U S 144, 157 (1970). The Court viewed the facts and inferences drawn from the underlying facts in the light most favorable to the plaintiff as the party opposing the motion. United States v Diebold, 369 U S 654, 655 (1962).

The Court determined that there was no genuine issue of material fact as to the plaintiffs' federal law claims and therefore granted the defendant partial summary judgment as to those federal claims. The Court determined that there were genuine issues of material fact as to the plaintiffs' state law claims and therefore did not grant the defendant summary judgment as to those state law claims. Pursuant to 28 U S C §1367(c)(3), the Court declined to exercise supplemental jurisdiction over the state law claims because the Court dismissed all claims over which it had original jurisdiction. See Doe v Montgomery County, Md., 47 Fed Appx 260 (4th Cir 2002).¹ The Court remanded the action to the South Carolina Court of Common Pleas.

The defendant's motion to alter or amend the order is denied.

AND IT IS SO ORDERED



C WESTON HOUCK
UNITED STATES DISTRICT JUDGE

June 29, 2006
Charleston South Carolina

¹ Having concluded that it did not have jurisdiction over the state law claims, it should not be argued that anything this Court did would have a preclusive effect in state court.

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SUMMONS

(Jury Trial Requested)

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CLERK OF COURT

GUNDLING
LAW FIRM P.A.

13

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2004-CP-22-955

David Ashenfelder and Jade
Inns, Inc d/b/a Georgetoman Motel,
Plaintiffs

vs

City of Georgetown, a body
Politic
Defendants

COMPLAINT
(Jury Trial Requested)

2004-CP-22-955
FILED
JUL 1 2004
CLERK OF COURT

Plaintiffs, complaining of Defendant, will respectfully show this Honorable Court that

JURISDICTION

1 The Plaintiff, David Ashenfelder, is a citizen and resident of Greenville County South Carolina, who has property interests located within the City of Georgetown, South Carolina

2 Plaintiff Jade Inns, Inc d/b/a Georgetoman Motel, is a corporation organized and existed under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina,

3 Upon information and belief, Defendant The City of Georgetown is a political subdivision of the State of South Carolina, and therefore subject of the jurisdiction of this Court. The property, which is the subject of this matter, is located in the City of Georgetown, Georgetown County, South Carolina.

4 The parties hereto and all matters alleged herein are within the jurisdiction of this Honorable Court

GENERAL ALLEGATIONS

5 The Plaintiffs reiterate the allegations contained above as if repeated verbatim
herein

6 Since at least 1979, the Plaintiff owned, operated, maintained, repaired and
- improved a billboard located adjacent to Church Street in the City of Georgetown, South
Carolina at the location where Church Street, a 30 feet right of way, separates from US
Highway 17 (Church Street) Since at least 1952, the Plaintiffs predecessors in interest owned,
operated, maintained, repaired and improved the same billboard. The Plaintiffs, and their
predecessors in interest have also maintained and paid for a South Carolina State Outdoor
Advertising Permit through the South Carolina State Highway Department for the billboard since
1977

7 The Plaintiffs have owned the billboard since 1979 and has maintained the
billboard and kept the area around the billboard maintained for the entire time. The billboard
was off the highway far enough that it did not obstruct the view of traffic coming from either
direction nor did it impede any traffic since it was well off the paved portion of Church street and
in fact the paved portion of Church Street is now used primarily for parking by the owner of the
adjacent Burger King Restaurant. The billboard had been there longer than any other signage on
that corner.

8 On or about January 13, 2002, a vehicle operated by unknown driver collided into
the billboard, apparently damaging one or two of the billboard supports. The billboard was not
knocked over, and could have been repaired at minimal cost.

9 The Defendants were aware that the Plaintiffs owned the billboard as evidenced
by letters and conversations between the Plaintiffs and Defendant over the years. Without

consulting the Plaintiffs, who where the owners of the billboard, the Defendant tore down and removed the billboard.

10 On or about February 14, 2003, the Plaintiffs sent a letter to Mr Boyd Johnson, City Administrator for the City of Georgetown requesting that the Plaintiffs be permitted to replace the billboard Mr Johnson replied on March 27 2003 denying the Plaintiffs request.

11 The billboard was consistently leased ant at the time it was removed was being leased to Randy Jones from the Litchfield Company at a rate of \$7,800 00 per year The Plaintiffs expected such income, with periodic increases, to continue indefinitely

**FOR A FIRST CAUSE OF ACTION
(Conversion)**

12 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

13 The Defendant assumed and exercised rights of ownership over goods or personal chattels belonging to the Plaintiffs by removing the Plaintiffs' billboard, to the exclusion of the rights of the owner, and such exercise of rights of ownership was unauthorized. The taking of the Plaintiffs' billboard by Defendant is illegal, tortious, fraudulent and/or willful and constitute a conversion of the Plaintiffs' property

14 As a result of the foregoing, the Plaintiffs are entitled to judgment for actual and punitive damages in an amount to be determined by this Court

**FOR A SECOND CAUSE OF ACTION
(Negligence)**

15 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

16 Upon damage to the billboard, the Defendant owed a duty to the Plaintiffs to notify them of the damage or any unsafe condition resulting there from before unilaterally removing the billboard. The Defendant breached the duty owed to the Plaintiffs by removing the billboard without any notice or opportunity for the Plaintiffs to repair the billboard. The breach of the duty by the Defendant is the proximate result of extensive damages caused by the Defendant.

17 As a result of the foregoing, and as a result of the Defendant's reckless, gross negligence, and negligent conduct, the Plaintiffs are entitled to damages against the Defendant for actual and punitive damages in an amount to be proved at the trial of this case.

FOR A THIRD CAUSE OF ACTION
(Violation of 42 U S C Section 1983)

18 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

19 The Plaintiffs asserts that this Court has jurisdiction under this action and that the Defendants are "persons" as defined by 42 U S C Section 1983.

Section 42 U S C Section 1983 provides

"Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and the laws shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

20 The Defendant through its City Administrator, has asserted that the Plaintiffs billboard, on the same site that it occupied since at least 1952 does not meet certain zoning requirements, such as spacing and that it cannot be replaced.

21 If such zoning regulations do exist, the billboard should be "grand-fathered" to any non-conforming use

22 The Defendants, under color of the Georgetown City Zoning Ordinances have deprived the Plaintiffs of their right to due process, a right, privilege and immunity secured by both the United States Constitution and the South Carolina Constitution

23 As a result of the foregoing, the Plaintiffs are entitle to actual damages and attorney's fees in an amount to be proved at the trial of this case

FOR A FOURTH CAUSE OF ACTION
(Violation of Fifth Amendment to the United States Constitution)

24 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

25 Amendment V to the United States Constitution provides in part that

No person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation

26 Upon information and belief, the Defendant violated the Plaintiffs rights under the Fifth Amendment¹ to the United States Constitution by virtue of its conversion of the Plaintiff's billboard that did not substantially advance legitimate state interest and denied the Plaintiffs an economical viable use of his land and billboard.

27 Based on the forgoing, the Plaintiffs have been damaged by the actions of the Defendants in violation of the Fifth Amendment to the United States Constitution in an amount to be proved at the trial of this case

FOR A FIFTH CAUSE OF ACTION
(Estoppel)

¹ Fifth Amendment is implicit in the due process clause of the Fourteenth Amendment to the United States Constitution and applicable to the States

28 The Plaintiff reiterates the allegations contained above as if repeated verbatim herein.

29 Since 1979, the Plaintiffs owned, maintained and improved, at their sole cost and expense, said billboard at the same location. The Plaintiffs lacked any knowledge and the means of knowledge that the billboard did not comply with the Georgetown City Zoning Ordinance, the Plaintiff was justified in relying on the government's conduct, lack of conduct and silence relating to the billboard, and the Plaintiff changed position by maintaining, repairing and improving the billboard to the Plaintiff's prejudice.

30 Not permitting the Plaintiffs to replace the billboard would constitute a manifest wrong and injustice.

31 Based upon the foregoing, the Defendant was estopped from removing the Plaintiff's billboard or claiming that it is not in compliance with any Georgetown City Zoning Ordinances, and as a result the Plaintiffs should be entitled to replace his billboard at the same location where it existed prior to the Defendant's removal and should also be entitled to actual damages resulting from the replacement cost of the billboard and lost revenue since the billboard removal.

**FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment)**

32 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

33 This is an action for declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina as set forth in S C Code of Laws § 15-53-10 (1976) *et seq* to declare the rights of the Plaintiffs relating to the billboard that is the subject of this action.

34 The Plaintiffs are informed and believe that they are entitled to an Order of this Court declaring that the Plaintiffs be permitted to replace and maintain the billboard at the same location where it existed on or before January 13, 2003

FOR A SIXTH CAUSE OF ACTION
(Prescriptive Easement)

35 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

36 The Plaintiffs and their predecessors in interest constructed, maintained, repaired and improved the subject billboard in the same location since approximately 1952. The use was continuous and uninterrupted use or enjoyment of the right for a period in excess of 20 years. The identity, place and location of the easement is clear and unmistakable and the use was adverse or under a claim of right.

37 Based upon the foregoing, the Plaintiffs are informed and believe that a prescriptive easement exists in their favor for the use of the subject billboard and its erection, maintenance, repair and improvement in the same size and location where it existed prior to January 13, 2003.

FOR A SIXTH CAUSE OF ACTION
(Laches and Waiver)

38 The Plaintiff reiterates the allegations contained above as if repeated verbatim herein.

39 Upon information and belief based upon the doctrines of laches and waiver, the Defendant is equitably precluded from preventing the Plaintiffs from maintaining the subject billboard at the size and location where it existed for in excess of 50 years.

40 As a result, the Plaintiff should be permitted to replace and maintain the billboard in the same size and location that it existed in prior to January 13, 2003

WHEREFORE, the Plaintiff respectfully requests the following relief

a An Order of the Court declaring the rights of the Plaintiff to replace and maintain the billboard in the size and location, as it existed on and before January 13, 2003,

b Actual and punitive damages in an amount to be proved at the trial of this case,

c Attorney fees, costs and disbursements in an amount to be proved at the trial of this case,

d. For such other relief as this Court deems just and proper

GUNDLING
LAW FIRM, P.A.

David J. Gundling
Attorney for Plaintiff
Post Office Drawer 2547
Pawleys Island, SC 29585
Telephone (843) 237-3400
Facsimile (843) 237-0270

Pawleys Island, South Carolina
December 1, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED

JAN - 7 2005

LARRY W PROPPS, CLERK
COLUMBIA, S C

David Ashenfelder and Jade
Inns, Inc d/b/a Georgetownian Motel,

Plaintiffs,

v

City of Georgetown, a body Politic,

Defendant.

Civil Action No 2 05-00007-12

ANSWER
(Jury Trial Requested)

The Defendant, City of Georgetown, answers the Plaintiffs' Complaint herein as follows

FOR A FIRST DEFENSE

1 The Plaintiffs' Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted The Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), FRCP

FOR A SECOND DEFENSE

2 The Defendant denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained

3 As to the allegations set forth in Paragraph 1 of the Plaintiffs' Complaint, the Defendant lacks sufficient information to admit or deny those allegations, and therefore, denies those allegations at this time



4 As to the allegations set forth in Paragraph 2 of the Plaintiffs' Complaint, the Defendant admits that Jade Inns, Inc is a corporation organized and existing under the laws of the State of South Carolina.

5 The allegations set forth in Paragraph 3 of the Plaintiffs' Complaint are admitted

6 The allegations set forth in Paragraph 4 of the Plaintiffs' Complaint raise legal matters to which no response is required The Defendant reserves its right to assert jurisdictional defenses based on standing and ripeness

7 As to the allegations set forth in Paragraph 5 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 4 of the Complaint as if fully repeated herein verbatim

8 As to the allegations set forth in Paragraphs 6 and 7 of the Plaintiffs' Complaint, the Defendant lacks sufficient information to admit or deny those allegations, and therefore, denies those allegations at this time

9 As to the allegations set forth in Paragraph 8 of the Plaintiffs' Complaint, the Defendant admits only that on January 13, 2003, a vehicle driven by an unidentified driver being pursued by an officer of South Carolina Highway Patrol collided with the subject billboard causing extensive damage to the billboard

10 As to the allegations set forth in Paragraph 9 of the Plaintiffs' Complaint, the Defendant admits only that there was correspondence in 1986 between certain agents of the City and counsel for the Plaintiff Ashenfelder regarding the subject billboard The Defendant further admits that the remnants of the subject billboard were removed by the Defendant following the January 13, 2003 incident. The remaining allegations set forth in Paragraph 9 are denied

11 As to the allegations set forth in Paragraph 10 of the Plaintiffs' Complaint, the Defendant admits to the existence of the February 14, 2003 and March 27, 2003 letters, and craves reference to those letters as the best evidence of what is stated therein

12 As to the allegations set forth in Paragraph 11 of the Plaintiffs' Complaint, the Defendant lacks sufficient information to admit or deny those allegations, and therefore, denies those allegations at this time

13 As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 11 of the Complaint as if fully repeated herein verbatim

14 The allegations set forth in Paragraphs 13 and 14 of the Plaintiffs' Complaint are denied.

15 As to the allegations set forth in Paragraph 15 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 14 of the Complaint as if fully repeated herein verbatim The Defendant objects to the jumbling of causes of action

16 The allegations set forth in Paragraphs 16 and 17 of the Plaintiffs' Complaint are denied

17 As to the allegations set forth in Paragraph 18 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 17 of the Complaint as if fully repeated herein verbatim The Defendant objects to the jumbling of causes of action

18 As to the allegations set forth in Paragraph 19 of the Plaintiffs' Complaint the Defendant admits that the City of Georgetown is a "person" amenable to suit under 42 U S C § 1983

19 As to the allegations set forth in Paragraph 20 of the Plaintiffs' Complaint, the Defendant admits that the City has taken the position that the subject billboard is non-conforming to the existing zoning ordinances governing off-site signs

20 The allegations set forth in Paragraphs 21, 22, and 23 of the Plaintiffs' Complaint are denied

21 As to the allegations set forth in Paragraph 24 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 23 of the Complaint as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action

22 As to the allegations set forth in Paragraph 25 of the Plaintiffs' Complaint, the Defendant craves reference to the Fifth Amendment to the United States Constitution

23 The allegations set forth in Paragraphs 26 and 27 of the Plaintiffs' Complaint are denied

24 As to the allegations set forth in Paragraph 28 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 27 of the Complaint as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action

25 The allegations set forth in Paragraphs 29, 30, and 31 of the Plaintiffs' Complaint are denied

26 As to the allegations set forth in Paragraph 32 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 31 of the Complaint as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action

27 The allegations set forth in Paragraph 33 of the Plaintiffs' Complaint raise legal matters to which no response is required

28 The allegations set forth in Paragraph 34 of the Plaintiffs' Complaint are denied

29 As to the allegations set forth in Paragraph 35 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 34 of the Complaint as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action.

30 The allegations set forth in Paragraphs 36 and 37 of the Plaintiffs' Complaint are denied.

31 As to the allegations set forth in Paragraph 38 of the Plaintiffs' Complaint, the Defendant repeats and reiterates its responses to Paragraphs 1 through 37 of the Complaint as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action.

32 The allegations set forth in Paragraphs 39 and 40 of the Plaintiffs' Complaint are denied.

33 The allegations and relief sought in the Prayer for Relief are denied.

FOR A THIRD DEFENSE

34 The Plaintiffs' claims are, in whole or in part, barred by the Plaintiffs' failure to exhaust its state law and/or administrative remedies.

FOR A FOURTH DEFENSE

35 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of ripeness.

FOR A FIFTH DEFENSE

36 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of waiver.

FOR A SIXTH DEFENSE

37 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of estoppel.

FOR A SEVENTH DEFENSE

38 The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of frauds

FOR AN EIGHTH DEFENSE

39 The actions taken by the Defendant are fairly debatable and are therefore presumptively valid

FOR A NINTH DEFENSE

40 The Plaintiffs' claims are, in whole or in part, barred as a result of absolute legislative immunity

FOR A TENTH DEFENSE

41 The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of limitations

FOR AN ELEVENTH DEFENSE

42 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of laches

FOR A TWELFTH DEFENSE

43 As to the state law claims, the Defendant asserts the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act, including but not limited to the damages caps and the punitive damages bar as set forth in S C Code Ann. § 15-78-120

FOR A THIRTEENTH DEFENSE

44 As to the state law claims, the Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, S C Code Ann. § 15-78-10, *et seq* , including but not limited to S C Code Ann § 15-78-60(1), (2), (4), (5), (7) (9), and (20)

FOR A FOURTEENTH DEFENSE

45 Upon information and belief, this Court lacks personal jurisdiction over the Defendant. The Defendant, therefore, reserves its right to file a motion pursuant to Rule 12(b)(2), FRCP

FOR A FIFTEENTH DEFENSE

46 Upon information and belief, the service of process upon the Defendant is insufficient. The Defendant, therefore, reserves its right to file a motion pursuant to Rule 12(b)(5), FRCP

FOR A SIXTEENTH DEFENSE

47 Upon information and belief, one or both of the Plaintiffs lacks standing

FOR A SEVENTEENTH DEFENSE

48 The Plaintiffs have failed to mitigate their damages, thereby barring their recovery in whole or in part

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendant, City of Georgetown, prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper

DAVIDSON, MORRISON AND
LINDEMANN, P A

BY 

ANDREW F LINDEMANN #5070
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
TEL (803) 806-8222
FAX (803) 806-8855
E-MAIL alindemann@dml-law.com

ATTORNEYS FOR DEFENDANT,
CITY OF GEORGETOWN

Columbia, South Carolina

January 7, 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

David Ashenfelder and Jade
Inns, Inc d/b/a Georgetown Motel,

Plaintiffs,

v

City of Georgetown, a body Politic,

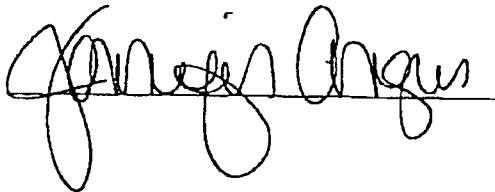
Defendant

Civil Action No 2 05-00007-12

CERTIFICATE OF SERVICE

The undersigned employee of Davidson, Morrison & Lindemann, P A , attorneys for the Defendant, does hereby certify that service of the Answer in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 7th day of January, 2005, addressed as follows

David J Gundling, Esquire
Post Office Drawer 2547
Pawleys Island, South Carolina 29585



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

David Ashenfelder and Jade	)	
Inns, Inc d/b/a Georgetownian Motel,	)	Civil Action No 2 05-00007 CWH
	)	
Plaintiffs,	)	
	)	
v	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
City of Georgetown, a body Politic,	)	
	)	
Defendant	)	
_____	)	

STATEMENT OF THE CASE

The Plaintiffs, David Ashenfelder and Jade Inns, Inc , allege in their complaint that they were the owners of a billboard located on Short Church Street within the City of Georgetown. On January 13, 2003, the billboard was damaged or destroyed when struck by a motorist fleeing from law enforcement. The billboard had been located within the right-of-way of Short Church Street. The billboard thus was located on the City's property. After the incident resulting in the damage to the billboard, the City had the remains of the billboard removed.

When the Plaintiffs inquired as to the possibility of rebuilding the billboard at its original location, that is, on the City's property as before, the Zoning Administrator provided the informal opinion that the City could not issue a sign permit to put the billboard once again on City property. The Plaintiffs also received a letter in March 2003, from the City Administrator

outlining the reasons that the Plaintiffs would be denied the opportunity to rebuild the billboard on City property

The Plaintiffs never formally sought a sign permit nor were officially denied a sign permit. Instead of pursuing the available administrative process and appeals through the state courts, the Plaintiffs filed this action against the City of Georgetown. Because the Plaintiffs' action includes federal constitutional claims, the City removed the case to the United States District Court. The Defendant City has now moved for summary judgment on all claims, federal and state, based on the grounds discussed below.

DISCUSSION

I Federal Claims

A The Defendant cannot be held vicariously liable for any acts or omissions by City employees. Moreover, the Plaintiff has not pled or proven any unconstitutional municipal policy or custom that could give rise to municipal liability under Section 1983.

In their third cause of action, the Plaintiffs plead a violation of 42 U.S.C. § 1983. It is unclear precisely the specific constitutional right that is pled, but it appears that the Plaintiffs are alleging a denial of due process as a result of the actions of the City Administrator and perhaps the Zoning Administrator. The Plaintiff has not alleged any municipal policy or custom that he maintains is unconstitutional or that proximately resulted in any constitutional violation. Instead, a fair reading of the Plaintiff's complaint indicates that the City is being sued only under a theory of vicarious liability based upon the alleged actions of City employees.

Under the theory of municipal liability, local governments may be held liable for policies and customs that deprive a person of their constitutional rights *Monell v Dept of Social Services and the City of New York*, 436 U S 658 (1978) In *Monell*, the United States Supreme Court clearly held that municipalities cannot be held vicariously liable under 42 U S C § 1983 for the acts of their employees Instead, liability rests only when the execution of a municipal policy or custom inflicts the injury *Id* Here, the Plaintiffs have alleged that the actions of the City employees in removing the damaged billboard and in not allowing for a replacement billboard to be constructed violated the Plaintiffs' due process rights The City, however, cannot be held vicariously liable under Section 1983 for the acts of its employees

Furthermore, the Fourth Circuit Court of Appeals has required as a basic premise of notice pleading that a plaintiff plead the alleged unconstitutional custom or policy in his complaint In *Semple v City of Moundsville* 195 F 3d 708 (4th Cir 1999), the Fourth Circuit held that "plaintiffs seeking to impose liability on a municipality must adequately plead and prove the existence of an official policy or custom that is fairly attributable to the municipality and that proximately caused the deprivation of their rights " 195 F 3d at 712, citing *Jordan v Jackson*, 15 F 3d 333, 338 (4th Cir 1994) (Emphasis added) Thus, using mandatory language, the Fourth Circuit requires that the municipal policy or custom be specifically pled See also, *Milligan v City of Newport News*, 743 F 2d 227, 230 (4th Cir 1984) ("[t]here is no properly pleaded allegation of the existence of a 'policy, practice or custom' upon which municipal liability for the deprivations allegedly suffered by [the plaintiff] could be based") Here the Plaintiffs have not pled any municipal custom or policy

In addition, in *Spell v McDaniel* 824 F 2d 1380 (4th Cir 1987), the Fourth Circuit set forth in detail the requirements for establishing municipal liability The *Spell* Court explained that

"policy" in this context implies most obviously and narrowly a course of action consciously chosen from among various alternatives respecting basic government functions, as opposed to episodic exercises of discretion in the operational details of government " 824 F.2d at 1386. The Court further explained that "custom" consists of "persistent and widespread practices of municipal officials " *Id.* Again, based on fair reading, the Plaintiffs' complaint includes no allegations of a municipal policy or custom that has given rise to any constitutional deprivation. In fact, based on the testimony of Mayor Linwood Wilson, there is no evidence that the Plaintiffs' billboard and its removal were even addressed by the City Council. *See, Wilson Depo*, p. 20. In sum, because the Plaintiffs have not alleged nor proven any municipal policy or custom that inflicted injury or resulted in any constitutional deprivation, their federal constitutional claim asserted against the City should be dismissed.

B The Plaintiffs did not possess any protected property interest in having its billboard in having their billboard located on City property, and as a result, the Plaintiffs were not deprived of any property interest without due process

Even if the Court reaches the merits of the Plaintiffs' federal claim, which appears to allege a denial of due process, that claim fails as a matter of law. The record is undisputed that the Plaintiffs' billboard was located on City property. David Ashenfelder testified that the billboard was located on City property. *See, Ashenfelder Depo*, pp. 41-42, 54. He, in fact, testified that his attorney informed him of that. *See, Ashenfelder Depo*, p. 41-42. Moreover, when an adjoining property owner named Douglas Green attempted in 1996 to have Ashenfelder pay rent to him for the billboard's location, Ashenfelder refuted that claim by showing Green that the sign was on City property. *See, Ashenfelder Depo*, Exhibits 7-8. A drawing of the property

boundary done by Ashenfelder's son likewise shows the sign on City property See, Ashenfelder Depo , Exhibit 9 And, another plat in the record shows the billboard as being located on City property See, Wilson Depo , Exhibit 14

In addition to an admission that the billboard was located on City property, David Ashenfelder conceded that he had never paid the City to have the billboard on its property nor did he have any agreement to have the billboard on the City's property See, Ashenfelder Depo , pp 39-40, 42 Finally, he conceded that no one with the City had ever given him permission to locate his billboard on City property See, Ashenfelder Depo , p 98

It is, nonetheless, anticipated that the Plaintiffs will argue that they obtained a legal interest in the City's property through adverse possession ¹ However, in *South Carolina State Highway Dept v Metts*, 240 S C 816, 270 S E 2d 816 (1978), the South Carolina Supreme Court held that "[i]t is well settled that no rights in a public street or highway can be acquired against the State or municipality by adverse possession " 240 S E 2d at 817 Here, there is no question that the billboard was located in the right-of-way of a street, and consequently, the holding in *Metts* bars any claim by the Plaintiffs that they have acquired a property interest through adverse possession

In addition, there are a number of cases from other jurisdictions holding that a private party cannot obtain a prescriptive easement against publicly owned property For instance, in *United States v Balliet*, 133 F Supp 2d 1120 (W D Ark 2001), the district court ruled that "adverse possession cannot be used to establish title against the United States " 133 F Supp 2d at 1128 The same is true with respect to states and their political subdivisions In *Steiner v*

¹ In their sixth cause of action, the Plaintiffs claim a prescriptive easement See, Complaint, paras 36-37

County of Marshall, 568 N W 2d 627 (S D 1997), the South Dakota Supreme Court held that "one cannot obtain a prescriptive easement against the government " 568 N W 2d at 632. Similarly, the Washington court in *City of Benton City v Adrian*, 50 Wash App 330, 748 P 2d 679 (1988), held that "title by adverse possession, or an easement by prescription, cannot be acquired to property held by a municipal corporation for public purposes in its governmental capacity " 748 P 2d at 683. See also, *Mat thews v State of New Mexico*, 113 N M 291, 825 P 2d 224 (1991), *Schilling v Backer*, 678 N W 2d 802 (S D 2004), *Classen v State Dept of Highways*, 621 P 2d 15 (Alaska 1980).

In sum, the Plaintiffs cannot demonstrate that they enjoy any protected property interest in having their billboard located on City property. Thus, the Plaintiffs cannot show that they were deprived of a protected property interest without due process of law. For this reason, the due process claim fails on its merits.²

C The Plaintiffs' Fifth Amendment taking claim is not ripe for adjudication

In their fourth cause of action, the Plaintiffs have alleged an unlawful taking of their property in violation of the Fifth Amendment to the United States Constitution. In addition to the argument above that the Plaintiffs enjoyed no property rights, the Plaintiffs' taking claim is also not ripe for adjudication. Therefore, at the very least, this Court lacks subject matter jurisdiction to entertain the taking claim.³

² For the same reasons discussed herein, the Plaintiffs' sixth cause of action seeking a ruling that a prescriptive easement exists should be dismissed.

³ See, *Gilbert v City of Cambridge*, 932 F 2d 51 (1st Cir 1991) ("a determination

In the seminal case of *Williamson County Regional Planning Commission v Hamilton Bank*, 473 U S 172 (1985), the United States Supreme Court explained that the "Fifth Amendment does not proscribe the taking of property, it proscribes [a] taking without just compensation " 473 U S at 194 The Court further explained that "if the government has provided an adequate provision for obtaining compensation, and if the resort to that process yields just compensation, then the property owners has no claim against the government for a taking " 473 U S at 194-195 The Court, therefore, has held as follows

[I]f a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation

473 U S at 195

There is no question that South Carolina law provides an adequate procedure for obtaining just compensation for legitimate governmental takings by means of an inverse condemnation action See, *Byrd v City of Hartsville*, 365 S C 650, 620 S E 2d 76 (2005) In their complaint, however, the Plaintiffs have not alleged that they first sought "just compensation" through a state law inverse condemnation action before pursuing their Fifth Amendment claim Likewise, there is no evidence that just compensation has been previously sought by the Plaintiffs under state law Until they have utilized the inverse condemnation process and been denied just compensation, their Fifth Amendment rights cannot be violated Consequently, based upon the reasoning of *Williamson*, the Plaintiffs' Fifth Amendment taking

that a claim is not ripe deprives a court of jurisdiction") See also, *Bateman v City of West Bountiful*, 89 F 3d 704 (10th Cir 1996)

claim is not ripe, and as a result, there is no "case or controversy" as required by Article III of the United States Constitution

II State Claims

A The Plaintiffs' failure to exhaust all available administrative remedies is a complete bar to their state law claim

In their complaint, the Plaintiffs seek an order "declaring that the Plaintiffs be permitted to replace and maintain the billboard at the same location where it existed on or before January 13, 2003 " *See* Complaint, para 34 Based on the case law discussed above, the City submits that the Plaintiffs had no legal right to have their billboard on City property prior to January 13, 2003, and as a result, the Plaintiffs have no legal right to rebuild that billboard in the same location The decision of the City Administrator was communicated to David Ashenfelder by letter dated March 27, 2003, whereby the Plaintiffs were informed that the City would not permit the billboard to be rebuilt *See*, Ashenfelder Depo , Exhibit 6 Ashenfelder also testified that he had been informed by Gerald Freeman, who was the Zoning Administrator, that he needed a sign permit to rebuild the billboard and that a permit would likely not be issued to rebuild a billboard on City property *See* Ashenfelder Depo , pp 61-63

The City submits that the Plaintiffs have failed to exhaust their administrative remedies and, for that reason, the Plaintiffs' claims for declaratory and injunctive relief are barred For the same reason, their state law claims for monetary relief should also be denied

Section 1001.1 of the City of Georgetown Zoning Ordinances provides that "[a] permit shall be required for the erection, alteration or reconstruction of any sign and such permit shall

be issued by the Zoning Administrator " See Wilson Depo , Exhibit 13 Section 1100 vests the power in the Zoning Administrator to make decisions enforcing the zoning ordinances That section further provides

It is the intention of this Ordinance that all questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Zoning Administrator

See, Wilson Depo , Exhibit 13 The Board of Zoning Appeals is empowered by Section 1202 "to reverse any order, requirement, decision, or determination of the Zoning Administrator " Likewise, Section 1205 of the Zoning Ordinances authorizes judicial review of any decision of Board of Zoning Appeals by the Circuit Court See, Wilson Depo , Exhibit 13 A decision of the Circuit Court may then be appealed in accordance with state law to the State appellate courts

In the present case, the Plaintiffs have presented no evidence that they have fully exhausted all administrative remedies In fact, there is no evidence that the Plaintiffs pursued *any* administrative remedies David Ashenfelder conceded in his deposition that the Plaintiffs never even applied for a sign permit to rebuild the billboard See, Ashenfelder Depo , pp 63-64 He further conceded that he did not take any formal action to challenge the Zoning Administrator's informal statement that the Plaintiffs would not qualify for a sign permit See, Ashenfelder Depo , p 64 Likewise, after he received the March 27, 2003 letter from the City Administrator he took no action other than to file this lawsuit in federal court See, Ashenfelder Depo pp 67-68 The record is thus clear that the Plaintiffs did not even attempt to obtain a remedy using the administrative appeals process available to them By formally seeking a sign permit, even if rejected, the Plaintiffs could have pursued all of the legal issues and defenses

raised in this litigation at the Board of Zoning Appeals and then, if necessary, on appeal to the Circuit Court and the State appellate courts

The South Carolina Supreme Court has held that "[i]t is well settled in this state that generally the exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts " *Lominick v City of Aiken*, 244 S C 32, 135 S E 2d 305, 310 (1964) In the more recent case of *Harkins v Greenville County*, 340 S C 606, 533 S E 2d 886 (2000), the South Carolina Supreme Court again explained that a party aggrieved by a decision by a zoning administrator or building official is required to exhaust all administrative remedies provided by ordinance See also, *Stanton v Town of Pawley's Island*, 309 S C 126, 420 S E 2d 502 (1992) (Supreme Court affirmed dismissal of action challenging denial of building permit for failure to appeal denial to Board of Adjustments)

In the present case, the Plaintiffs cannot challenge the informal decision of the Zoning Administrator denying a permit to rebuild the billboard in its original location where it failed to pursue available administrative remedies The failure to first exhaust these administrative remedies is a complete bar to the Plaintiffs' state law claims

B If the Court finds it necessary to address the merits of the state law claims, the City submits that each state law claim should be dismissed on the merits

1 Negligence Cause of Action

In their second cause of action, the Plaintiffs alleged that the City was negligent in removing the damaged billboard without providing the Plaintiffs the opportunity to repair the billboard This claim fails for several reasons

First, as discussed above, the City owed no legal duty to allow the Plaintiffs to rebuild the billboard on City property. The City had no legal duty prior to January 13, 2003, to even allow the billboard to remain on public property. Certainly, there was no legal duty to allow the Plaintiffs the opportunity to rebuild the billboard at that same location.

Second, because the billboard was located without permission on City property, the City had the legal right to remove the billboard at any time. The Plaintiffs were, in essence, trespassing on City property, by placing their personal property, i.e., the billboard, on real property they did not own and for which they had no legal or proprietary interest.

Third, the actions by the City to remove the damaged remains of the billboard after the January 13, 2003 incident were intentional. There is no evidence that the City accidentally removed the billboard. South Carolina law clearly distinguishes between intentional conduct and negligent conduct. Intentional conduct cannot be the basis for a negligence claim. In *Chassereau v Global-Sun Pools Inc.*, 363 S.C. 628, 611 S.E.2d 305 (Ct. App. 2005), the South Carolina Court of Appeals explained that "[n]egligence, while itself a tort, does not encompass all torts, particularly intentional torts." 611 S.E.2d at 308, n.15. Similarly, in *USAA Property & Casualty Ins. Co. v Rowland*, 312 S.C. 536, 435 S.E.2d 879 (1993), the Court of Appeals stated that an intentional tort "by definition cannot be committed in a negligent manner." 435 S.E.2d at 882. See also, *State Farm Fire & Casualty Co. v Barrett*, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000). Thus, the Plaintiffs cannot state a negligence claim as a result of the intentional conduct by the City employees in removing the damaged billboard without providing the Plaintiffs the opportunity to rebuild.

Finally, the Plaintiffs' state law torts, including the purported negligence claim, is governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* Prior to the decision of the South Carolina Supreme Court in *McCall v Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985),

governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), *reversed on other grounds*, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.*

The State and its political subdivisions, including the City of Georgetown, did not waive sovereign immunity for any loss arising out of a nuisance. *See*, S.C. Code Ann. § 15-78-60(7). The City removed the damaged billboard because it was a nuisance and had created a dangerous condition in the right-of-way of a public street. Moreover, the City removed the billboard and denied the Plaintiffs the opportunity to rebuild as part of the Zoning Administrator's duty to enforce City ordinances. S.C. Code Ann. § 15-78-60(4) provides absolute immunity for any loss arising from the enforcement of existing laws or ordinances. *See Adkins v Varn*, 312 S.C. 188, 439 S.E.2d 822 (1993). Thus, for these additional reasons, the Plaintiffs' negligence claim is barred.

2 Conversion Cause of Action

In their first cause of action, the Plaintiffs have alleged a conversion claim. South Carolina law provides that "[c]onversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or

the exclusion of the owner's rights " *Hawkins v City of Greenville*, 358 S C 280, 594 S E 2d 557, 566 (Ct App 2004)

To the extent that the Plaintiffs are alleging that the City converted the damaged remains of the billboard, the City's conduct was authorized given that the Plaintiffs' chattel (or the remains thereof) was on the City's property. The City had the legal right to remove and dispose of that property.

Moreover, to the extent that the Plaintiffs are alleging that the City converted the Plaintiffs' "right" to have a billboard at that location, that claim would implicate a real property interest. In addition to the arguments previously made that reject the notion that the Plaintiffs enjoyed a real property interest in the billboard's location, the City further submits that conversion does not lie for the taking of a real property right. In *Hawkins, supra*, the Court of Appeals held that "a conversion action does not lie when alleging the exercise of dominion or control over real property." *Id*

Finally, as a tort, the City's liability for conversion is governed by the Tort Claims Act. For the reasons discussed above with respect to the negligence claim, the City is likewise entitled to sovereign immunity for the removal of the damaged billboard. The defenses set forth in S C Code Ann. §§ 15-78-60(4) and (7) bar the conversion claim as well.

3 Estoppel

In their fifth cause of action, the Plaintiffs allege that the City should be estopped from denying the Plaintiffs the opportunity to rebuild the billboard on City property. "As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." *Town of Sullivan's Island v Byrum*, 306 S C 539, 413

S E 2d 325, 328 (Ct App 1992) More importantly within the context of the present case, the South Carolina Supreme Court has explained that "the doctrine of estoppel will not be applied to effect public revenues or *property rights* " *Heyward v South Carolina Tax Commission*, 240 S C 347, 126 S E 2d 15, 17 (1962) (Emphasis added)

"To prove estoppel against the government, the claiming party must show (1) a lack of knowledge and the means of knowledge about the truth of the matter in question (2) justifiable reliance on the government's conduct, and (3) a prejudicial change in position " *Town of Sullivans Island v Byrum*, 306 S C 539, 413 S E 2d 325, 328 (Ct App 1992) "When a [plaintiff] has actual or constructive notice of a matter, and does not show any misrepresentation or concealment by the government, estoppel will not lie against the government " *Id*

The Plaintiffs cannot argue that they did not know that their billboard was located on City property As early as 1986 the City addressed with the Plaintiffs and/or their legal counsel its position that the billboard was located on City property See, Ashenfelder Depo , Exhibit 1 In fact, in 1996, in an effort to defeat a claim by an adjacent property owner, Douglas Green, who requested that the Plaintiffs pay him rent for the billboard's location, David Ashenfelder informed Green by letter that the billboard was located on City property See, Ashenfelder Depo , Exhibit 7 The Plaintiffs further knew that they did not have the permission of the City or any agreement with the City to keep their billboard on City property See, Ashenfelder Depo , pp 42, 98 Thus, the Plaintiffs had full knowledge of their rights (or lack thereof) with respect to the billboard, and certainly there was no concealment by the City of any material facts or its position

In short, there is no basis for the doctrine of equitable estoppel to be applied against the City so as to allow the Plaintiffs to rebuild their billboard on public property As the *Heyward* Court held estoppel should not be applied to effect the government's property rights Yet, that is precisely

how the Plaintiffs are asking this Court to apply the doctrine. Thus, the City is entitled to summary judgment on this issue.

4 Laches and Waiver

The Plaintiffs' sixth cause of action is for laches and waiver. That cause of action should be dismissed because laches and waiver are defenses, not causes of action. Furthermore, for the reasons already discussed, there is no evidence that the City knowingly and intentionally relinquished any property rights. Laches and waiver do not apply on the same basis that the City cannot be equitably estopped from asserting its property rights and denying the Plaintiffs the opportunity to rebuild the billboard on public property.

III Additional Defenses Applicable to the Federal and State Claims

A Punitive damages are not recoverable against a municipality under Section 1983 nor under the South Carolina Tort Claims Act

The Plaintiffs' complaint includes a general prayer for punitive damages. To the extent that the Plaintiffs are seeking the recovery of punitive damages on any federal cause of action, that claim should be dismissed. It is well settled that punitive damages are not recoverable against a municipality in a Section 1983 action. See *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981). In addition, to the extent that the Plaintiffs seek the recovery of punitive damages for any state law claims, S.C. Code Ann. § 15-78-120(b) bars the recovery of punitive damages against the City.

B The Plaintiff Jade Inns, Inc lacks standing

Based upon the deposition testimony of David Ashenfelder, Jade Inns, Inc has no legal interest in the billboard in question. He testified that he and his wife owned the billboard. *See*, Ashenfelder Depo , p 16. There is no evidence that Jade Inns, Inc has any interest in the billboard. Jade Inns, Inc , therefore, lacks standing to assert any claims or seek any relief with respect to the property for which it has no legal interest. Consequently, the City is entitled to summary judgment on all claims asserted by that Plaintiff.

CONCLUSION

Based on the foregoing discussion and analysis, the Defendant, City of Georgetown, respectfully requests that this Court grant its motion for summary judgment and dismiss the Plaintiffs' complaint with prejudice

Respectfully submitted,

DAVIDSON, MORRISON AND
LINDEMANN, P.A

BY s/ Andrew F Lindemann

ANDREW F LINDEMANN #5070

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

TEL (803) 806-8222

FAX (803) 806-8855

E-MAIL alindemann@dml-law.com

ATTORNEYS FOR DEFENDANT
CITY OF GEORGETOWN

Columbia, South Carolina

December 16, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER 2002-CP-22-955

David Ashenfelder and Jade Inns,
Inc d/b/a Georgetown Motel,

Plaintiffs,

NOTICE OF MOTION AND
MOTION TO AMEND COMPLAINT

vs

City of Georgetown, a body politic

Defendant

TO DEFENDANT, THROUGH THEIR ATTORNEY, ANDREW F LINDEMANN ESQ

PLEASE TAKE NOTICE that the undersigned will move before the presiding judge of the Court of Common Pleas of the Fifteenth Judicial Circuit in ten days, or as soon thereafter as he can be heard, for an Order, pursuant to Rule 15 SCRPC, to permit the Plaintiff to amend his Complaint for cause and an Order pursuant to Rule 19 SCRPC, for joinder of persons needed for just adjudication

This motion shall be supported by the laws of the State of South Carolina and arguments of counsel. The undersigned affirms, pursuant to Rule 11, SCRPC, that he attempted to resolve this matter prior to filing this motion, to no avail

I SO MOVE

GUNDLING
LAW FIRM, P A



David J Gundling
Attorney for Plaintiff
Post Office Drawer 2547
Pawleys Island, South Carolina 29585
Telephone (843) 237-3400
Facsimile (843) 237-0270

Pawleys Island South Carolina
November 10 2006

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2004-CP-22-955

David Ashenfelder, Carol)
Ashenfelder, and Jade Inns, Inc)
d/b/a Georgetown Motel,)
Plaintiff,)

vs)

City of Georgetown, a body)
Politc and Lucien Bruggeman)
Defendants)

**AMENDED
COMPLAINT**
(Jury Trial Requested)

2006 NOV 13 PM 1 39
CLERK OF COURT

Plaintiffs, complaining of Defendant, will respectfully show this Honorable Court that

JURISDICTION

1 The Plaintiffs, David Ashenfelder and Carol Ashenfelder, are citizens and residents of Greenville County, South Carolina, and have property interests located within the City of Georgetown, South Carolina

2 Upon information and belief, Defendant Lucien A Bruggeman is a citizen and resident of Cincinnati, Ohio who owns real property in the City of Georgetown, State of South Carolina that in part is the subject of this matter This court has personal jurisdiction over said Defendant Lucien A Bruggeman pursuant to S C Code Ann §36-2-803

3 Upon information and belief, Defendant the City of Georgetown is a political subdivision of the State of South Carolina, and therefore subject of the jurisdiction of this Court The property, which is the subject of this matter, is located in Horry County, South Carolina

4 The parties hereto and all matters alleged herein are within the jurisdiction of this Honorable Court

GENERAL ALLEGATIONS

5 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

6 Since at least 1977, the Plaintiffs owned a billboard located adjacent to Church Street in the City of Georgetown, South Carolina. The Plaintiffs continuously maintained the billboard, the land under the billboard and a Ten feet (10') area around the billboard, up to Church Street, a 30' right of way [hereinafter the "Land"] The Land where the sign is located is now owned by Defendant Lucien A. Bruggeman

7 On or about January 13, 2002, a vehicle operated by unknown driver collided into the billboard, apparently damaging one or two of the billboard supports. The billboard was not knocked over, and could have been repaired at minimal cost.

8 The Plaintiffs owned the billboard and possessed the Land for over 26 years and maintained the billboard and Land for the entire time. The billboard was off the highway far enough that it did not obstruct the view of traffic coming from either direction nor did it impede any traffic since it was well off the paved portion of Church Street and in fact the paved portion of Church Street is now used primarily for parking by the owner of the adjacent Burger King Restaurant. The billboard had been there longer than any other signage on that corner.

9 Although the billboard was located entirely on property owned by Doug Green, as predecessor in title to Defendant Lucien A. Bruggeman, at the time of the accident, without consulting the Plaintiffs who were the owners of the billboard, and the Land by adverse possession and/or prescription, or Doug Green, the record title holder to the land, the Defendant trespassed onto the property, tore down the entire billboard and failed and refused to allow the

Plaintiff to replace the billboard in its original location or compensate the Plaintiffs for the resulting damages

10 The billboard was consistently leased by the Plaintiffs, and at the time it was removed by Defendant City of Georgetown, was being leased to Randy Jones from the Litchfield Company In that the Plaintiffs, David and Carol Ashenfelder are retired, the sign provided a substantial amount of income of at least \$7,800 00 per year and the Plaintiffs expected such income, with periodic increases, indefinitely

FOR A FIRST CAUSE OF ACTION
(Adverse Possession as to Defendant Lucien A Bruggeman)

11 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

12 The Plaintiffs exercised dominion and possession of the billboard, and the Land, in excess of 23 years until the sign was removed by the Defendant City of Georgetown and such possession was continuous, hostile, open, actual, notorious and exclusive for the entire 23 year period and as such being in excess of the 10 year statutory period

13 Based upon the foregoing, the Plaintiffs are informed and believes that they acquired right title and interest to the Land by adverse possession and that they are entitled to an Order of this Court so holding and declaring

FOR A SECOND CAUSE OF ACTION
(Prescriptive Easement as to Defendant Lucien A Bruggeman)

14 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

15 As an alternative to the First Cause of Action, the Plaintiffs allege that they exercised the continued and uninterrupted use or enjoyment of a right to the Land for a full

period in excess of 20 years and the enjoyment was adverse or under claim of right as against the true owner

16 Based upon the foregoing, the Plaintiffs are informed and believes that the Plaintiff has acquired a prescriptive easement over and across the Land

FOR A THIRD CAUSE OF ACTION
(Conversion against the City of Georgetown)

17 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

18 The Defendant, City of Georgetown assumed and exercised rights of ownership over goods or personal chattels belonging to the Plaintiffs by trespassing onto the Land and removing the Plaintiffs' billboard to the exclusion of the rights of the owner and such exercise of rights of ownership was unauthorized. The taking of the Plaintiffs' billboard by Defendant City of Georgetown is illegal, tortious, fraudulent and/or willful and constitute a conversion of the Plaintiffs' property

19 As a result of the foregoing the Plaintiffs' are entitled to judgment for actual and punitive damages in an amount to be determined by this Court

FOR A FOURTH CAUSE OF ACTION
(Negligence as the City of Georgetown)

20 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

21 Upon damage to the billboard, the Defendant City of Georgetown owed a duty to the Plaintiffs to notify them of the damage or any unsafe condition resulting there from before unilaterally trespassing onto the Land and removing the billboard. The Defendant City of Georgetown breached the duty owed to the Plaintiff by trespassing onto the Land and removing

the billboard without any notice or opportunity for the Plaintiffs to repair the sign. The breach of the duty by the Defendant is the proximate result of extensive damages caused by the Defendant City of Georgetown.

22 As a result of the foregoing, and as a result of the City of Georgetown's reckless, gross negligence, and negligent conduct, the Plaintiff is entitled to damages against the Defendant for actual and punitive damages in an amount to be proved at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(Trespass as to the City of Georgetown)

23 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

24 The Plaintiffs assert that by the affirmative act of the City of Georgetown, the City of Georgetown invaded the Land, such invasion was intentional, and such intentional invasion and the acts of the City of Georgetown in tearing down and removing the Plaintiff's billboard directly resulted in damages to the Plaintiff.

25 As a result of the foregoing, the Plaintiff is entitled to actual and punitive damages in an amount to be proved at the trial of this case.

FOR A SIXTH CAUSE OF ACTION
(Estoppel as to the City of Georgetown)

26 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein.

27 Since 1977, the Plaintiffs owned, maintained and improved, at his sole cost and expense, a billboard on the Land at the same location. The Plaintiffs lacked any knowledge and the means of knowledge that the sign did not comply with the Georgetown City Zoning Ordinance, the Plaintiffs were justified in relying on the government's conduct, lack of conduct

and silence relating to the sign and the Plaintiffs changed position by paying for license fees, maintaining, repairing and improving the billboard to the Plaintiff's prejudice

28 Based upon the foregoing, the Defendant City of Georgetown was estopped from removing the Plaintiffs' billboard or claiming that it is not in compliance with any Georgetown City Zoning Ordinances, and as a result the Plaintiffs should be entitled to replace his sign at the same location where it existed prior to the removal and should also be entitle to actual damages resulting from the replacement cost of the sign and lost revenue since the billboard removal

FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment as to the City of Georgetown)

29 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

30 This is an action for declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina as set forth in S C Code of Laws § 15-53-10 (1976) *et seq* to declare the rights of the Plaintiffs relating to the billboard and Land that is the subject of this action

31 The Plaintiffs are informed and believes that he is entitled to an Order of this Court declaring that they are entitled to keep and maintain the billboard at the same location where it existed since at least 1977

WHEREFORE, the Plaintiffs respectfully request the following relief

- a An Order of the Court declaring the rights of the Plaintiff to maintain the billboard on the Land in the size and location as it existed on January 13, 2003,
- b Actual and punitive damages in an amount to be proved at the trial of this case,
- c Attorney fees, costs and disbursements in an amount to be proved at the trial of this case,

d For such other relief as this Court deems just and proper

G U N D L I N G
L A W F I R M P A

David J Gundling

Attorney for Plaintiff

Post Office Drawer 2547

Pawleys Island, SC 29585

Telephone (843) 237-3400

Facsimile (843) 237-0270

Pawleys Island, South Carolina
November 13, 2006

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2004-CP-22-955

David Ashenfelder, Carol)
Ashenfelder, and Jade Inns, Inc)
d/b/a Georgetownian Motel,)
Plaintiff,)

vs)

City of Georgetown, a body)
Politie and Lucien Bruggeman)
Defendants)

**AMENDED
COMPLAINT**
(Jury Trial Requested)

FILED
GEORGETOWN COUNTY
2007 MAR 15 PM 4 45
CLERK OF COURT

Plaintiffs, complaining of Defendant, will respectfully show this Honorable Court that

JURISDICTION

1 The Plaintiffs, David Ashenfelder and Carol Ashenfelder, are citizens and residents of Greenville County South Carolina, and have property interests located within the City of Georgetown, South Carolina

2 Upon information and belief, Defendant Lucien A Bruggeman is a citizen and resident of Cincinnati, Ohio who owns real property in the City of Georgetown, State of South Carolina that in part is the subject of this matter This court has personal jurisdiction over said Defendant Lucien A Bruggeman pursuant to S C Code Ann §36-2-803

3 Upon information and belief, Defendant the City of Georgetown is a political subdivision of the State of South Carolina, and therefore subject of the jurisdiction of this Court The property, which is the subject of this matter, is located in Horry County, South Carolina

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GENERAL ALLEGATIONS

5 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

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7 On or about January 13, 2002, a vehicle operated by unknown driver collided into the billboard, apparently damaging one or two of the billboard supports. The billboard was not knocked over, and could have been repaired at minimal cost.

8 The Plaintiffs owned the billboard and possessed the Land for over 26 years and maintained the billboard and Land for the entire time. The billboard was off the highway far enough that it did not obstruct the view of traffic coming from either direction nor did it impede any traffic since it was well off the paved portion of Church Street and in fact the paved portion of Church Street is now used primarily for parking by the owner of the adjacent Burger King Restaurant. The billboard had been there longer than any other signage on that corner.

9 Although the billboard was located entirely on property owned by Doug Green, as predecessor in title to Defendant Lucien A. Bruggeman, at the time of the accident, without consulting the Plaintiffs who were the owners of the billboard, and the Land by adverse possession and/or prescription, or Doug Green, the record title holder to the land, the Defendant trespassed onto the property, tore down the entire billboard and failed and refused to allow the

Plaintiff to replace the billboard in its original location or compensate the Plaintiffs for the resulting damages

10 The billboard was consistently leased by the Plaintiffs, and at the time it was removed by Defendant City of Georgetown, was being leased to Randy Jones from the Litchfield Company In that the Plaintiffs, David and Carol Ashenfelder are retired, the sign provided a substantial amount of income of at least \$7,800 00 per year and the Plaintiffs expected such income, with periodic increases indefinitely

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(Adverse Possession as to Defendant Lucien A Bruggeman)

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13 Based upon the foregoing, the Plaintiffs are informed and believes that they acquired right title and interest to the Land by adverse possession and that they are entitled to an Order of this Court so holding and declaring

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(Prescriptive Easement as to Defendant Lucien A Bruggeman)

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period in excess of 20 years and the enjoyment was adverse or under claim of right as against the true owner

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(Conversion against the City of Georgetown)

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(Negligence as the City of Georgetown)

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(1

the billboard without any notice or opportunity for the Plaintiffs to repair the sign. The breach of the duty by the Defendant is the proximate result of extensive damages caused by the Defendant City of Georgetown.

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(Trespass as to the City of Georgetown)

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24 The Plaintiffs assert that by the affirmative act of the City of Georgetown, the City of Georgetown invaded the Land, such invasion was intentional, and such intentional invasion and the acts of the City of Georgetown in tearing down and removing the Plaintiff's billboard directly resulted in damages to the Plaintiff.

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FOR A SIXTH CAUSE OF ACTION
(Estoppel as to the City of Georgetown)

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27 Since 1977, the Plaintiffs owned, maintained and improved, at his sole cost and expense, a billboard on the Land at the same location. The Plaintiffs lacked any knowledge and the means of knowledge that the sign did not comply with the Georgetown City Zoning Ordinance, the Plaintiffs were justified in relying on the government's conduct, lack of conduct

and silence relating to the sign and the Plaintiffs changed position by paying for license fees, maintaining, repairing and improving the billboard to the Plaintiff's prejudice

28 Based upon the foregoing, the Defendant City of Georgetown was estopped from removing the Plaintiffs' billboard or claiming that it is not in compliance with any Georgetown City Zoning Ordinances, and as a result the Plaintiffs should be entitled to replace his sign at the same location where it existed prior to the removal and should also be entitle to actual damages resulting from the replacement cost of the sign and lost revenue since the billboard removal

FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment as to the City of Georgetown)

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30 This is an action for declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina as set forth in S C Code of Laws § 15-53-10 (1976) *et seq* to declare the rights of the Plaintiffs relating to the billboard and Land that is the subject of this action

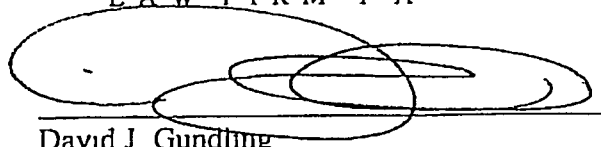
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d For such other relief as this Court deems just and proper

G U N D L I N G
L A W F I R M P A

A handwritten signature in black ink, appearing to read 'David J. Gundling', is written over a horizontal line. The signature is stylized with large, overlapping loops.

David J. Gundling
Attorney for Plaintiff

Post Office Drawer 2547
Pawleys Island, SC 29585
Telephone (843) 237-3400
Facsimile (843) 237-0270

Pawleys Island, South Carolina
March 5, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2004-CP-22-955

David Ashenfelder, Carol
Ashenfelder, and Jade Inns, Inc
d/b/a Georgetown Motel,

Plaintiffs,

vs

City of Georgetown, a body
Politie and Lucien Bruggeman

Defendants

SECOND AMENDED SUMMONS

(Jury Trial Requested)

TO THE DEFENDANTS NAMED ABOVE

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned David J Gundling of Gundling Law Firm, P A , at 239 Business Center Drive, Post Office Drawer 2547, Pawleys Island, South Carolina, 29585, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Second Amended Complaint within the time aforesaid, judgment for default will be rendered against you for the relief demanded in the Second Amended Complaint

GUNDLING
LAW FIRM, P A



David J Gundling
Attorney for Plaintiffs
Post Office Drawer 2547
Pawleys Island, South Carolina 29585
Telephone (843) 237-3400
Facsimile (843) 237-0270

Pawleys Island, South Carolina
May 30, 2007

FILED
2007 JUN -1 PM 2
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO 2004-CP-22-955

David Ashenfelder, Carol
 Ashenfelder, and Jade Inns, Inc
 d/b/a Georgetown Motel,

Plaintiffs,

vs

City of Georgetown, a body
 politic and Lucien Bruggeman

Defendants

**SECOND
 AMENDED
 COMPLAINT**
 (Jury Trial Requested)

FILED
 174 COUNTY, SC
 2007 JUN -1 PM 2 29
 ALMA J. WHITE
 CLERK OF COURT

The Plaintiffs, complaining of Defendants, will respectfully show this Honorable Court that

JURISDICTION

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trespassed onto the property, tore down the entire billboard and failed and refused to allow the Plaintiff to replace the billboard in its original location or compensate the Plaintiffs for the resulting damages

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FOR A FIRST CAUSE OF ACTION
(Adverse Possession as to Defendant Lucien A. Bruggeman)

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13 Based upon the foregoing, the Plaintiffs are informed and believes that they acquired right title and interest to the Land by adverse possession and that they are entitled to an Order of this Court so holding and declaring.

FOR A SECOND CAUSE OF ACTION
(Prescriptive Easement as to Defendant Lucien A. Bruggeman)

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FOR A THIRD CAUSE OF ACTION
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19 As a result of the foregoing, the Plaintiffs' are entitled to judgment for actual damages in an amount to be determined by this Court

FOR A FOURTH CAUSE OF ACTION
(Negligence as the City of Georgetown)

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21 Upon damage to the billboard, the Defendant City of Georgetown owed a duty to the Plaintiffs to notify them of the damage or any unsafe condition resulting there from before

unilaterally trespassing onto the Land and removing the billboard. The Defendant City of Georgetown breached the duty owed to the Plaintiff by trespassing onto the Land and removing the billboard without any notice or opportunity for the Plaintiffs to repair the sign. The breach of the duty by the Defendant is the proximate result of extensive damages caused by the Defendant City of Georgetown.

22 As a result of the foregoing, and as a result of the City of Georgetown's reckless, gross negligence, and negligent conduct, the Plaintiff is entitled to damages against the Defendant for actual damages in an amount to be proved at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(Trespass as to the City of Georgetown)

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24 The Plaintiffs assert that by the affirmative act of the City of Georgetown, the City of Georgetown invaded the Land, such invasion was intentional and such intentional invasion and the acts of the City of Georgetown in tearing down and removing the Plaintiff's billboard directly resulted in damages to the Plaintiff.

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FOR A SIXTH CAUSE OF ACTION
(Estoppel as to the City of Georgetown)

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(Declaratory Judgment as to the City of Georgetown)

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31 The Plaintiffs are informed and believes that he is entitled to an Order of this Court declaring that they are entitled to keep and maintain the billboard at the same location where it existed since at least 1977

FOR AN EIGHTH CAUSE OF ACTION
(Inverse Condemnation as to the City of Georgetown)

32 The Plaintiffs reiterate the allegations contained above as if repeated verbatim herein

33 Upon information and belief the destruction and removal of the Plaintiffs' billboard by the City of Georgetown was an affirmative, positive, aggressive act on the part of the governmental agency that constituted a taking of the Plaintiffs' property for a public use and the taking has some degree of permanence in that the Plaintiffs' billboard was removed, destroyed and disposed of by the City of Georgetown

34 Based upon the foregoing inverse condemnation by the City of Georgetown, the Plaintiff's are entitled to actual damages in an amount to be proved at the trial of this case

WHEREFORE, the Plaintiffs respectfully request the following relief

- a An Order of the Court declaring the rights of the Plaintiff to maintain the billboard on the Land in the size and location as it existed on January 13, 2003,
- b Actual damages in an amount to be proved at the trial of this case,
- c Attorney fees, costs and disbursements in an amount to be proved at the trial of this case,
- d For such other relief as this Court deems just and proper

G U N D L I N G
L A W F I R M P A.


David J Gundling
Attorney for Plaintiffs
Post Office Drawer 2547
Pawleys Island, SC 29585
Telephone (843) 237-3400
Facsimile (843) 237-0270

Pawleys Island, South Carolina
May 30, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
DAVID ASHENFELDER, CAROL,)
ASHENFELDER and JADE INNS, INC)
d/b/a GEORGETOWN MOTEL)
Plaintiffs,)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 04-CP-22-955

COPY

vs)
CITY OF GEORGETOWN, A BODY)
POLITIC and LUCIEN BRUGGEMAN)
Defendants)

ANSWER TO AMENDED COMPLAINT

The Defendant Lucien Bruggeman Answering the Amended Complaint of the Plaintiffs,
and would respectfully show unto the Court as follows

FOR A FIRST DEFENSE

ONE The Defendant Lucien Bruggeman denies all of the allegations of the Plaintiff's
Amended Complaint, unless specifically admitted herein

TWO The Defendant Lucien Bruggeman is without sufficient information to admit or
deny the allegations contained in paragraph one (1) of the Plaintiff's Amended Complaint

THREE The Defendant Lucien Bruggeman denies the allegations contained in paragraph
two (2), paragraph three (3), paragraph four (4) of the Plaintiff's Amended Complaint

FOUR The Defendant Lucien Bruggeman is not required to admit or deny the allegations
contained in paragraph five (5) of the Plaintiff's Amended Complaint

FIVE The Defendant Lucien Bruggeman denies the allegations contained in paragraph
six (6) of the Plaintiff's Amended Complaint

SLX The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph seven (7) and paragraph eight (8) of the Plaintiff's Amended Complaint

SEVEN The Defendant Lucien Bruggeman denies the allegations contained in paragraph nine (9) of the Plaintiff's Amended Complaint

EIGHT The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph ten (10) of the Plaintiff's Amended Complaint

NINE The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph eleven (11) of the Plaintiff's Amended Complaint

TEN The Defendant Lucien Bruggeman denies the allegations contained in paragraph twelve (12) and paragraph thirteen (13) of the Plaintiff's Amended Complaint

ELEVEN The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph fourteen (14) of the Plaintiff's Amended Complaint

TWELVE The Defendant Lucien Bruggeman denies the allegations contained in paragraph fifteen (15) and paragraph sixteen (16) of the Plaintiff's Amended Complaint

THIRTEEN The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph seventeen (17) of the Plaintiff's Amended Complaint

FOURTEEN The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph eighteen (18) of the Plaintiff's Amended Complaint

FIFTEEN The Defendant Lucien Bruggeman denies the allegations contained in paragraph nineteen (19) of the Plaintiff's Amended Complaint

SIXTEEN The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph twenty (20) of the Plaintiff's Amended Complaint

SEVENTEEN The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph twenty-one (21) of the Plaintiff's Amended Complaint

EIGHTEEN The Defendant Lucien Bruggeman denies the allegations contained in paragraph twenty-two (22) of the Plaintiff's Amended Complaint

NINETEEN The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph twenty-three (23) of the Plaintiff's Amended Complaint

TWENTY The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph twenty-four (24) of the Plaintiff's Amended Complaint

TWENTY ONE The Defendant Lucien Bruggeman denies the allegations contained in paragraph twenty-five (25) of the Plaintiff's Amended Complaint

TWENTY-TWO The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph twenty-six (26) of the Plaintiff's Amended Complaint

TWENTY-THREE The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph twenty-seven (27) and paragraph twenty-eight (28) of the Plaintiff's Amended Complaint

TWENTY FOUR The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph twenty-nine (29) of the Plaintiff's Amended Complaint

TWENTY FIVE The Defendant Lucien Bruggeman admits the allegations contained in paragraph thirty (30) of the Plaintiff's Amended Complaint

TWENTY-SIX The Defendant Lucien Bruggeman denies the allegations contained in paragraph thirty-one (31) of the Plaintiff's Amended Complaint

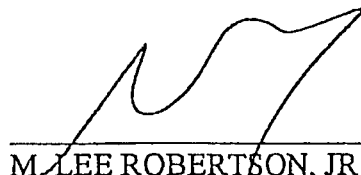
TWENTY-SEVEN The Defendant Lucien Bruggeman is not required to admit or deny the allegations contained in paragraph thirty-two (32) of the Plaintiff's Amended Complaint

TWENTY-EIGHT The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph thirty-three (33) of the Plaintiff's Amended Complaint

TWENTY-NINE The Defendant Lucien Bruggeman is without sufficient information to admit or deny the allegations contained in paragraph thirty-four (34) of the Plaintiff's Amended Complaint

WHEREFORE, the Defendant prays that the Court dismiss the Plaintiff's Third Part y Amended Complaint with costs and for such other and further relief as the Court deems just and proper

Respectfully submitted



M. LEE ROBERTSON, JR
Attorney at Law
1002 Anna Knapp Boulevard
Post Office Box 2110
Mt Pleasant, S C 29465
(843) 881-2244

Mount Pleasant, South Carolina
June 15, 2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

David Ashenfelder, Carol Ashenfelder,)
and Jade Inns, Inc d/b/a Georgetown)
Motel,)

Civil Action No 04-CP-22-0955

Plaintiffs,)

v)

City of Georgetown, a body Politic,)
and Lucien Bruggeman,)

Defendant)

ANSWER TO SECOND
AMENDED COMPLAINT
(Jury Trial Requested)

FILED
2007 JUN 19 AM 8 59
CLERK OF COURT

The Defendant, City of Georgetown, answers the Plaintiffs' Second Amended Complaint
herein as follows

FOR A FIRST DEFENSE

1 The Plaintiffs' Second Amended Complaint, in whole or in part, fails to state a cause
of action upon which relief may be granted The Defendant City reserves its right to file a motion
pursuant to Rule 12(b)(6), SCRCF

FOR A SECOND DEFENSE

2 The Defendant City denies each and every allegation of the Plaintiffs' Second
Amended Complaint not hereinafter specifically admitted, qualified, or explained

3 As to the allegations set forth in Paragraphs 1 and 2 of the Plaintiffs' Second
Amended Complaint, the Defendant City lacks sufficient information to admit or deny those
allegations, and therefore denies those allegations at this time

4 As to the allegations set forth in Paragraph 3 of the Plaintiffs' Second Amended Complaint, the Defendant City admits that it is a municipality and political subdivision of the State of South Carolina. The Defendant City denies that the subject property is located in Horry County.

5 The allegations set forth in Paragraph 4 of the Plaintiffs' Second Amended Complaint raise legal matters to which no response is required. The Defendant City reserves its right to assert jurisdictional defenses based on standing and ripeness.

6 As to the allegations set forth in Paragraph 5 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 4 of the Second Amended Complaint as if fully repeated herein verbatim.

7 As to the allegations set forth in Paragraph 6 of the Plaintiffs' Second Amended Complaint, the Defendant City denies that the property where the billboard was located is owned by Lucien Bruggeman. As to the remaining allegations, the Defendant City lacks sufficient information to admit or deny those allegations and therefore, denies those allegations at this time.

8 As to the allegations set forth in Paragraph 7 of the Plaintiffs' Second Amended Complaint, the Defendant City admits only that on January 13, 2003, a vehicle driven by an unidentified driver being pursued by an officer of South Carolina Highway Patrol collided with the subject billboard causing extensive damage to the billboard. The remaining allegations of Paragraph 7 are denied.

9 As to the allegations set forth in Paragraph 8 of the Plaintiffs' Second Amended Complaint, the Defendant City denies that the property where the billboard was located was possessed by the Plaintiff for over 26 years. As to the remaining allegations, the Defendant City lacks sufficient information to admit or deny those allegations, and therefore denies those allegations at this time.

10 As to the allegations set forth in Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendant City admits only that the remnants of the subject billboard were removed by the City following the January 13, 2003 incident and that the City refused to allow the Plaintiff to re-build the billboard on City-owned property. The remaining allegations set forth in Paragraph 9 are denied.

11 As to the allegations set forth in Paragraph 10 of the Plaintiffs' Second Amended Complaint, the Defendant City lacks sufficient information to admit or deny those allegations, and therefore, denies those allegations at this time.

12 As to the allegations set forth in Paragraph 11 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 10 of the Second Amended Complaint as if fully repeated herein verbatim.

13 The allegations set forth in Paragraphs 12 and 13 of the Plaintiffs' Second Amended Complaint are denied.

14 As to the allegations set forth in Paragraph 14 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 13 of the Second Amended Complaint as if fully repeated herein verbatim.

15 The allegations set forth in Paragraphs 15 and 16 of the Plaintiffs' Second Amended Complaint are denied.

16 As to the allegations set forth in Paragraph 17 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 16 of the Second Amended Complaint as if fully repeated herein verbatim. The Defendant City objects to the jumbling of causes of action.

17 The allegations set forth in Paragraphs 18 and 19 of the Plaintiffs' Second Amended Complaint are denied

18 As to the allegations set forth in Paragraph 20 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 19 of the Second Amended Complaint as if fully repeated herein verbatim. The Defendant City objects to the jumbling of causes of action.

19 The allegations set forth in Paragraphs 21 and 22 of the Plaintiffs' Second Amended Complaint are denied

20 As to the allegations set forth in Paragraph 23 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 22 of the Second Amended Complaint as if fully repeated herein verbatim. The Defendant City objects to the jumbling of causes of action.

21 The allegations set forth in Paragraphs 24 and 25 of the Plaintiffs' Second Amended Complaint are denied

22 As to the allegations set forth in Paragraph 26 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 25 of the Second Amended Complaint as if fully repeated herein verbatim. The Defendant City objects to the jumbling of causes of action.

23 The allegations set forth in Paragraphs 27 and 28 of the Plaintiffs' Second Amended Complaint are denied

24 As to the allegations set forth in Paragraph 29 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 28 of

the Second Amended Complaint as if fully repeated herein verbatim The Defendant City objects to the jumbling of causes of action

25 The allegations set forth in Paragraphs 30 and 31 of the Plaintiffs' Second Amended Complaint are denied

26 As to the allegations set forth in Paragraph 32 of the Plaintiffs' Second Amended Complaint, the Defendant City repeats and reiterates its responses to Paragraphs 1 through 31 of the Second Amended Complaint as if fully repeated herein verbatim The Defendant City objects to the jumbling of causes of action

27 The allegations set forth in Paragraphs 33 and 34 of the Plaintiffs' Second Amended Complaint are denied

28 The allegations and relief sought in the Prayer for Relief are denied

FOR A THIRD DEFENSE

29 The Plaintiffs' claims are in whole or in part, barred by the Plaintiffs' failure to exhaust its state law and/or administrative remedies

FOR A FOURTH DEFENSE

30 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of ripeness

FOR A FIFTH DEFENSE

31 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of waiver

FOR A SIXTH DEFENSE

32 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of estoppel

FOR A SEVENTH DEFENSE

33 The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of frauds

FOR AN EIGHTH DEFENSE

34 The actions taken by the Defendant City are fairly debatable and are therefore presumptively valid

FOR A NINTH DEFENSE

35 The Plaintiffs' claims are, in whole or in part, barred as a result of absolute legislative immunity

FOR A TENTH DEFENSE

36 The Plaintiffs' claims are, in whole or in part, barred as a result of the application of the statute of limitations

FOR AN ELEVENTH DEFENSE

37 The Plaintiffs' claims are, in whole or in part, barred based upon the defense of laches

FOR A TWELFTH DEFENSE

38 The Defendant City asserts the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act, including but not limited to the damages caps and the punitive damages bar as set forth in S C Code Ann § 15-78-120

FOR A THIRTEENTH DEFENSE

39 The Defendant City is immune from suit pursuant to the South Carolina Tort Claims Act, S C Code Ann § 15-78-10, *et seq* , specifically S C Code Ann § 15-78-60(1), (2), (3), (4), (5), (7), (9), and (20)

FOR A FOURTEENTH DEFENSE

40 Upon information and belief, the Plaintiff Jade Inns, Inc lacks standing

FOR A FIFTEENTH DEFENSE

41 The Plaintiffs have failed to mitigate their damages, thereby barring their recovery

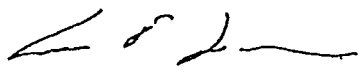
in whole or in part

FOR A SIXTEENTH DEFENSE

42 The Defendant City asserts the defense of sovereign immunity as to all claims for money damages

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint, the Defendant, City of Georgetown, prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action and for such other and further relief as the Court deems just and proper

DAVIDSON, MORRISON AND
LINDEMANN, P A

BY 

ANDREW F LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806 8222

Counsel for Defendant City of Georgetown

Columbia, South Carolina

June 15, 2007

Motions

1 primarily I'd call your attention to the Stanton versus
2 Town of Pawleys Island case, a 1992 Supreme Court case
3 where the Supreme Court dismissed an action challenging
4 denial of a building permit because of failure to appeal
5 to the Board of Adjustment in that particular case So,
6 we believe that that issue disposes of all of the
7 grounds

8 Let me turn real quickly to the adverse possession
9 and prescriptive easement claims Those are new to this
10 case as of the amendment that brought Mr Robertson's client,
11 Mr Bruggeman into this case, and even though those causes of
12 action aren't directed at the City, we have an
13 interest in those causes of action, Your Honor, because of
14 the City's belief that the sign was on City property at the
15 time that these events occurred, and therefore, the City had
16 the right not to allow the sign to be rebuilt on our
17 property first of all and we also had the right to remove the
18 remnants of the billboard that was located on City
19 property

20 Now, in federal court, that issue was undisputed Mr
21 and we've cited and submitted to the Court deposition
22 testimony from Mr Ashenfelder where he said, " I don't like
23 the idea I don't agree, but I can't dispute the fact that
24 the billboard was on City property " In fact, in his
25 deposition he says, "My lawyer even told me that it was on

1 two I asked him to describe specifically the portion of the
2 property to which they claim exclusive possession, and in
3 answer to interrogatory number two, they say the eight feet
4 around the sign in all directions, and then in interrogatory
5 number four I asked, ``What measures, actions or methods were
6 undertaken to exclude the persons identified from the real
7 property described in response to interrogatory number one
8 and two," and the only thing they described is they say,
9 ``The Plaintiff maintained, repaired, repainted and
10 advertised on the billboard on the property and maintained,
11 cut the grass and cleaned the area around the sign '' The
12 fact that they maintained the sign and the area around it did
13 not cause there to be exclusive possession, Your Honor So,
14 the Plaintiff cannot prove as a matter of law exclusive
15 possession One other case I would quickly point out to the
16 Court and then I'm going to move on to another issue is a
17 case called King versus Hawkins It's a case that the South
18 Carolina Courts of Appeals actually held as a matter of law
19 that the placement of a sign on a piece of property, an
20 adjoining piece of property was not sufficient evidence of
21 probable cause, of not probable cause, of adverse possession
22 I'm trying to go quickly because I know I only have a few
23 minutes, Your Honor

24 Let me move quickly to the prescriptive easement issue
25 as well That's a new issue as well In order to prove,

1 discussed for the adverse possession So, we would submit,
2 Your Honor, that summary judgment should be issued denying
3 relief based on adverse possession or a prescriptive
4 easement

5 If I may very quickly hit on the other issues On the
6 trespass issue, Your Honor, as indicated the City cannot be
7 liable for trespass on its own property certainly and it
8 can't be liable for trespass on somebody else's property If
9 this property was, indeed, Bruggeman and Green's property
10 that they went onto, Mr Ashenfelder and his Plaintiffs
11 cannot sue for that trespass The only thing that they can
12 sue for would be a trespass as to the sign itself and there's
13 no such thing because South Carolina law, particularly the
14 Creative Displays versus South Carolina Highway Department
15 case recognizes that a billboard is not a fixture, it's not
16 real property It's personal property, and so, you cannot
17 have trespass with respect to personal property So, summary
18 judgment should be granted on that particular claim, Your
19 Honor

20 On the inverse condemnation claim which Your Honor will
21 ultimately decide we do not believe that there was a taking
22 in this particular instance because as we indicated it was
23 the billboard itself was taken down in order to affect a
24 safety or security issue There's a considerable amount of
25 case law talking about exercise of police power does not give

1 rise to a taking In addition to that, Your Honor, and I'll
2 be happy to hand up this case It's the Mibbs versus South
3 Carolina Department of Revenue This goes to what I
4 mentioned back in chambers that if there is any recovery

5 whatsoever for a taking or a conversion in this case that it
6 would be limited to the value of the billboard in its damaged
7 state, which there has been no evidence submitted as to what
8 that value is In Mibbs versus South Carolina Department of
9 Revenue, it was a video poker case, and the South Carolina
10 Supreme Court very clearly said that collateral damages,
11 including lost business profits, are not recoverable on a
12 takings claim That was the exact quote that I read to
13 you and it's marked on the page I'm handing up to Your
14 Honor

15 THE COURT Thank you

16 MR LINDEMANN So, in taking, Your Honor, the
17 inverse condemnation claim should be limited in damages to
18 the value of that damaged billboard The Court recalls we
19 didn't have anything to do with damaging it It was damaged
20 by the run-away vehicle

21 On the negligence claim, Your Honor, real quickly,
22 there's no duty that was owed to allow Mr Ashenfelder to
23 rebuild his billboard either on city property or even if it
24 was on Mr Bruggeman's property We don't have a duty to
25 issue a permit to allow him to build on a piece of property

1 for which he does not have a lease or a right to put that
2 billboard, and he admitted in his deposition and that
3 testimony is in the record before Your Honor, that he did not
4 ever have any lease agreements throughout the entire period

5 of time he and the Plaintiffs owned this billboard to have
6 the billboard on that particular spot, regardless of whether
7 it was owned by the City or some other third property So,
8 there's clearly no duty We've also raised sovereign
9 immunity under subsection seven for a nuisance and under
10 subsection four for enforcing our ordinances The City
11 cannot be liable for taking action against a nuisance or
12 taking or enforcing our own ordinances as we did, which is
13 another reason why they should have exhausted their
14 administrative remedies If they were entitled to a remedy
15 that's the way they were going to get it, rather than a money
16 damages claim in this particular case

17 Equitable estoppel claim before Your Honor, they don't
18 meet the four, the three elements I'll rely on the brief
19 for that, Your Honor There was nothing that was kept from
20 Mr Ashenfelder He knew all the facts He knew that he
21 never had the legal right to have that billboard on that
22 location The fact that he was -- nobody forced him over the
23 years to take it down does not give him the right, and in
24 fact, that was one of the issues raised in federal court that
25 I think caused the Plaintiffs to change their tact in the

1 State Court, which is you can't obtain property by
2 prescription against the government, and so, that's why I
3 think they've changed their theory to say, "Well, we can
4 obtain property by prescription against Mr Bruggeman" The
5 problem is for the reasons I've already said, stated, they
6 cannot prove the elements of those particular claims So, on
7 all of those grounds, Your Honor, we believe that this
8 lawsuit should be dismissed and if anything the Plaintiff had
9 a remedy I don't know whether he can still pursue it, but
10 certainly he had a remedy if there was one out there through
11 the administrative process and he failed to do that and that
12 should, alone should dispose of this entire case Thank you
13 Your Honor

14 THE COURT Thank you Mr Gundling, in
15 reply?

16 MR GUNDLING May it please the Court, Your
17 Honor

18 With respect to exhaustion of administrative remedies, I
19 think the City is kind of missing the point with respect to
20 this issue They're suggesting that Mr Ashenfelder had to
21 apply for a permit to put a sign up The problem was is the
22 City tore the sign down and then after tearing his property
23 down, throwing it into the landfill then they say, "Okay,
24 if you want a sign you've got to come back and give us a
25 permit " The wrongful act was them tearing down the sign

1 that he had operated and maintained and used and advertised
2 on since 1979 I mean, an analogy would be them coming on
3 somebody else -- somebody's property if there is a tool shed
4 or something that it is nonconforming What the City is
5 going to do is tear it down because it's nonconforming and
6 then come back and say, ``You have to get a permit for that,
7 for that sign or for that, to repair that '' So, I think for
8 them to say that, ``Okay, we're going to tear it down because
9 it's nonconforming and then we're going to say you've got to
10 get a permit to put it back up,'' I feel is disingenuous but
11 the real issue with that, I think, is that there's a
12 generally recognized exception to the requirement of
13 exhaustion of administrative remedies that exists when a
14 party demonstrates that the pursuit of them would be a vein
15 or futile act and that's the Ward v State case In this
16 particular action several individuals and I have, I have some
17 cites of depositions, Mr Ashenfelder's deposition, several
18 cites in Ms Gregory's deposition, Mr Freeman's deposition,
19 Mr Johnson's deposition and a letter that Mr Johnson wrote
20 to Mr Ashenfelder basically saying that, " We can't give you
21 a permit period," and not that we think we needed one We
22 weren't going for a permit We said, ``We want to put our
23 sign back up that you tore down without even telling us
24 about '' So, to suggest, I think, to suggest that they --
25 that we're even obligated to seek an administrative remedy of

1 a permit for the sign, we -- that's not what our relief is
2 We feel we had that sign there anyway It had been there at
3 least with -- in our possession since 1979, and that we
4 weren't obligated to get a permit Where were they the last
5 24 years asking us to permit that sign? Where were they in
6 the last 24 years asking us to tear down that sign? Where
7 were they in the last 24 years obligating us to take down
8 that sign? Now they rip it down and say, ``Okay, you've got
9 to get a permit to put it back up and we're not going to give
10 you one '' So, I feel under those circumstances that I think
11 exhaustion of administrative remedies, in the first instance
12 it's not required In the second instance, based on the
13 testimony and the depositions of Mr Freeman, Mr Johnson and
14 Ms Gregory it would have been a futile act because they all
15 said that that isn't something that they would, they would
16 permit

17 The next issue has to do with the right to possession
18 that was brought up in the motion for summary judgment This
19 deals basically with the adverse possession argument and
20 also the prescriptive easement argument The adverse
21 possession argument requires continuous use for ten years
22 The evidence will be that we had continuous use since 1979
23 of this property, the hostile possession I don't know how
24 more hostile than you can get with respect to a sign that's
25 12 by 32 feet in size I don't know how you can be more

1 hostile than that I mean, that's obviously the hostile
2 use and Mr Green, who was the owner of the property back
3 in the eighties and nineties and in the early this century,
4 stated that he felt that that was his sign, that was on
5 his property, but he never took any action with respect to
6 that either So, I don't know how much more hostile you
7 can get from putting a big billboard on somebody's
8 property

9 Open and notorious, again, I don't know how much more
10 hostile than you get as far as putting a big billboard on
11 the sign and he actually possessed it and it was exclusive
12 Nobody during the time period that he operated that sign
13 from 1979 tried to dispossess him of the use and the right
14 to that sign There are some letters that went around in
15 '86 and in 1995 but nobody tried to do that So, I'd
16 certainly think there's an issue of fact of whether he had a
17 right to the property where that sign was by adverse
18 possession

19 THE COURT All right, counsel, what about the
20 argument that in 1996 he took the position that the City
21 owned the property where the sign was?

22 MR GUNDLING Well, in that, in that letter as you will
23 see in evidence he was reciting the position that the City
24 took and that's basically what the, the position the City
25 took in their letters, and as a matter of a fact, he cited

1 those letters and said the City says it's on their property
2 Mr Green never pushed that issue, but the City back in 1986
3 wrote letters to Mr Ashenfelder to try to get him to remove
4 the, remove the sign off the road They never took any
5 action from 1986 on that, and he kept operating under the
6 belief that he had every right to own and operate and
7 maintain that sign, and what he had was he had the City
8 saying that that's on our property and Mr Green saying that
9 that's on my property So, the issue was never resolved
10 either by Mr Green or the City at that time, and it wasn't
11 only -- it wasn't until only recently by the efforts of
12 Mr Ashenfelder that he has actually isolated and determined
13 a location of that billboard The problem is when the City
14 before the City tore down that billboard they didn't take one
15 picture of it They didn't do anything to preserve the
16 site They didn't do anything to survey the property to
17 determine where that sign was located and they were the ones
18 that had the ability right at that point to determine the
19 location of that sign and it has really never been determined
20 and that's what this case is going to be about It's going
21 to determine the location of the sign The City has no
22 evidence as to where it is We would submit evidence through
23 an expert to testify where that sign is and that's on Mr
24 Bruggeman's property The City doesn't have any evidence to
25 establish it's in the street They don't even have any

1 evidence to establish they have any rights to that street
2 through deeds or dedication or any other normal rights that
3 the City would have to have possession of City property, but
4 we've determined through our experts and that's evidence that
5 we'll present that the sign was actually located on Mr
6 Bruggeman's property So, we feel that based on that we can
7 -- at least there's an issue of fact as to the adverse
8 possession

9 Again, there's also, I believe, an issue of fact as to
10 the claim for prescriptive easement There it must be
11 continuous and uninterrupted for a period of 20 years
12 pursuant to Pittman v Lowder and other authority, Horry
13 County v Lacher The -- Mr Ashenfelder owned, maintained,
14 operated that sign since 1979 The City tore it down in
15 2003 So it was 24 years that he operated that sign, of
16 course, well over the statutory requirement for a
17 prescriptive easement The identity of the thing enjoyed
18 couldn't be any more clear He operated, maintained that
19 sign and cleaned up around that sign and it was obviously
20 adverse to the claim of right of Mr Green and who was
21 ultimately the owner of the property where the sign is
22 located and prior owners I mean, he had, he had clear
23 possession of that sign during that whole time and while he
24 was there since 1979 to 2003 nobody tried to come on there
25 and tell him to get off the property until Mr Green did in

1 1996, but you know, I think that he has also established and
2 there's issues of fact that he has established all the
3 elements for prescriptive easement as well

4 On some of the other issues, the issue of trespass,
5 obviously once there's a determination by this jury that we
6 did have the right to that property by adverse possession or
7 prescription, which those rights would mature by virtue of
8 this, then there is then, obviously, the City trespassed on
9 somebody else's property, ours to take the sign down. They
10 had, I mean, this is the City, they had every right, ability
11 and resource to make an accurate determination as to where
12 that sign is. They didn't care to. They saw an opportunity
13 to tear down that sign and they did it, did not even notify
14 Mr. Ashenfelder that they were going to do it. There's an
15 issue of fact as to exactly whether the sign was damaged or
16 not and -- or how much it was damaged. There was an issue
17 that one pole was damaged on the sign out of five poles. So,
18 there's certainly an issue as to what the damage was to that
19 sign and whether he could have just repaired it. They took
20 the position, "We're going to tear it down and then we're
21 going to assert our right, if you want that thing back up
22 you've got to get a permit for it." So, you know, I feel
23 that that certainly was a trespass. That goes to the
24 negligence issue as well that the duty that the City owed to
25 a property owner of that sign. There is ample testimony from

1 Mr Boyd, who was with the City, I believe, for 24 years that
2 he knew who owned that sign because of the issue way back in
3 1986 where the City wrote some letters to Mr Ashenfelder
4 about that sign They were well aware who owned that sign
5 Irrespective of that, and because of that, I feel that the
6 City owed a duty to the Plaintiff not to just go on the
7 property, tear down the sign and that that duty was breached
8 by the City and there were proximate damages that flowed
9 from that

10 The inverse cause of action, inverse condemnation, I'm
11 sorry, the -- I guess they're raising the issue of that this,
12 this -- the reason why they went on there and took the sign
13 is because of some type of nuisance or unsafe condition It
14 wasn't until about three days after the sign was originally
15 damaged that they took it down So, it must not have been a
16 very exigent circumstance in the first place, and the
17 testimony from the city officials that testified was all over
18 the map as to exactly the damage to the sign, whether the
19 billboard, the face of the billboard was damaged or not
20 So, and they were the ones in the last position -- all they
21 had to do was take a picture and we wouldn't be here, one
22 picture and we wouldn't be here, but they failed to do that
23 They just take it on themselves to tear down the sign I
24 feel they felt that they had an opportunity and they were
25 going to tear it down, not tell Mr Ashenfelder and then when

1 he comes back to them to tell him, ``Well, you can't
2 put it back up '' So, I believe that there obviously was
3 a conversion, which is the unauthorized assumption and
4 exercise of right of ownership over Mr Ashenfelder's
5 property

6 The equitable estoppel argument, Your Honor, the
7 elements for equitable estoppel pursuant to the Midlands
8 Utility case a lack of knowledge and a means of knowledge
9 about the truth of the matter in question, justifiable
10 reliance on the government's conduct and a prejudicial change
11 in condition, in position The government body may within
12 limitations of its power be estopped by its acquiescence in
13 and approval of the acts originally authorized, and what
14 happened is, obviously in 1997, in 1979 he took possession of
15 the sign and this isn't something you can hide This is a
16 sign on US Highway 17 If the City had rights to that sign
17 and felt it was a nonconforming use they could have taken
18 action in 1979 or even before that when the sign was up
19 They didn't In 1986 they informed Mr Ashenfelder that they
20 felt the sign needed to be taken down and told them it was on
21 their property Some letters went back and forth and they
22 did nothing, no formal action at all was taken in 1986 and
23 they let Mr -- under that belief that he had every right to
24 be there to operate and maintain the sign, he went ahead and
25 continued maintaining it, repairing it, fixing the sign,

1 forward?

2 MR GUNDLING The South Carolina code annotated
3 15-78-40 states that a state agency, a political subdivision
4 and governmental entity are liable for their torts in the
5 same manner and to the same extent as the private individual
6 under like circumstances subject to limitation of liability
7 and damages and exemptions from liability and damages
8 contained therein So, trespass is a tort

9 THE COURT All right, and the, the exemptions
10 are in 15-78-60

11 MR GUNDLING Right, and the only one they cite is
12 adoption or enforcement or compliance with any law or failure
13 to adopt or enforce any law and that gets with their whole
14 issue of enforcing their ordinance, somehow they are not,
15 they are not liable for that That's really not an issue to
16 us The issue to us isn't that we had to comply with their
17 ordinance in the first place The issue to us is we had a
18 sign there and they tore it down We didn't have to comply
19 with their ordinance to have it there and we shouldn't have
20 had to comply with their ordinance once they tore it down,
21 and the other issue that they claim, I understand, is a
22 nuisance That really wasn't pled as an affirmative defense
23 in this case, that they -- that there was some type of a
24 nuisance that was involved, but that, if anything, that's an
25 issue of fact but nothing ---

1 THE COURT What about, what about number
2 nine?

3 MR GUNDLING I don't, I don't have the statute in
4 front of me, Your Honor

5 THE COURT It says entry upon any property
6 where entry is expressly or impliedly authorized by
7 law

8 MR GUNDLING Well, that would assume that their,
9 their right was authorized by law to, to come onto that
10 property I mean, I don't know what authorized them to come
11 onto the property and tear down that sign

12 THE COURT Well, what you really dispute is
13 whether or not the sign was damaged to the extent that it
14 had to be torn down Isn't that really what the issue is
15 here?

16 MR GUNDLING Well, that's not the main issue
17 The fact is we felt we had the sign We had the right to
18 continue to maintain the sign and they shouldn't have torn it
19 down They're raising the issue, we weren't, they're raising
20 the issue that the sign somehow constituted a nuisance and
21 that's going to be an issue of fact, and that they had every
22 right to go in there and tear down that sign Again, that
23 could have easily been established as to the level of damage
24 to that sign by a photograph but they're going to have
25 testimony to say that that sign was a nuisance and they had a

Motions

1 right to go in there and tear down that sign but we, we feel
2 we had every right to repair the damage, and they're, under
3 the ordinance, they're citing issues dealing with restoration
4 or a new sign and this type of thing and I tried to tie them
5 down as to what constitutes repair, how much money, how much
6 damage, and I never could get a straight answer from the City
7 as to that, but we felt if it was damaged, all you have to do
8 is tell us and we'll repair it

9 THE COURT All right

10 MR GUNDLING And that was, that was never done
11 So, our main issue is not really the extent of the damage
12 and whether they had a right to tear it down We feel
13 they didn't have the right to tear our sign down
14 period

15 THE COURT Well, I understand, counsel What
16 I'm trying to think through though are the public policy
17 implications of what you say because if the police have to go
18 and get authorized entry upon land before they take any type
19 of action, whether it be a billboard which appears to be in
20 their belief a hazard or a nuisance as they term it today or
21 a fire on a property or any other situation which requires an
22 exigent or non-exigent response how could such a system ever
23 be workable if the City was constantly being subjected to
24 trespass torts

25 MR GUNDLING Well, the first time we heard that

1 issue was in this lawsuit that when they're trying to justify
 2 their action to go on the site There was a police report
 3 done by the guy that -- the officer that was there and he did
 4 a detailed police report and he actually itemized the sign as
 5 one of the, as one of the things that he specified the level
 6 of damages to He didn't say that the sign was destroyed
 7 His report, which had, which had an additional attachment to
 8 it didn't say anything about how the sign was a danger, that
 9 it needed to be removed, that it was a nuisance, there was
 10 nothing to that effect in his police report that was done
 11 and in fact, based on the testimony from the City, the sign
 12 wasn't removed for two or three days after that They don't
 13 really know when it was removed So I think from that
 14 evidence it doesn't constitute a situation where there is
 15 exigent circumstances from the evidence, and I think that's
 16 going to be an issue of fact for the jury to decide as to
 17 whether they felt that the City had the right to go on there
 18 and tear this down or whether they -- there were only one or
 19 two out of five poles that were damaged so

20 THE COURT All right, just, just a moment
 21 Thank you

22 MR GUNDLING Okay

23 THE COURT All right, counsel, this, of course
 24 you, ladies and gentlemen, have been living with this matter
 25 for quite some time The Court, although I've had some

1 certain that there will be a counter, but to be perfectly
2 honest with the Court, given the fact that I just got that
3 over the weekend, I haven't had a chance to address it

4 THE COURT All right, very good

5 MR GUNDLING Your Honor, we got the offer on
6 Friday So, we tried to respond to it

7 THE COURT All right, well, obviously when this
8 case, when the smoke clears somebody is going to win,
9 somebody is going to lose, and if we can resolve the case
10 among the parties that's a better way to do it, but if it's
11 not possible, we'll go forward to try the case That's why
12 we're here

13 MR GUNDLING Your Honor, if I may, last night I
14 prepared a memorandum in opposition of summary judgment with
15 ---

16 THE COURT All right, just one moment,
17 Mr Gundling All right, Mr Gundling, go ahead and then
18 we'll -- once we -- do we have a telephone number for Mr
19 Willis?

20 (Bailliff and Court confer)

21 THE COURT All right thank you, Ms Knox, for
22 checking on that Go ahead We're going to have to make a
23 decision in a moment as to whether we're ready to go forward
24 without one of our jurors, but go ahead, Mr Gundling

25 MR GUNDLING Your Honor, I just want to submit a

1 Q Okay

2 A Approximately eight years

3 Q All right, all right, did you have any other businesses
4 or occupation when you moved to Georgetown?

5 A Yes, we owned the Georgetownian Motel

6 Q And when did you purchase the Georgetownian Motel?

7 A We got here in February and that's when I started working
8 on it I think that's pretty close to the right time

9 Q Okay, and that was the business that basically you and
10 Carol operated?

11 A That's correct

12 Q And it was incorporated under a legal name, at least the
13 property was?

14 A Yes, it was Jade Inns, Incorporated

15 Q Let me show you what's marked as Plaintiff's Exhibit
16 Number 26 and I'd ask you to look at the second to the last
17 page of that document What is that document and does your
18 name appear on that document?

19 A This is an application for reinstatement of the
20 corporation It had lapsed, I'm not sure why, but it lapsed
21 in 1977

22 Q All right

23 A And we had it reinstated in April of '79, I believe it
24 was

25 Q So, that would be right around the time you began

1 operating the Georgetownian Motel?

2 A That's correct

3 Q All right, all right, and your signature and Carol's
4 signature appears on that document?

5 A Yes, sir, it does

6 Q Please explain to the jury where the Georgetownian Motel
7 is

8 A It is now called Harbor Inn It's located right on Route
9 17 If you're going north on 17 headed towards Myrtle Beach,
10 if you know where the Carolinian was, then comes the -- let's
11 see what's on the other side of the Carolinian, I guess the
12 cemetery, and then we're on the other side of the cemetery and
13 then comes Pizza Hut

14 Q Okay, all right, how long did you operate the
15 Georgetownian Motel?

16 A For about 25 years

17 Q And that would have started from 1979 until when?

18 A I think it was about 1975 or '76, in that area that we
19 sold it to Jay Patidar

20 Q Okay, let me show you what's marked as Plaintiff's
21 Exhibit Number 25 This is already introduced but is that the
22 deed where you -- where the property was transferred and you
23 ceased operating the Georgetownian Motel?

24 A Yes, it looks like that's the deed

25 Q Okay, and what would that date be, Mr Ashenfelder?

1 A The 21st of April, 1995

2 Q Okay, was the motel when you operated it located within
3 the city limits?

4 A Yes, sir

5 Q All right, and did you pay taxes and fees to the City
6 for operating the motel?

7 A Yes, sir, we sure did

8 Q Okay, this motel like a family business? Did your
9 family members help you with it?

10 A Yes, as a matter of a fact it was managed before we came
11 by Carol's mother and father for the previous owner

12 Q Okay, so, your in-laws actually operated it before you
13 actually took ownership?

14 A Right, and they both continued to manage it while I was
15 working for Baptist Life

16 Q How many rooms did that motel have?

17 A Well, when it started we had -- there were actually, I
18 think, 42 rooms and probably fifteen of them were rentable

19 Q Okay, did you also operate a bed and breakfast in the
20 Georgetown area?

21 A Yes, we did Later on we purchased a home, well, the
22 names of the owners just skips my mind, but anyways, we did
23 operate a bed and breakfast, yes

24 Q And where was that located?

25 A It was on South Island Road as you go out towards the

1 ferry on the right-hand side

2 Q What was the name of the bed and breakfast?

3 A Ashfield Manor Bed and Breakfast

4 Q Okay, is that something that you and your wife operated
5 as well?

6 A Yes, and enjoyed that very much

7 Q Okay, now, when you -- you and your wife became involved
8 with the Georgetownian Motel was there a billboard in town that
9 advertised the Georgetownian Motel?

10 A Yes, sir, there was

11 Q And was that a part of the property that you took
12 possession of and maintained when you began operating the
13 motel?

14 A Yes, sir, we did

15 Q Where was that sign located?

16 A To give you a current picture, if you're going north on
17 17, if you went to Burger King and just took a quick glance
18 off to your left, it was located in that area

19 Q Okay, let me show you what's marked as Plaintiff's
20 Exhibit 29 Could you explain what that photograph is?

21 A Yes, this was the billboard when we purchased the motel
22 This is an old picture but that's -- it's a picture of that
23 billboard

24 Q Okay, what was the size of the billboard?

25 A It was 12 by 32

1 Q Okay, did the size of the billboard change at any time
2 that you operated the billboard?

3 A No, sir, it did not

4 Q Explain what the construction of the billboard was?

5 A At the time we purchased it it was made up of, the main
6 structure of the billboard was billboard material that was
7 five-eighths of an inch thick and alls it had on it was a one
8 by four trim around the outside that at that time was painted
9 blue It had five telephone poles that the sign was attached
10 to Those poles were eight foot apart and approximately 19
11 feet off the ground was the top of the billboard

12 Q Okay

13 A Seven feet approximately to the bottom of it, so

14 Q How long did the billboard advertise the Georgetownian
15 Motel?

16 A Well, for the 25 years that we owned it

17 Q Okay, was there any, ever any other advertising on that
18 billboard?

19 A After we sold the motel our son -- we also owned what was
20 the Georgetownian Restaurant As a matter of a fact if you
21 wanted a good cheeseburger that was the -- Master, Jimmy
22 Master Mike owned it and probably the best cheeseburgers in
23 town, but anyways, we converted that into Winyah Bay
24 Outfitters and my son operated that for about three or four
25 years and we advertised the Winyah Bay Outfitters on that

1 billboard at that time

2 Q So, after you sold your interest in the Georgetownian
3 Motel, you and your wife continued operating the sign, the
4 billboard?

5 A Yes, we did When Dwayne bought the motel we -- the men
6 who had been painting the sign for us said it was getting the
7 texture of it was getting pretty rough from the sun's pulling
8 the fiber or whatever off of the sign and we decided that that
9 would probably be a good time to rebuild it So, at that
10 point we rebuilt the sign and advertised Winyah Bay Outfitters
11 on it

12 Q Okay, explain the construction process when you rebuilt
13 the sign

14 A Well, if you know anything about construction you take a
15 sheet of plywood, if you were building a floor it'd probably
16 be the best explanation, you start with a four by eight sheet
17 of plywood and then you alternate it, the next row would be a
18 sheet cut in half So, you'd be alternating the laps on the
19 flooring so you don't have horizontal or vertical laps that
20 that are in the same direction, and so, when I resurfaced it
21 the first row we cut the four by eight sheets in half and that
22 way we were able to break the joints that were on the
23 billboard underneath, the surface that was underneath it, and
24 so all of the joints were not one on top of the other They
25 were alternating on the whole board We used liquid nail all

1 around the edges 16 inches on center and then we used two inch
2 deck screws that were screwed in every six to eight inches
3 apart and caulked the joints around the four by eight section
4 It was a tongue and groove board It was a -- technically, it
5 was billboard material That's what it was designed for,
6 five-eighths by four by eight, and we used adhesive caulking on
7 those joints just to make sure that the joints were sealed
8 well

9 Q Okay, what were the poles made of?

10 A Those were telephone poles that were originally
11 creosoted the way they used to do it when I was a kid They
12 don't do it that way anymore but they were creosoted poles

13 Q Okay, did you have to repair or replace the poles?

14 A No, those poles would probably last my lifetime over
15 again They were in excellent shape

16 Q Mr Ashenfelder, let me show you what is marked as
17 Plaintiff's Exhibit Number 34 Can you identify that
18 document?

19 A Yes This is, this is my billboard At that time we
20 were renting it out to Cantrell Mortgage Company That nice
21 looking fellow in the left-hand corner is me cutting the
22 grass

23 Q Okay, and what was the date of that picture?

24 A What's the date?

25 Q What year was it taken? I'm sorry?

1 A I'm sorry, did you ask what the date of that picture
2 was?

3 Q Yeah, what year was that picture taken?

4 A Oh, mercy, I don't know but we had a lease agreement
5 with Cantrell Mortgage I honestly can't tell you I don't
6 know I'd have to look at the lease

7 Q All right

8 MR GUNDLING Move to admit Exhibit Number 34

9 THE COURT What says Defense?

10 MR LINDEMANN No objection, Your Honor

11 THE COURT All right, without objection, 34 in
12 evidence for Plaintiff

13 (Whereupon, Plaintiff's Exhibit Number 34 admitted into
14 evidence and appropriately marked)

15 BY MR GUNDLING

16 Q Now, you were explaining, Mr Ashenfelder, that you
17 leased the sign Let me show you what's marked as Plaintiff's
18 Exhibit Number 14 Please identify what that document shows

19 A That is a lease agreement that we had with Sid and
20 Luther's Restaurant that was located down on front street in
21 Georgetown We leased that sign for them for, I don't know,
22 a couple of years, I guess, as long as they stayed down there

23 Q Now, was that after Cantrell Mortgage?

24 A No, I believe this is the first -- I can't tell you
25 that I don't know whether they were the first one or whether

1 Cantrell -- no, I think, I think this was before Cantrell
2 because Cantrell Mortgage put, I think they put a -- they
3 didn't paint the sign as such They put a vinyl type of
4 covering on it that was stretched tight with ropes and -- but
5 I think this may have been the first one

6 Q All right, and what was the monthly lease amount in that
7 lease?

8 A \$600

9 Q All right, let me show you what's marked as Plaintiff's
10 Exhibit Number 15 and can you identify what that document
11 shows?

12 A This was a lease to Island Adventures, and ---

13 Q And what was the rental amount of that lease?

14 A 650, \$650

15 Q And let me show Plaintiff's Exhibit Number 16, if you
16 could identify that, please

17 A This was the last lease that I had that was leased to
18 Randy Jones from the Litchfield Real Estate Company in Pawleys
19 Island

20 Q And what was the rental that was to be paid on that
21 lease?

22 A \$750 a month

23 Q All right, and that lease was to take effect on January
24 1 of 2003?

25 A That's correct

1 Q When did you first discover that the billboard wasn't
2 there anymore?

3 A It was quite interesting because my wife and I had been
4 in Florida for a month and on our way back I said, ``You know,
5 we need to go through Georgetown get off the interstate and go
6 back through Georgetown and see what Randy's sign looks
7 like,'' and we came into town We were talking as we rode
8 along and drove down 17 While we were talking looking for
9 our sign and didn't realize it, we had gone around the corner
10 and didn't see our sign, and I asked my wife, I said,
11 ``Honey,'' I said, ``Did you see the sign,'' and she said,
12 ``No '' I said, ``Well, we better turn around and go back and
13 look at it,'' and the reason I say that is because Randy had
14 several signs in Pawleys Island and in Myrtle Beach already
15 and he was pictured, his picture was -- took about a third of
16 the billboard, and you couldn't have missed it if it would
17 have been there if you had been looking for it I guess, but it
18 was not there and ---

19 Q What was the date you returned from Florida?

20 A I think that was on January 23rd or 24th, I believe

21 Q And what did you do after you found out that the sign
22 wasn't there anymore?

23 A Other than get a little upset, you mean?

24 Q Yes

25 A I didn't really know what to do We -- my wife and I

1 THE COURT Thank you

2 BY MR GUNDLING

3 Q As a result of your conversation with the highway
4 department where did you go next?

5 A Well, I'm not sure I'll get the order correct but I went
6 to the police department I went to city hall

7 Q Did you talk with anyone at the Georgetown City Police
8 Department?

9 A Yes, I did I asked -- I went to the counter that when
10 you go in there's a glass window there and the gal sitting
11 behind there I asked her if she could help me to find out
12 about a billboard and she referred me to another lady at
13 another part of the department that was actually patrolling, I
14 guess, I'm not sure how you would explain that, but -- and I
15 asked her if she knew anything about it and she said, no, she
16 did not

17 Q Did you ultimately talk to Officer Church with the
18 police department?

19 A Yes, I talked to Officer Church and I talked to several
20 other people in regards to the billboard

21 Q What was Officer Church's involvement in this accident?

22 A Well, I talked to several policemen in order to get to
23 Mr Church to begin with, and as I understand it, he -- it was
24 his responsibility to investigate the crime scene or crime
25 scene, the accident scene, and my particular interest in it,

1 of course, was to find out because he did that if he had taken
2 any pictures or if there was anything that he could tell me
3 about the scene while he was there and he had taken pictures
4 of -- his responsibility he said was to take responsibility of
5 the entire accident scene, and I asked him specifically about
6 the billboard, and I said, ``That's -- it was my billboard and
7 I'm concerned to see if you have taken pictures of that,'' and
8 he said, ``Mr Ashenfelder, I've taken pictures of the entire
9 crime -- or the accident scene,'' and I said, ``Well, can you
10 tell me what was the condition of the billboard,'' and he said
11 the billboard had been damaged but it was still standing and
12 that's about the end of our conversation

13 Q Did Mr Church ever provide you with pictures of the
14 billboard?

15 A No, Mr Church did not As a matter of a fact I
16 continued to pursue that matter because I wanted to either get
17 copies of the pictures or at least see them, and I was
18 instructed that he had turned the pictures that he had taken
19 over to, I think it's Greg Young in the police department who
20 is, excuse me, responsible for keeping the evidence, and I
21 called Craig Young to see if I could get a copy of the
22 pictures or come and see them and he said the pictures were
23 being, they were, there was a trial -- I'm trying to look for
24 the word he used It was the fact that there was going to be
25 a trial or something that was going to be held and because

1 they were in evidence he could not allow me to do that

2 Q Have you ever seen a picture of the full billboard as it
3 stood after this accident?

4 A No, sir, I have not

5 Q Now, did you speak with anyone else from the City of
6 Georgetown about the billboard?

7 A Well, yes, I went and spoke to Gerald Freeman He is
8 the one that I was most familiar with with the City

9 Q Who is Gerald -- I'm sorry, Mr Ashenfelder Who is
10 Gerald Freeman and what does he do or what did he do for the
11 City back then?

12 A Oh, I don't really know his official capacity, but --
13 well, I do I think originally he was building and zoning and
14 because we were doing a lot of construction at the motel I
15 think that's how I originally got involved with Gerald

16 Q And what did you talk with him about?

17 A I asked him, I said, ``You know, what are we going to do
18 about my sign," and he said, ``Well, there's not much we can
19 do about it " He said, ``If you're going to put it up you're
20 going to have to get permits to put it up," and I explained
21 to him, I said, ``Gerald," I said, ``This, this billboard has
22 been planned to be part of our retirement and a substantial
23 part of it," and he says, ``Mr Ashenfelder," he says, ``I'm
24 sorry," but he said, ``I can't, I can't issue you a permit,"
25 and I, I guess I pleaded with him a little bit I said,

1 "Well, why not", and he said, "Because it's in a public
2 right-of-way," and we continued that conversation for quite a
3 while and I saw it was to no avail and he said, "You know, if
4 -- I would suggest to you that you go to higher authority,"
5 and he said, "If you like, you can contact Boyd Johnson "

6 Q Did he tell you what happened to the sign or what was
7 done with the sign?

8 A Well, I think prior to that I had gone to the City and
9 attempted to obtain an accident report and when I was trying
10 to obtain that the gal at the counter knew nothing about an
11 accident in Georgetown at all and she said, "Let me go check
12 with the gal that does the record keeping," and she went back
13 and checked with her and she said, "I'm sorry We don't have
14 any record of any accident in Georgetown " I said, "Well,"
15 I said, "You mean to tell me you've got a juvenile that stole
16 a truck, had crack cocaine, a gun and there is no record of
17 this accident on January 14th or 13th " and she says, "I'm
18 sorry We don't show any record " So, I went back and did
19 some more phone calling, talked to, I don't know what
20 patrolman I talked to Eventually they told me what I needed
21 to do, excuse me

22 MR LINDEMANN Your Honor, objection to anything
23 that the highway patrol may have said They're obviously not
24 a party to this case and it would be hearsay

25 Q Was that a highway patrolman or a patrolman with the

1 A Well, Boyd eventually did and Gerald -- you know,
2 you're, you're -- this was a long time ago and I'm not really
3 sure I would like to say because of the circumstances he did
4 but I can't positively say I'm sure that I talked to Gerald
5 because that's the reason I went there, so that's ---

6 Q What did you find out happened with the sign?

7 A Well, you're asking me that I guess that's where I
8 found out from Gerald because he was the one that originally
9 gave me all the directions and instructions and the fact that
10 there had been an accident That's the only place I could
11 have gotten it from

12 Q Let me show you what's marked as Plaintiff's Exhibit
13 Number Ten If you could describe that document for the jury,
14 why it was prepared

15 A Yes, this is the -- not having spoke to Boyd Johnson I
16 went home and wrote a letter and this is the letter that I
17 wrote to Mr Johnson telling him that I had spoken with Gerald
18 Freeman

19 Q Well, Mr Ashenfelder, let me just ask you to go ahead
20 and publish the entire contents of that letter, read it to the
21 jury

22 A It says, ``Dear Mr Johnson, I spoke with Gerald Freeman
23 regarding the billboard that we own located adjacent to Burger
24 King In talking with Gerald he told me the sign had been
25 damaged on or about 1-13-03 by a juvenile that had stolen a

1 truck and in the process of being pursued ran into our
2 billboard as well as Burger King's dumpster area doing quite a
3 bit of damage Gerald also informed me that he had instructed
4 the City maintenance department to remove the remaining part
5 of the sign that was left standing I asked Gerald about
6 putting the sign back up and he suggested that I write a
7 letter to you with my request Gerald did explain that the
8 billboard was in a nonconforming area by zoning regulations
9 I would like to make a couple of observations and try to
10 explain my position and then submit them to you for
11 consideration We, Jade Inns, Incorporated, have owned that
12 billboard for approximately 30 years We have maintained it
13 and kept the area around it maintained for that period of
14 time Jade Inns, Incorporated, has paid taxes to the City and
15 I just sent another check for \$2500 for current taxes It was
16 off the highway far enough that it did not obstruct the view
17 of traffic coming from either direction The sign has been
18 there longer than any of the other signage on that corner It
19 in no way impedes or restricts any traffic since Burger King
20 paved that road I have never seen any overflow parking from
21 Burger King in that area It was my understanding that
22 included in the nonconforming zoning clause that if the
23 property were damaged and not completely destroyed it could be
24 repaired The police report indicates that only two of the
25 five poles have been hit by the vehicle as it left the road

1 On a personal basis I am retired and the billboard has been a
2 substantial part of our income It was leased to Randy
3 Johnson from the Litchfield Company currently and previously
4 to Ken Altman with New York Life Insurance Company At that
5 time it provided \$7800 a year in income As I have been self
6 employed most of my life the income from this sign has been
7 planned over the years to help us get through our retirement
8 years So, we are dependent upon this to live on, and at age
9 66 it would be almost impossible to replace that kind of
10 income I hope these observations will be helpful in the
11 decision process and it is my desire to replace the billboard
12 as soon as possible Thank you for your consideration I
13 look forward to your soon response Sincerely, David
14 Ashenfelder ''

15 Q Okay, now, did you receive a response to that letter?

16 A Yes, I did

17 Q All right, let me show you what's marked as Plaintiff's
18 Exhibit Number 11 Is that the response?

19 A Yes, sir, it is

20 Q And who did that response come from?

21 A It came from L Boyd Johnson

22 Q And what was his title with the City?

23 A City administrator

24 Q Okay, and please publish the contents of that letter to
25 the jury

1 A "Dear Mr Ashenfelder, I am sorry it took so long to
2 respond to your letter regarding the billboard recently
3 destroyed We cannot permit this billboard to be replaced as
4 it was located in public property It is my understanding
5 that you have no lease arrangement for the sign to be on this
6 property Additionally, it is my understanding from Gerald
7 Freeman that a billboard on this site would not meet certain
8 zoning requirements such as required spacing You need to
9 find a new location on private property that meets our zoning
10 requirements in order to erect a new billboard I realize
11 you'll be disappointed with this information but it is only --
12 it is the only position the City can take Sincerely, L Boyd
13 Johnson, City Administrator "

14 Q All right, did Mr Freeman and/or Mr Johnson know that
15 you owned the sign?

16 A Oh, yes

17 Q And how did they know that you owned the sign back in
18 2003?

19 A Well, back -- well, it actually goes back further than
20 that It goes back to 1986 is actually when they would have
21 been aware of the billboard

22 Q All right, how did that come about?

23 A Well, in 19 -- somewhere in 1985, 1986, Burger King came
24 to town and they purchased that piece of land on that corner
25 that was adjacent to where my billboard was located,

1 and apparently, they did not meet the parking requirements
2 from the City and they applied to the City for a lease so that
3 they could get the additional required parking spaces

4 Q At that time did you have any involvement with Boyd
5 Johnson or Gerald Freeman about that issue with the billboard
6 back in '86?

7 A I'm sure that at that time -- I wasn't that close with
8 Boyd Johnson, but Gerald Freeman was really the liaison, I
9 guess, as far as the City is concerned and I was concerned
10 So, he was the one that I would have gone to and said -- well,
11 let me back up a little bit because I'm trying to think it --
12 again, it's interesting We were in Florida and my son had
13 called me and said that they are doing some construction on
14 the land around the billboard At that time I didn't know
15 that Burger King was coming I didn't know what it was for,
16 but he said he saw the construction and he stopped and he
17 said, ``They're going to push over the billboard,'' and I said,
18 ``You go back and you tell them to keep, keep their hands off
19 the billboard I want that billboard to stay ''

20 Q This was in the '86 time period?

21 A That was in 1986

22 Q And back in '86 did you hire Kenny Mitchum, an attorney
23 in Georgetown, to assist you with that matter?

24 A Yes, I did

25 Q And ---

1 A This was kind of vague in my mind when we took a
2 deposition, but I guess like everybody when you stop and
3 rehearse some of these things it comes back, and what I had
4 done, I had actually gone -- Robbie O'Donnell was the attorney
5 that we had used in Georgetown for all of our legal matters,
6 and Robbie at that time, I believe, was the -- I don't know if
7 this is the right term or not, but he was the Judge that sat
8 on hearing cases for the City, and he told me he felt it would
9 be a conflict of interest

10 MR LINDEMANN Your Honor, objection on the basis of
11 relevance and hearsay I don't know where this is, where this
12 is going, talking about a judge in the 1980s

13 THE COURT I understand Just no speaking
14 objections Objection is noted Counsel, I would sustain the
15 objection You'll need to lay a foundation for relevance to
16 get over the relevance objection

17 MR GUNDLING Okay

18 BY MR GUNDLING

19 Q Let me just ask you about the letter I think I know
20 where you're going but let me just ask you about Plaintiff's
21 Exhibit Number Three?

22 A Yes

23 Q Number Three, did you, in fact, retain Mr Mitchum to
24 assist you in the case?

25 A Yes, I did

1 Q All right, and that's the letter that he sent on your
2 behalf?

3 A That's correct

4 Q And that letter was written to Mr Patrick Doyle,
5 Esquire, on April 15 of 1986?

6 A That's correct

7 Q All right, and the second to the last paragraph says,
8 ``This sign has been in place for 35 years and it seems to me
9 that any such destruction of this sign on April 28, 1986,
10 would be ridiculous'', is that correct?

11 A That's correct

12 Q And what was this letter in response to? Why did he
13 have to write that letter to Patrick Doyle?

14 A Well, I didn't know of any other recourse It was a
15 case of, you know, I'm being told that whoever is doing the
16 excavation down there is going to take my sign, and I said,
17 ``Don't do it,'' and I didn't know where else to go So, that
18 was what precipitated my approaching Kenny Mitchum to step in
19 for me and see if he couldn't put a halt to it

20 Q Let me show you what's marked as Plaintiff's Exhibit
21 Number Seven Is this a documents that you -- that was
22 received in response by Mr Mitchum that you acquired a copy
23 of responding to that letter?

24 A Yes, it is

25 Q Okay, and who did that letter come from?

1 A I didn't know at the time but it's Patrick J Doyle

2 Q Okay

3 A So, it's James I guess

4 Q All right, and what is the letterhead on that letter?

5 A It's from the City of Georgetown, official -- office of
6 City attorney

7 Q Okay, and let me publish a portion of -- and this letter
8 is dated October 20, 1986?

9 A Yes, that's correct

10 Q And let me publish this briefly -- For your files I
11 enclose a copy of a letter to Sylvan L Rosen, Esquire, who
12 represents Burger King The letter is in response to his
13 letter to the highway department concerning whether or not the
14 Georgetownian Motel sign is within the highway department
15 right-of-way Clearly by the terms of the letter you can see
16 that the sign is not within the highway right-of-way Under
17 these circumstances it would be appreciated if you within the
18 next 30 days have your client remove the sign from the City
19 property now leased to Burger King I might add that the
20 latest plat also confirms the fact that the sign is on City
21 property In the meantime, if you have any questions
22 concerning this problem please so advise " Did you ever
23 remove the sign?

24 A No, sir

25 Q Did the City bring any action back in 1986 or at any

1 time before 2003 to have you remove the sign?

2 A No, sir, they did not

3 Q Can you state whether or not before 1986 the City
4 brought any action to have you remove the sign?

5 A No, sir, they had not

6 Q This letter refers to the latest plat that confirms the
7 fact the sign is on city property Have you ever seen that
8 plat?

9 A No, sir, I have not seen that plat

10 Q Now, before the billboard was removed by the city in
11 January of 2003, did you receive any letter or correspondence
12 from the City requesting that you remove the sign during that
13 time frame?

14 A No, sir, I had not

15 Q Did you -- can you state whether or not you received any
16 notice from the City as to their intention to remove the sign?

17 A No, sir, I had not

18 Q Now, let me show you what is marked as Plaintiff's
19 Exhibit Number Six, which is a letter from P Douglas Green
20 Is that a document that you received from Mr Green?

21 A Yes, sir, it is

22 Q And what is the date of that document?

23 A November 7th, 1995

24 Q And please read that, the body of that letter to the
25 jury

1 A No, sir, he did not

2 Q Did you hear from Mr Green or from the -- after 1996,
3 did you hear from Mr Green or from the City about the sign
4 till the time it was removed by the City in January of 2003?

5 A No, sir, I did not

6 Q Now, taking you back to 1979 and moving forward did you
7 do any maintenance, repair on the billboard over those, over
8 that time?

9 A I continually did whatever maintenance was necessary
10 It had been painted and in between renting the sign I always
11 re-primed the sign so that the previous advertiser was not
12 listed I replaced the molding that was around the sign, was
13 originally what I did, and as far as the sign itself was
14 concerned that's, that's the extent

15 Q Okay, what about the grounds around the sign? Did you
16 do any maintenance to the grounds around the sign?

17 A I was the only one that did any maintenance around the
18 ground

19 Q What did you do around the sign?

20 A As you would normally do I -- it was really weeds It
21 was not grass to be cut, but I normally was down there quite
22 often just to take a weed eater and cut down the weeds and
23 clean up the debris from Burger King and the other restaurant
24 that's down there

25 Q And what area around the sign did you maintain?

1 A It was a, it was a substantial area It was where it
2 went down into the valley there was a fence that at one time
3 marked apparently some kind of a boundary line I'm not sure
4 what it was but that's where the debris always collected, all
5 their cups and napkins and all that kind of garbage, but that
6 was a regular routine to go down there and try and keep that
7 clean

8 Q What area around the sign did you maintain?

9 A Are you talking about -- all the area I went from the
10 driveway to the fence

11 Q How far was that?

12 A That's -- that was 10, probably 30 feet If you were
13 looking at the billboard face on probably it was from the
14 driveway to the fence was 30, 40 feet, I suppose, and the
15 length of the fence, I -- periodically the people that owned
16 -- I don't believe it was Mr Green, but whoever owned that
17 little house there would cut the grass up to within, I don't
18 know, maybe 20 feet of the sign, and I would mow it from
19 there, keep it cut from there up to the road, which was --
20 well, the sign is 32 feet, 42 feet, probably 50 feet

21 Q And what was the distance between the sign and the paved
22 portion of the road?

23 A Are you referring to Route 17 or to Church Street?

24 Q Church Street

25 A Oh, that's, that's a pretty good distance That was --

- 1 you had the, you had the grassy area, you had the sidewalk
2 and then you had another probably 10 feet, I suppose, before
3 you got to the billboard
- 4 Q What was the, what was the size of the billboard again?
- 5 A 12 by 32
- 6 Q 12 by 32, all right, and I'm assuming the width is
7 32 feet?
- 8 A Yeah, 12 feet high and 32 feet long
- 9 Q Okay, and how are you sure it was 32 feet in width?
- 10 A I'm sorry
- 11 Q How are you sure it's 32 feet in width?
- 12 A How am I sure?
- 13 Q Yes
- 14 A Well, it took four full sheets of plywood and they're
15 four by eight sheets and it ---
- 16 Q Okay
- 17 A --- was three feet, three sheets high
- 18 Q All right
- 19 A So, three fours are 12 and four eights are 32
- 20 Q Did the size of the sign change at all while you were
21 operating it from '79 all the way up until 2003?
- 22 A No, sir
- 23 Q Can you state whether or not the City ever asked you to
24 have a permit for that sign before 2003?
- 25 A No, I was never asked to have a permit

1 Q Was the sign, in fact, permitted?

2 A It was permitted to SCDOT, South Carolina Department of
3 Transportation

4 Q Okay, and how long was the sign permitted to them?

5 A I'm sorry I didn't hear you

6 Q How long did you have the sign permitted through the
7 South Carolina Department of -- the South Carolina Highway
8 Department, whatever that entity is

9 A Well, from the time we purchased it we had been paying
10 the permit

11 Q That would be from 1979?

12 A That's correct

13 Q And let me show you Plaintiff's Exhibit Number One,
14 these documents that they've come from the highway department
15 to show the permits and some of the bills that you paid for
16 that sign?

17 A Yes, sir, they are

18 Q The first sheet on that document shows the sign as being
19 192 feet and the second shows the sign as being 380 feet
20 What was the actual size of that sign?

21 A Well, it's always been the same size It's been 12 by
22 32 ever since I've known

23 Q And what's 12 by 32?

24 A Got a calculator? I think it's 384 square feet

25 Q Now, this picture that we've introduced as Plaintiff's

1 Exhibit Number 34, is that you standing in that picture?

2 A Sure is

3 Q Okay, and what are you doing at that time?

4 A I had a DR trimmer that I used to maintain around the
5 sign It was a weed eater, commercial

6 Q While you were on the property maintaining it did you
7 ever have any one stop and tell you to get off or that you
8 couldn't be on that property?

9 A No, as a matter of a fact just the opposite The fellow
10 from the eyeglass place came over and said, ``Hey, would I
11 mind cutting the'' ---

12 Q Okay, you don't need to testify what he said

13 A Okay, no, they did not

14 Q As a result of that did you feel that you -- did you
15 ever leave the property and felt you didn't have rights
16 there?

17 A Oh, no, sir

18 Q Now, when the -- back in 2003 when the billboard was
19 removed by the City what was the -- what do you feel was the
20 fair market value of the billboard?

21 A Well, I don't really -- I don't know how to determine
22 We went through this once Let me relate it to what
23 information that I have that I can connect it to I think
24 ---

25 MR LINDEMANN Your Honor, he just indicated he

1 case has been pending for a long time and there's been
2 numerous supplementations in discovery There's never been a
3 supplementation that provides any opinions about the value of
4 the billboard

5 THE COURT All right, was there an initial
6 opinion moved or quoted in the interrogatory responses? Was
7 there a figure? You said there's never been one

8 MR LINDEMANN None, none, Your Honor

9 THE COURT Did you move to compel?

10 MR LINDEMANN Your Honor, it was a standard
11 Interrogatory asking them for their damages They didn't
12 have to move to compel They told me what they believed
13 their damages were in this case They didn't identify that
14 as any damages

15 THE COURT All right

16 MR GUNDLING Your Honor, in the -- I'm sorry

17 THE COURT Go ahead

18 MR GUNDLING In the deposition he asked the
19 question as to what he felt the value of the sign was and
20 this is where the testimony came out about the individual
21 that contacted them about the \$75,000, an additional amount
22 So, that was clearly set forth in his deposition They have
23 certainly notice of the fair market value that -- as he
24 determined it back then

25 THE COURT All right, Mr Lindemann, again, I'm

1 going to overrule your objection The Plaintiff takes the
2 position that there has been notice given to the party
3 While it may not be contained, and again, I don't have these
4 documents before you verbatim in an interrogatory, the Court
5 is going to allow the testimony

6 Now, ladies and gentlemen, just by explanation we don't
7 have trial by ambush in South Carolina The way the process
8 works is we have discovery devices, including
9 interrogatories, which are questions amongst the parties that
10 are and answers that are propounded between the parties,
11 depositions and other devices that allow each side to fully
12 explore the other side's position and the merits of that
13 position before they ever get to trial You hear the
14 Defendant's position that this testimony is inappropriate
15 because it is beyond what has been provided in discovery
16 The Court overrules that objection

17 MR LINDEMANN Your Honor, if I may, could I
18 at least ask the Court to please examine what is being
19 presented to you, the deposition testimony and let me produce
20 to you the answers to discovery before you rule?

21 THE COURT Well, I'll be glad to do that
22 Counsel, let me ask you, how much longer do you think your
23 direct will be for your witness?

24 MR GUNDLING Probably about 15 minutes, Your
25 Honor

1 they charged -- started charging me \$30

2 Q Do you see it within their file though what you just
3 referenced earlier, correspondence where you refuted it?

4 A You want me to keep looking? I don't know I thought I
5 saw it earlier, but I -- from what I just read to you is --
6 the only thing I see here is on 10-10-90, and I don't know --
7 I sent these advertisers a letter back telling them to,
8 "Contact you concerning the square footage change I was
9 wrong I should have advised you to investigate and advise
10 me of the findings " That's the only thing I see

11 Q But what you just read to the jury is handwriting
12 written by someone Shirley to Doris, correct? That's not
13 your handwriting

14 A Well, it was -- yeah, it was written to somebody by the
15 name of Doris That's not my handwriting

16 Q And it's signed by someone named Shirley, correct?

17 A That's correct, yeah

18 Q All right, and then Doris is the person who did the
19 investigation and wrote a note to Shirley the page previous
20 to that that says, "The sign has been investigated and is
21 12 by 28 or 336 square feet", correct?

22 A I see, I see what you're referencing That's, that's
23 what they have on there

24 Q Okay, all right, let me, let me ask you some additional
25 questions about the billboard You take the position with

1 the jury that this billboard is actually on the property now
2 owned by Mr Bruggeman, correct?

3 A To, I think to answer your question correctly is to say
4 that at this time that's what I understand Prior to this
5 time I was just like the City Mr Doyle had no idea where
6 the sign was Mr Green had no idea where the sign was and
7 once this in 1986 when it was brought to my attention when
8 and Burger King was built that they were claiming it was on
9 their property that was the first time that I had to take any
10 steps of any kind to try and find out where the sign was Up
11 till that time I thought it was mine I had no reason to
12 think otherwise So until 1986 I can only tell you I didn't
13 know -- I had no reason to find out whose property per se it
14 was on I thought it was mine

15 Q You thought it was actually on your plot of property?

16 A Whatever was there around that sign I thought was mine

17 Q Let me ask you this Did you pay taxes on that
18 particular piece of property?

19 A No, sir

20 Q Did you pay insurance on that particular piece of
21 property?

22 A No, sir, I did not

23 Q Did you pay a mortgage on that particular piece of
24 property?

25 A No, sir, I did not I thought it was already paid for

1 by the time I got the motel

2 Q All right, were you receiving a tax bill from the City
3 and County for your motel for the property it was located on?

4 A I sure did

5 Q Were you receiving a property notice for any other
6 property that you owned, a home or any other property?

7 A Sure did

8 Q All right, but you weren't receiving a property notice,
9 tax notice for that particular property?

10 A No, sir

11 Q All right, but still you contend, you thought in 1986
12 that you owned it?

13 A Well, that was the first time that I had any reason to
14 think that it was not mine for whatever reason I can tell
15 you this, I did -- I went to Pat Gregory's office after our
16 deposition to try and find out further information I had
17 spent hours between '86 and '96 of trying to find detail of
18 where my sign actually was located I went to Pat Gregory's
19 office to do that very thing I'd gone to the City

20 Q You can't testify as to any hearsay if you're about to
21 testify what somebody told you

22 MR GUNDLING Pat Gregory is a ---

23 A I'm telling -- I'm trying to tell you what I did

24 MR GUNDLING Your Honor Pat Gregory was an
25 official with the City at the time

1 THE COURT I understand, overruled

2 Q Oh, I didn't understand him to say Pat Gregory Is that
3 who you said?

4 A Yes, that's correct

5 THE COURT Overruled, go ahead

6 Q Oh, I thought you were talking about an -- your
7 attorney

8 A No, I'm talking about Pat Gregory

9 Q Okay

10 A I went to the city to try and get additional information
11 where I -- most of this information that you see here was
12 provided by me

13 Q And this was after your deposition?

14 A No, this was all gotten before my deposition I went to
15 Pat Gregory after the deposition

16 Q All right

17 MR LINDEMANN Well, obviously, Your Honor, I have
18 an issue to take up with that because this case was in
19 litigation, shouldn't have been addressing City employees and
20 witnesses during that time So, I don't believe that should
21 be admissible

22 THE COURT Counsel, that's a collateral issue
23 with regard to this testimony

24 MR LINDEMANN Anything that was talked about prior
25 to the litigation obviously that's ---

1 THE COURT Actually, I believe he was telling
2 you what he did without saying -- I haven't heard yet him say
3 that someone said

4 MR LINDEMANN Yeah, as long as he testifies what
5 he did, but if he testifies what somebody said I would
6 object I was expecting him to say that, Your Honor

7 THE COURT The objection, therefore, is
8 premature You can go ahead and tell what you did

9 MR LINDEMANN Thank you, Your Honor

10 A I went to the City because I was still endeavoring to
11 find out because the City did not know where the billboard
12 was located at that time or Mr Doyle would have never
13 written SCDOT asking for information to find out where it
14 was

15 Q You're talking about back in 1980, correct?

16 A I'm talking about 1986

17 Q Okay, you're not talking about since you filed this
18 lawsuit?

19 A No, I'm talking about back in 1986 ---

20 Q Okay, I understand

21 A --- because it all pertains to the lawsuit I guess

22 Q Let me just make sure I'm clear

23 THE COURT One at a time, counsel, please,
24 because our court reporter just can't take down two people
25 talking

1 MR LINDEMANN I understand I apologize

2 THE COURT Please let the witness finish

3 BY MR LINDEMANN

4 Q Mr Ashenfelder, I just want to make sure I'm clear and
5 the jury is clear The conversation that you had with Pat
6 Gregory that you're or the investigation you did where you
7 dealt with Pat Gregory that occurred prior to 2003?

8 A No, that was after, after the deposition was made I was
9 still endeavoring to find out whose property the billboard
10 was located on

11 Q All right, and so, what did you do as part of that
12 endeavor?

13 A I went back to the City and I spoke with the people that
14 assisted me when I got this information and asked them if
15 they could assist me in finding any documentation that would
16 show any leases, any sales, any kind of information that
17 would give me an idea as to who had a part in this property
18 and they said if you wanted that information you'd have to go
19 to Pat Gregory I went to Pat Gregory Now, I don't know if
20 I can tell any more than that or not, but ---

21 MR LINDEMANN Your Honor, can we have a side bar?

22 THE COURT Well, that's all right Rather than
23 discuss what happened after litigation ensued the best thing
24 to do is just end that there Please move to the next
25 question

1 BY MR LINDEMANN

2 Q All right, Mr Ashenfelder, you talked to Pat Gregory
3 prior to the litigation, too, as well, correct?

4 A You have a particular occasion in mind that you're
5 talking about or ---

6 Q We're talking about the ownership of the property

7 A I've talked to Pat Gregory on several occasions

8 Q All right, back in 1995 and '96 you got into a dispute
9 with Mr Douglas Green over who owned that billboard and who
10 owned that property, correct?

11 A That's correct

12 Q Okay, and at that time Ms Gregory assisted you as well,
13 correct?

14 A I would ---

15 Q Yes or no?

16 A I'd like to correct your statement, number one, I'm not
17 sure that your statement that it was a dispute is an accurate
18 description of what you're trying to say at least to me It
19 was not a dispute

20 Q All right, well, let me ask you, let me lay the
21 foundation I think it's been gone over already but you
22 received a letter You may have it in front of you from
23 Mr Green dated November 7, 1995, which is Exhibit Number
24 Six, correct?

25 A That's correct

1 Q Okay, and he was asking you to or he was raising the
2 issue as to who owned the billboard, correct?

3 A I don't think he raised the issue I think he just said,
4 ``Your billboard is on my property Pay me or get it off ''

5 Q All right, let me see the letter Does he not state and
6 tell me if I'm reading it correctly starting right there,
7 ``The sign was on my property when I purchased it By law I
8 own the sign and if there is any disagreement about this
9 issue please respond within 10 days''

10 A That's exactly what he says

11 Q Okay, so, in that letter he didn't actually tell you,
12 ``Get your billboard off my property or pay me rent '' He
13 said, ``I bought the property So, the billboard is mine''?

14 A That's exactly right

15 Q Okay, and you responded to that letter by telling him
16 that the billboard was, indeed, your billboard, correct?

17 A Are you referencing a letter that I can look at or ---

18 Q We don't have that letter I don't believe

19 A Oh, well, okay

20 Q I mean, there's obviously a letter ---

21 A I, I responded to him, yes, I did

22 THE COURT One at a time, gentlemen, one at a
23 time

24 MR LINDEMANN Sorry, Your Honor

25 THE COURT Please, each of you, please wait

1 till the other is finished before you speak Go ahead, Mr
2 Lindemann, and ask your question again

3 BY MR LINDEMANN

4 Q I assume you sent a letter or responded in some way
5 saying that you owned the billboard, correct?

6 A Yes, I did

7 Q All right, we don't have a copy of the letter you sent
8 to that effect?

9 A Not to my knowledge

10 Q Subsequently you received this February 6th, 1996,
11 letter

12 MR LINDEMANN I have a blowup of that, Your
13 Honor, that I can let the jury follow along

14 BY MR LINDEMANN

15 Q And in the particular letter Mr Green responded to you
16 and he's referencing, "A letter that you left with my
17 secretary which was from Mr Doyle the City Attorney",
18 correct?

19 A That's correct

20 Q And that was a copy of the correspondence that you
21 obtained from Pat Gregory which is in evidence from the
22 mid-1980s, 1986 when SCDOT, well, then it was the Highway
23 Department, indicated that the sign was not in their right-
24 of-way, but rather was on City property, is that correct?

25 A I don't believe that was Pat Gregory I think that was

1 Mr Doyle's letter

2 Q Mr Doyle's letter that Pat Gregory provided to you,
3 correct?

4 A No, she did not

5 Q Okay, you obtained it from the City obviously at that
6 point?

7 A Let me be correct in what you're -- I'm not sure what
8 letter you're referring to

9 Q All right, well, if you look at the second paragraph Mr
10 Green's letter that's what I'm getting at He is referring
11 to the letter Mr Doyle had written which is the letter from
12 1980s, isn't that the way you understood it?

13 A That's correct, yes

14 Q Okay, and that is the same correspondence that you had
15 provided to Mr Green

16 A That's correct, yes

17 Q Okay, and it was at this particular time, January 6th,
18 1996, letter that he said, and I'm reading from the second to
19 the last paragraph, ``I am now giving you 30 days from the
20 date of this letter to remove the sign off of the property or
21 to call my office to arrange a rental agreement or further
22 action will be taken'', correct?

23 A Are you asking me if he does state that?

24 Q That's what it says

25 A That's what it says

1 Q All right, and you don't believe that there was a
2 dispute, there was a disagreement between the two of you at
3 that point?

4 A Oh, I thought you were talking about a dispute between
5 me and Pat Gregory

6 Q No, no, I'm -- I was asking ---

7 A I'm sorry I mis ---

8 Q I was asking you about the dispute between you and Mr
9 Green

10 A I misunderstood your question There, there is a
11 difugalty between Mr Green and myself, not in the sense that
12 -- it was a clarification not, not a dispute In his mind it
13 was a dispute, but in my mind I didn't know I didn't know
14 whether it was on his property I didn't know whether it was
15 on City property At this point I was confused in knowing
16 where it was

17 Q When you say at this point, you're talking in early
18 1996?

19 A I'm talking about 1986

20 Q Okay

21 A In the letter that I'm referencing

22 Q All right, the dispute with Mr Green occurred in '95
23 and '96, correct?

24 A Yeah, this was some ten years after he purchased the
25 property

1 Q Okay, let me just make sure, make sure it's clear When
2 you say you don't know who owned the property are you talking
3 about in 1986 or in 1996, the property where the billboard
4 was located?

5 A Well, I really didn't do extensive search in 1986 It
6 wasn't until 1996 when I now had Mr Doyle who had said in
7 '86 It all, you know, when you're looking at a time frame
8 you're pulling out letters from 1986 till 1996 and we're
9 cramming in 2003 all into a picture here that we need to
10 understand is in a long time frame

11 Q In 1996 ---

12 A Yes

13 Q --- did you take the position that that billboard was
14 located on Mr Green's property?

15 A No, I did not

16 Q And you did not believe it was on Mr Green's property
17 at that time, did you?

18 A Sir, I did not know I've said this repeatedly I did
19 not know on whose property that sign was At that point I
20 had -- I was trying to find out I was trying to find out
21 The City never came up with any evidence that it was on their
22 property Mr Green never came up with any evidence that it
23 was on his property and I'm in a dilemma They're saying
24 they want to take down a sign and nobody knows whose property
25 it's on

1 Q I'm focused on what you knew in 1996

2 A That's what I'm telling you

3 Q All right, in 1996 you're saying that -- I mean, you did
4 not take the position, what you just testified is you
5 certainly didn't take the position that the sign was on Mr
6 Green's property

7 A I did not take that position

8 Q Okay, you took the position with Mr Green that it was
9 on City property, correct?

10 A I did not take the position it was on City property I
11 never took the position that it was on City property

12 Q You have a copy of your letter to Mr Green dated
13 February 22nd, 1996?

14 A Yes, I do

15 Q Okay, and that's Exhibit Number what, Number Nine?

16 A Number Nine, yes, sir

17 Q All right

18 MR LINDEMANN I have a blowup of that, Your Honor

19 BY MR LINDEMANN

20 Q You follow along with me, Mr Ashenfelder Is this, in
21 fact, a letter that you sent to Mr Green?

22 A It certainly is

23 Q Okay, I know it's not a signed copy, but you testified
24 that you actually wrote this and sent it, correct?

25 A That's correct

1 Q All right, and you actually say in the second to the
2 last paragraph, ``It is not my intention to deny you anything
3 that rightfully belongs to you'', correct?

4 A That's correct

5 Q All right, did you mean that at the time?

6 A Yeah, I think I did

7 Q All right, so, if you believed that that property, your
8 billboard was on his property you were ready and willing at
9 that time to pay some rent or remove your billboard?

10 A If he produced some evidence for me that that billboard
11 was on his property and he wanted to charge me rent I was
12 willing to pay him rent for it

13 Q Okay, so, you were ready to do that?

14 A If he provided me with that information

15 Q All right, you go on to say, ``However, my sign is not
16 located on the property that you purchased from a tax sale ''
17 Isn't that your words?

18 A That is what is written here That is Mr Doyle's
19 statement, not mine That's his opinion, not my opinion

20 Q Are you referencing there Mr Doyle's letter in that
21 paragraph?

22 A I think I referenced the letter in the paragraph above
23 that I said, ``According to the letter, '' and back in
24 paragraph three I said, ``The letter indicated the sign '' I
25 think it's a pretty strong indication I was referencing Mr

1 Doyle's letter

2 Q Okay, now, down where you actually state as a fact that
3 the sign is not located on the property that you purchased
4 from a tax sale you don't know say according to Mr Doyle
5 there, do you?

6 A I quote Mr Doyle's letter If you'll look at Mr
7 Doyle's letter he says, in fact, that property is where it's
8 at

9 Q I'm asking in the paragraph that I'm referring to You
10 make no reference to Mr Doyle's letter there, do you?

11 A I referenced it in the whole, in the whole presentation
12 it was a fact his letter In that paragraph, if you ---

13 Q Mr Ashenfelder, if you would please answer my question
14 THE COURT One at a time

15 Q There's no reference in that paragraph to Mr Doyle, is
16 there?

17 A Excuse me?

18 Q That particular paragraph the word Doyle doesn't appear
19 That's all I'm asking

20 A No, Doyle does not appear in that paragraph

21 Q And you saying in fact, because you use the words in
22 fact, you're saying it is fact it, meaning the property on
23 which the sign is located, belongs to the City and is leased
24 from the City to Burger King That's what you state,
25 correct?

1 A Do you have Mr Doyle's letter If you have and put his
2 up there you'll find that Mr Doyle states, in fact, that
3 City leased that property to Burger King That's exactly
4 what Mr Doyle said, in fact

5 Q You didn't have quotes around that though, did you?

6 A I think, you know, again had I had an attorney write
7 this letter it probably would have been written differently
8 I did the best to my ability at that time to describe
9 something that I wanted Mr Green to say, ``Hey, here's the
10 evidence I'll show you that I own it," and that never came
11 forward

12 Q All right

13 A That's the intent of that letter

14 Q On whose property did you believe your billboard was
15 back in 1996 when you had this dispute with Mr Green?

16 A You asked me that before and I told you I'm not -- I
17 thought all along up until 1986 until this whole Pandora's
18 box opened up, I thought it was my mine I thought whatever
19 agreement had been signed or had gone into prior to that time
20 indicated that the billboard belonged to me, property,
21 billboard the whole nine yards

22 Q I know, but we've been through that

23 A Yes

24 Q You knew at that time in 1990 -- '86 that the property
25 did not belong to you, correct? You learned that in 1986?

- 1 A No, I did not learn that
- 2 Q You did not learn that in 1986?
- 3 A I sure did not
- 4 Q Okay, but you admitted that you had never paid any
- 5 property taxes for that property?
- 6 A That's correct
- 7 Q You've admitted you don't have a deed for that property?
- 8 A That's correct
- 9 Q All right, what happened in 1986? Were you paying any
- 10 type of taxes on that particular property?
- 11 A No, I was not
- 12 Q All right, did you know at that particular time that
- 13 Mr Green actually owned that property, that he had a deed to
- 14 that property?
- 15 A I know that Mr Green had a deed to property Whether
- 16 he had the deed to where my sign was or not I did not know
- 17 Q That was a bad question on my part The property that
- 18 you now contend the billboard was on, you knew in 1996 that
- 19 you didn't own that property, correct?
- 20 A No, I did not
- 21 Q You didn't know Mr Green owned that property at that
- 22 particular time?
- 23 A There was no evidence given that he did
- 24 Q Did you -- well, you know that certainly now there was a
- 25 deed, correct?

1 A I know it as of today's date I know that because Ryan
2 Moore placed -- you're asking me ---

3 Q I'm asking about, I'm asking about the property, not the
4 sign The property that you contend today ---

5 A Yes

6 Q --- the billboard was on ---

7 A Yes

8 Q --- you understand today that that property was owned in
9 1996 by Mr Green and it subsequently is conveyed to
10 Mr Bruggeman, correct?

11 A You're asking about an entire lot I'm talking about
12 the sign, the billboard area which I thought was mine, and I
13 cannot answer you anything other than what I've told you

14 Q And you used at that time the City's letter from 1986,
15 Mr Doyle's letter to convince Mr Green that he was wrong,
16 correct?

17 A I used that letter to indicate to Mr Green that I had
18 two opinions I had the opinion of Mr Doyle I had his
19 opinion I'm trying to find out who's right I say it's
20 mine Doyle says it's his Green says it's his Who does
21 it belong to? Nobody knows

22 Q Are you saying in your letter dated February 22nd, 1996,
23 that you tell Mr Green that he may be correct that his
24 opinion may be correct? Do you say anything along those
25 lines? Do you give that impression at all?

1 A Just other than the fact that, ``It's not my intention
2 to deny you of anything that rightfully belongs to you ''

3 Q Well, where does it specifically say, ``Mr Green, if
4 you are correct'' -- what you just testified to, where in
5 that February 22nd, 1996, letter do you convey to Mr Green
6 that he may be correct, that you have two contradictory
7 opinions?

8 A I'm not sure I understand your question again

9 Q Well, you just indicated that in 1996 you believed you
10 had two contradictory opinions ---

11 A That's correct

12 Q --- one from Mr Doyle saying the sign is on City
13 property one from Mr Green saying the sign is on his
14 property Isn't that what you testified?

15 A Well, he had his letter and I'm quoting Mr Doyle's
16 letter

17 Q All right, isn't that what you just testified you, you
18 felt like you had two conflicting opinions

19 A That's correct

20 Q Okay, where in your 1996 letter do you convey to Mr
21 Green that you believed that his opinion may be correct?

22 A I think I just read it to you It's not my intention to
23 deny you of anything that rightfully belongs to you

24 Q But then you go on to say, ``However, the sign is on
25 City property'', do you not?

1 A No, I do not I state the fact that Mr Doyle said the
2 sign was on City property, that it was not my opinion That
3 was Mr Doyle's opinion

4 Q Did you ever negotiate with Mr Green for a lease
5 agreement?

6 A No, I did not

7 Q Did you ever pay Mr Green any money to have the
8 billboard on his property?

9 A No, I did not

10 Q During the period of time that Mr Green owned that
11 property did you ever pay any taxes on that property?

12 A No, I did not

13 Q Did you ever pay any insurance on that property?

14 A On Mr Green's property? I wouldn't pay taxes on Mr
15 Green's property

16 Q On the property where you believe the billboard was
17 located ---

18 A No

19 Q --- did you ever pay any taxes or insurance on that
20 property?

21 A No, I did not

22 Q Did you ever make any type of mortgage payments?

23 A No, I did not

24 Q Did you hold a deed to that property?

25 A No, I do not

1 Q Okay, did you ever put up a fence around the billboard
2 to keep other people out from that portion of the property?

3 A No, sir, I did not

4 Q Did you ever do anything to exclude Mr Green or his
5 family members who inherited it from him when he died or
6 Mr Bruggeman from use of the area of their property around
7 the -- where the billboard was?

8 A I had no reason to do that that I know of

9 Q Okay, so, there was no fence, no, no attempts to keep
10 them out, correct?

11 A I didn't know that I needed to do that

12 Q Okay Now, you've testified earlier about your attempts
13 to obtain a copy of the accident report from the City?

14 A Yes, I did

15 Q All right, and you did actually obtain a copy of that
16 report from the City, correct?

17 A After extensive work I did

18 Q And how extensive was the -- I mean, can you give me a
19 time frame?

20 A How long it took me to get it?

21 Q Sure

22 A Well, I can give you an idea When I went to the police
23 -- whenever that date was that I went to the police
24 department to get it I kept a diary which you saw I think at
25 our last meeting, we gave you a copy of that, not a diary per

1 se but a log of times that I called and who I talked to that
2 you had access to that

3 Q I'm just simply asking you do you know a day

4 A No, but I'm sure it's in that log is what I was trying
5 to get to

6 Q All right, let me show you Defendant's [sic] Exhibit
7 Number Ten Do you know the date of that letter, that's the
8 letter from, reference to the Court, is the letter he sent to
9 Mr Johnson with the City

10 A I have a good idea because the letter went to Mr
11 Johnson perhaps a week after we got back from Florida and I
12 realized our sign was gone So, it had probably been -- that
13 was January -- probably the first part of February

14 Q The first part of February?

15 A That's correct

16 Q And you reference in that letter that you wrote the
17 first of February that you had already an accident report,
18 correct?

19 A I'm sorry?

20 Q You reference in that letter that you already have a
21 copy of the accident report, do you not?

22 A The estimate report? Tell me where you're at I don't
23 know what you're talking about

24 Q Paragraph that's numbered eight you say, do you not,
25 ``The police report indicates that only two of the five poles

1 had been hit by the vehicle as it left the road " So,
2 obviously you had a copy of what you called the police report
3 there

4 A Apparently I did

5 Q Okay, so, you had it in early February when you
6 corresponded with Mr Johnson

7 A Yes

8 Q All right, you've never had a lease with the City or an
9 agreement with the City to actually have your billboard on
10 this property, have you?

11 A I never had indication, any rules, anything, evidence to
12 show that it was on City property So, I had no reason to
13 even obtain an application

14 Q Okay, so, the answer to my question is no you never had
15 a lease, is that correct?

16 A I think you're asking a misleading question, but I think
17 you're assuming that I had a reason to ask them and I did not
18 have a reason to ask them

19 Q All right, and you never had any type of lease to have
20 that billboard on that property with anyone, correct?

21 A With anyone?

22 Q With anyone?

23 A That's why I went to Pat Gregory to see if I could find
24 out in the archives

25 Q And were you ever able to find a lease that -- well, I

1 was asking about you By you, I mean Jade Inns, Inc Did
2 Jade Inns, Inc , ever have a lease with anyone to have that
3 billboard on that property?

4 A I don't know that

5 Q Since you took over Jades, Inc , purchased Jades, Inc ,
6 in 1979, let me be more specific, are you aware of any lease
7 that Jade Inns, Inc , had with the owner of the property
8 where the billboard sat?

9 A I didn't know who the owner of the property was

10 Q Okay, on the date that the sign was run into by the
11 vehicle fleeing the highway patrol, and I believe that was
12 January 13, 2003, you were in Florida, is that correct?

13 A Yes, that's correct

14 Q All right, and you all didn't return from Florida until
15 a couple of weeks later?

16 A Somewhere around the 23rd

17 Q So, obviously after the billboard was struck you didn't
18 actually see it, correct?

19 A No, I did not

20 Q All right, now, you testified, I believe, that after you
21 returned to town you did speak with Mr Freeman, Gerald
22 Freeman, with the Zoning and Planning Department with the
23 City, is that right?

24 A Yes, that's correct

25 Q And Mr Freeman told you at that time that the billboard

1 was located on City property, is that correct?

2 A That's what he told me

3 Q All right, and that's the position the City had taken
4 consistently since 1986, correct?

5 A Without any evidence to back it up that's true

6 Q Okay, the City never changed its position on that over
7 time, have they?

8 A Well, it's -- I don't know whether they did or not, ask
9 somebody from the City

10 Q Okay, no one from the City ever communicated a different
11 position to you between 1986 and 2003, did they?

12 A To tell me that they did not own it, they never gave me
13 any evidence that they did own it I can put it that way

14 Q Okay, nobody ever told you, "Oh, we're not -- we're no
15 longer considering that billboard on City property It's on
16 somebody else's property," that was never done, was it?

17 A I don't know if they felt satisfied that they could do
18 that because I'm not sure they knew that they even had
19 ownership

20 Q I'm not asking you what they thought I'm asking you
21 was anything along those lines ever communicated to you, a
22 change in position between 1986 and 2003

23 A No, sir

24 Q Okay, and Mr Freeman, he told you that because the
25 billboard was on City property he would not be able to issue

1 a permit to allow the billboard to be replaced, correct?

2 A That's what he told me

3 Q All right, and that was also reflected to you in

4 Mr Johnson's letter, correct?

5 A That's correct

6 Q And you disagreed at that time with that explanation, is
7 that right?

8 A That's correct

9 Q And you never actually formally sought a permit, you
10 never applied for a permit, did you?

11 A I never had a reason to think that I needed one

12 Q Okay, so, you believed that you could replace that
13 billboard, should be allowed to replace that billboard
14 without a permit, that was your position?

15 A I didn't think that I needed to get a permit because the
16 billboard should never have been taken down in the first
17 place

18 Q So, you disagreed with Mr Freeman's opinion that you
19 needed a permit, is that right?

20 A I disagree with his whole premise

21 Q Did you disagree with his opinion that you required a
22 permit or his decision that you required a permit, to require
23 a permit?

24 A Yes, I do

25 Q All right, did you ever appeal that decision or any

1 decision made by Mr Freeman to the Zoning Board of Appeals
2 here for the City of Georgetown?

3 A It's my understanding that Gerald Freeman was the one
4 that would issue a permit for ---

5 MR LINDEMANN Your Honor, if I could ask if he
6 could answer yes or no to my questions

7 A It's hard to answer a yes or no

8 MR LINDEMANN I'm sorry, Your Honor, if he could
9 answer yes or no to my questions and then obviously he can
10 explain, but ---

11 THE COURT I'm going to decline to instruct him
12 to do that He was answering your question, counsel You
13 cut in on him Go ahead

14 MR LINDEMANN I apologize

15 BY MR LINDEMANN

16 Q Okay, Mr Ashenfelder, did you ever appeal any decisions
17 or any information that was provided to you by Mr Freeman to
18 the Zoning Board of Appeals?

19 A I never felt I had to

20 Q Okay, did you ever appeal any decision by Boyd Johnson,
21 what he relayed in his letter to you, which I believe is
22 Exhibit Number Ten, to the Zoning Board of Appeals?

23 A Never felt I had to

24 MR LINDEMANN With the Court's indulgence if I
25 could just take a moment, Your Honor?

1 THE COURT Yes, sir
2 MR LINDEMANN Your Honor we've marked an exhibit,
3 Defendant's Exhibit Number Three I believe we have
4 previously had stipulation that it was admissible
5 THE COURT Any objection?
6 MR GUNDLING No, no objection
7 THE COURT Defense Three in evidence without
8 objection
9 MR LINDEMANN Thank you, Your Honor
10 (Whereupon, Defendant's Exhibit Number Three admitted
11 into evidence and appropriately marked)
12 BY MR LINDEMANN
13 Q Defendant's Exhibit Number Three, Mr Ashenfelder, have
14 you seen that document before?
15 A Yes, I have
16 Q Okay, at the top of it it says from Dave Ashenfelder
17 Do you see where it says that?
18 A Yes, sir
19 Q Is that in your handwriting?
20 A Yes, it is
21 Q And read for the jury what the date of this document is?
22 A 8-10-04
23 Q All right
24 MR LINDEMANN And Your Honor, I have a blow up of
25 this document for the jury to see

1 BY MR LINDEMANN

2 Q And it says, it says the writing at the top underneath
3 obviously the fax line, that's all in your handwriting?

4 A The writing, the printing at the top?

5 Q Underneath the fax by line there, all the handwriting is

6 ---

7 A Yes

8 Q --- your handwriting, correct?

9 A Not, not everything from there down, that paragraph
10 that's written there is my handwriting

11 Q Okay, if you could read that paragraph

12 A It says, "Location of survey stake showing Green
13 property line entrance to Burger King approximate location of
14 folds for billboard that were removed by City of
15 Georgetown "

16 Q Okay, and that was, as you indicated, dated in August of
17 2004?

18 A That's correct

19 Q All right, and the diagram that's drawn that was drawn
20 by your son I believe?

21 A That's correct

22 Q And did you assist in the drawing of that diagram?

23 A No, I did not

24 Q You did not Now, in 2004 during this timeframe you
25 actually had the property surveyed by a surveyor named Lucky

1 Sanders, correct?

2 A That's correct

3 Q All right, and the survey that Mr Sanders did for you
4 do you have a copy of that?

5 A He did not give me a copy To my knowledge, I don't
6 think I got a copy of anything

7 Q Have you ever tried to obtain a copy of the survey done
8 in 2004 from your surveyor?

9 A No, I was there when he surveyed it and his survey was
10 not relative It did not help me establish anything

11 Q This is something that you retained him to do, correct?

12 A That's correct

13 Q All right, on this diagram that was prepared by your son
14 and that you, you actually in your own handwriting say it's
15 the location of the survey stakes showing the Green property
16 line The survey stakes you're referring to there so the
17 jury can see it is the survey stakes that were put in by Mr
18 Sanders?

19 A That's correct

20 Q Okay, he's a licensed surveyor by the State of South
21 Carolina?

22 A I'd just like to add that those stakes are not iron pins
23 that you would normally refer to as permanent lot markers or
24 stake marks Those are wooden stakes that were driven in as
25 an estimate of approximately where a line would be

1 Q All right, but he actually surveyed it for you, correct,
2 and you were there with him?

3 A I was there when he did part of it, yes

4 Q And he put in the survey stakes that are referenced
5 there, correct?

6 A Well, I didn't see him do that I assume he did

7 Q All right, and according to this diagram, the billboard
8 itself was not within the Green property according to that
9 survey, correct?

10 A Well, it, again, was not an intention to locate a
11 billboard that was not there There was no way to actually
12 -- he did not survey it If you're, if you're leading up to
13 Lucky surveying that, those marks, no, he did not have
14 anything to do with that

15 Q He surveyed the Green property line, correct, for you?

16 A Well, he didn't survey the Green property for me I
17 asked him if he could locate the property line I was after
18 the property line that was on the side that would go down
19 Green's line I was not interested in Mr Green's property
20 per se

21 Q And on this particular document you also tried to
22 document the approximate location of the billboard itself,
23 correct?

24 A Well, if you're using approximate very loosely, yes

25 Q Well, I'm using your words You have written in your

1 handwriting at the top, approximate location of poles for
2 billboard that were removed by City of Georgetown, isn't that
3 right?

4 A As I said, if you're using it loosely that's correct,
5 approximately is just that

6 Q Okay, and these five black dots are what was intended to
7 be the approximate location of the billboard, correct?

8 A If you're using approximately in the same sense that I
9 am, yes

10 Q All right, and according to the way this diagram is
11 drawn and referenced by you that billboard was not on the
12 Green/Bruggeman property, correct?

13 A Well, not being a surveyed and just a sketch I think
14 it's wrong to try and draw assumptions that that's where I am
15 placing the billboard That's not a correct assumption

16 Q It doesn't say here that you're -- I mean, what's the
17 purpose of this? You were trying to provide some diagram to
18 show relative to where Mr Sanders placed the survey line the
19 property line where the ---

20 A Well, this survey ---

21 Q Please let me, let me finish my question

22 A Excuse me I'm sorry I thought you were done

23 Q --- where the billboard was in relation to that,
24 correct?

25 A Well, Mr Green's survey stakes were incorrect He had

1 a survey stake that was approximately in the middle of the
2 driveway that leads off of 17 into the road to begin with
3 After he had completed his survey and I realized it was
4 erroneous, I obtained another surveyor, licensed survey to --
5 and I asked him to let me know when he was going to be there
6 and I would be there to work with him to find out exactly the
7 information that I was after

8 Q All right, you have not provided Mr Sanders' survey so
9 we can determine whether or not it was accurate or not?

10 A I never was given a survey

11 Q All right, and this reflects your understanding of where
12 the survey stakes were when Mr Sanders surveyed it, correct?

13 A The survey stakes alone, yes

14 Q All right, and you said you were there when Mr Sanders
15 surveyed it, correct?

16 A No, I said I was not there during the whole survey I
17 said I did not -- I was not there when he placed the stakes
18 I was not there when the engineers set up his tripod to run
19 all those I was running all over Georgetown at that time

20 Q So, you were there for part of it

21 A Part of it, that's correct

22 MR LINDEMANN The court's indulgence No further
23 questions Thank you, Mr Ashenfelder

24 THE COURT Is there redirect, Mr Gundling?

25 MR GUNDLING Yes, sir

1 THE COURT All right, and is our jury back,
2 Ms Knox?
3 MR LINDEMANN Thank you, Your Honor
4 THE COURT Thank you
5 (Whereupon, the following takes place in the presence of
6 the jury)
7 THE COURT All right, welcome back, ladies and
8 gentlemen I trust you had a nice lunch You will recall we
9 are in the Plaintiff's case at this point, and Mr Gundling,
10 please call your next witness
11 MR GUNDLING Your Honor, the Plaintiff would call
12 Mr Barry Haynes
13 THE COURT Please come forward and take the
14 oath of a witness
15 WHEREUPON, Barry Charles Haynes was called to the stand,
16 duly sworn by the clerk and testified as follows
17 THE CLERK Thank you, please be seated, and
18 would you state and spell your full name for the Court,
19 please?
20 MR HAYNES Barry Charles Haynes, B-A-R-R-Y,
21 Haynes, H-A-Y-N-E-S
22 MR GUNDLING May it please the Court, Your Honor?
23 THE COURT Go ahead
24 DIRECT EXAMINATION
25 BY MR GUNDLING

- 1 Q Mr Haynes, where do you reside?
- 2 A Pawleys Island
- 3 Q And how long have you lived in this area?
- 4 A Since 1975
- 5 Q All right, what is your occupation?
- 6 A Electric sign builder, billboards
- 7 Q And how long have you been involved in that occupation?
- 8 A Since 1976
- 9 Q All right, and explain to the jury what that occupation
- 10 involves?
- 11 A The construction of business signs, billboard signs,
- 12 neon signs, just about all types
- 13 Q And you've been doing that how many years, sir?
- 14 A 32 years
- 15 Q All right, do you own your own business?
- 16 A Yes, I do
- 17 Q And what is the name of your business?
- 18 A Haynes Sign Company
- 19 Q All right, do you also own your own billboards
- 20 privately?
- 21 A Yes, I do
- 22 Q Okay, and how many billboards do you operate?
- 23 A We have 110 between two companies
- 24 Q Okay, and these are actual billboards that are in your
- 25 name that you actually lease out or use?

1 A Yes, they are

2 Q All right, how many billboards do you feel that you've
3 built since you've been in this business?

4 A Back in the seventies and early eighties we built
5 probably 50 of them, 60 of them

6 Q All right, and are you familiar with the construction of
7 a wood billboard with just telephone poles for posts?

8 A Yes, I am

9 Q All right, do you own or have you built any of those
10 types of billboards?

11 A Not in the last 20 years

12 Q All right, and what is the issue with building those
13 billboards now?

14 A It's kind of hard to do an engineer drawing on wooden
15 poles

16 Q Okay, now, in your deposition on September 27th, 2007,
17 Mr Lindemann asked you questions about the cost to construct
18 a wood billboard the size of Mr Ashenfelder's billboard Do
19 you think you can do that?

20 MR LINDEMANN Your Honor, is this impeachment
21 using the deposition? I don't think there's a question to
22 impeach him with his deposition

23 THE COURT Well, I haven't heard the question
24 yet Overruled at this juncture

25 MR LINDEMANN All right

1 THE COURT But counsel, there's only certain
2 ways you may use the deposition

3 MR GUNDLING I understand, Your Honor

4 Let me first, Your Honor, I would like to qualify
5 Mr Haynes?

6 THE COURT All right, counsel, before you make
7 that motion please come to the side if you would, please

8 (Whereupon, a bench conference was held in the presence
9 but out of the hearing of the jury)

10 BY MR GUNDLING

11 Q Okay, Mr Haynes, what is your estimate of the cost to
12 construct a billboard, a wooden billboard of the size that
13 Mr Ashenfelder had?

14 A It came to \$15,600, plus the sales tax, engineering and
15 the labor was \$3,000 It came to \$20,342

16 Q All right, that's all the questions I have

17 THE COURT Cross examination

18 CROSS EXAMINATION

19 BY MR LINDEMANN

20 Q Mr Haynes, are you referring to an estimate that you
21 have given?

22 A No, this is the estimate that I did after I left the
23 deposition

24 Q All right, so, at the deposition you had not done an
25 estimate for a wooden billboard, is that right?

1 specifications Please explain that

2 A Well, you have 120-mile an hour wind load with a three
3 second 130-mile an hour gust it has to be built by That's
4 why this one is written up to where it would have to be built
5 back to today's standards I don't think you could get a
6 permit to build one back that was at the time, you know, 30,
7 40 years ago

8 Q That's all I have

9 MR GUNDLING Thank you very much, Your Honor

10 THE COURT All right, sir, you're free to step
11 down You're free to leave if you wish, not required to but
12 you're welcome to if you wish

13 Please call your next witness

14 MR GUNDLING Your Honor, that is the Plaintiff's
15 case

16 THE COURT All right, Plaintiff rests
17 Counsel, come to the sidebar just one moment again and let's
18 talk about scheduling here at the end of the Plaintiff's
19 case

20 (Whereupon, a bench conference was held in the presence
21 but out of the hearing of the jury)

22 THE COURT All right, ladies and gentlemen, in
23 every case, in every civil case at the end of one party's
24 case the Court takes up certain motions and reviews legal
25 issues before we proceed to the next part of the case, which

1 *****OFF THE RECORD*****

2 (On the record)

3 (Whereupon, the following takes place outside the
4 presence of the jury)

5 THE COURT All right, ladies and gentlemen, I have
6 released the jury With counsel's permission I went back to
7 the jury room myself I asked them to be back at 9 30
8 tomorrow morning I explained that this process was taking
9 or going to take longer than anticipated I also, because it
10 appears to me that there has been some press interest in this
11 story, asked the jurors not and instructed the jurors not to
12 read the newspaper tomorrow morning before they come to
13 court, and we are now at the point in the case we're at the
14 close of the Plaintiff's case I will be glad to hear any
15 motions the Defense may have at this time Mr Lindemann

16 MR LINDEMANN Thank you, Your Honor Your Honor,
17 at this time on behalf of the City of Georgetown we would
18 move for a directed verdict on all causes of action on and I
19 apologize to the Court but on numerous different grounds
20 So, if you would bear with me as we go through them, and I
21 don't know how you want to handle this I'm absolutely fine
22 if you want to take each ground and go back and forth or
23 however you want to do it, Your Honor, is fine with me

24 THE COURT Let me hear them all, please

25 MR LINDEMANN Okay, the first ground that I have,

1 Your Honor, would be very quickly and you've heard some of
2 this yesterday but just to protect myself on the record the
3 exhaustion of administrative remedies defense because that
4 applies to all of the causes of action As Your Honor is
5 aware and we've actually stipulated to an exhibit to this
6 effect and we'll obviously need to get the exhibits all
7 straight, what's in evidence and what's not, but we have
8 agreed to put in the municipal ordinances that show the
9 establishment of a Zoning Board of Appeals, and as well as
10 provisions in there which is consistent with state law that
11 allows for a ZBA and allows for then an immediate appeal to
12 the Circuit Court and then to the South Carolina Appellate
13 Courts

14 In this particular matter, Your Honor, we believe that
15 the issues that have been raised by the Plaintiff are exactly
16 the type of issues that require exhaustion of administrative
17 remedies through the ZBA Yesterday you heard arguments from
18 Mr Gundling that the -- going through the administrative
19 procedures would be futile and I didn't get a chance to
20 respond to that because of shortness of time and what I would
21 submit to Your Honor is this is not the type of case where
22 our Appellate Courts have found futility applies because
23 Mr Gundling's argument was directed at the decision makers
24 meaning that if Mr Ashenfelder and his corporation had filed
25 a permit application that they felt it was futile, that it

1 was going to be turned down by the zoning administrator and
2 I'm not denying that, but what I am suggesting to the Court
3 is that's not exhausting administrative remedies The
4 administrative remedies that are built into the ordinance by
5 statute, also provided for obviously by statute is the ZBA,
6 and then an appeal to the Circuit Court and Appellate Courts
7 that way That is the administrative remedy is the Zoning
8 Board of Appeals There's been absolutely no evidence
9 presented whatsoever that would suggest that proceeding to
10 the ZBA would be futile Now, there are two points that are
11 raised by the Plaintiffs that are at the heart of this case
12 from a zoning perspective Number one, they contend that if
13 we had required them to have -- to get a permit that it would
14 have been turned down because Mr Freeman did testify -- I
15 mean, did tell Mr Ashenfelder and that was his testimony
16 today, ``That if you apply for a permit I'm not going to be
17 able to provide you one because it's on City property ''
18 He also has said, ``We don't believe that a permit was
19 necessary '' That's the second part of their argument
20 Well, whether or not a permit is required or not is also a
21 decision of a zoning administrator and a decision of a zoning
22 administrator that if you are aggrieved by it you can appeal
23 it to the ZBA So, both of those issues were grievable to
24 the, to the ZBA and that is the way this issue should have
25 gone through, number one, first, the ZBA and if they weren't

1 satisfied with that result it would make it to Circuit Court
2 that way, and instead they circumvented all of those
3 procedures and this is the exact type of case, a case where
4 you disagree with a decision of a zoning administrator
5 That's what the ZBA was designed for, dealing with those
6 issues In fact, I'm handling an appeal for the City of Irmo
7 right now where a property owner disagreed with the
8 interpretation of the zoning ordinance that the zoning
9 administrator had issued, and the way they -- and in fact,
10 they initially filed an immediate action in Circuit Court and
11 I got that dismissed That was dismissed by Judge Johnson
12 They then filed an appeal to the ZBA The ZBA made a record
13 In that particular instance the ZBA agreed with the zoning
14 administrator of Irmo and it's now in the Circuit Court level
15 in front of Judge Johnson once again

16 THE COURT But counsel, doesn't this defense
17 really apply to the Plaintiff's request on the equity side of
18 the Court to require that the Court -- this Court require
19 that they be allowed to rebuild as opposed to damages for
20 what was torn down?

21 MR LINDEMANN It clearly applies to the request
22 for any type of prospective relief and the equitable relief
23 I would submit it applies to the damages claim as well
24 because if he had obtained relief from the ZBA there would be
25 no need to claim a taking There would be no need to claim

1 conversion or any of these other torts That's why the South
2 Carolina Supreme Court requires exhaustion of administrative
3 remedies even in a money damages case, and in fact, that's
4 consistent with the use of administrative remedies in all
5 cases In fact the United States Supreme Court routinely
6 holds that just because you can't get perhaps money damages
7 relief through the administrative process you still have to
8 exhaust first and the rationale for that is several things
9 Number one, you'll create a record Number two, the
10 aggrieved party may succeed and that that would then mitigate
11 or resolve any claims for money damages because they'd get
12 the relief that they were seeking and there would be no money
13 damages claim and those -- and obviously it provides an
14 avenue to pursue those forms of relief which may ultimately
15 make the lawsuit unnecessary and those also apply in South
16 Carolina, too, and in fact, there are a number of South
17 Carolina cases dealing with why we even have exhaustion
18 requirements

19 I think and I would submit to this Court that the case
20 of Stanton versus Pawleys Island is right on point on both
21 the necessity of exhaustion and the futility argument because
22 in that particular case the property owner was denied a
23 building permit and as a result it was required that he must
24 first exhaust before he brings In this particular case they
25 dismissed his action in Circuit Court because he failed to

1 first go through the ZBA Like the Plaintiffs here they
2 raised the futility argument and this court and the Supreme
3 Court said that futility was not an issue in this particular
4 matter, at least I think this is -- now, I might be referring
5 to another case, and I can find it for Your Honor, but they
6 were talking about you can't claim futility because there's
7 no evidence to show that the ZBA would -- would not be able
8 to provide relief, would agree necessarily with the zoning
9 administrator, and in fact, the particular case I'm referring
10 to and I will have to find the cite for Your Honor The
11 Plaintiff actually argued that it would be futile and the
12 Court said, ``No, it's not futile '' The membership even on
13 the ZBA has changed because what the Plaintiffs had argued in
14 that particular case was that another homeowner had brought
15 the exact same type of issue before the ZBA and had lost Of
16 course, we don't even have evidence of that in this
17 particular case, but the Supreme Court actually said that's
18 not even good enough to establish futility So, I really
19 don't think their futility argument carries any water If --
20 clearly Mr Freeman wasn't going to change his mind and I'm
21 not going to refute that, but at that point once he got a
22 formal decision from Mr Freeman or even the decision to
23 require a permit, all they had to do was file an appeal to
24 the ZBA, they'd have a Board of Appeals to decide that issue
25 one way or the other If they got a favorable decision for

1 | them probably wouldn't have required this lawsuit If they
2 | didn't get a favorable decision the issue goes before the
3 | Court with a record that's established at the ZBA and goes to
4 | the Circuit Court that way So, I think this case is just
5 | like, Your Honor, Stanton versus Pawleys Island and
6 | exhaustion of administrative remedies is absolutely required
7 | and should also result in a dismissal of the damages claims
8 | for the exact reason I stated

9 | Going as to the -- and as I indicated I think that's all
10 | encompassing Going to a couple of the other issues, Your
11 | Honor, we touched on those yesterday dealing with -- give me
12 | a second to find my notes, Your Honor, dealing with the issue
13 | of adverse possession As I indicated, Your Honor, proof of
14 | adverse possession must be by clear and convincing evidence
15 | We cited to you yesterday the Lusk versus Callaham case, a
16 | Court of Appeals case, and the Plaintiff must show, again,
17 | just obviously the elements are the actual, notorious,
18 | exclusive, continuous and hostile for a statutory period of
19 | ten years I focused yesterday the Court on the issues of
20 | hostile and exclusive I do that again today, and in fact,
21 | one of the argument made by Mr Gundling yesterday was,
22 | ``Well, clearly there was a big huge billboard How much
23 | more hostile can you get?'' Well, the big huge billboard
24 | doesn't go to the issue of hostility It goes to the issue
25 | of open and obvious or that it's notorious and I'm not

1 challenging those issues What I am challenging is that the
2 Plaintiff cannot show hostility, and the Court of Appeals in
3 the Lusk case made it very clear that possession with the
4 intention to dispose, dispossess the owner is what's required
5 to show hostile possession Mr Ashenfelder's testimony
6 today was very clear that he never made any attempt to
7 dispossess, certainly Mr Bruggeman who now owns the property
8 or any of the predecessors of the title His testimony in
9 fact is that his intentions when he sent that February 22nd,
10 1996, letter to Mr Green was to tell him that, "Well,
11 there's two different arguments One is you say it's your
12 property Another, the City says it's on their property,"
13 and he says, "I don't know I was mistaken I have no idea
14 what it was " Well, certainly he is not taking an adverse
15 position giving his testimony at the time He's saying he
16 doesn't even know So, clearly, Your Honor, based on the
17 testimony that you have heard here today in this courtroom
18 clearly they are not going to be able to show that it was
19 adverse and even if you read into the 1996 letter, as I do,
20 that he was taking the position, actually affirmatively
21 taking the position that, "It's not on your property,
22 Mr Green It's on the City's property I'm telling you
23 that as a matter of fact and that's my position," which
24 those are the only two ways you could interpret that letter,
25 either the way he testified or the way I'm suggesting

1 Either way they don't qualify for -- to show adverse, and in
 2 fact, he testified that the language in the letter where he
 3 says, "It is not my intention to deny you anything that
 4 rightfully belongs to you," well, that right there shows
 5 based on the way he described what that language meant shows
 6 he wasn't being adverse to Mr Green He was telling him,
 7 "If it's something -- if something rightfully belongs to you
 8 I'm fine with that You just need to prove it to me " That
 9 was his testimony today So, clearly they haven't shown
 10 hostility, Your Honor, by his own testimony

11 As well on the issue of, on the issue of exclusive
 12 possession you've gotten no testimony whatsoever to show that
 13 he did anything to prevent anybody else from using that
 14 property In fact, the statute that we cited to the court
 15 which was 15-67-250 says that the land must be protected by,
 16 "A substantial enclosure " I specifically asked him, "Did
 17 you ever put up a fence? Did you ever do anything to exclude
 18 people from that property, the Bruggeman Green property,"
 19 and he indicated that he had not

20 THE COURT Give me that cite again, please

21 MR LINDEMANN 15-67-250

22 THE COURT All right, go ahead

23 MR LINDEMANN It's part of the article, Article 3
 24 of Chapter 67 which deals with adverse possession We had
 25 also cited to the Court -- excuse me, Your Honor We had

1 cited to the Court the Butler versus Lindsey case where the
2 Court of Appeals addressed the issues dealing with, dealing
3 with the exclusive element and I can't -- oh, here it is I
4 apologize, and in that particular case the Court of Appeals
5 explained, Your Honor, and this was the same quote I read to
6 you yesterday, ``The general rule is where an owner of
7 property and an occupier are both in possession," which is a
8 best case scenario for the Plaintiff in this particular case,
9 ``the possession of the legal owner prevails to the exclusion
10 of the other " Clearly, Mr Green, the deed is in evidence
11 of -- when Mr Green owned it in '96, when there was a deed
12 of distribution after his death in 1999 to his children and
13 then in 1995 another deed to Mr Bruggeman In addition to
14 that, Mr Ashenfelder admitted in testimony that he never
15 held legal title to that property and certainly never paid a
16 mortgage on it, never paid taxes on it, never paid insurance
17 on it The Court of Appeals went on to say, ``The exclusive
18 possession necessary to acquire title by adverse possession
19 is not satisfied if occupancy is shared with the owner or the
20 agents of the owner " So, those two elements alone they
21 have not been able to meet We also cited and handed up
22 yesterday the case of King v Hawkins where somewhat similar
23 factual situation There was an adjoining property on which,
24 on which the person who was making a claim for adverse
25 possession had put a sign, and the Court of Appeals granted

1 with not any type of in-depth discussion by any means but the
2 Court of Appeals in that particular case said that placement
3 of a sign on the property is not evidence of adverse
4 possession So, on the adverse possession cause of action we
5 would move for a directed verdict and a finding that the
6 Plaintiff is not entitled to any type of title or ownership
7 rights to the Bruggeman property through adverse possession

8 On the issue of prescriptive easement which is related,
9 there are -- as we discussed there are three elements, the
10 continued and uninterrupted use or enjoyment of the right for
11 a full period of 20 years, two the identity of the thing
12 enjoyed, and three, that the use or enjoyment was adverse or
13 under a claim of right For the exact same reasons I just
14 discussed with adverse possession there can be no finding, I
15 would submit, of -- that the use of the property was adverse
16 I mean, clearly he -- the letter to Mr Green, however it's
17 interpreted, either Mr Ashenfelder's interpretation or the
18 interpretation I would suggest either way clearly it was not
19 adverse

20 Second of all, Your Honor, as far as a claim of right,
21 again, he was not making a claim of right to that property
22 Mr Ashenfelder's own testimony today was, "I was telling
23 Mr Green that if it was rightfully his it's his " He was
24 not making a claim of right to that property at all He was
25 weighing two different alternatives in his opinion One was

1 the property where the billboard was was owned by Mr Green
2 The other was the billboard was owned by the City, and he
3 said he didn't decide He didn't know which one was right
4 That was his testimony today Well, obviously, he is not
5 claiming any type of prescriptive easement by claim of right,
6 Your Honor So, on that basis as well we would move for a
7 directed verdict on the prescriptive easement issue, and if,
8 obviously if the Court agrees with our position on those,
9 then the ultimate conclusion as a matter of law is that Mr
10 Ashenfelder and the other Plaintiffs did not have any legal
11 right to that, having that billboard on the Bruggeman
12 property We would also submit as a matter of law that if
13 the billboard itself was on City property they would have no
14 legal right to have the billboard on City property
15 Obviously, no private citizen has the ability to put a
16 structure on City, on government property without the
17 permission of the government You cannot obtain rights
18 through prescription against the government That actually
19 was an issue that we dealt with in the federal case, and
20 there's undisputed testimony he never had any type of lease
21 agreement or any type of agreement with the City to have the
22 billboard on City property So, regardless of whether the
23 jury in this case would conclude that the billboard was on
24 City property or on Mr Bruggeman's property, it is
25 absolutely immaterial, and as a result, should not preclude a

1 directed verdict on the negligence issue

2 The Plaintiff contends that we had a duty to allow him
3 to repair or replace that billboard. The City does not have
4 a duty, Your Honor, to allow someone, first of all, to place
5 or maintain or retain a structure on its own property. They
6 also have no duty to allow somebody to maintain or retain a
7 structure on a third party's property without that third
8 party's approval. There's absolutely no evidence that
9 Mr. Green, Mr. Bruggeman or any owner of that property has
10 ever provided and certainly not in 2003 which is the time
11 that's relevant to this case ever provided any permission
12 whatsoever or authority for that billboard to remain or be
13 reconstructed in its original location. So, there is
14 absolutely no legal duty, Your Honor, and for that reason
15 summary judgment, the City would be entitled to summary
16 judgment on that particular negligence claim. As far as ---

17 THE COURT Well, now, counsel, wasn't the
18 negligence claim, though, not about replacing the sign, but
19 the negligence was removing it negligently as I understood
20 the claim.

21 MR. LINDEMANN That's right, and I was going to get
22 to that. The same argument I made yesterday, Your Honor,
23 the removal of the sign itself was not negligent because it
24 was an intentional act. I mean, there's absolutely been no
25 testimony that would suggest, in fact, there's been no

1 testimony, quite, frankly, if you think about it that the City
2 removed it I'm not going to sit here and dispute that, but
3 I don't think the Plaintiff has ever even presented that as
4 part of its case in chief, but I'm certainly not stipulating
5 to it So, that might be right there a grounds for directed
6 verdict, but bottom line is, Your Honor, there has been no
7 evidence that has been presented that would suggest any type
8 of negligence in the manner in which and how the board was
9 taken down or removed To the extent it's an intentional
10 tort, an intentional tort is an intentional tort It cannot
11 give rise to negligence, an intentional act cannot give rise
12 to negligence and we cited case law to that effect, in our
13 memorandum and if I cite to the Court, there's a case called
14 Chassereau versus Global-Sun Pools where the Court of Appeals
15 held that intentional conduct cannot be the basis for a
16 negligence claim In that particular case the Court held,
17 "Negligence while itself a tort does not encompass all torts
18 particularly intentional torts " That's the exact quote
19 from the Chassereau case In addition, in the USAA versus
20 Rowland case, another Court of Appeals case from 1993, excuse
21 me, the Court of Appeals held that an intentional tort by
22 definition cannot be committed in a negligent manner So,
23 and obviously, the Plaintiffs have brought intentional tort
24 claims, which I will get to, but the negligence claim itself,
25 intentional conduct can give rise to it, and as I indicated I

1 don't think there's been a showing of a legal duty to allow
2 that billboard to be replaced to the extent that's an aspect
3 of the negligence claim

4 THE COURT All right, and counsel, again, on
5 the damages issue as opposed to the replacement of the board,
6 the -- is the standard against a political subdivision one of
7 negligence here? I say -- obviously there is a claim for
8 negligence, but is there not a gross negligence standard
9 under the tort claims act against the City?

10 MR LINDEMANN Not for this, Your Honor There's
11 been no gross -- gross negligence would only apply if there's
12 been an exception under 15-78-60, subsection I mean, excuse
13 me, 15-78-60 if we applied one of the subsections that had a
14 gross negligence exception and we have not done that That
15 would be 25, and I believe 12 or 13 I can't ever get --
16 remember that off the top of my head I can look though

17 THE COURT 12

18 MR LINDEMANN 12, those are the ones that have
19 gross negligence exceptions and you are exactly correct, that
20 if a Defendant relies on one of those and relies on other
21 exceptions that do not have gross negligence exceptions the
22 Supreme Court has said you read gross negligence into all of
23 them but we have specifically not pled nor relied nor do I
24 think 25 or 12 are applicable here We have not relied on
25 any of those defenses, and so therefore, gross negligence is

1 not applicable to this particular case Quite honestly, the
2 Plaintiffs, at best, they would have a due process claim
3 That's one of the points I made and they've made their due
4 process claim in the federal court and it was dismissed

5 THE COURT Counsel, let's go forward to the
6 intentional tort claim What's your position on whether or
7 not recovery for an intentional tort may be had here?

8 MR LINDEMANN Well, Your Honor, dealing first with
9 the conversion claim and I understand that it's conversion of
10 the billboard and then as I read their claim it's actually
11 two different aspects to it, first, conversion of the actual
12 damaged billboard as it existed on January 13, 2003, take the
13 fact that they took away the billboard, the remaining parts
14 of the damaged billboard That itself would not be subject
15 to a claim for conversion because conversion, Your Honor is
16 defined as, and in fact, I have the definition It uses the
17 word unauthorized in it The Court's indulgence, too many
18 cases to refer to in this

19 If you look at the case of Hawkins versus City of
20 Greenville which has a number of these issues in it in a
21 somewhat different context which is surface water issues or
22 sewer issues The Court indicated conversion is quote, ``The
23 unauthorized assumption and exercise of the right of
24 ownership over goods or personal chattel belonging to another
25 to the alteration of the condition or the exclusion of the

1 owner's rights '' The key word there, Your Honor, is
 2 unauthorized In this particular instance the Plaintiff has
 3 presented absolutely no evidence in their case in chief and I
 4 know we had the discussion in chambers, ``Well, this is an
 5 affirmative defense,'' and I would submit to the Court that
 6 it is not Obviously, the definition includes the word
 7 unauthorized It's the Plaintiff's burden to show that the
 8 removal of their chattel, their billboard was unauthorized
 9 They have not presented any evidence, no witnesses from the
 10 City were ever presented as witnesses in the Plaintiff's case
 11 in chief, but beyond that, Your Honor, the case law certainly
 12 does not support their position I would cite Your Honor to
 13 and I have an extra copy of this case It's a case called
 14 People's Program for Endangered Species and then there's also
 15 another case very similar to that called Quality Towing
 16 versus City of North Myrtle Beach, and if I could hand those
 17 two cases up to the Court

18 THE COURT Thank you

19 MR LINDEMANN Those are both cases that talk about
 20 the police power, and Your Honor, we would submit that the --
 21 that this issue falls squarely within the police power that
 22 obviously the City of Georgetown enjoyed in order to protect
 23 the safety and welfare of its citizens, and the South
 24 Carolina -- I thought I had it highlighted, Your Honor, and I
 25 apologize It cites, it cites the case of Sentell versus New

1 Orleans & Carrollton Railroad Company, which is a United
2 States Supreme Court case, and this is a decision by the
3 South Carolina Supreme Court, and it says, the Supreme Court
4 held in Sentell that, "A state, in a bona fide exercise of
5 its police power, may interfere with private property, and
6 even order its destruction for the welfare and comfort of its
7 citizens " In this case they were dealing with dogs, and it
8 said, "Property and dogs is of an imperfect or qualified
9 nature and dogs may be subjected to peculiar and drastic
10 police regulation by the state without depriving their owners
11 of any federal rights " The Court then went on and said,
12 "The individuals privileged to use property freely is always
13 subject to a legitimate exercise of the police power under
14 which new burdens and restrictions may be imposed when the
15 public welfare demands," and that exact same point was also
16 mentioned in a case in the Quality Tire case that I -- Towing
17 case that I handed up and also a case of Donnie Myers versus
18 Real Property, which is 411 S E 2d 209, and here the Court as
19 indicated and it's again the South Carolina Supreme Court
20 says, quote, and I can hand this up as well I don't have a
21 second copy "This Court has long recognized that the
22 State's exercise" -- I'm sorry -- yeah, "of eminent
23 domain" -- scratch this When I get to inverse condemnation
24 that's where I need to read this case I apologize, but for
25 the, for the conversion claim, Your Honor, in a nutshell, we

1 don't believe that the Plaintiff can show that it was
2 unauthorized because it was an exercise of the police power,
3 and certainly there is absolutely no evidence in the
4 Plaintiff's case in chief that would suggest that it was
5 unauthorized

6 As for the second part of the conversion claim, to the
7 extent they're alleging this and it's unclear to me in the
8 complaint, if they're alleging that we converted the right to
9 rebuild the billboard in this same place, well, that's a
10 property right, and in the Hawkins case I just cited to Your
11 Honor, it's very clear from the Court of Appeals that
12 conversion only applies to personal property It doesn't
13 apply to any type of real property interest, and as a result,
14 Your Honor, conversion is not the cause of action that may be
15 pursued for any type of real property damage, and it says,
16 ``It is well settled that a conversion action does not lie
17 when alleging the exercise of dominion or control over real
18 property '' So, those would be the arguments, Your Honor,
19 where we would be asking for a directed verdict on the
20 conversion claim

21 Real quickly on the trespass claim, Your Honor, if the
22 Court rules that Mr Ashenfelder has no rights to the
23 Bruggeman Green property by adverse possession, he certainly
24 cannot prevail on any type of trespass claim There is
25 absolutely no basis for someone to bring a suit against a

1 Defendant saying, ``You trespassed on a third party's
2 property,'' and trespass would not apply even if you find the
3 prescriptive easement or allow the prescriptive easement case
4 to go to the jury because there's absolutely no authority
5 that allows a trespass on an easement, but in this -- so, in
6 this case if you find or agree with our position on adverse
7 possession, the trespass claim should go away as well, and
8 that's without even considering some tort claims act defenses
9 and the Court mentioned Subsection Nine yesterday I think
10 that would also bar the trespass claim, but I don't even
11 think you need to get to that point certainly if you find
12 that Mr Ashenfelder had no right to title to that property
13 through adverse possession, which brings me to the inverse
14 condemnation claim

15 It's very related That's why I started reading this
16 case There is an exception, of course, for inverse
17 condemnation where there is an exercise of police power

18 THE COURT All right, as opposed to eminent
19 domain

20 MR LINDEMANN That's correct, and I was reading
21 you -- I had cited to you the case of Myers versus Real
22 Property at 1518 Holmes Street It's a South Carolina
23 Supreme Court case from 1991, and what I was getting ready to
24 read to you was, ``This Court has long recognized that the
25 State's exercise of eminent domain is distinguished from its

1 exercise of the police power Just compensation is required
2 in the case of the exercise of eminent domain but not for the
3 loss of property of the property owner which results from the
4 constitutional exercise of the police power " So, in this
5 particular case, again, I would submit that there's been
6 absolutely no showing in the Plaintiff's case that would give
7 rise to an inverse condemnation because they haven't
8 addressed this issue of police power, but nonetheless, even
9 if the Court believes that there's sufficient evidence to at
10 least meet the basis of inverse condemnation, what this case
11 is about is an exercise of police power in order to take down
12 the billboard itself

13 THE COURT All right, but counsel, what, what
14 -- first of all, what evidence will you have in your case or
15 do you intend to put up in your case that this was a valid
16 exercise of police power?

17 MR LINDEMANN Well, Your Honor, the testimony will
18 be provided by the officer from the City of Georgetown who
19 will testify as to the condition of the billboard and his
20 immediate belief at the time that it presented a real hazard
21 to citizens who would be walking, pedestrians on the sidewalk
22 and also motorists on U S 17 and in the Burger King parking
23 lot, that it was that hazardous of a situation, and he, in
24 fact, will testify that he called his supervisor to have
25 something done about the billboard, to have the billboard

1 taken down because it posed such a threat and he could not
2 recall whether he, or at least this is his deposition
3 testimony, whether he or his supervisor actually made the
4 call to the street department to have that done, but that is
5 his testimony We will also put into evidence the
6 photographs There are photographs that the investigating
7 officer took that, that show the -- doesn't -- there's not
8 one photograph that shows, "Here's the billboard " I will
9 admit that, but there are a series of about 11 or 12
10 photographs that show the sheer destruction that was done to
11 this entire area by this pickup truck, shows the pickup, the
12 damage to the pickup truck as well I mean, drove through a
13 brick wall There are all kinds of poles down There are a
14 number of pictures showing telephone poles sheered off So,
15 clearly, we're going to have evidence that goes to the jury
16 that shows this mass destruction That evidence was actually
17 in the record on the summary judgment motion as well Those,
18 I believe those photographs were part of the summary judgment
19 record, but that is -- that's going to be -- that's going to
20 be essentially that argument and then Mr Freeman, the zoning
21 administrator, went out there, who also examined it, will
22 also indicate that his belief that this was a very hazardous
23 situation and that the City needed to take some immediate
24 action to protect its citizens

25 THE COURT

And counsel, what's your position of

1 when the Court reviews the validity of a police action or a
2 police power or what's the threshold upon which it's
3 reviewed? And again, to put -- to say, state it another way
4 the Plaintiff's position, although not argued yet, I'm sure
5 is that this was just a fortuitous opportunity for the City
6 to reach in and remove something that had been a thorn in
7 their side for some time. Again, that's taking the -- in the
8 light most favorable to the Plaintiff obviously, but I ask
9 you if the Court reviews whether the police power exercised
10 was valid, what is the threshold upon which the Court
11 reviews, what's the level of proof or standard which is
12 applied?

13 MR LINDEMANN Well, the standard that's applied,
14 the Supreme Court has indicated that you, you would be also
15 looking at the -- in fact, in Byrd versus City of Hartsville,
16 your town, the Court indicated that they've changed somewhat
17 the standard for inverse condemnation in this state. So, you
18 would be looking at where there was a taking and a taking for
19 a public use. I don't know if that's the question you're
20 asking me or whether there is some elevated standard of
21 proof. I don't know if that's -- if that was Your Honor's
22 question, but to a certain extent, you know, you have to give
23 discretion, obviously, to these, these civil servants who
24 make these decisions, and certainly on the tort claims and
25 I'm not so sure on inverse condemnation, but on the tort

1 claims we've also asserted discretionary immunity and we've
2 also asserted Subsection Four which I mentioned yesterday
3 about the fact that the government is entitled to immunity
4 for enforcing its own laws

5 THE COURT All right

6 MR LINDEMANN And there's the Barnes versus Adkins
7 [spelled phonetically] case where I think Chief Justice Toal
8 wrote that case a number of years ago That is the primary
9 and principal case interpreting Subsection Four and actually
10 found immunity for animal control officers in Greenville
11 County for enforcing animal control ordinances Again, those
12 ordinances were used to enforce the police powers, and so, it
13 would be comparable in this particular case

14 Now, I'm not suggesting to the Court the Tort Claims Act
15 provisions apply to inverse condemnation, but the same
16 rationale I would think applies that there should be some
17 deference or discretion that's given to governmental
18 officials to be able to make that, make that determination as
19 to when they think the public safety is at harm, and I can
20 certainly submit to the Court that public policy would
21 suggest that because you really don't want your officials
22 when they're faced with what they believe to be a potentially
23 hazardous situation to the public to feel hamstrung by, you
24 know, "Am I going to get sued over this?" You want to be
25 able to allow people to make decisions without being attacked

1 by -- under -- with hindsight So, in this particular case I
2 really don't think it's a major issue with inverse
3 condemnation because, quite honestly, Your Honor, the only
4 inverse condemnation claim that I think the Plaintiff can
5 make for damages is to the condition of the existing
6 billboard, and I mentioned this yesterday I handed up to
7 you, Your Honor, the case of Mibbs versus South Carolina
8 Department of Revenue, which made it very clear that any type
9 of collateral economic loss, meaning lost profits or what we
10 heard today when he says, "The billboard was worth \$450,000
11 to me," well, that's not the standard for determining a
12 value for inverse condemnation The standard is going to be
13 the value of the property that was, that was lost There was
14 also a point that was raised during a sidebar as to whether
15 or not you could make an inverse condemnation claim for
16 personal property As far as I -- my research has shown, the
17 South Carolina Supreme Court has not had the opportunity to
18 decide that issue They have had cases dealing with video
19 poker machines that have declined to allow any type of
20 recovery under inverse condemnation, but they tend to address
21 those from the damages standpoint rather than deciding it
22 head-on as to whether or not there could be an inverse
23 condemnation claim for a piece of personal property I would
24 submit to Your Honor that there is case law, and I pulled
25 some last night that makes it very clear that inverse

1 condemnation is supposed to be the equivalent of eminent
2 domain, and in fact, in the case of Cobb versus South
3 Carolina Department of Transportation, and I know this case
4 isn't on point, but it's instructive with the point I'm
5 trying to make. The Court was looking at something that we
6 discussed with Your Honor before trial started whether or not
7 inverse condemnation is an issue that can go to the jury, and
8 in Cobb the South Carolina Supreme Court determined that
9 whether or not there is a taking, whether or not there is an
10 inverse condemnation is an issue for the Judge to decide and
11 not the jury because if you look at the equivalent law for
12 eminent domain there is no entitlement to a jury trial for
13 eminent domain, and inverse condemnation is supposed to match
14 eminent domain. Eminent domain occurs when the governmental
15 entity initiates a taking and inverse condemnation is for
16 when the harmed party, the alleged harmed party makes,
17 initiates a claim for a taking. So, they are basically twins
18 for lack of a better way to describe it.

19 Now, we have case law in South Carolina that talks in
20 the eminent domain context that you can't recover in eminent
21 domain for any type of personal property, that is property
22 being condemned, and I would suggest to Your Honor that given
23 the Cobb case and other cases saying eminent domain and
24 inverse condemnation are supposed to work the same way that
25 if you cannot recover personal property on the property being

1 condemned in eminent domain, that you should not be able to
2 make an inverse condemnation claim for personal property on
3 the property as well, and that's, and that's exactly what the
4 Plaintiff is making in this case because the billboard
5 itself, as I indicated, I cited a case to you yesterday, the
6 Creative Designs case where the South Carolina Supreme Court
7 years ago found that in South Carolina a billboard is not a
8 fixture It's a piece of personal property So, I would add
9 that as an additional basis, Your Honor, for, for summary
10 judgment on the inverse condemnation With the Court's
11 indulgence let me make sure I have gotten to all of the
12 different causes of action

13 Something else that I would add to the allegations
14 regarding intentional torts To the extent that the
15 Plaintiffs are arguing and they haven't really pled this but
16 I've heard this flavor in the testimony, to the extent that
17 they're arguing that the City used or City officials used the
18 fact that there was this accident as an excuse or an effort
19 to be able to take down this billboard that they've wanted it
20 to be taken away long ago, well, the City is not liable for
21 that Clearly, Your Honor, assuming a jury even bought that
22 argument and assuming it's been pled and I don't think it has
23 been but I want to go ahead and make sure I'm thorough with
24 all the grounds I've raised, 15-78-60, Subsection 17
25 indicates that the governmental entity cannot be liable for

1 any, first of all, acts outside the scope of their employee's
2 scope of employment, but also any acts that constitute intent
3 to harm, and to the extent that the Plaintiff is arguing some
4 sort of conspiracy even though they haven't pled a conspiracy
5 that cannot be asserted against the City of Georgetown That
6 would have to be asserted against the individual employees or
7 officials who they believe engaged in such conduct, and
8 again, I don't know if I'm reading too much into their
9 arguments, but to the extent that they're going to argue that
10 to the jury in this case, I don't believe that that would be
11 appropriate and that such a claim was before the Court
12 certainly we would be entitled to sovereign immunity under
13 Subsection 17

14 I know I haven't addressed the equitable estoppel claim,
15 Your Honor Very quickly, rely on the arguments and I'll go
16 through them very quickly that were in our summary judgment
17 memo First of all, Town of Sullivan's Island versus Byrum
18 holds that estoppel, and this is a quote, ``Estoppel does not
19 lie against the government to prevent due exercise of its
20 police power or to thwart the application of public policy,``
21 very clear principle of law The South Carolina Supreme
22 Court case of Heyward versus South Carolina Tax Commission
23 also took it another step and they said the doctrine of
24 estoppel will not be applied to affect public revenues or
25 property rights So, clearly, the government cannot be

1 estopped from denying the Plaintiff the ability to, number
2 one, rebuild this billboard certainly on its own property and
3 I would suggest that the City has no authority to allow the
4 Plaintiff to build, rebuild this billboard on a third-party's
5 property in which they have no legal interest, number one,
6 and number two, have no rights by lease agreement or approval
7 of that third party

8 To the extent the Plaintiff is alleging that they did
9 not -- they were not aware of the existence of the City's
10 claim to ownership of the property where the billboard is
11 located, well, that was certainly defeated by
12 Mr Ashenfelder's testimony He indicated that he quite
13 clearly learned and understood in 1986, all that
14 correspondence was in the file, in evidence, that he
15 understood at that time that the City's position was that
16 they owned the property where the billboard was located I
17 asked him specifically, "Did your understanding of the
18 City's position change between then and 2003?" I think I
19 had to ask him several different ways to get an answer, but
20 he -- I believe his answer ended up being quite clear that he
21 had never been -- never had communicated to them that there
22 was a change of position by the City So, clearly, there's
23 no showing of detrimental reliance whatsoever, Your Honor

24 To the extent the Plaintiff argues that we didn't tell
25 him that this billboard was non-conforming, well, Your Honor,

1 all the -- and again, I'm not sure that -- I'm trying to be
2 real broad in the reading of the complaint or reading of the
3 arguments I've seen in this case over the last couple of
4 years. Clearly there's no detrimental reliance there.
5 There's also no ability for us to have this information and
6 the Plaintiff not to have it. The ordinances are public
7 notice, and it is very clear, I mean, he has, he has notice
8 obviously of the ordinances, and it is very clear in the
9 ordinances for the City of Georgetown that there are very
10 strict limitations on billboards and what makes it a
11 nonconforming use. This billboard was clearly, in the
12 condition it was in, it was clearly a nonconforming use and I
13 don't believe that he can argue any type of estoppel to that
14 effect and I'm not sure what that argument really has to do
15 with this case because the City primarily didn't allow him to
16 rebuild this billboard because it was on City property and
17 they certainly couldn't authorize it to be rebuilt even if he
18 had taken the position at that time that it was on somebody
19 else's property.

20 The last point I'd like to make is, Your Honor, this
21 whole idea of an ownership interest in the, in the property
22 where the billboard was located was never raised by
23 Mr. Ashenfelder prior to 2003 or certainly in 2003 in
24 relationship to his dispute with the City. It was never
25 raised in the lawsuit itself that was brought and removed to

1 federal court Mr Bruggeman was not a party nor the Greens
2 as predecessors to Mr Bruggeman in that lawsuit It was not
3 until approximately nine months ago or so that a motion to
4 amend was brought in, was made, Your Honor granted allowing
5 Mr Bruggeman to be brought in That's the first time that
6 the Plaintiff ever made any claim in this particular case
7 suggesting that he had an ownership interest in the property
8 In federal court he approached this case that, and if you
9 look at the pleadings in the federal case or the initial
10 pleadings in this case, you will see it He took the
11 position that it was owned by the City, but the City -- that
12 he had established prescriptive rights against the City The
13 problem with that is we presented evidence, I mean, case law
14 from all over the country that indicated that you can't
15 establish ownership by prescription against the government
16 for obvious reasons The United States Government owns
17 property all over the place, and if all you had to do was
18 squat on it for 20 years they wouldn't even know you were
19 there and then be able to take the taxpayers' property So,
20 that was the position that was earlier in this case It
21 wasn't until there was an amendment made and this current
22 theory was proffered that he contends he owns or has any type
23 of legal interest in the Bruggeman property So, clearly,
24 the City, and the reason I'm making this point, the City
25 cannot be held to having breached any type of duty of care to

1 him under his theory of the case because we had no idea that
2 he was even claiming a right in the adjoining property in
3 2003, nor did he know he was claiming a right, and I think
4 the evidence shows very consistently that he was not claiming
5 such a right until he changed his theory in this, during the
6 course of this litigation

7 Very last point, Your Honor, and this goes -- this is an
8 evidentiary point We have three different Plaintiffs in
9 this particular case It's Jade Inns, Inc , Carol
10 Ashenfelder and David Ashenfelder Obviously not all of
11 those parties have standing to pursue these claims I'm not
12 sure which one has standing to pursue these claims, but
13 that's not my problem That's the Plaintiffs' obligation and
14 obviously part of subject matter jurisdiction is to establish
15 standing The Plaintiff has not distinguished between the
16 three claims, the Plaintiffs' case has not distinguished
17 between the three different Plaintiffs as to who actually
18 owns this billboard I would submit to Your Honor that there
19 is a real question based on the evidence and that has not
20 been answered by the Plaintiffs as to who owns this
21 billboard If you look at the deed that was put into
22 evidence by the Plaintiff showing what they purchased or,
23 excuse me, what Jade Inns, Inc , purchased in 1975 and if you
24 -- with the Court's indulgence let me find that real quickly
25 What they, what they purchased, Your Honor, is a piece of

1 real property described as a easement on an adjoining lot and
 2 then it also says, ``All furniture, furnishings, fixtures,
 3 equipment, linens and supplies utilized in connection with
 4 the operation of the Georgetownian Motel '' So, that would
 5 obviously include the billboard, and that was their testimony
 6 that the billboard came with the hotel and was used while
 7 they operated the motel, that it was used solely to advertise
 8 the motel If you then go and look at the documents that
 9 transfers this particular property to Jade Inns, Inc , to PV,
 10 Inc , that's also a title that was in evidence, then you look
 11 at what exactly was conveyed it is word for word identical to
 12 that deed from 1975 It includes all the real property that
 13 I just mentioned and also includes quote, ``also all
 14 furniture, furnishings, fixtures, equipment, linens and
 15 supplies utilized in connection with the operation of the
 16 Georgetownian Motel '' So, it would be my position, Your
 17 Honor, as a matter of law based on the evidence before the
 18 Court that none of the three Plaintiffs currently own this
 19 billboard This billboard is owned by PV, Inc , the exact
 20 same property that was purchased by Jade Inns, Inc , in 1975
 21 and was conveyed back out in 1995 So, in 2003 when all
 22 this occurred, Your Honor, I don't believe that there's
 23 evidence before this Court that would allow these three
 24 Plaintiffs to pursue this case, and certainly, as a backup
 25 an alternative argument there certainly isn't evidence in

1 this case to allow all three of the Plaintiffs to pursue
2 relief in this particular case If it's not owned by PV,
3 Inc , it's got to be owned by, it's got to be owned by Jade
4 Inns, Inc , or Mr Ashenfelder or Mrs Ashenfelder, but
5 there's no evidence that allows this jury to determine who
6 even has standing or this Court since standing is an issue
7 for this Court, that allows this Court to determine who has
8 standing to pursue these claims, and we would move for a
9 directed verdict on that basis as well, and I believe and I
10 appreciate Your Honor giving me the time I believe that
11 that covers all of the points that I wanted to raise

12 THE COURT All right, thank you Just a
13 moment, counsel All right, counsel, let me get you to come
14 to sidebar one moment before we go into the Plaintiffs'
15 arguments in response

16 (Whereupon, a bench conference was held)

17 THE COURT All right, ladies and gentlemen,
18 we're going to be at ease for just a moment Just you may
19 remain in place or step from the courtroom if you wish

20 *****OFF THE RECORD*****

21 (On the record)

22 (Whereupon, the following takes place outside the
23 presence of the jury)

24 THE COURT Counsel, I will be glad to hear from
25 you

1 MR GUNDLING Thank you very much, Your Honor
2 The first issue that was raised was exhaustion of
3 administrative remedies, and the allegations of the City is
4 that we failed to exhaust those remedies The City has
5 always taken the position in this case that this case
6 required an administrative remedy, and it has always been our
7 position that it doesn't require an administrative remedy,
8 and what they're suggesting is that this is a zoning matter
9 and that there was -- that we could have asked for a permit
10 and then that issue could have been dealt with We didn't
11 want a -- necessarily a permit, and we never asked for a
12 permit That was never the issue in this case We wanted
13 what we had before the City took our property, the billboard
14 THE COURT All right, let me just stop you
15 right there, counsel
16 MR GUNDLING All right
17 THE COURT Let's say that someone in the City
18 owned a house and by error the house was destroyed Let's
19 say perhaps there was perhaps a -- which I recently read
20 happened in New Jersey, where there was an order to destroy a
21 house because it was substandard at one place in the block
22 There was some error administrative and the house next door
23 was knocked down by the crew that knocked it down Well,
24 when you go to build that house back, even if it's an error
25 or negligence or an intentional act that tore it down, you've

1 got to have a permit to reconstruct that house, would you not
2 and would that not be the same case here with the billboard?

3 MR GUNDLING I disagree, and I think that as
4 a policy matter that sets a bad precedent I think what --
5 we had, we feel that we had the right to have that billboard
6 and operate that billboard in the location where it was, and
7 we don't feel that the City can come on and remove it They
8 knew it was a nonconforming use This was nothing new to
9 anybody The City had been involved in this issue back in
10 1986 saying that this had to be removed, "it was on our
11 property " What you're saying is that the City can identify
12 nonconforming uses, if they want They can go in there and
13 trespass or condemn by inverse condemnation or convert that
14 item and then say, "Well, we're sorry but now you have to
15 get a permit to build that back, and by the way, we don't
16 permit that type of thing," and that's basically what
17 they're saying They're saying that they can -- that they
18 went in there and converted this or did by inverse
19 condemnation took this They well knew the situation with
20 respect to this sign, and then saying that, "Now you have to
21 give us the permit By the way, we wouldn't issue one
22 anyway," we don't even feel it gets to that point, and I
23 don't suggest that in cases of inverse condemnation that
24 there are administrative remedies required, in cases of
25 conversion by the City, that there's administrative remedies

1 required Everything that the City deals with and with
2 property issues or signs, there's a plethora of things they
3 deal with and what you were saying is if the City converted
4 your property or, or condemned by adverse condemnation your
5 property then you have to get permits, and that's not where
6 we start here We start with the fact that they took the
7 sign, that the administrative remedies isn't an issue and
8 we're not claiming that we asked for a permit, that we wanted
9 a permit, that we needed a permit We had a sign that was
10 located there, permitted by the South Carolina Department of
11 Transportation or whatever that entity was at that time, and
12 we had every right to be there, and ---

13 THE COURT But counsel ---

14 MR GUNDLING Yes

15 THE COURT --- you're mixing and jumbling your
16 issues here as the Court sees it because you've asked this
17 Court to employ an equitable remedy for you which is to estop
18 the City from preventing you from building it and to in DJ,
19 declaratory judgment, fashion declare the Plaintiffs' rights
20 with respect to that property and that billboard Now,
21 wouldn't you have to exhaust administrative remedies in order
22 to approach this Court for those two administratively based
23 remedies that you're asking the Court to grant?

24 MR GUNDLING All we've asked in those remedies
25 is to have what we had before and this may get into other

1 issues dealing with estoppel and those types, those types of
2 things, but what we're asking is -- all we want, wanted in
3 those equitable remedies, nothing more, is to have back what
4 we had That sign had been there, the testimony is, more
5 than 50 years and the County never sought to permit it or
6 bring any type of action in that period that would any way
7 suggest that the property was non-conforming I mean, they
8 -- I understand they say that, but what you're suggesting and
9 what the Defendant is suggesting that we are -- that we're
10 obligated now when we apparently weren't obligated for the
11 last 24 years as to the Ashenfelders and even before that to
12 have that sign permitted Now what we're going to do is to
13 tear it down and say try to permit it, and that's why I think
14 it's such a, it's such a dangerous precedent There was a
15 cite to the Stanton case That was over in the Pawleys
16 Island and I'm moving on into, into the exhaustion argument
17 part of this I mean, initially we don't feel that there's
18 administrative remedies that are even involved in this All
19 we want is damages for their acts, but assuming that there
20 are administrative remedies that are required, the law is
21 that the legislature will not require a futile act Thus a
22 generally recognized exception to the requirement of
23 exhaustion of administrative remedies exists when a party
24 demonstrates that pursuant to -- pursuit of them would be a
25 vain or a futile act, Moore versus Sumter County Council and

1 what -- in that exhaustion of administrative remedies is a
2 matter for Your Honor in its discretion to determine whether
3 you feel that there are exhaustion, whether the exhaustion of
4 administrative remedies would be a futile or vain act, and we
5 have, we have admitted Plaintiff's Exhibit Number 11 and
6 that's the document from Gerald Freeman already that stated
7 that, "We cannot permit this billboard to be replaced It
8 was located on public property " So, they're taking that
9 position that there is not going to be a permit issued

10 THE COURT Well, counsel, how do you know that
11 a Circuit Judge or perhaps the Zoning Board itself would not
12 have reversed that position? You say the position was
13 arbitrary in the way that it was decided and unfair in the
14 way it was applied How do you know you wouldn't have gotten
15 relief had you pursued your administrative remedies?

16 MR GUNDLING "We cannot permit this billboard to
17 replace because it was in -- located in public property "
18 They're taking, they're taking the position that this is not
19 property where you can permit a billboard, and with that
20 they're saying that there's no way it can be, it can be
21 permitted In discussions with Mr Freeman and others it was
22 the same thing "It's not going to be permitted We can't
23 permit it It's not possible to permit this sign because
24 it's in City property " So, that's what we're left with and
25 I don't know how you can from that, I mean, we didn't feel

1 that we had to get a permit anyway, but from that they're
2 basically telling us, ``This is not a place where you can
3 even permit We won't sign one ''

4 THE COURT Very good

5 MR GUNDLING So, so, my primary argument with
6 administrative remedies, exhaustion of administrative
7 remedies that we didn't need to and to suggest that any time
8 there's a condemnation or a trespass or a conversion that you
9 have to exhaust administrative remedies in those regards if
10 there are zoning issues involved I think, I think is a
11 dangerous precedent because it does just what I say It
12 gives them the -- the City the ability if there's a
13 nonconforming use to by, by destroying it or modifying it to
14 say, that, ``Well, you, now you have to, now you have to
15 permit it '' I'm not necessarily saying that that's
16 something that would necessarily happen, but it happened in
17 this case and that's the issue that we're dealing with as far
18 as the exhaustion of state remedies We just wanted what we
19 had

20 I would, I would briefly like to discuss the Stanton
21 case, that case over in Pawleys Island and that was, that was
22 cited for the authority by the City that basically said that
23 the, dealing with the exhaustion of administrative remedies,
24 that dealt with a situation where a permit was requested and
25 a building inspector basically said that, ``Well, we're not

1 going to issue that because that wasn't issued to another
2 landowner '' We're not and I think this situation dealing
3 with the fact that, but basically saying that didn't speak to
4 the ability to permit That really spoke I think -- I'm
5 sorry, that spoke to the ability to permit In our case we
6 have, we have what the City has informed is three different
7 officials from the City has informed us is a non-permittable
8 event, and therefore, there's no sense to go to them and
9 address that when they were taking the position at the time
10 that it was on City property

11 Your Honor, dealing with the adverse possession cause of
12 action, the elements of adverse possession are continuous use
13 for 10 years Now, the testimony is that this -- the
14 Plaintiffs took possession of this billboard in 1979 The
15 ten-year period ran in 1989 So, their adverse possession
16 was perfected seven years before this -- these issues with
17 Bruggeman even came about So, we would -- we believe that
18 they had -- their claim for adverse possession ripened in
19 1989 They were aware of claims by the City at that point,
20 but as you can, as you could read from the letter from Kenny
21 Mitchum and the testimony from Mr Ashenfelder he felt that
22 he had every right to use that property and that he had
23 ownership of that property Nobody at that time was
24 basically claiming, before 1989 was claiming that they had
25 some type of superior use The City made a claim but they

1 never actually brought any formal cause of action So, with
2 respect to the adverse possession that existed at that time
3 Mr Ashenfelder clearly testified that he thought that he had
4 every right to use the property and the Defendant cited the
5 Lusk line of cases for the proposition that it has to be
6 adverse, but I would submit and this is the, this is the
7 Wigfall line of cases that in this situation that is not
8 required The -- in Wigfall the Court determined that the
9 rule basically that you have to be adverse to the true owner,
10 if that is in fact a mistaken belief, then that -- the --
11 that only relates to cases dealing with adjoining landowners
12 So, if there is a mistaken belief as to the property's --
13 that the property is ones own and even no intent to claim the
14 property against the true owner, under the normal
15 circumstances, this is the Lusk line of cases, that does not
16 constitute hostile possession, but in Wigfall this Court held
17 that, "The rule's applicable only to cases involving
18 boundary disputes between adjoining landowners Here this
19 case involves a dispute over an entire tract of land
20 Therefore, the mistaken belief rule set forth in Lusk is
21 inapplicable," and that I could hand up these cases That's
22 also recited in Wigfall and in Clear Channel Outdoor, that
23 basically says that the mistaken belief and that's what I
24 would suggest that we have in this case Mr Ashenfelder
25 believed that he owned title to the property That turned

1 out, as you can see from the evidence that we have submitted
2 to be a mistaken belief. However, that does not preclude him
3 from claiming adverse possession under the Wigfall line of
4 cases.

5 THE COURT Well, counsel, let's get to the real
6 issue on adverse possession, which is Plaintiff's Exhibit
7 Number Nine, which is the letter in which the Plaintiff
8 states that the property belongs to the City. What's your
9 position about that with regard to adverse possession?

10 MR. GUNDLING Well, to the -- there was obviously
11 through his testimony an uncertainty about who owned it after
12 that letter came from Mr. Green. That was in 1996, so

13 THE COURT Well, I understand that, but why
14 didn't he say, "This is my property," because that's what
15 adverse possession is. That's when you say, "It's my
16 property and not someone else's."

17 MR. GUNDLING Well, I would submit, Your Honor,
18 that that -- as far as adverse possession, I mean, that
19 letter is confusing, and as you understand from
20 Mr. Ashenfelder's testimony, he had the City back in 1986
21 that was claiming title to it, claimed that the sign was on
22 the road, and then he has Mr. Green claiming that the sign is
23 on his property and the letter was his attempt to say,
24 "Here's what the City says. They're saying it's on their
25 property," and he cites the letters from Mr. Doyle nine

1 years ago, but I would submit that, that, and as his
2 testimony revealed, I think, that there was quite a bit of
3 uncertainty all along until actually we had the analysis done
4 to determine where that billboard was as to exactly where
5 that was located To the extent that that constitutes a
6 mistaken belief as to ownership of the property in that it
7 doesn't deal with adjacent landowners, if he feels that he
8 has rights, ownership to that property and he's exercised
9 those for more than ten years, I would assume that he's
10 satisfied the requirements of adverse possession, and that
11 was done in 1989 because he had, he had possessed that
12 property from 1979 until 1989 The, the exercise of that
13 right was hostile, that is possession with the intention to
14 dispossess the owner of the property Again, with the
15 Wigfall line of cases if he's under mistaken belief that he
16 owns the property, then you don't have to satisfy the hostile
17 requirement That's only dealing with adjacent landowners,
18 and let me hand those up to you before I forget, Your Honor
19 The third element of adverse possession that it be open
20 and notorious, that is possession so conspicuous that it's
21 generally known, talked about publicly I think the
22 billboard certainly satisfies the open and notorious
23 requirement, that it was actual possession and the testimony
24 revealed that the Plaintiffs were in actual possession of
25 that They entered onto the land They possessed it They

1 maintained it They repaired it, and that it was exclusive
2 He held the property for the Plaintiffs, that was property
3 for themselves and not with another person or with the true
4 owner The owner was never in possession of this property as
5 far as we can tell They never actually possessed, had a
6 home on this property and lived there So, this was just a
7 vacant piece of property and they exercised that right to use
8 that billboard exclusively They weren't sharing that with
9 anybody They weren't sharing that with what turned out to
10 be the true owner of the property So, with that I believe
11 that the elements of adverse possession have been met in that
12 it simply requires continuous possession for more than, more
13 than ten years and the other elements With the Wigfall line
14 of cases I believe that we have -- that there's at least the
15 evidence shows I think in a light most favorable to the
16 Plaintiff that we have satisfied the elements of adverse
17 possession

18 THE COURT All right, counsel, the Court is
19 prepared to rule at this time with regard to adverse
20 possession and will do so now The Court finds that the
21 Plaintiff's Exhibit Nine is fatal to the adverse possession
22 claim by the Plaintiffs Clearly, there was a statement in
23 that letter, although the Court is aware that that is a 1996
24 document, that the property belongs to the City and even if
25 it is a quote of what the City said, still it is a failure to

1 show an open and active, a hostile, a continuous claim of
2 ownership of the property Today the Plaintiff on the stand
3 equivocated saying that he really is not certain who the
4 owner of that property is and there's evidence from various
5 sources Well, that's not what adverse possession is
6 Adverse possession is when you say, "This is my property
7 Everyone else remove themselves from the property I own it
8 exclusively I control it and it is mine," and that's not
9 what we have here, and the Court is going to grant the motion
10 with regard to the Defendant's motion to dismiss the case as
11 to adverse possession I do not find that from '79 to '89
12 there's been a ten-year period that meets the requirements,
13 and I find that claim fails as a matter of law because of the
14 subsequent correspondence in the testimony today

15 Now, please move to your next issue

16 MR GUNDLING Your Honor, thank you, sir

17 As I understand the next issue that I have is the
18 easement by prescription The elements of easement by
19 prescription and this is the Pittman v Lowder case are that
20 there must be continued and uninterrupted use or enjoyment of
21 the right for a period of 20 years That was satisfied in
22 this case Mr Ashenfelder and the Plaintiffs possessed this
23 property from 1979 up until it was destroyed in 2003 That
24 is 24 years The identity of the thing enjoyed must be
25 proven I think there's no questions from pictures back in

1 1979 as well as pictures just a few years before it was
2 destroyed as to what was being enjoyed The identity of the
3 thing being enjoyed was the billboard, and the use must have
4 been adverse or under claim of right I think there was no
5 question that he was claiming a right to this property and he
6 -- it's not adverse and under claim of right I think it's
7 adverse or under claim of right, and I think by the fact that
8 he had used, maintained, operated and apparently withstood a
9 claim from the City in 1986 that they said they had rights to
10 it also apparently withstood a claim from Mr Green in 1996
11 that said he had rights to it Neither of them,
12 Mr Ashenfelder was obviously the one that was claiming
13 rights to the use and enjoyment of that property and that
14 billboard Nobody saw it fit or apparently felt that they
15 had a good ground to attempt to dispossess him of that claim
16 of right to use that property and neither, neither did The
17 City obviously was aware of this billboard Testimony is as
18 many as 50 years and 24 years since the Plaintiff owned it
19 and they didn't apparently feel during that period that they
20 had the right to dispossess the Ashenfelders of that
21 property, and to suggest that they weren't trying, that
22 there's evidence in the record of the letters that you have,
23 Your Honor, from the City of Georgetown on October 20, 1986,
24 and that letter unequivocally stated that, "Under the
25 above circumstances it would be appreciated if you

1 within the next 30 days have your client remove the sign from
2 the City property now leased to the Burger King I might add
3 that the latest plat also confirms the fact that this sign is
4 on City property I would point out that they never produced
5 that plat and said that they don't have it So, we don't
6 know what they were dealing with back then, but ---

7 THE COURT All right, counsel, let me just
8 focus with you The adverse claim, I believe, fails because
9 again for the reasons for adverse possession fails, and we
10 now move forward to the claim of right Now, here there is
11 no deed to this property He was not paying taxes on it and
12 there's no lease How can he -- how can there be a colorable
13 claim of right without those underlining necessities

14 MR GUNDLING This sign was permitted and he was
15 paying fees to the South Carolina Department of
16 Transportation on a yearly basis from 1979 forward They
17 were the one that permitted it, and he was claiming that he
18 had ownership and the right to use it They looked to him as
19 far as being the one that that ownership and rights over the
20 billboard He -- they're the -- he's the one or the
21 Plaintiffs are the one that they assessed for the operation
22 of this billboard He felt, obviously, that it was
23 permitted, that he had every right to have that sign where it
24 was So, so ---

25 THE COURT Well, counsel, isn't there a general

1 agreement that the sign encroaches on the right-of-way

2 MR GUNDLING At the present time?

3 THE COURT Yes

4 MR GUNDLING No, no

5 THE COURT Well, at the time that the sign
6 stood

7 MR GUNDLING At the time stood it was, it was
8 never determined either by Mr Bruggeman or by the City
9 exactly where the sign was, and as Mr Ashenfelder testified
10 he always had an issue as to exactly where that sign stood
11 and tried through many resources and sources to gain
12 information to confirm the location of that sign It wasn't
13 until after -- I mean, and the City, they're there, they have
14 all the resources in the world, they had -- the sign has been
15 there for 50 years They had apparently a claim in 1986 that
16 it was on their property They have every resource to make
17 that determination, but instead they took the sign off the
18 property, didn't take any pictures, didn't preserve any of
19 the evidence, and left Mr Ashenfelder as the one then that
20 had to establish the location of that sign and that's been,
21 that's been established by the evidence to be on Mr
22 Bruggeman's property and he was obviously there under a claim
23 of right as evidenced by the fact that he had that billboard
24 licensed through the state So, I would think that that
25 would satisfy that prong of the prescriptive easement

1 THE COURT All right, I'm going to take the
2 prescriptive easement issue under advisement at the present
3 time

4 MR ROBERTSON Judge, that's one of the two, only
5 two issues that involve me I wonder if I could say
6 something very short

7 THE COURT Go ahead There's a microphone you
8 can pull closer to you or just come to this microphone if you
9 wish

10 MR ROBERTSON All right, the first time that
11 there's a claim that this property or this billboard is on
12 the Green Bruggeman property was when this second amended
13 complaint was filed in 2007 Prior to that time Mr
14 Ashenfelder's position all the way through all the
15 negotiations with Mr Green, the predecessor, was, "It is
16 not your property It is the City property " It's already
17 been established in this case that and I believe they've said
18 in the federal case that you cannot prescribe an easement
19 against a governmental entity Is that, is that what Judge
20 Houck ruled?

21 MR LINDEMANN He never reached that issue

22 MR ROBERTSON He dismissed it

23 MR LINDEMANN That issue came up during the case
24 He never decided the state law claims, Your Honor

25 THE COURT Very good

1 MR LINDEMANN There's very clear authority, and
2 just -- he has not asserted the prescriptive easement cause
3 of action against the City

4 MR ROBERTSON Right

5 MR LINDEMANN That has been abandoned That was
6 in the original complaint He looked to the second amended
7 complaint It makes it very clear that that's only against
8 Mr Bruggeman

9 THE COURT All right, go ahead

10 MR ROBERTSON So, the adverse, of course, goes
11 out, but also a claim of right has to be made against the
12 true owner The first time he has made a claim of right of
13 any kind was in March of 2007 His position throughout this
14 whole, this whole thing from 1986 forward, at least from '96
15 forward as to my guy's predecessor in title is that it is
16 not, my billboard is not on your property So, therefore, he
17 is not claiming any right to my people's property until 2007
18 There is no 20-year period where he is saying to Mr Green
19 and Mr Bruggeman or whoever during that chain of title
20 because I guarantee you Doug Green would have gone over there
21 and torn the billboard down before he'd allowed that So --
22 all right

23 THE COURT All right, thank you, counsel,
24 and Mr Gundling, there is some problems with this
25 prescriptive easement issue What do you say to that, that

1 you switched horses in the middle of the stream here You
2 can't have it against the City, against a governmental
3 entity Now you say it's against Mr Bruggeman but there's
4 no 20 year claim against him or someone who would -- against
5 whom you would tack that was in his chain of title because
6 he's recently come in, the issue that he owns has recently
7 come into the case What do you say to all that?

8 MR GUNDLING Well, as Mr Ashenfelder's
9 deposition will reveal he was never convinced and his
10 deposition will reflect this as to the true ownership of that
11 property by the City and the deposition reveals several
12 instances where he's asked that question and only because I
13 pled it that way did he, did he relent, but he never in his
14 deposition ever was satisfied as to the true location of the
15 property The City has provided no proof whatsoever that
16 this sign is on their property Through all this discovery
17 we don't have any recorded plats We don't have any surveys
18 We don't have the survey in the October 20,,1986, letter
19 There's no documentation They don't have any deeds
20 There's no dedications There is no documentation whatsoever
21 that establishes this right of this road to the City It
22 used to be, it used to be the old Highway 17, I believe, and
23 I don't know how the City ever acquired the rights to it but
24 there's no evidence as to that anyway, but Mr Ashenfelder
25 was never convinced as to the location of the sign and it

1 Some say it was more than 50 percent destroyed Well, we
2 know why they're saying that Some say that it was a third
3 destroyed Some say that the whole billboard was laying on
4 the road The arresting officer testified three or four
5 weeks ago that, "Oh, yeah, that was a danger and it needed
6 to be removed and it was a danger to the community and to
7 people walking by," but if you go back to that night and
8 look at his accident report which identified the billboard,
9 you know how they do the vehicles one, two and there were two
10 vehicles involved in it and there was a billboard and they
11 identified -- he identified the billboard in there This is
12 Officer Church with the City He identified the damage to
13 the billboard as being \$2300 and nowhere in there was there
14 any statement and this is a public officer who's supposed to
15 protect the public safety There's nothing in there that
16 suggests that this was a danger, that the sign needs to be
17 removed, that he contacted anybody about removal of the sign
18 I know what he testified two weeks ago, but four years later
19 when it was right there he had no indication, there was no
20 letters or correspondence from him, no memorandum, nothing
21 that said that he was actually felt that this was a danger
22 and needed to be removed, but anyway ---

23 THE COURT All right, let's move forward

24 MR GUNDLING All right

25 I think the next issue had to do with the legal duty of

1 the City in this regard and the Plaintiff feels that they
2 have a duty with respect to their property, his property
3 that's located within that city and we felt that they were
4 negligent First of all, we don't know why they removed the
5 entire sign There was testimony that one or maybe two poles
6 were damaged from the sign, but interestingly enough, even
7 though the officer testified that he took pictures, they
8 haven't shown up and there is no picture of that billboard,
9 and he even in his testimony testified that he followed the
10 course of the automobile which he says went behind the
11 billboard and he took the whole path that that car traveled
12 to where it ultimately stopped We don't have those pictures
13 either

14 THE COURT All right, well, counsel, let me ask
15 you Does the fact as to whether this is negligence or an
16 intentional tort somehow affect your insurance coverage here?

17 MR GUNDLING I have no idea

18 THE COURT Well, how can this be negligence?
19 They went out there and tore down the sign? That's not
20 negligence That's intentional I mean, do you not agree?

21 MR GUNDLING Well, I would agree that that's
22 intentional tort of conversion, but I believe that they were
23 negligent in not contacting Mr Ashenfelder and in the extent
24 of the damage that they caused to that sign I mean, there's
25 nothing, there's nothing that would suggest, at least in the

1 wasn't until he undertook to undergo an analysis and find
2 somebody that could do that analysis with all the information
3 that we had. He had to go and pay for a survey of that
4 property line, and then he had to go and pay to have someone
5 do the analysis of the information that we had to try to
6 locate that sign. It wasn't until then that he was actually,
7 actually positive as to where the property was, but he was
8 claiming a right of ownership and possession over that
9 property from 1979 on and he was being -- it was being
10 permitted and I don't think there was any question when they
11 -- when the City went to somebody about that sign they didn't
12 go to Mr. Green or to his predecessors in title. They went
13 straight to Mr. Ashenfelder. They knew whose sign it was.
14 They knew who was exercising rights over this property. They
15 knew who was claiming rights to that sign. I don't think
16 that was an issue as to the City, and I think that as to the
17 City as revealed in his attorney's letters in 1986 he was
18 claiming that sign had been there for several years and that
19 we had rights to the sign. So, you know, I think there was a
20 -- by his actions, obviously, there is a continuing claim of
21 right to it by getting his permit every year, by paying the
22 permit there was a claim of right. By going in there and
23 doing the maintenance and repair there was a claim of right
24 to that property. I think it was so open and obvious that he
25 was claiming ownership to that sign and nobody else until the

1 City in 1986 and until Mr Green in 1995 attempted to claim
2 that they had some rights, but they apparently didn't think
3 they were strong enough to proceed So, there was no one
4 else that claimed any paramount rights to this property or
5 claim of right to this billboard and the use of this
6 billboard He's the one that leased it People came to him
7 to lease the property He's the one that used it for the
8 hotel No one was, other than him, other than
9 Mr Ashenfelder since 1979 was claiming a right to the use of
10 that property for that billboard

11 THE COURT All right, counsel, would you agree,
12 though, that if your prescriptive easement claim fails,
13 either at the hands of the Court or the jury, all your causes
14 of action are out, this case is over, if there is not a
15 finding of prescriptive easement

16 MR GUNDLING I would disagree Of course, I
17 believe that there's the equitable arguments that we've made,
18 but also I believe that there is a issue of conversion, that
19 they actually converted There's no question at all that
20 they took his sign and threw it away and this was a sign that
21 was earning revenue of \$9,000 a year for Mr and
22 Mrs Ashenfelder There's no question that the City did
23 that They didn't notify him They didn't try to notify
24 him There's conflicting testimony in the depositions from
25 the City officials as to how much of the sign was destroyed

1 evidence that I saw, that the sign was damaged to the extent
2 that it was a public nuisance or ---

3 THE COURT But isn't that really some just a
4 collateral event that has to do with what is really an over-
5 arching intentional tort? They tore down the sign

6 MR GUNDLING And I'm not doubting that I'm not
7 doubting that that intentional tort and, you know, that's
8 where all this, that's where all this started that they
9 converted our property, and of course, with conversion you
10 can get damages of the value or even, even interest if
11 there's income associated with that, with that that property,
12 but ---

13 THE COURT Well, so, then isn't then the up
14 side of that or the actual result of what you just said is
15 that the negligence claim doesn't go to the jury? This is a
16 conversion claim if that goes to the jury Negligence is
17 really not what's at issue here

18 MR GUNDLING Primarily if the Court would agree
19 that conversion goes to the jury I would agree I mean, I
20 think that the conversion would cover the and the
21 condemnation, I mean, there were, there were several kind of
22 overlapping causes of action and I know at some point
23 there'll be an election of remedies, but I believe that the
24 conversion, I think that's the -- that and the inverse
25 condemnation are the primary actions against, against the

1 City, and the -- those issues all relate back to the deal
2 with adverse possession and with prescriptive easement as to
3 what the affect of their taking and their conversion was

4 THE COURT All right, let me just ask you
5 briefly and we'll move then to your inverse condemnation The
6 trespass, how do you claim damages for trespass here?

7 MR GUNDLING How do we?

8 THE COURT How do you claim damages for
9 trespass?

10 MR GUNDLING If they had -- if we had rights
11 to that property by virtue of satisfying the prescriptive
12 easement or adverse possession then they came on property
13 that we had rights to, and of course, the damages is obvious
14 They, they tore down our sign and removed it from the
15 property

16 THE COURT Well, that's conversion, but I'm
17 talking about trespass, talking about the right of the City
18 to go on the property in a police function to determine
19 whether or not it's -- needs to come down or whether you
20 disagree with the decision and then taking it down How is
21 your -- how is the Plaintiff -- under what authority do you
22 claim that the City officials trespassed?

23 MR GUNDLING Well, I mean, I guess you're
24 presuming then that through some type of police power they
25 had the right to be there If you're not presuming that they

1 had through some type of police power the right to come onto
2 that property that we claim ownership by those theories and
3 take our sign then -- and right now we -- I don't believe we
4 have any evidence that there was any type of police power
5 required The -- there's I don't believe sufficient evidence
6 that there was even damage to the sign as we have right now
7 Not -- you're making the ---

8 THE COURT Well, but isn't the knocking out of
9 two or one even of the supports authorize the police or the
10 City officials in the exercise of their police power for the
11 protection of public safety to go there and see as to whether
12 or not it comes down, whether you agree or disagree with the
13 decision? Do you take the position they don't even have the
14 right to be there, first of all that you own it through some
15 legal device such as prescriptive easement or have possessory
16 interest in it and then can exclude the police?

17 MR GUNDLING Well, I guess you would have to make
18 the assumption that they had the right to be there and that
19 there was a damage to the, to the sign, and I -- the police
20 report showed basically that two poles were involved, but we
21 don't know the extent of those poles

22 THE COURT Well, all right, well, what
23 precedent do you have that gives your clients the authority
24 to question the City's imposition of this police power?
25 What's the threshold? What's the standard, the same question

1 I asked Defense counsel earlier What precedent do you have
2 that shows this Court that you have the right to stand in
3 judgment of that decision to determine whether or not the
4 sign had to come down?

5 MR GUNDLING And I don't know that standard
6 either I don't know what authority that the City has I'm
7 assuming that -- and I can only assume that they just can't
8 say it can be totally non-discretionary, that they can use
9 police power to enter any house, any private property, and
10 Your Honor, I'd be glad to research that and try to get that
11 information to you but I don't really know the standard of
12 police power

13 THE COURT Well, but don't you have the burden
14 of proof here, and again, think about the public policy
15 implications of what the Plaintiffs are saying here The
16 City or police or whomever you're referring to you can't come
17 on my property to determine whether or not this is a public
18 hazard that endangers passersby, whether they be pedestrians
19 or automobiles You're trespassing

20 MR GUNDLING Well, there's no evidence now ---

21 THE COURT How could, how could we -- how could
22 the City ever function in a legal system like that?

23 MR GUNDLING Well, there's been no evidence that
24 there is significant damage to that sign, and now you're
25 asking us to prove a negative to go back and say, ``Okay,

1 now you've got to prove that the sign had a certain amount of
2 damage or that the City had every right to go in there and
3 remove the sign '' The testimony from Officer Church who was
4 there that night or that, or what he told Mr Ashenfelder
5 that the sign was damaged but still standing and there was
6 nothing in his report to suggest that it created any type of
7 danger I mean, that's something that's just come along
8 recently in his testimony that, that there was some type of
9 danger to the sign and the -- so, I don't know how we -- the
10 Plaintiff has the obligation of establishing the burden of
11 the City in the exercise of its police power There's an
12 issue of fact as to the extent that the sign was damaged and
13 I'd be glad, Your Honor, to research that standard, but I
14 don't know that it's a standard that we have to carry

15 THE COURT All right, not necessary Let's
16 move forward to -- I'm going to ask you to make your
17 arguments about inverse condemnation

18 MR GUNDLING All right, thank you, sir

19 The -- with respect to inverse condemnation, an action
20 for inverse condemnation is appropriate where the government
21 takes private property for public use Inverse condemnation
22 is a cause of action against the government, governmental
23 Defendant to recover the value of property which has been
24 taken in fact by the government Defendant, even though no
25 formal exercise of police power of eminent domain has been

1 attempted by the taking agency I mean, there's no question
2 whatsoever that the City took property that was owned by Mr
3 -- by the Plaintiffs for their own purposes and that's --
4 that, I believe, satisfies the elements of the taking of
5 private property with respect to inverse condemnation We
6 feel they had no power, right or authority to exercise any
7 control over our property If they felt that the property
8 needed to be removed for some reason then they could have
9 sought any type -- a regular condemnation action, if they
10 felt that that was appropriate, but for them to just be the
11 judge, jury, fact finder, go in there and determine that we
12 have the rights to take Mr Ashenfelder's property that he
13 was deriving an income from with no repercussions I believe
14 that satisfies the taking requirement of inverse
15 condemnation The elements of inverse condemnation and this
16 is the Sea Cabins Ocean IV Homeowners Association,
17 ``affirmative, positive, aggressive act on the part of the
18 governmental agency'', there's no question that their
19 aggressive act was taking and destroying Mr Ashenfelder's
20 property There has to be a taking I believe that that has
21 been satisfied as well The taking is for a public use, they
22 took it and destroyed it we feel to enforce their, basically
23 as a way to enforce their zoning, and the taking has some
24 degree of permanence There wasn't a situation in this case
25 where they said, ``Your sign has to come down Let's try to

1 contact the owner of the sign " There's no question that
2 they knew who it was "Let's ask him if he wants the sign
3 or not," but this -- the degree of permanence is a fact,
4 that they permanently destroyed Mr Ashenfelder's personal
5 property So, I feel, and of course, the measure of damages
6 for the permanent injury to the property in inverse
7 condemnation is the diminution of the market value of the
8 property So, there was also evidence in the record of that
9 So, I feel that they have established the elements of, at
10 least there's an issue of fact as to the elements of inverse
11 condemnation were established by the Plaintiffs' case

12 THE COURT All right, anything further?

13 MR GUNDLING And there was in the discussion of
14 conversion, Your Honor, there was a discussion by the
15 Defendant as to the authorized taking Again, I don't see
16 that in the general elements of inverse condemnation, but
17 again, you've got to reach some type of factual standard that
18 I don't believe is on record yet, that there was some type of
19 authority that they had paramount to the owner's rights to
20 exercise a positive aggressive act over his property and take
21 it and possess it permanently

22 There were several photos that were actually put into
23 evidence to try to show the damage to the sign, but I would,
24 I would submit and this gets into the, again, to the issue of
25 whether they were authorized, that there is very inconclusive

1 evidence as to what those pictures actually show There was,
2 no doubt that there was a telephone pole, a utility pole that
3 was also run over, and it looks like several of those
4 pictures show the utility pole I don't think it's
5 conclusive in looking at those pictures as to any -- whether
6 any of those pictures show the actual billboard So, again
7 to make the leap that they had absolute and total and
8 complete authority to remove that sign as a defense to their
9 inverse condemnation I believe is misplaced based on the
10 evidence that's before the Court

11 THE COURT All right, just one moment, please

12 MR GUNDLING Thank you, sir

13 THE COURT Mr Robertson, you stood a few
14 moments ago Did you have something you wanted to add on the
15 issue of prescriptive easement?

16 MR ROBERTSON Yes, sir, just briefly He was
17 making the argument that he had complete -- they had complete
18 control and had every right to the sign What we're talking
19 about here is to the real estate, and he never asserted a
20 right to the real estate, the use of any of Doug Green's or
21 Luke Bruggeman's real estate until 2007, and the other aspect
22 I wanted to point out, too, is the -- as far as my client
23 goes, if there is not going to be any equitable relief in
24 allowing the sign to be rebuilt there, then that would make
25 that, the prescriptive easement from here on kind of moot, I

1 would think, because there is no sign there anymore

2 THE COURT All right, thank you, counsel

3 MR GUNDLING Your Honor, I think we have touched
4 on the issue of intentional torts

5 THE COURT We did

6 MR GUNDLING And with respect to the equitable
7 estoppel issue, Your Honor, the -- with respect to affect and
8 estoppel, it's required to prove they -- a lack of knowledge
9 and the means of knowledge about the truth of the matter in
10 question, justifiable reliance on the government's conduct
11 and the prejudicial change in circumstances It was argued
12 that there was a no change in possession or, I'm sorry,
13 position by the City I would refer Your Honor to
14 Plaintiff's Exhibit Number Seven which stated that and this
15 is October 20, 1986, that stated that the sign needed to be
16 removed in 30 days It was on their property That was the
17 position that they were taking on August 20th, 1986 I would
18 suggest that they changed that position by not requiring that
19 the sign be removed within 30 days, and in fact, for the next
20 17 years were inconsistent with that position that was stated
21 in that letter, that the sign was to be removed There was
22 no action by the City as threatened in that letter of October
23 20, 1986, and Mr Ashenfelder had every right to believe that
24 the City was not going to take any action, and in fact, they
25 didn't take any action until the sign was damaged A

1 governmental body may within limitations of its powers be
2 estopped by its acquiescence in and approval of acts
3 originally authorized They, after that letter, acquiesced
4 to the Plaintiffs' continued use and enjoyment of that
5 property They didn't assert any rights over that and in
6 reliance on that he continued to maintain it, operate it,
7 repair it, clean up around the sign and basically change his
8 position with respect to the original position that was taken
9 by the City So, I believe that their acquiescence from
10 October 20 of 1986, and you can argue their acquiescence
11 before that They never apparently took any type of position
12 or claimed any right of that sign or any rights with respect
13 to where the sign was located from October, before
14 October 20th, 1986 Mr Ashenfelder acquired ownership of
15 this in 1979 So, they never asserted any rights before that
16 nor did they assert any rights after that So, they
17 continued, I believe, after this letter changing their
18 position and acquiescing in the Plaintiffs' use and enjoyment
19 of that sign They didn't require any permits for the sign
20 They didn't require any permits when it was repaired They
21 continued to allow it to operate, and as Mr Ashenfelder
22 testified, when he spoke at one point with, I believe, yes,
23 that's correct, with Gerald Freeman because he had requested
24 back in 1986 whether they would take any formal action, he
25 said they didn't and he should just keep on doing what he's

1 doing with it So, they apparently changed their position in
2 wanting to enforce any right that they may have Apparently
3 they didn't feel that they had any rights, and we believe
4 that that works estoppel against the City to -- then to come
5 in at some point and assert that we're just going to take the
6 property and we have paramount rights to it

7 THE COURT All right, anything further,
8 counsel?

9 MR GUNDLING I hope I have reached all the
10 points, Your Honor, but I think that's all I have, sir

11 THE COURT All right, very good The Court now
12 makes the following rulings with regard to the various issues
13 here at the end of the Plaintiffs' case First of all, I
14 have already for reasons given dismissed the adverse
15 possession claim as a matter of law

16 I'm now going to take the issue of prescriptive
17 easement under advisement and that is to consider overnight
18 the question of whether or not the Plaintiffs have
19 demonstrated that they have obtained this easement under a
20 claim of right, and that will be reviewed further

21 With regard to the declaratory judgment claim and the
22 estoppel claim, which is part of the Plaintiffs' complaint
23 that requests relief from this Court, this Court respectfully
24 denies that relief and dismisses those claims for failure to
25 exhaust the administrative remedies Both of these involve

1 whether or not the City should be required to either permit
2 or allow the construction of that -- reconstruction of the
3 billboard without a permit, and I find that these cases are
4 directly on point, than an exhaustion of administrative
5 remedies including filing for a permit, contesting the denial
6 of it, as well as pursuing that through whatever appellate
7 opportunities may be available was not done in this case I
8 do not find that this is as a matter of law or would have
9 been a futile effort, and therefore, the Court dismisses
10 those claims I further find there's been no showing here at
11 the end of the Plaintiffs' case that the Plaintiff is
12 entitled to relief on the merits of those claims, regardless
13 of the fact that I dismiss them for failure to exhaust
14 administrative remedies The Court further dismisses the
15 negligence claim because this is an intentional tort of which
16 the Plaintiff complains, and it is not, it does not sound in
17 negligence Furthermore, the Court dismisses the trespass
18 claim because the Court finds that this claim, as a matter of
19 law, is not cognizable because a governmental entity is
20 immune from -- under some -- such claims under 15-78-60,
21 Subsection 4, which has to do with the enforcement of any
22 particular law, as well as number nine, the entry upon
23 property, Subsection 9, where entry is expressly or impliedly
24 authorized by law, and in making such a decision I further
25 would add with regard to protections that Subsection 7 which

1 has to do with nuisances is also appropriate, should be
2 mentioned here because the Court takes judicial notice of the
3 Georgetown City Code, Section 1001 13 which talks about signs
4 not being in compliance with structural standards and other
5 safety necessities and the declaration that such signs not in
6 compliance are a nuisance Clearly after this sign was
7 damaged it was not in compliance with structural standards
8 The Court is aware, as the Federal Court mentioned, this
9 Court is aware that the City did not comply with the time
10 frames set out and the procedures set out as to notification
11 of the owner and other issues mentioned within the statute,
12 but as far as consideration of the trespass claim with regard
13 to the City's immunity the Court believes that the City is
14 immune from the trespass claim and to have a public policy
15 otherwise would put the police or the city officials in a
16 position that they would have to, before they could respond
17 to any situation, particularly one that would be exigent,
18 they'd have to determine whether or not they have the right
19 of access or the ability to enter a property and that just
20 simply is not workable in today's society, and then finally,
21 with regard to the inverse condemnation claim, the Court
22 finds that the evidence shows that this action was an
23 exercise of the police power and that the South Carolina law
24 is clear that in a police power exercise there is no inverse
25 condemnation This is not an eminent domain case, which is

1 what inverse condemnation arises from, and therefore, the
2 Court finds that this claim, too, must be dismissed at this
3 stage What that leaves us is the conversion claim The
4 Court is going to take under advisement, as I stated earlier,
5 the prescriptive easement claim If the Court determines
6 there is no prescriptive easement as a matter of law, then
7 the conversion claim must fail If the Court determines that
8 this prescriptive easement is a jury question then the
9 conversion claim remains for determination by the jury and
10 that is the status of the case at this juncture Any
11 questions now from either party about this ruling the Court
12 has just entered?

13 MR GUNDLING Your Honor, to get clarification
14 from the conversion claim, I'm unclear as to why the Court
15 feels if they -- if there's not a prescriptive easement, in
16 other words no right to the property, whether a conversion
17 claim would still not -- would still not arise because the
18 City did come and converted property of the Plaintiffs to
19 their own use

20 THE COURT Well, if they didn't have it by
21 adverse possession and they didn't have it by prescriptive
22 easement they didn't own it How can you convert something
23 from someone who didn't own it?

24 MR GUNDLING Well ---

25 THE COURT Now, they may, they may have

1 exercised control and been in the fortuitous situation that
 2 something that -- they were not paying taxes on, hadn't
 3 purchased by deed or hadn't leased from someone, they were
 4 deriving a benefit from and perhaps that may lie in
 5 conversion I would ask you to take a look at that, but it
 6 would seem to me as a matter of law if there's no proof of
 7 ownership, which is why the Plaintiffs first structured this
 8 case with, ``We own this by adverse possession or we own it
 9 by prescriptive easement, have a possessory interest by
 10 prescriptive easement,' I believe that the way the
 11 Plaintiffs' case is laid out in the pleadings there is an
 12 admission, although not direct, an indirect admission that if
 13 you don't fit one of those two, you don't go forward at all
 14 So, if you -- I would be glad to hear from you in the morning
 15 and I'll be here by 9 00 o'clock ---

16 MR GUNDLING All right

17 THE COURT --- to be able to talk with you
 18 about that further Again, if the Court finds there is
 19 sufficient evidence for prescriptive easement to go forward
 20 that question is moot It goes forward, conversion does

21 All right, now, anything further from the Defense side
 22 in the case?

23 MR LINDEMANN Nothing, Your Honor I know
 24 earlier as a housekeeping matter you mentioned that we would
 25 deal with the exhibits from the Plaintiffs' case in chief

1 (Whereupon, the following takes place outside the presence of
2 the jury)

3 THE COURT All right, good morning, everyone

4 MR LINDEMANN Good morning, Your Honor

5 MR GUNDLING Good morning

6 THE COURT Yesterday we left the issue under
7 advisement or at least under consideration as to whether the
8 Court would allow the prescriptive easement claim to go
9 forward I do find that there is sufficient evidence of a --
10 in this record that would create an issue of fact for which
11 this is an issue for the jury, and therefore, the Court is
12 going to allow the prescriptive easement claim to go forward
13 I want to state for our record as an additional sustaining
14 ground of the Court's decision to dismiss the trespass claim,
15 the Court reviewed again the last complaint of the Plaintiff
16 and notes that the trespass claim is not for trespass in
17 chattels, but it is a claim for trespass to land That is
18 the Fifth Cause of Action, and again, the Court does not
19 believe that is an appropriate claim here because the
20 dispute, the ownership of that land is clearly one of the
21 issues in dispute here Now, is there anything further or
22 are there other issues the Court needs to resolve before we
23 go forward this morning into the Defense case Anything from
24 the Defense?

25 MR LINDEMANN You've mentioned the

1 prescriptive easement claim I assume you're allowing the
2 conversion claim to go forward as well

3 THE COURT That is correct because the
4 prescriptive easement claim -- it is the Court's opinion that
5 there must be proof of the prescriptive easement against
6 Mr Bruggeman, not against the City, and the claim itself,
7 the Plaintiff sets out in the complaint that the claim for
8 prescriptive easement is against Mr Bruggeman The
9 Plaintiff has to first prove that and then the conversion
10 claim is still in if the Plaintiff proves that and then may
11 be awarded damages if the Court, if the jury accepts the
12 prescriptive easement argument as well as the conversion
13 arguments of the Plaintiff, still in

14 MR LINDEMANN I had also raised, Your Honor, that
15 the standing argument that I don't believe Your Honor
16 addressed with your rulings yesterday about obviously not all
17 three parties can go forward, and also the issue regarding
18 whether there was any proof in the record to show that any of
19 the three Plaintiffs actually owned the billboard given the
20 deeds that are actually in the record, and I don't know that
21 Your Honor ruled on that

22 THE COURT I did not I believe there clearly
23 are factual inferences in the record that at least one of the
24 Plaintiffs owns, allegedly owns the billboard I might have
25 to take another look at that this morning We'll resolve

1 that issue at the end of all of the evidence, but I don't
2 believe there's evidence of all three Plaintiffs going
3 forward but most likely at least one of the Plaintiffs I
4 believe will and there is sufficient evidence to support at
5 least one of the Plaintiffs

6 MR LINDEMANN All right, Your Honor I'll just
7 renew that one at the end ---

8 THE COURT Very good

9 MR LINDEMANN --- of my case and we can take it up
10 then

11 THE COURT Very good How many witnesses do
12 you have this morning?

13 MR LINDEMANN I have three, Your Honor, but they
14 all should be fairly brief

15 THE COURT All right, will there be reply
16 testimony or do you know that at this time, Mr Gundling?

17 MR GUNDLING I don't know If there would be
18 reply it would only be Mr Ashenfelder

19 THE COURT All right, anything from the
20 Plaintiff with regard to the issues before the Court?

21 MR GUNDLING At this time nothing further, Your
22 Honor

23 THE COURT All right

24 MR LINDEMANN The one other housekeeping matter,
25 Your Honor, it's about the, the exhibits We were going to

1 THE COURT All right, sir, you are free to
2 leave You're not required to leave but you're welcome to
3 leave if you wish

4 A Thank you, Your Honor

5 THE COURT Thank you, Sergeant
6 Please call your next witness

7 MR LINDEMANN Thank you, Your Honor, at this time
8 we would call Boyd Johnson Thank you

9 THE COURT Please come forward and take the
10 oath of a witness

11 WHEREUPON, LESTER BOYD JOHNSON, JR , WAS CALLED TO THE
12 STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS

13 THE CLERK Please be seated and would you state
14 and spell your full name for the Court, please?

15 MR JOHNSON It's Lester Boyd Johnson, Jr , L-E-
16 S-T-E-R, B-O-Y-D, J-O-H-N-S-O-N, J-R

17 DIRECT EXAMINATION

18 BY MR LINDEMANN

19 Q Mr Johnson, could you tell the jury by whom you're
20 currently employed?

21 A Georgetown County

22 Q Okay, so, you are not currently working for Georgetown
23 City, is that correct?

24 A No, I'm not

25 Q What do you do for the county?

1 A I'm the director of planning and code enforcement
 2 Q And how long have you held that position with the
 3 county?
 4 A Since September of 2005
 5 Q In January 2003, the first half of 2003 timeframe, by
 6 whom were you employed?
 7 A The City of Georgetown
 8 Q In what capacity?
 9 A I was the city administrator
 10 Q What does the city administrator do?
 11 A Handles the day-to-day operations of the City, is
 12 responsible for it, basically carries out the policies set
 13 forth by the elected officials
 14 Q All right, in that position did you have any involvement
 15 whatsoever with the events of January 13th, 2003, involving
 16 the accident over on Church Street near the Burger King?
 17 A My involvement was after the accident when the billboard
 18 was requested to be replaced or put up on the property
 19 Q Okay, as far as the, visiting the accident scene,
 20 something, anything along that line that night, you didn't do
 21 that?
 22 A No, I did not
 23 Q Okay, when did you first learn of this accident? Do you
 24 recall?
 25 A It was probably, it was probably the next day, excuse

1 Q From the early fifties until 2003, did the City ever
2 endeavor to permit that sign?

3 A To permit it, I don't believe so, no, sir

4 Q Did the City ever object that that sign was in violation
5 of the City ordinances?

6 A Zoning ordinance, no, sir

7 Q And the City, in fact, never took any action to have
8 that sign removed for violation of a City ordinance?

9 A We wrote the letter back in the late eighties but did
10 not take any action other than writing the letter We did
11 not follow it up

12 Q All right

13 A And that was really based more on the City property
14 issue as opposed to the zoning issue

15 Q Okay, so, in 1983, you felt it was on City property?

16 A Yes, sir

17 Q All right This plat that I have here shows in 1997
18 So, what did you use back in 1986, what map, plat, studies
19 did you use to verify this was on City property ten years
20 before that?

21 A I don't have a plat that shows that When Burger King
22 went to that site and leased this property from the City
23 there were a lot of maps At that time we were looking at
24 what was on the property because it was being leased to
25 somebody, but apparently none of that is available I have

1 not seen any of that since then

2 Q You don't have any maps to that that sign was located on
3 City property in 1986?

4 A No, sir, I don't have any maps

5 Q Does the City have any pictures of that sign?

6 A The only, the only pictures that I'm aware of are the
7 pictures you discussed with Officer Church Are you talking
8 of the sign earlier?

9 Q Yes, sir

10 A I don't recall any pictures of that, no, sir

11 Q And you didn't direct that anyone go out and take any
12 pictures of the sign?

13 A No, sir

14 Q And you didn't direct that there be any study or
15 analysis done?

16 A No, sir, I did not

17 Q Okay, you didn't instruct that any reports be done with
18 respect to the sign

19 A No, sir

20 Q In fact, you never personally contacted or tried to
21 contact Mr Ashenfelder that the sign -- to tell him that the
22 sign was damaged, is that correct?

23 A No, sir, I did not

24 Q And in fact, as early as 1986 you knew that Mr
25 Ashenfelder owned the sign

1 A Yes, sir

2 Q Did you instruct that the sign be barricaded in any way?

3 A No, sir

4 Q All right Let me show you the Georgetown Code, which
5 has been admitted as Plaintiff's Exhibit Number 35 and ask
6 you to refer to page 1747 ---

7 A Okay

8 Q --- and I would ask you to read that paragraph to the
9 end

10 A This right here?

11 Q Yes, sir

12 A ``In the event that the zoning administrator determines
13 that such sign or parts thereof constitute an immediate
14 threat to the public he/she shall arrange for barricades to
15 prevent public injury The persons charged with maintaining
16 such sign shall be given 24 hours to eliminate the threat or
17 the zoning administrator shall initiate action described in
18 the preceding paragraph The zoning administrator shall
19 document the reasons such sign is declared to be an immediate
20 threat to public safety ''

21 Q All right, are you aware that the zoning administrator
22 gave any notice to Mr Ashenfelder within 24 hours a
23 perceived threat to the -- which resulted from the sign?

24 A I am not aware of any notice, no, sir

25 Q And do you have any documentation that there is a reason

1 why you would request the sign be maintained or repaired?

2 A No, sir

3 Q All right, and there were no barricades that were placed

4 around the sign at the time?

5 A I'm not aware of any

6 Q You didn't instruct that any be?

7 A No, sir, I did not instruct it

8 Q Okay, and do you have any documentation or records or

9 reports from any city officials that said, pursuant to the

10 zoning ordinance, that says that the sign is declared an

11 immediate threat to public safety?

12 A No, sir

13 Q All right, now, back in 1986, I understand your

14 testimony was and you referred to Plaintiff's Exhibit Number

15 Five, there were some letters around that area from a Mr Pat

16 Doyle to Mr Sylvan Rosen?

17 A Yes, sir

18 Q Okay, and Pat Doyle was the city attorney at the

19 time?

20 A Yes, sir

21 Q All right, and this deal with the -- a letter from the

22 highway department as you understand that the City has

23 jurisdiction over the sign and that it's not within the state

24 highway right-of-way?

25 A Yes, sir, that's what it says

1 was any deeds to my knowledge or grants

2 Q Does the letter from the highway department make an
3 opinion as to whether Church Street is a city right-of-way?

4 A Let me see I don't think I have that Do I have that?

5 Q You have that I'll get it

6 A I know I had it at one time

7 Q You did

8 I'm referring you to Plaintiff's Exhibit Number Seven if
9 you will refer to the third page

10 A This letter simply says that the sign is located
11 adjacent but not in the South Carolina Highway Department's
12 right-of-way

13 Q All right, there's no indication that would suggest it's
14 in the City right-of-way?

15 A Not in that letter

16 Q Okay, I understand from your testimony you never
17 actually went to inspect the sign at any time?

18 A No, sir, I did not

19 Q So, you have no testimony of your own knowledge as to
20 any damage to the sign?

21 A No, sir, I did not see it

22 Q Ultimately the City removed Mr Ashenfelder's billboard,
23 is that correct?

24 A Yes, sir

25 Q And what did they do with the billboard?

1 A I assumed it was hauled to the county landfill

2 Q Do you know whether there was any notice to Mr
3 Ashenfelder to allow him to take it down, to allow him to
4 recover the billboard?

5 A I don't know that there -- I don't know that I don't
6 think there was

7 Q We understand from the testimony that this accident
8 occurred on January 13th of 2003 What day was the sign
9 removed on?

10 A I'm not certain of that

11 Q Was it two days after, three days after?

12 A I would, I would anticipate -- I think it was about two
13 days after It was -- it was quickly, removed quickly

14 MR GUNDLING The Court's indulgence for one
15 minute, sir

16 BY MR GUNDLING

17 Q I think we had referred to in your testimony that there
18 were certain letters which you understood indicated that this
19 sign was actually located on City property I have
20 Plaintiff's Exhibit Number Seven, which is the letter from
21 the City attorney in 1996 I also have attached to that
22 letter he has two letters from a Mr Rosen and from the
23 highway department Are you aware of any other
24 correspondence or letters that the City had that they sent to
25 Mr Ashenfelder or his attorney indicating their opinion as

1 THE COURT And sir, would you state your
2 full name for us, please?

3 MR FREEMAN My name is Leroy Gerald Freeman

4 DIRECT EXAMINATION

5 BY MR LINDEMANN

6 Q All right, Mr -- and I don't mean to block you from the
7 jury Mr Freeman, if you don't understand the question I
8 ask or later with Mr Gundling, please tell me

9 A Okay

10 Q Okay, would you please tell the jury what you currently
11 do for a living?

12 A I'm retired

13 Q And where are you retired from?

14 A I'm retired from the City of Georgetown

15 Q And for what period of time did you work for the City of
16 Georgetown?

17 A From 1978 till May of 2004

18 Q And in what capacity did you work for the City?

19 A I was in the building department from the beginning in
20 community development and then assistant building official
21 and then building official and eventually head of the
22 department

23 Q All right, and when were you the head of the department?

24 A I became head of the department probably around '89,
25 1989 in that area when Boyd, when Boyd Johnson left out of

1 the department

2 Q So, Mr Johnson who just testified was previously the
3 head of the same department?

4 A Right, yes, right

5 Q When he became city administrator you became ---

6 A Well, he moved over to be assistant administrator first
7 and then became administrator a few years later

8 Q Okay, so, when he moved up you took his position?

9 A That's right

10 Q All right, explain to the jury what the head of the
11 Planning Department and Zoning Department does?

12 A The Planning Department reviews site plans for
13 development, for single-family dwellings, for businesses, for
14 additions We permit these, when they're approved we permit
15 for construction We do the inspections, do a final
16 certificate of occupancy We do code enforcement, which is
17 addressing dilapidated houses, overgrown lots, things of that
18 nature We hear complaints and so forth

19 Q As the head of the Planning and Zoning Department were
20 you also considered the zoning administrator?

21 A Yes, yes

22 Q All right, and the duties you just related are those
23 also the duties of the zoning administrator?

24 A I'm sorry

25 Q The job duties that you just explained to the jury ---

1 A Yes

2 Q --- are those also the job duties for the zoning
3 administrator?

4 A Yes, they are

5 Q Okay, if you want, can you elaborate on what a zoning
6 administrator does?

7 A Well, the zoning administrator, sometimes you have a
8 different position called a planner and that planner may
9 handle most of the zoning things Code enforcement can
10 involve zoning also and that's handed to a -- what we call a
11 code enforcement person The zoning administrator ascertains
12 that the business you want to build or construct is allowed
13 in a particular area If it's not you can apply for -- have
14 rezoning For instance if somebody wanted to build a
15 concrete plant on Highmarket Street or Frazier Street they
16 couldn't because the zoning doesn't allow it there, things of
17 that nature

18 Q Okay, were you the zoning administrator in January 2003?

19 A Yes

20 Q Do you recall an incident occurring on Church Street
21 near the Burger King ---

22 A Yes

23 Q --- involving damage or destruction of the billboard
24 located there?

25 A Yes, I do

1 (Whereupon, the following takes place in the presence of
2 the jury)

3 THE COURT All right, ladies and gentlemen,
4 welcome back You will recall we are now in cross
5 examination of the witness Mr Gundling, you may proceed

6 MR GUNDLING Thank you very much, Your Honor

7 CROSS EXAMINATION

8 BY MR GUNDLING

9 Q Mr Freeman, if you can't hear me just let me know

10 A I'll let you know

11 Q All right, sir I understand that you worked for the
12 City of Georgetown for 26 years?

13 A That's correct

14 Q All right, and as long as you worked for the City of
15 Georgetown up until 2003, is it your understanding that
16 Mr Ashenfelder's sign was in place?

17 A Yes

18 Q And you saw that sign several times, is that correct,
19 sir?

20 A That's correct

21 Q All right, I understand that you were the director of
22 development beginning in 1994 and 1995?

23 A That's correct

24 Q All right, and I understand you testified before
25 concerning some letters that were sent, in particular

1 Plaintiff's Exhibit Number Seven, a letter from Mr Patrick
2 Doyle?

3 A Yes

4 Q All right, and is your understanding that that letter is
5 an attempt to request Mr Ashenfelder through his attorney

6 ---

7 A Yes

8 Q --- to remove the sign?

9 A Yes

10 Q And it's my understanding, sir, that that sign was never
11 removed by action of the City until this accident

12 A That's correct

13 Q All right, and you're not aware of any action that was
14 taken at that time, formal action to remove the billboard?

15 A Following this letter?

16 Q Yes, sir

17 A No

18 Q All right, now, you had referred to several maps, some
19 plats and other documents that you used back in 1986 where --

20 which assisted you in determining the location of that

21 billboard on City property Do you have any of those maps or
22 plats?

23 A Do I have any?

24 Q Yes, sir

25 A No, I don't

1 Q Okay, have you had a chance to review the documents,
2 have you ever tried to find any maps or plats that might have
3 existed back in 1986?

4 A I had seen them at that time I had seen them before

5 Q But you haven't seen them in this courtroom, sir, is
6 that correct?

7 A I saw a plat a while ago

8 Q All right, sir Referring to Defendant's Exhibit
9 Number One and I'm sorry for walking in front of you all Is
10 this the plat that you recall you have seen?

11 A A few minutes ago?

12 Q Yes, sir

13 A Yes

14 Q And would you agree, sir, that that plat is dated
15 September 29th of 1997?

16 A Yes

17 Q And you're not aware of any formal action that was taken
18 against Mr Ashenfelder in 1997 with respect to this sign?

19 A No

20 Q All right, other than this, have you seen any other
21 plats that would reflect the location of the billboard on
22 City property?

23 A I saw an earlier plat that was done, I think, by the
24 highway department, are those -- the surveyors surveyed it
25 for Burger King back in the 1980s

1 to do and required by the City to do?

2 A I would have not been involved in that

3 Q Now, we have referred to the letter of Mr Doyle and
4 that's in front of you in 1986

5 A Right

6 Q At the time were you the individual responsible for
7 billboards?

8 A Was I responsible?

9 Q Yes, sir

10 A No

11 Q All right, would you have any -- would somebody that you
12 were supervising be responsible for that back at that time?

13 A Not at that time, no, that was Boyd Johnson

14 Q Boyd Johnson, all right

15 Are you aware of any action that was taken by the City
16 to permit Mr Ashenfelder's billboard?

17 A Say again

18 Q Are you aware of any action that was taken by the City
19 to permit Mr Ashenfelder's billboard?

20 A To permit it?

21 Q Yes

22 A No

23 Q All right, were you in fact aware that the billboard was
24 permitted by the South Carolina Highway Department?

25 A That would not surprise me

1 Q Okay, all right

2 A I'm assuming that's when the highway department thought

3 that was on their -- one of their right-of-ways

4 Q Okay, but if they're not going to permit it, the highway

5 department should be permitting it, is that right, sir?

6 A Say again

7 Q If the City is not going to permit it, it's got to be

8 permitted by somebody?

9 A Well, when that sign was built ---

10 MR LINDEMANN Object to the form, Your Honor

11 That's, that's asking -- hold on, object to the question,

12 Your Honor It's asking for a legal conclusion

13 MR GUNDLING Well, he's ---

14 MR LINDEMANN I mean, that's an issue of state

15 law, obviously what the Highway Department requires permits

16 for

17 THE COURT I'm going to overrule because of the

18 witness's previous employment and his understanding of these

19 matters Again, this is for the jury to determine weight and

20 credibility Objection overruled You may proceed

21 MR GUNDLING Thank you, Your Honor

22 BY MR GUNDLING

23 Q If the City's not going to permit it you believe it

24 would have been permitted by the State?

25 A Let me say this, I personally believe that sign was

1 erected even before the City of Georgetown had a zoning
2 ordinance or permitted signs

3 Q Okay, so, the sign was existing even before there was a
4 sign ordinance that was in the City?

5 A I think that's right

6 Q But to your recollection the City never permitted that
7 sign

8 A No, could not have permitted that sign

9 Q All right

10 A Could not permit the sign today

11 Q Okay, and that's based on your understanding that the
12 sign is located in Church Street?

13 A No

14 Q Okay, sir

15 A On the little street between Church Street and Bond
16 Street

17 Q Okay, but your opinion that it just couldn't be
18 permitted, I mean, there was no -- it would be no use to even
19 apply for a permit to replace that sign, is that correct?

20 A You can, you can apply, but I don't know of any building
21 official that's going to permit a sign to go in the street
22 I mean, I can't -- I don't have authority to do it

23 Q It'd be useless and a waste of time for anyone to try to
24 get a permit to rebuild that sign, is that correct?

25 A You can apply It would be denied and you can appeal to

1 the Board of Appeals and then eventually to the court, but I
2 could write a permit, I suppose -- I suppose the City Council
3 told me to write a permit I would or I suppose if a judge
4 told me to write a permit I would but you can be sure at the
5 bottom of that permit I would write so ordered by the judge
6 on such and such a date so in the future somebody would know
7 what it was doing there, you know

8 Q All right, sir, all right Let me ask you about the
9 location of the accident where this sign was How many times
10 did you go to that site?

11 A You mean at the time of the accident?

12 Q After, after the time that there was testimony that
13 there was damage to the sign How many times did you go to
14 that sign?

15 A I went the one time

16 Q Okay, and actually it wasn't you that was basically
17 responsible for the billboard, it was Pat Gregory

18 A Well, that was part of her responsibility, yes

19 Q And she was the one under your supervision that was
20 responsible for taking care of this matter, is that correct?

21 A That's correct

22 Q All right, did you require her or ask her to do any type
23 of report, written report that we can see today as to what
24 she found when she went out there?

25 A No, I didn't

1 Q Do you have any report to give us today to show what you
2 did when you went out there and what you saw?

3 A No, I don't

4 Q Did you take any pictures of the billboard when you
5 inspected it?

6 A It was our understanding that the police department had
7 already taken photographs So, we did not do that

8 Q Have you seen any photographs from the City showing the
9 actual billboard that you saw when you inspected it ---

10 A I think I have

11 Q --- the total face of the billboard?

12 A After the accident?

13 Q Yes, sir

14 A Yes, I have

15 Q Okay, where are those pictures, sir?

16 A Where are they?

17 Q Yes, sir

18 A I couldn't tell you right now

19 Q Okay, but you're saying at one point you had possession
20 of pictures ---

21 A No

22 Q --- of the billboard, the full face of the billboard
23 after the accident?

24 A No, I didn't have possession

25 Q But you had seen them?

1 A I've seen them

2 Q All right, now, you're familiar with the Georgetown
3 zoning ordinances, aren't you, sir?

4 A Well, it's been about three and a half years now, so,
5 you know ---

6 Q Okay, all right, at least back in 2003 you were, sir, is
7 that correct?

8 A Beg your pardon?

9 Q In 2003 you were, sir?

10 A Yeah

11 Q All right, now, I'm reading you a section that I
12 previously read ``In the event that the zoning
13 administrator," and you were the zoning administrator in
14 2003?

15 A Yes, I was

16 Q Is that yes?

17 A Yes

18 Q Okay, thank you ``In the event that the zoning
19 administrator determines that such sign or parts thereof
20 constitute an immediate threat to the public he or she shall
21 arrange for barricades to prevent public injury " Did you,
22 in fact, barricade the sign, sir?

23 A I couldn't barricade the sign because I would be
24 blocking the street It was a narrow street and if I'd
25 barricaded the sign adequately it would have blocked the

1 street

2 Q Well, sir, if it's for public safety you would block the
3 street, sir, wouldn't you?

4 A No, we took the sign down

5 Q All right

6 A There's a certain amount of flexibility built into
7 zoning ordinances

8 Q All right, so, you didn't endeavor to barricade the sign
9 in any way?

10 A No, I did not

11 Q All right, sir, "The persons charged with maintaining
12 such sign shall be given 24 hours notice to eliminate the
13 threat " Now, did you give Mr Ashenfelder 24 hours notice
14 of the damage to the sign to allow him to eliminate the
15 threat?

16 A I don't think Mr Ashenfelder lived here at that time
17 It was early in the morning We had to do something about it
18 and we made a decision to do that

19 Q All right, sir So, your testimony is that you never
20 gave any notice to Mr Ashenfelder pursuant to your zoning
21 ordinance?

22 A No, you're correct

23 Q All right, all right

24 A We did what we felt was in the best interest of public
25 safety at that time

1 Q "The zoning administrator shall document the reason
2 such sign is declared to be an immediate threat to public
3 safety " Can you give me the document that details your
4 reasons, sir?

5 A No, no

6 Q Did you instruct or direct any engineers or anyone else
7 to survey the damage of the sign?

8 A We wouldn't have done that

9 Q You wouldn't have done that, sir?

10 A No, we didn't have the budget to do that

11 Q All right, now, you had stated that you had given Mr
12 Ashenfelder some information -- I'm sorry -- Ashenfelder some
13 information about his rights with respect to the billboard?

14 A Afterwards?

15 Q Yes, sir, after

16 A Yes

17 Q Did you send him any type of letter?

18 A It was all done verbally

19 Q Okay Is it your procedure if there's an application
20 made that you would actually send a written response to the
21 application, sir?

22 A No

23 Q So, what you do if somebody signs a permit if you deny
24 it you just call them on the phone and tell them it's denied

25 A I usually hand deliver it or they come to the office to

1 pick it up or it's done at one time He can sit there and
2 make an application out and I would write denied on the
3 bottom of it We'll go to the file We'll get an
4 application to the Zoning Board of Appeals He can fill it
5 out then or bring it back later and we'd put him on the
6 agenda for the next meeting

7 Q What document did you give Mr Ashenfelder detailing all
8 this so he understood it?

9 A What documents ---

10 Q Yes, sir

11 A --- to tell him that the sign was damaged?

12 Q No, sir, this procedure that you said What -- first of
13 all, let me just verify You didn't give him any written
14 documentation?

15 A No, I did not, no It was all done verbally

16 Q All right

17 A In my office

18 Q And the only one that ever sent a letter to Mr
19 Ashenfelder to your knowledge is Mr Boyd Johnson, that's the
20 March 27, 2003, letter ---

21 A That's correct

22 Q --- from the City after the sign was
23 damaged

24 A That's correct

25 Q All right

1 MR GUNDLING May it please the Court, Your Honor?
2 THE COURT Yes, sir
3 MR GUNDLING Your Honor, that's all I have of
4 this witness
5 THE COURT Is there redirect?
6 MR LINDEMANN Thank you, Your Honor
7 REDIRECT EXAMINATION
8 BY MR LINDEMANN
9 Q Mr Freeman, you were just asked a question regarding
10 any type of formal denial of a permit ---
11 A That's correct
12 Q --- for Mr Ashenfelder Was there ever an application
13 made for a permit to be denied?
14 A No
15 Q So, the entire discussion between you and
16 Mr Ashenfelder was done informally?
17 A That's right
18 Q If he had submitted a formal application for a permit to
19 you would you have provided him something in writing denying
20 it?
21 A Yes, I would
22 Q You were also asked several questions about the
23 procedures involved with the Zoning Board of Appeals?
24 A Right
25 Q Let me hand you what's already been admitted by -- as

1 Defendant's Exhibit Number Six

2 MR GUNDLING Your Honor, I object to this line of
3 testimony It's new on redirect I didn't ask him about the
4 procedure specifically I just asked did he inform Mr
5 Ashenfelder So, I would object to this line of questioning,
6 sir

7 THE COURT All right

8 MR LINDEMANN May I be heard, Your Honor?

9 THE COURT Yes, sir, how is this connected to
10 the cross?

11 MR LINDEMANN Because obviously the ordinances
12 explain the -- what the procedures are and what the available
13 administrative remedies are for the Plaintiff and as a result
14 everyone has notice of what is permitted by the law or
15 allowed by the law

16 MR GUNDLING Your Honor, now he's testifying I
17 object I think that could have been brought up in direct

18 MR LINDEMANN I'm not testifying

19 THE COURT Gentlemen, whoa, one at a time
20 We've had this discussion

21 MR GUNDLING I believe that that matter could be
22 brought up in direct All I asked him is whether he informed
23 him and how he informed him

24 THE COURT All right, I'm going to give the
25 Defendant some latitude in this matter Ladies and

1 belief all along that he had the right to be there A
2 prescriptive easement different than adverse possession isn't
3 an exclusive right and the right is going to be shared
4 That's the nature of an easement The right is going to be
5 shared with the true owner of the property So, I think that
6 it is absolutely clear that he has met the requirements of a
7 prescriptive easement

8 THE COURT All right, Mr Gundling, I'm going
9 to respectfully deny your motion without argument from the
10 other side for two reasons Number one, clearly there are
11 inconsistent facts in this record about whether or not the
12 Plaintiff had a claim of right For that very reason alone
13 it is a jury issue, and secondly, there is the substantial
14 issue in this case of whether that prescriptive easement lies
15 against the Defendant Bruggeman or whether it is actually
16 asserted, although in the pleadings against Mr Bruggeman, in
17 the facts there is an indication that it may be against the
18 City South Carolina law does not allow a prescriptive
19 easement against a governmental entity and what that thus
20 means is the Plaintiff must prove a prescriptive easement
21 against Mr Bruggeman These are for the jury to determine
22 and I respectfully decline to direct a verdict

23 With regard to conversation, do you wish to be heard on
24 that?

25 MR GUNDLING Just briefly, I think it would

1 mirror what my -- what was in my memorandum in opposition to
2 the Defendant's motion for summary judgment that I handed to
3 the Court before, but Your Honor, I feel that the elements of
4 conversion are clear and that they have all been met pursuant
5 to the testimony and unless the Court requires further
6 argument on that I think the law is clear and I would just
7 make that motion as well, Your Honor

8 THE COURT I respectfully deny that motion
9 There are -- the Defense has asserted several factual
10 defenses as well as immunities and these are for the jury to
11 determine, those that have not already been decided by the
12 Court Therefore, I deny that motion

13 Anything now from Defense?

14 MR LINDEMANN Yes, Your Honor May it please the
15 Court, on behalf of the City of Georgetown we would move for
16 a directed verdict at the end of our case in chief on several
17 grounds I'll go through them each as quickly as I can

18 THE COURT Briefly

19 MR LINDEMANN First of all, Your Honor, we raised
20 at the very close of our arguments in the initial directed
21 verdict motion a standing argument That I don't believe the
22 Court has ruled upon as we discussed this morning Instead
23 of rehashing that entire argument I will rely on my previous
24 arguments if the Court will allow me to do so and protect me
25 on the record on that In essence, there has been no proof

1 by the three Plaintiffs that each of them have a right or own
2 this particular billboard In fact, I would submit to the
3 Court that there is not evidence before this Court that would
4 allow the jury to form a decision as to who actually owned
5 the billboard, and in fact, the two deeds that were put into
6 evidence by the Plaintiff reflect exactly what was purchased
7 by Jade Inns, Inc , which would include the billboard
8 according to Mr Ashenfelder's testimony and Jade Inns, Inc ,
9 sold the exact same property including personal property in
10 1995 to, I believe it was PV, Inc , if I can remember the
11 name of the party correctly So, it's two parts as I argued
12 previously, no evidence as to any of the Defendants actually
13 owned this billboard, and certainly there's no evidence to
14 support a finding that all three Plaintiffs did It would be
15 the standing ground, Your Honor

16 THE COURT All right, counsel, actually I'm
17 ready to rule on that but I'll give Mr Gundling if you will
18 let us break in a moment

19 MR LINDEMANN Sure

20 THE COURT Do you have a position on that,
21 Mr Gundling?

22 MR GUNDLING Your Honor, I think there is obvious
23 evidence from the permitting that was done by the South
24 Carolina Department of Transportation, the fact that
25 Mr Ashenfelder ever leased the sign, the fact that when they

1 went back just dealing with this issue of the sign, that Mr
2 Ashenfelder was always the one they contacted I don't think
3 there's any issue as, as to the ownership and I'm -- thank
4 you, Your Honor

5 THE COURT All right, I'm going to based on the
6 evidence before me at this point allow Mr David Ashenfelder
7 only to go forward We have no evidence from Carol
8 Ashenfelder She did not testify here, no assertion of
9 ownership, nor one of Jade Inns, Inc What the evidence
10 appears to the Court to be is that Mr Ashenfelder undertook
11 himself personally, not as a part of Jade Tree [sic] but
12 personally to maintain this sign, to take care of the sign,
13 to rent out the sign and then further to assert a claim for a
14 prescriptive easement based on his activities over a period
15 of years My recollection is is that the lease which is in
16 evidence from 2003 to 2006 is signed by Mr David
17 Ashenfelder, as well as by the person who is renting the
18 sign So, for all these reasons the Court is going to allow
19 only the one Plaintiff, David Ashenfelder, to go forward at
20 this time Anything further?

21 MR LINDEMANN Will I be able to argue the issue of
22 ownership with the jury, Your Honor?

23 THE COURT If you believe it to be a factual
24 issue, counsel, then I think the more appropriate thing is to
25 allow all the Plaintiffs to remain in if you believe it's a

1 factual issue Personally, the Court does not see that to be
2 an issue in the case I'm going to make that ruling as a
3 matter of law and we will leave that issue as it is, that
4 Mr David Ashenfelder would be the Plaintiff

5 MR LINDEMANN All right

6 THE COURT Now, if you wish to persist and you
7 believe that to be an issue then I would reverse my decision
8 and give the Plaintiff the benefit of taking all three
9 entities to the jury What's your preference? For
10 simplicity sake it seems to me that the real issue here is
11 was the City authorized in what they did, not really who the
12 Plaintiff is, but I'll leave that up to your, to your
13 advocacy

14 MR LINDEMANN Your Honor, I'm fine with your
15 ruling

16 THE COURT Very good Then we'll proceed with
17 Mr David Ashenfelder only as the Plaintiff You may proceed
18 to your other arguments

19 MR LINDEMANN All right, Your Honor With the two
20 causes of action that remain, on the prescriptive easement,
21 Your Honor, I know Your Honor indicated yesterday that as far
22 as the third element goes where they must show the use which
23 is either adverse or under a claim of right, as I understood
24 it you directed a verdict on the adverse portion of that,
25 that the only issue remaining at this point is whether or not

1 the use was under a claim of right I would also point out
2 to the Court the language that I cited previously from the
3 case of Morrow v Dyches indicating that the -- as it says,
4 as the Court of Appeals says, "A party's use must meet all
5 requirements throughout the 20-year period " Simply because
6 a Plaintiff may make a claim of right at some time during the
7 20 year, 20-year period that's not sufficient That claim of
8 right needs to have been made throughout the 20-year period
9 Your Honor, there's been absolutely no testimony talking
10 about any type of claim of right that Mr Ashenfelder has had
11 against the owner of the property on which they now contend
12 that a prescriptive easement it should be located and that
13 being the Green Bruggeman property and that would obviously
14 apply also to the predecessor of Douglas Green but we don't
15 even know who that is No title work has been done or
16 submitted into evidence to show that Off the top of my head
17 I'm not sure who owned it before Mr Green bought it in 1995,
18 but certainly they have not established that claim of right
19 for a period of 20 years Also, the -- what the Plaintiff
20 argued yesterday, what I anticipate hearing is they claim a
21 claim of right as to the billboard Well, the billboard is
22 personal property This is a real property claim that
23 they've made for a prescriptive easement and they have not
24 established a claim of right and they may have -- think they
25 had the right to have a billboard and they owned

1 -- that they owned the billboard, but they didn't establish
2 20 years of a claim of right of using the Green Bruggeman
3 property and that is what is required of them to prevail on
4 this prescriptive easement issue In addition to that, Your
5 Honor, I would remind the Court of Mr Ashenfelder's
6 testimony in trying to address his letter to Mr Green back
7 in 1996, the February 22nd letter of that year, he testified
8 that the language -- what he intended with that language,
9 particularly the second to last paragraph of that letter, is
10 that he wasn't taking a position on who was right as to where
11 the billboard was located and what the rights of those
12 parties were He explained to me very clearly, his testimony
13 was that Mr Doyle had his opinion that the billboard was on
14 City property Mr Green had his opinion that the billboard
15 was on the Green property and that he did not know and he did
16 not take a position and that he was trying to convey with
17 that letter that he was not taking a position Well, that
18 was in 1996, but certainly within the 20 year period at issue
19 here and that right there, his own testimony, sworn testimony
20 negates any claim of right to a portion of the Green
21 Bruggeman property I would also point out to the Court that
22 there was evidence in the record now as a result of our case
23 in chief, as well as from Mr Ashenfelder's testimony
24 yesterday, that he never communicated to anyone with the City
25 that he was claiming any type of legal interest in the

1 Bruggeman property All along Mr Ashenfelder's conduct in
2 this case was that -- reflects his understanding that the
3 billboard was on City property, and in fact, that's reflected
4 in the pleadings of this case when Mr Ashenfelder first
5 brought this action He sought a prescriptive easement
6 against the City of Georgetown, did not even name Mr Green
7 or Mr Green's descendants who would have been the owners at
8 the time suit was brought here or Mr Bruggeman It wasn't
9 until 2007 that there was first made a claim of any type of
10 real property interest, not personal property interest, real
11 property interest in the property that they are now seeking a
12 prescriptive easement from this court

13 THE COURT All right, counsel ---

14 MR LINDEMANN So, for those reasons we would move
15 for a directed verdict on that particular cause of action,
16 Your Honor

17 THE COURT I'm going to respectfully without
18 argument from the other side deny that motion The third
19 prong of the prescriptive easement requires adversity or
20 under a claim of right Claim of right doesn't necessarily
21 mean it has to be to the exclusion of all others In fact,
22 the nature of an easement is such that you don't exclude
23 everyone else You just have the right to use the property
24 and the Court does not believe that what -- these
25 inconsistent facts are such that on the prescriptive easement

1 issue the Court is required to direct a verdict It's a
2 factual issue for the jury, and we will take that issue to
3 the jury and respectfully your motion is denied

4 MR LINDEMANN Thank you, Your Honor

5 Lastly, Your Honor, to address the conversion cause of
6 action, the definition of conversion that we submitted to the
7 Court not only in our charge but also from the Hawkins case
8 requires it to be the unauthorized assumption or detention or
9 taking of somebody else's personal property In this
10 particular case, Your Honor, we contend that there is no
11 evidence that's been presented by the Plaintiff to show that
12 it was unauthorized In fact, the police powers that the
13 City of Georgetown enjoyed to deal with the safety hazard,
14 the issue that they were facing with regard to the damaged
15 sign actually makes it an authorized detention or taking of
16 that personal property We cited to the Court, I won't go
17 through it in great detail, but we cited to the Court the
18 language from the People's Program for Endangered Species
19 versus Sexton case which deals with obviously the power of
20 government to deal with safety and security issues, health,
21 welfare, those issues using their police powers and actually
22 have the right using their police powers in order to
23 interfere with private property and actually in certain cases
24 destroy public property The Court has already ruled that
25 the City exercised its police powers So, therefore we

1 would contend that Plaintiff cannot prevail on showing an
2 unauthorized taking of its property under these factual
3 circumstances

4 We would also submit to Your Honor that as the Hawkins
5 case makes very clear conversion only applies to personal
6 property, to a chattel The billboard structure itself is
7 personal property The right to have that billboard on
8 somebody else's property, the right to be able to put it on
9 the -- with -- on the Bruggeman property, whether it's by
10 easement or whatever, is a real property interest and to the
11 extent that the Plaintiff is contending that the City denied
12 him the ability to rebuild the billboard that implicates a
13 real property interest, not a personal property interest
14 So, we would submit to Your Honor that if the conversion case
15 goes to the jury the only element of damages that should be
16 recoverable is the value of what the personal property that
17 was removed, the value of that personal property and that
18 would be the billboard in its damaged condition The City --
19 there's absolutely no evidence or allegation in this case
20 that the City caused the billboard to be damaged That was
21 done by a run-away vehicle fleeing the highway patrol The
22 billboard in its damaged condition should be the sole measure
23 of damages in a conversion action because that's the only
24 personal property right that they're contending was
25 converted

1 Now, there's absolutely no evidence before this Court as
2 to the value of the damaged billboard Nobody has offered
3 any evidence on that It would be pure speculation for the
4 jury to try to determine what the damaged billboard was
5 worth

6 THE COURT There's \$1300 in evidence, counsel,
7 by the, by the police officer's testimony That was clearly
8 brought out in the testimony

9 MR LINDEMANN Well, he also testified that that
10 was just his estimate, but you are correct about that, Your
11 Honor

12 THE COURT All right

13 MR LINDEMANN That, of course, that didn't come in
14 until after the Plaintiff's case in chief So, I agree with
15 you He did testify to that, but nonetheless we would ask
16 that you at least direct a verdict on the conversion cause of
17 action, number one, because they can't satisfy the
18 unauthorized issue, the element of the cause of action, and
19 number two, Your Honor, that they would be limited, if you
20 allow them to go forward that it should be limited to the
21 value of the damaged chattel and not any type of lost profits
22 or other collateral economic loss

23 THE COURT All right, first of all,
24 counsel, with regard to your request that a verdict be
25 directed against the conversion claim in its totality I'm

1 going to respectfully deny that motion and this is the
2 reason The Plaintiffs' claim and there is a nuance and an
3 inference in these facts, that the city took an opportunity,
4 fortuitous as it may have been, to remove the sign which was
5 something that they wanted removed, that it was not done as
6 enforcement of -- for purposes of enforcement of some code or
7 law and it was done because it was a quote or unquote
8 nuisance It was done because the City wanted to remove it
9 and simply took the opportunity given to do so unlawfully and
10 without authority Again, this is in the light most
11 favorable to the Plaintiff These actions, if proven, would
12 remove this from the Tort Claims Act, and thus, the question
13 of conversion is a viable claim to go to the jury and I'm
14 going to deny your motion with regard the entire claim, but
15 damages is an issue that we clearly need to discuss We
16 don't -- we're running out of time, but I will say -- I want
17 to hear from both sides You've made your position on the
18 record clear that you believe the only thing that the
19 Plaintiffs are entitled to is the damaged condition, whatever
20 the worth of the board, billboard was in its damaged
21 condition at the time it was removed Now, what do you say,
22 Mr Gundling? I'll come back to you, Mr Lindemann, after
23 Mr Gundling takes a position

24 MR LINDEMANN Your Honor, if I could just
25 interrupt, I have not put my immunity defenses on and I just

1 wanted to make sure, certain that I was covered on that
 2 because, especially given your comments, that was the exact
 3 point I made in my first directed verdict motion, that if the
 4 Plaintiff was going to pursue this case under a theory that
 5 officials acted unlawfully and outside the scope of their
 6 official duties and with the intent to harm As Your Honor
 7 just indicated you said this conversion claim would fall
 8 outside the Tort Claims Act Well, it can't fall outside the
 9 Tort Claims Act against the City of Georgetown It could
 10 fall outside the Tort Claims Act against employees of the
 11 City of Georgetown, but no employee has been sued

12 THE COURT All right

13 MR LINDEMANN And so, we would also rely on
 14 Subsection Four and Subsection Nine and Seven as well, and I
 15 won't discuss those, just want to be protected on that, Your
 16 Honor

17 THE COURT Very good

18 MR LINDEMANN That's 17, based on your comments

19 THE COURT Thank you

20 MR GUNDLING Your Honor, I understand you want to
 21 be heard about damages with conversion My -- the charge
 22 that I submitted to the Court states that the general rule is
 23 that compensation for lost profits may be recovered in an
 24 action for conversion where the lost profits are a proximate
 25 result of the Defendant's acts and where the loss can be

1 shown with reasonable certainty Obviously, in evidence are
2 the leases he had in effect when the City came on and
3 converted the property I don't see that there's a big issue
4 about that damage The issue I think is how far the jury is
5 going to be permitted to run with that and how they're going
6 to determinate damages beyond that existing lease I believe
7 that, you know, there's, of course, the, the -- all the new
8 case law on profits for new businesses and the effect of
9 being able to calculate those profits and I would think that
10 the jury should be allowed to determine what they feel are
11 lost profits based on the evidence There were leases before
12 this one This wasn't the one and only lease, and it's
13 evidenced from his testimony that he had with the Cantrell
14 Mortgage, which was another tenant, that there were three
15 leases that were immediately preceding this lease It's
16 obvious from the testimony and the leases that were admitted
17 that this has a value, that it's not perspective in the
18 future and that the jury would have every right to determine
19 that those, that those -- that billboard can be leased I
20 submitted the tables just for the purpose of using David
21 Ashenfelder's life expectancy as one measure, but I think
22 that the issue of determining those lost profits right on
23 have some degree of certainty that the jury can determine
24 ``Well, this had been leased before It was leased now
25 It's a billboard It's in a good location, '' as was

1 testified to There's no reason to believe that this was
2 going to be a three-year lease and he'd never be able to
3 lease it again

4 THE COURT Well, but counsel, we -- well, where
5 is the witness who would say that? Where is the witness
6 that would say and for example now, we're talking about a
7 loss in January of '03 The lease carried it until January 1
8 of '06 So, there's a gap now between January 1 of '06 and
9 October of '07 even getting us to trial We're not even
10 talking about future damages We're talking about past
11 damages Where is the witness who would have come in here
12 and said ``I'm renewing that lease and would have done so
13 for a period of three years '' I don't think we can infer
14 that that same witness would have -- there's general
15 knowledge here that the real estate business has taken a
16 significant down turn during the year of 2006 and even now
17 here in Georgetown County there's no certainty that lease
18 would have been renewed There's no other person coming in
19 saying, ``Well, I would have taken it up '' Where is that
20 evidence?

21 MR GUNDLING Your Honor, the leases in the past
22 were Sid and Luther's, a restaurant Island Adventures,
23 L L C , and to a realtor So, this isn't only a sign that's
24 going to be leased to a realtor, and I think it's hard for --
25 without a sign even being in place to suggest that somebody

1 is going to come in here and obligate themselves to a lease
2 So I feel that the leases that are in the record give
3 evidence of the fact that this was a continual situation of
4 leasing back from even before 1999 right on to 2006 So,
5 there was a continuation that this, by the leases in the
6 record it was leased for seven years and I don't think there
7 -- I think the jury can infer from those documents that this
8 is a property that could have been continued to be leased
9 So, I mean, I think that satisfies the -- if you can, if you
10 can value lost profits for entities that haven't even been
11 formed or haven't even earned any profits, I certainly think
12 this is an entity that has shown income pursuant to these
13 leases from 1999 up until 2006 So, this has a history of
14 income in this location, so

15 THE COURT Well, what about the -- what about
16 Mr Lindemann's position that what the City owes if found
17 responsible is simply for whatever the value of the damaged
18 board was, before we even get to profits what's your position
19 on that?

20 MR GUNDLING Well, that wasn't what they damaged
21 There was a billboard there standing that had income pursuant
22 to these leases and that's what they effected Conversion
23 allows damages for lost profits and ---

24 THE COURT But I understand I'm going back to
25 what about the board? I mean, do they owe you for the

1 damaged board in its damaged state or do they owe you for
2 what the value of that board was? What's your position?

3 MR GUNDLING For the value of the board and the
4 lost profits would be my -- is my understanding of the
5 measure for conversion

6 THE COURT The value of the board in its
7 pristine state or in its damaged state?

8 MR GUNDLING Well, the value of the board being
9 rented to a tenant at that time I mean, that's what they --
10 that's what they had on the site at that time They had
11 property that was being leased and they had an expectation of
12 income from that That's what they took away from him They
13 took away, they took away from Mr Ashenfelder his ability to
14 continue to rent and maintain and operate that sign and I
15 think that's the damages that the City, that we have against
16 the City It's not just a billboard

17 THE COURT All right, and you want to reply to
18 that?

19 MR LINDEMANN Your Honor, this Court has already
20 ruled that the ability to put the billboards back up, the
21 relief that was sought through this litigation, that they did
22 not exhaust their administrative remedies

23 THE COURT Now, counsel let me add as another
24 sustaining ground in the evidence today is that it would be
25 an impossibility according to the witnesses we have before us

1 to permit that under today's and even 2003's statutes in
2 place at the time because of potential right-of-way
3 encroachment and a nonstandard use and design So, I add
4 that as an additional sustaining ground for whoever may
5 review this record, but go ahead

6 MR LINDEMANN And the reason why I bring that up
7 Your Honor, is what he's essentially trying to do, what the
8 Plaintiff is trying to do is argue around that decision
9 What the Plaintiff should have done at that time was pursue
10 their administrative remedies, and if they had been
11 successful they could have put the billboard back up They
12 did not pursue that correctly and now they are contending as
13 far as the conversion claim to circumvent their failure to
14 exhaust their administrative remedies Of course, this goes
15 to why I argued yesterday and would renew that today as well
16 that at least the claim as to future lost income as part of
17 the conversion claim to the extent that that's recoverable
18 under a conversion claim would suffer the same fate They
19 failed to exhaust their administrative remedies because if
20 they had been successful, if they had pursued their
21 administrative remedies and been successful they could have
22 put the board back up and would have never sustained future
23 loss They wouldn't have even had a partial loss given the
24 temporary taking jurisprudence that we have in this state
25 but in this particular matter all that was taken, if

1 anything, was the real property and the real property wasn't
2 even the billboard in its, in its, in its non-damaged state
3 and certainly isn't a replacement billboard that Mr Haynes
4 testified to It would be solely limited to the billboard in
5 its damaged condition Any type of lost profits, anything of
6 that runs from the property interest, not the personal
7 property interest It would run from not having the ability
8 to put it back up

9 THE COURT All right, just a moment, please

10 MR LINDEMANN And that is a real property right

11 THE COURT All right, obviously, there is no

12 agreement between the parties on this I've reviewed South
13 Carolina law and this is the Court's ruling I'm going to
14 limit the Plaintiffs' damages to the value of the board,
15 whatever that board was at the time that it was taken down,
16 as well as the lease in place but beyond that, counsel, I
17 have no evidence that would permit you to go to the jury on a
18 continuing and certainly on a permanently continuing damage
19 Therefore, the Court is going to limit the damages based on
20 the evidence before me to that lease that was in place at the
21 time of the loss

22 MR GUNDLING Subject to my objections, Your
23 Honor?

24 THE COURT Yes, sir, objections are noted, and
25 again, I do this because South Carolina law clearly requires

1 a jury cannot award speculative or conjectural damages and
2 any number of things could have happened with this board
3 For one thing, it could have been determined by the
4 Department of Transportation to be a substandard or
5 nonconforming billboard, and thus, permit denied It could
6 have been determined that it encroached into the right-of-way
7 and thus a permit denied It could have been blown down by a
8 hurricane There are any numbers of things that could have
9 happened that prevent this Court from just simply saying the
10 Plaintiffs are entitled to claim it on and on in a continuing
11 basis I believe that's fair The Court, and I think it's
12 fair because this is the evidence that I have before me and
13 there was an opportunity to put up additional evidence, but
14 it's not there The Defendant takes the position where
15 you're only entitled to the value of the nails and the boards
16 and the Court disagrees with that, does not find that that
17 lease itself is a real property interest that must be denied
18 also, but that is the decision of the Court

19 Now anything further before we close this record? My
20 intention is to give you now -- in fact, my law clerk, Rufus
21 will bring to you the proposed charge as well as the verdict
22 form, give a few moments to review that, then we'll meet
23 quickly back in chambers to review that before we go forward
24 and take our lunch break and then come back at 1 30 to argue
25 and charge Anything further?

1 MR GUNDLING Just briefly, Your Honor, I want to
2 put on this record concerning the police power and I'll hand
3 you up this case for the charge, but the powers conferred
4 upon a municipality as set forth in Section 5-7-30 and in
5 reviewing the Lomax v City of Greenville case, it states
6 that the rule that grants police powers to municipalities are
7 to be strictly construed, has been generally invoked in cases
8 involving municipal ordinances regulating or restricting the
9 activity of the citizens It goes on to state that where the
10 powers, particular subject matter has been delegated to
11 municipal corporation by the legislature without any
12 expressed limitations the extent to which that power shall be
13 exercised rests in the discretion of the municipal
14 authorities and as long as exercised in good faith and for
15 municipal purpose the courts have no ground on which to
16 interfere, and we have submitted the -- their police powers
17 delegated by the State when they pass their ordinances which
18 can further limit or direct their police power This is so
19 the citizens know what powers that the municipality has
20 against them, and as you have heard a couple of times, this,
21 with respect to this case, the -- it required the zoning
22 administrator to do certain things, not may, it shall He
23 has testified that he didn't do any of the things that he was
24 required to under the ordinance So, I don't believe they
25 can use police power as a defense, that they have certain

1 powers over the citizens but aren't even going to comply with
2 their own ordinances that directly relate to that power So,
3 I'm going to hand up the -- just an excerpt from the Lomax v
4 City of Greenville case and then the statute for Your Honor

5 THE COURT Counsel, that what you've just made
6 given the Court's rulings is really a jury argument to
7 determine whether or not this is a valid exercise of police
8 power

9 MR GUNDLING All right

10 THE COURT Mr Lindemann takes the position,
11 well if it's not it has to be ultra vires or the actions of
12 an employee outside the scope of employment and thus you have
13 to name that employee, thus the entire case fails again for
14 the Plaintiff The Court does not accept that argument, but
15 nevertheless, based on the rulings we have and the evidence
16 before us and the issues that's a jury argument that you can
17 take up in your closing with the jury

18 MR GUNDLING Thank you, sir

19 THE COURT All right, counsel, we're going to
20 stand down at this time I'm going to give you about five
21 minutes to review the proposed jury charges and then we'll
22 come back to chambers when you're ready and talk about it
23 I'll be waiting for you back in the back Thank you The
24 Court is now in recess until 1 30

25 *****OFF THE RECORD*****

1 same source that any future jury will be and there's no
2 reason for me to believe that the case will ever be submitted
3 to 12 people who are more attentive, more intelligent, more
4 impartial and more conscientious and more competent than you
5 are or that any more clearer evidence will be produced on one
6 side or the other at some future trial, and so, what I'm
7 going to ask you to do, ladies and gentlemen, is with that
8 understanding is return to your deliberations with the hope
9 that you can arrive at a verdict that's unanimous within a
10 reasonable time What I'd ask you to do is go back to the
11 jury room and then we will await either further information
12 or confirmation from you or if you should have some question
13 or need for the assistance of the court All right, let's
14 everyone else remain where they are while our jury returns to
15 the jury room Thank you

16 (Whereupon, the following takes place outside the
17 presence of the jury)

18 THE COURT All right, ladies and gentlemen, we
19 will be in recess now while the jury entertains further
20 deliberations

21 *****OFF THE RECORD*****

22 (On the record, 1 00 p m)

23 THE COURT Thank you Please be seated, ladies and
24 gentlemen All right, counsel, we have sent a message into
25 the jury concerning lunch We are advised by the jury in our

1 lunch message that they remain deadlocked, that there has
2 been no movement, that it appears to them that there would be
3 no benefit to further deliberation Therefore, it would be
4 the Court's intention to declare a mistrial in this case I
5 have delayed a moment to determine whether or not the parties
6 in light of this information may be able to resolve this case
7 and I ask, has there been any movement or potential
8 settlement in light of this recent development?

9 MR GUNDLING Your Honor, we haven't been able to
10 resolve the case

11 THE COURT Very good, all right, please bring
12 in the jury

13 (Whereupon, the following takes place in the presence of
14 the jury)

15 THE COURT All right, welcome back, ladies and
16 gentlemen, to the courtroom, and Mr Buck, Mr Foreman, I am
17 advised by Ms Knox who brought in a lunch message to the
18 jury that there's not been any movement and the jury is of
19 the opinion that further deliberations would not be
20 productive Is that correct, sir?

21 MR FOREMAN I'd say at this point, yes

22 THE COURT All right, sir, and do you believe
23 that all the jurors share that opinion, that is it is
24 unanimous among the jurors that they all share the opinion
25 that further deliberations would not be of benefit?

1 MR FOREMAN Yes

2 THE COURT All right, then what I'm going to
3 do, ladies and gentlemen, is rather than put you to further
4 fruitless negotiation effort the Court is going to declare a
5 mistrial in this case

6 I want to say to you though when I do that that I don't
7 want you to think that, well, goodness, somehow this is a
8 failure on the part of the jury It is not There is a
9 message in the decision that you -- well, the fact that you
10 could not reach a unanimous decision Remember, the
11 Plaintiff has the burden of proof The Defendant is here to
12 respond to those allegations, and, again, this has not been
13 futile because clearly the parties will receive a message
14 from the decision that has been made to declare a mistrial
15 and will react accordingly to that I will tell you I've
16 encouraged the parties now that the case is over and will be
17 momentarily when I declare a mistrial, I've encouraged them
18 to consider even here after this first trial proceeding to
19 consider whether they're able to settle the case among
20 themselves and that can always happen even before trial, in
21 the middle of trial or after trial, regardless of what the
22 jury's verdict may be, but I just want to say to you in
23 closing I do not want you to think somehow that there has
24 been a lack of your fulfilling your responsibility because
25 you have fulfilled your responsibility and you've determined

1 that there is not unanimity on the decision before you and
2 that in itself is a, as I've said earlier, a message to the
3 parties

4 Now, what I'm going to come down and do is I'm going to
5 -- well, I should say this first, in a few days you're going
6 to get a small check from the County It is not enough to
7 retire on So, don't be looking forward to a huge sum, but
8 that's going to be the County's expression of gratitude I'm
9 going to come down and give you my personal expression of
10 gratitude which is to shake your hands as you leave the jury
11 box because I appreciate what you've done here and I
12 appreciate your efforts as jurors This case, of course, is
13 over now and the Court is going to momentarily declare a
14 mistrial by signing one of our civil court forms which simply
15 means that the case remains on the docket Your service as
16 jurors is over now There are no further cases this week,
17 and so, we conclude and if any of you -- if there's some
18 question that you have you want to ask me about this process
19 I'll be glad to take your questions at this time You may
20 not You may just want to leave You may want to hit the
21 door and be gone and if that's the case that's fine and I'll
22 come down and speak to you If someone has a question or
23 wants to make a comment then you just stand to the side with
24 me and I'll be glad to talk to you

25 Now, I'm going to say this to you about further contact

1 in this case You may be contacted by the attorneys in this
2 case It's up to you as to whether or not you wish to
3 discuss with them your perception of the evidence I would
4 say to you you may also be contacted by the press The media
5 has an interest in this case Again, jury deliberations are
6 secret and that secrecy is looked upon as a sacrosanct part
7 of our judicial system, and so, with that caveat there's
8 nothing wrong with you, if you wish, you're not required to,
9 in responding if you should be contacted by counsel or by the
10 press in this matter That's up to you, but again I would
11 just caution you to remember the secrecy of juror
12 deliberations

13 All right, any questions from anyone? Hearing none I'll
14 come down and say goodbye to you

15 (Jury exits courtroom)

16 THE COURT All right, ladies and gentlemen,
17 this -- you've heard the discussions the Court has had with
18 the jury This Court now formally declares a mistrial in
19 this case It will be returned to the jury docket for future
20 trial at a later time if not resolved between the parties
21 Anything further for our record before we close the record in
22 this matter from the Plaintiffs?

23 MR GUNDLING Nothing further from the Plaintiffs,
24 Your Honor

25 THE COURT And from Defendants?

1 MR LINDEMANN Your Honor, at this time on behalf
2 of the City I would ask the Court to reconsider your ruling
3 on the last directed verdict motion applying to the two
4 remaining causes of action I won't recite the grounds and
5 go through the discussion with you and rely on the grounds
6 that were previously stated but I would ask the Court to do
7 that, particularly given the fact, given your previous
8 rulings on the first directed verdict motion that we believe
9 obviously would be dispositive of the remaining two causes of
10 action as well, and again, I will go into much more detail if
11 Your Honor would be willing to hear that, but that's what I
12 would ask at this point

13 THE COURT All right, I'm going to decline to
14 do that, counsel, and will leave the matter as it is, but I'm
15 going to state here on the record to the Plaintiffs, to Mr
16 Ashenfelder, now the one remaining Plaintiff, there's a
17 message in this for the Plaintiff, sir The Plaintiff has
18 the burden of proof The Plaintiff did not meet the burden
19 of proof in this case to convince the jury and I would
20 strongly suggest to you that you should reconsider your
21 settlement position and resolve this matter if you can This
22 matter has -- both parties have had their say now The
23 Plaintiffs clearly have had their say This case has
24 consumed four days of judicial time, which is a precious
25 resource, and there is no indication to me that if tried

1 again it would not do so again and there would be a public
2 benefit to this case being resolved between the parties, and
3 so, I encourage you toward that end All right, ladies and
4 gentlemen, having concluded ---

5 MR LINDEMANN I have one other point I want
6 to raise with you, Your Honor, and I don't know if this is
7 the appropriate time, but I know you are chief administrative
8 judge I believe for this circuit, are you not?

9 THE COURT I am

10 MR LINDEMANN I have some concern as to when
11 this case would be rescheduled and where given the article
12 that was yesterday published in the Georgetown Times
13 Obviously I have no problems with the press covering stories,
14 but that particular article, I don't know if Your Honor has
15 had a chance to look at it, published the actual settlement
16 negotiations that had gone on between the parties which
17 causes me great concern if this case is tried certainly any
18 time soon when those articles might be and I'm, you know, the
19 press is still here today So, I'm assuming there'll be an
20 article in tomorrow's paper as well I don't know if that's
21 something you -- I should take up by motion, but I do have
22 that concern, Your Honor

23 THE COURT All right, we will not return the
24 case immediately to the roster There is a term of court
25 next week It is not on next week's roster and I will

**PLAINTIFF'S
EXHIBIT**

**STATE OF SOUTH CAROLINA
APPLICATION FOR OUTDOOR ADVERTISING PERMIT
S. C. STATE HIGHWAY DEPARTMENT**

05-21-57-71

(Permit Number)

Attention is hereby made to erect and/or maintain an advertising device at the location hereinafter described in accordance with the provisions of South Carolina's Highway Advertising Control Act, dated November 3, 1971.

Name of Applicant: Georgetown Hotel - Ed Gilliland, Owner

600 Church St. Georgetown, S. C.

Sign Location: County Georgetown Route US-17 Road Section 39

Between S-392 and S-98 0.25 From S-302

on North ☐ East ☐ South ☐ West ☒ side of highway

Sign Located Within Corporate City Limits ☐ Within Zoned Industrial or Commercial area ☐
Within Unzoned Commercial or Industrial area ☐ None of these ☒

Land Owner H. R. Brown c/o North Carolina

205 King St. Suite 20 - P. O. Box 2522 - Charleston, S. C.

P. O. Box or Street City State

Type of agreement between sign owner and property owner Verbal ☒ Written ☐

Duration of Agreement 2 Years Months

Total Square Footage In Sign (excluding decorative base and supports but including border trim cutouts and extensions) 192'

Date sign was erected 1971

Enter the combined value of all advertising devices owned by your company located in the county with the sign described herein. This figure will be furnished to county treasurers for tax purposes in accordance with State law \$ 300.00

Type of Advertising Device Single Face ☐ Double Face ☒ V-Type ☐ Other ☐

Permit Fee remitted herewith \$ 16.00 (See Reverse Side for Schedule)

STATE HIGHWAY ENGINEER

Permit Approved May 24, 1976

Return all copies to Highway Department Disposition as follows Original - Sign Owner Green - Central File Blue - County Treasurers, Canary District Office, Salmon - Advertising Control Office

STATE OF SOUTH CAROLINA
APPLICATION FOR ADVERTISING PERMIT
S. C. STATE HIGHWAY DEPARTMENT

65-11-177A

(7 min) Number

ation is hereby made to erect and/or maintain an advertising device at the location above described in accordance with the provisions of South Carolina's Highway Advertising Control Act, dated November 8, 1970.

Name of Applicant Georgetown Hotel - Jim Peoples, Vice Pres.

P. O. Box or Street 600 Church St., Georgetown, S. C.

Sign Location, County Georgetown Route 18-17 Road Section 2

Between K. City Limits and U.S. Rt. 701 0.2 From U.S. 701

on North ☐ East ☐ South ☐ West ☒ Nearest 1/10 mile 0.2 Side of highway Right

Sign located ☒ Within Corporate City Limits ☐ Within Zoned Industrial or Commercial area ☐
☐ Within Unzoned Commercial or Industrial area ☐ None of these ☐

Land Owner Unknown

P. O. Box or Street City State S. C.

Type of agreement between sign owner and property owner Verbal ☐ Written ☒

in writing, signed, recorded ☐ Yes ☒ No 1 Page 1 of 1 Duration of Agreement 2 Years 0 Months 0 Days

Total Square Footage in Sign (excluding decorative base and supports but including border, trim, cutouts and extensions) 380

See Reverse side for computations: 380

Date sign was erected 1977

Enter the combined value of all advertising devices owned by your company located in the county with the sign described herein. This figure will be furnished to county treasurers for tax purposes in accordance with State law \$ 25.00

Type of Advertising Device ☒ Single Face ☐ Double Face ☐ Other ☐

Permit Fee remitted herewith \$ 4.00 (See Reverse Side for Schedule)

The undersigned hereby agrees the existing or proposed structure described above was constructed in accordance with existing local ordinances and regulations and further agreed that upon determination said sign is non-conforming this permit may be revoked and the sign removed in the manner prescribed by existing laws and regulations.

Signature of Company Official Jim Peoples Vice Pres.

Signature of Highway Engineer E. J. Collier S. C. State Highway Department

Permit Approved April 19, 1977

Return all copies to Highway Department Disposition as follows Original - Sign Owner Green - Central File, Blue - County Treasurers, Canary District Office, Salmon - Advertising Control Office

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P O BOX 191

COLUMBIA, SC 29202

January 9, 1990

Orgetonian Motel
Church Street
Orgetown SC 29440

Outdoor Advertising Sign Permit Renewals, Pursuant to the Highway Advertising Control Act

Gentlemen

Enclosed please find two copies of the 1990 Outdoor Advertising Sign Permit Renewal listing for sign(s) owned by you in South Carolina. The attached listing was compiled from permits issued to you prior to December 1989.

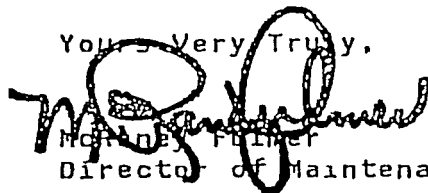
Please review this listing carefully in order to determine if these records are complete. If you find permit numbers missing or other changes, if any signs have been removed or sold by you, make the necessary corrections on the listing.

After you have reviewed all the information and made any corrections, review and sign the statement which is typed on the final page of the listing. Then submit a corrected copy of the listing along with your check for the correct amount, payable to South Carolina Department of Highways and Public Transportation. Please remit payment and all required documentation within thirty (30) days from the date of this letter.

You will also find enclosed a copy of the CERTIFICATION OF TAX PAYMENT for each county in which you have signs. The Highway Advertising Control Act stipulates that the Department cannot renew your sign permits unless this certification is completed and returned along with your payment.

If you have any questions, contact Outdoor Advertising Administrator Catherine Pederson at (803) 737-1339.

Yours Very Truly,


Morley Palmer
Director of Maintenance

CERTIFICATION OF TAX PAYMENT
PURSUANT TO HIGHWAY ADVERTISING CONTROL ACT

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown

DATE 4/6/89 19

The tax records of Georgetown County indicate that there are no property taxes owed and unpaid for the current year or any previous year on any sign or Outdoor Advertising Sign as defined in the Highway Advertising Control Act belonging to

Georgetownian Motel / Jade Inn, Inc
Name

600 Church St Georgetown, S C
Address

D. J. McKnight
Treasurer,

Georgetown County, S C

The original of this certification is to be forwarded to the South Carolina Department of Highways and Public Transportation

Page No 38
03/08/89

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
OUTDOOR ADVERTISING
1989 SIGN PERMIT RENEWAL INVOICE

COUNTY	ROUTE	PERMIT NUMBER	SQUARE FOOTAGE	PERMIT RENEWAL FEE

4 GEORGETOWN HOTEL

GEORGETOWN	17	05 22 577050	220	4.00

Subtotal 4.00

4.00

Permits for signs that are not constructed within 180 days from the date
the permit was issued become void even if the renewal fees are paid I
certify that the information contained herein is true and correct

Carol Ann Linton
Signature

4-6-89
Date

April 13, 1989

GEORGETONIAN MOTEL

600 CHURCH STREET
GEORGETOWN SC 29444

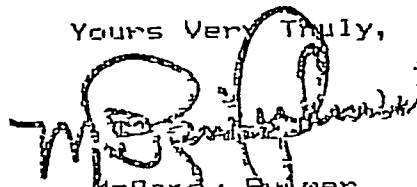
Gentlemen:

Re Payment of Outdoor Advertising Sign Permit Renewals for ~~1988~~ 1989

\$4,00 Receipt is acknowledged of your check in the amount of which was submitted for the renewal of permit applications owned by you in South Carolina for the year 1989

In this connection, please be advised that payment for your renewal is in order and your check is being deposited to the credit of the South Carolina Department of Highways and Public Transportation

Yours Very Truly,



McRae, Palmer
Director of Maintenance

CC:
Dist. Engr Adm Catoe - Dist 5
Outdoor Advertising Administrator

CSA/SH
CSA/SH

September 29 1989

GEORGETONIAN MOTEL

600 CHURCH STREET
GEORGETOWN SC 29440

REFERENCE REPAIRING STORM DAMAGE TO OUTDOOR ADVERTISING SIGNS CAUSED BY
HURRICANE HUGO

Gentlemen

Outdoor advertising signs throughout the coastal and midland areas of the State of South Carolina sustained major damage during the recent hurricane

In order to repair any damage to signs which occurred as a result of this storm please review the Law and Regulations pertaining to Outdoor Advertising and maintenance of signs

In 57-25-150 (d) of the Outdoor Advertising Control Act the Department is directed to promulgate regulations concerning mandatory maintenance to insure that signs are in a good state of repair

You have been previously notified by letter that new regulations affecting maintenance and repair to signs went into effect on June 9 1989. Under 63-350 (7) of these regulations very specific guidelines are set forth regarding signs suffering damage in excess of normal wear. THESE SIGNS CANNOT BE REPAIRED UNTIL THE DEPARTMENT IS NOTIFIED BY YOU IN WRITING OF THE EXISTENCE OF THE DAMAGE, THE REASON FOR THE DAMAGE AND PROVIDING A DESCRIPTION OF THE REPAIR WORK TO BE DONE INCLUDING THE ESTIMATED COST OF REPAIR.

You will then receive written notice from the Department authorizing or denying the repair work as requested. ANY SIGN WHICH IS REPAIRED WITHOUT DEPARTMENT AUTHORIZATION BECOMES ILLEGAL regardless of the extent of damage.

Because of the extent of damage and repair work which will need to be accomplished, we suggest you submit your requests as soon as possible.

If you have any questions, please contact the Outdoor Advertising Coordinator in the area or areas where your signs were damaged. If you do not know how to reach the Coordinator you may call the Outdoor Advertising Office at (803) 737-1339 and someone will refer you to the Coordinator for your area.

Very truly yours

Catherine S. Angus
Outdoor Advertising Administration

OUTDOOR ADVERTISING SITE APPROVAL FORM

Date 3-8-77

Name of Applicant Georgetown Motel

Address 600 Church Street
Georgetown, S C

Site Location County Georgetown Route US 17 Road Section 05-22-17
Between North City Limits US Rt 701 0.3 from US 701
Road or Route Road or Route Nearest 1/10 mile Road or Route

Zoning If any None

Distance of Nearest Commercial/Industrial E

A Type Business Gas station

Distance to Nearest Permitted Sign 300'

Inventory Number, If available 24

Over-all Dimensions of Sign 12x30



Approved/Disapproved Approved

Remarks _____

SCHD Representative - Name W L Singleton
Title Public Relations Coordinator

Date 3-8-77

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
P O BOX 191
COLUMBIA, SC 29202
January 15, 1990

Orgetonian Motel
3 Church Street
Orgetown SC 29440

Outdoor Advertising Sign Permit Renewals Pursuant to the Highway
Advertising Control Act

Gentlemen

Enclosed please find two copies of the 1990 Outdoor Advertising Sign
Permit Renewal listing for sign(s) owned by you in South Carolina. The
attached listing was compiled from permits issued to you prior to December
1989.

Please review this listing carefully in order to determine if these
records are complete. If you find permit numbers missing or other changes
any signs have been removed or sold by you make the necessary cor-
rections on the listing.

After you have reviewed all the information and made any corrections
view and sign the statement which is typed on the final page of the lis-
ting. Then submit a corrected copy of the listing along with your check for
the correct amount payable to South Carolina Department of Highways and
Public Transportation. Please remit payment and all required documentation
within thirty (30) days from the date of this letter.

You will also find enclosed a copy of the CERTIFICATION OF TAX/ PAYMENT
for each county in which you have signs. The Highway Advertising Control
Act stipulates that the Department cannot renew your sign permits unless
this certification is completed and returned along with your payment.

If you have any questions contact Outdoor Advertising Administrator
Suzanne Angus at (803) 737-1339.

Yours Very Truly

McRaney Fulmer
Director of Maintenance

CERTIFICATION OF TAX PAYMENT
PURSUANT TO HIGHWAY ADVERTISING CONTROL ACT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

DATE 2-5 19 90

The tax records of GEORGETOWN County indicate that there are no property taxes owed and unpaid for the current year or any previous year on any sign or outdoor advertising sign as defined in the Highway Advertising Control Act belonging to

GEORGETONIAN MOTEL

Name of Sign Owner

600 Church Street

Georgetown, S C 29440

Address of Sign Owner

Loretta D Washington

Loretta D Washington
Signature of County Treasurer

Georgetown, S C 29440

County South Carolina

THIS CERTIFICATION IS TO BE FORWARDED TO THE SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION FOR ALL PERMIT APPLICATIONS AND THE ANNUAL RENEWALS OF ALL OUTDOOR ADVERTISING SIGN PERMITS

ADDRESS SOUTH CAROLINA DEPARTMENT OF HIGHWAYS & PUBLIC TRANSPORTATION
ATTN OUTDOOR ADVERTISING ADMINISTRATOR
DRAWER 191
COLUMBIA SOUTH CAROLINA 29202

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

OUTDOOR ADVERTISING
1990 SIGN PERMIT RENEWAL NOTICE

orgetonian Motel (#03710)

County	Route	Permit Number	SqFt	Permit Fee	Delinquent Fee	Total
orgetown	US 17	05-22-577050	380	\$ 4 00	\$ 0 00	\$ 4 00
Grand Total						\$ 4 00

permits for signs that are not constructed within 180 days from the date the permit was issued become void, even if the renewal fees are paid I certify that the information contained herein is true and correct

David Ashfelder
Signature

2-5-90
Date

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

OUTDOOR ADVERTISING
1990 SIGN PERMIT RENEWAL NOTICE

Orgetonian Motel (#03710)

County	Route	Permit Number	SqFt	Permit Fee	Delinquent Fee	Total
Orgetown	US 17	05-22-577050	380	\$ 4 00	\$ 0 00	\$ 4 00
Grand Total						\$ 4 00

Permits for signs that are not constructed within 180 days from the date the permit was issued become void even if the renewal fees are paid I certify that the information contained herein is true and correct

Signature

Date

February 8, 1990

Argetonian Motel
1 Church Street
Myrtle Beach SC 29577

Payment of Outdoor Advertising Sign Permit Renewals for 1990

Gentlemen

Receipt is acknowledged of your check, number 4119, in the amount of \$100.00 which was submitted for the renewal of permit applications owned by you in South Carolina for the year 1990

In this connection, please be advised that payment for your renewal is in good order and your check is being deposited to the credit of the South Carolina Department of Highways and Public Transportation

Yours Very Truly,

McRaney Fulmer
Director of Maintenance

June 1, 1990

03710
Georgetown Motel
600 Church Street
Georgetown SC 29440

SUBJECT NEW LAW GOVERNING OUTDOOR ADVERTISING IN SOUTH CAROLINA

Gentlemen

Effective May 30, 1990, the Highway Advertising Control Act which governs outdoor advertising in the State of South Carolina has been revised by the legislature

The major changes which will effect sign owners are as follows

RENEWAL FEES

Signs up to 350 sq ft are now \$20 00 per year

Signs over 350 sq ft are now \$30 00 per year

NEW APPLICATIONS:

\$100 00 application fee, required on all NEW applications only, and NON-REFUNDABLE if the application is denied

SIZE OF SIGNS:

REDUCED from 1200 sq ft to 672 sq. ft., with an additional 150 sq ft for cutouts and extensions.

These are NOT the only changes made in this statute. We strongly recommend that you carefully review the changes if you intend to build additional signs in the State of South Carolina. You may request a copy of the statute from your area coordinator. Your area outdoor advertising coordinator will also be happy to answer any questions you may have pertaining to this.

IF YOU DO NOT KNOW HOW TO CONTACT YOUR AREA COORDINATOR, YOU MAY CALL THE OUTDOOR ADVERTISING OFFICE IN COLUMBIA, (803) 737-1339 FOR THE NAME AND NUMBER OF THE APPROPRIATE PERSON IN YOUR AREA

Yours very truly,
Catherine S. Angus
Outdoor Advertising Administrator

03710

October 15, 1990

Georgetownian Motel
600 Church Street
Georgetown SC 29440

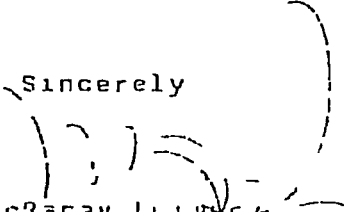
Gentlemen

We are in receipt of your preliminary notice for your outdoor advertising sign in Georgetown county

Upon checking our records, we find that the square feet of the sign is 390 therefore, if you wish to change the footage of the sign you must contact Mrs Doris Reynolds at (803) 661-4710

If we can be of further assistance please feel free to contact either Mrs Reynolds or the outdoor advertising office at (803) 737-1339

Sincerely


Gregory L. Lince
Director of Maintenance

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P O BOX 191
COLUMBIA, SC - 29202

October 1, 1990

Georgetown Hotel
600 Church Street
Georgetown SC 29440

Re: Outdoor Advertising Sign Permit Renewals - Preliminary Notice

Gentlemen:

Enclosed please find two copies of the 1991 Outdoor Advertising Sign Permit Renewal listing for sign(s) owned by you in South Carolina. The attached listing was compiled from permits issued to you prior to October 1, 1990.

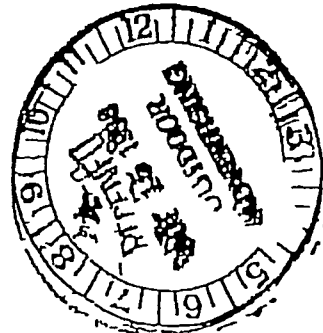
THIS IS A PRE-BILL STATEMENT FOR THE COMING YEAR. Review this listing carefully in order to determine if these records are complete. If you find permit numbers missing or other changes, or if any signs have been removed or sold by you, make the necessary corrections on the listing.

After you have reviewed all the information and made any corrections, review and sign the statement which is typed on the final page of the listing. Then submit a corrected copy of the listing to South Carolina Department of Highways and Public Transportation, Attn: Outdoor Advertising Office, within ~~30~~ (30) days from the date of this letter or NO LATER THAN OCTOBER 31, 1990.

IF YOU DO NOT RETURN A CORRECTED COPY OF THIS LISTING, YOU WILL BE BILLED FOR ALL SIGNS SHOWN HEREON. NO CORRECTIONS WILL BE ALLOWED AFTER OCTOBER 31, 1990. DO NOT SEND PAYMENT AT THIS TIME.

If you have any questions, contact the Outdoor Advertising Office at (803) 737-1339.

Yours Very Truly,
McRaney Fulmer
Director of Maintenance



SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
OUTDOOR ADVERTISING
1991 SIGN PERMIT RENEWAL NOTICE

Georgetownian Motel (403710)

County	Route	Permit Number	SqFt/Ext	Permit Delinq Fee	Total Fee	Total
Georgetown	US 17	05-22-577050	~~380~~ 336	\$30 00	\$ 0 00	\$ 30 00
Grand Total \$						30 00

I certify that the information contained herein is true and correct I understand that I will be billed for all signs shown hereon and I forfeit my right of correction if this notice is not returned as specified above

David Aschfelder

Signature

10-10-90

Date

7118

December 11, 1990

Shirley,

This sign (permit No 05-22-577050) has been investigated and is 12 x 28 or 336 square feet It is a non conforming sign



Doris

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
OUTDOOR ADVERTISING
1991 SIGN PERMIT RENEWAL NOTICE

Georgetownian Motel (#03710)

County	Route	Permit Number	SqFt/Ext	Permit Fee	Delinq Fee	Total
Georgetown	US 17	05-22-577050	~~350~~ 336	\$30 00	\$ 0 00	\$ 30 00
Grand Total \$						30 00

I certify that the information contained herein is true and correct I understand that I will be billed for all signs shown hereon and I forfeit my right of correction if this notice is not returned as specified above

David Ashfield

Signature

10-10-90

Date

Doris,

I sent these advertisers a letter back telling them to contact you concerning the square feet change, I was wrong, I should have asked you to investigate and advise me of the findings.

Thanks
Shirley

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
P O BOX 191
COLUMBIA, SC 29202
January 2, 1991

Owner ID No 03710
Georgetownian Motel
600 Church Street
Georgetown SC 29440

Invoice No 810306

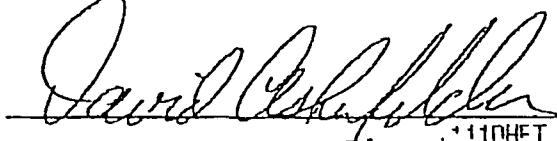
A signed copy of this invoice must be returned along with your check
for \$ 30 00 made payable to South Carolina Department of Highways
and Public Transportation (marked to the attention of the Secretary-
Treasurer) within 90 days or your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90
days from the date of this billing, or April 2, 1991
Non-payment within this time cancels the permits and the signs become
illegal

Permits for Outdoor Advertising Signs that are not constructed within
80 days from the date the permit was issued become void, even if the
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct

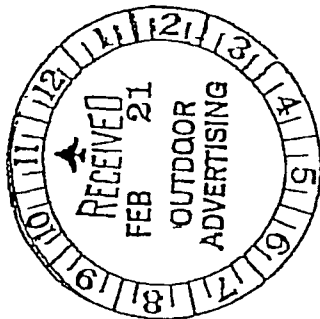

signature

7-11-91
Date

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
OUTDOOR ADVERTISING
1991 SIGN PERMIT RENEWAL NOTICE

Georgetownian Motel (#03710)

County	Route	Permit Number	SqFt/Ext	Permit Fee	Delinq Fee	Total
Georgetown	US 17	05-22-577050	380/ 0	\$30 00	\$ 0 00	\$ 30 00
Grand Total \$						30 00



SOUTH CAROLINA
Department of Highway and Public Transportation
Form 520-1 (Rev. 7-1-70)

RECEIPT

No. 12576



DATE OF RECEIPT: 12-20-76 TRANSACTION NUMBER AND DATE: 12-20-76 AMOUNT: \$10.00 CASHIER: [Signature]

ORIGINAL

RECEIPT 12-20-76

\$10.00



SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P.O. Box 1911

Florence, SC 29503

March 2, 1992

Owner ID No. 03710

Invoice No. 820300

Georgetown Hotel

600 Church Street

Georgetown, SC 29440

A signed copy of this invoice must be returned along with your check for \$ 30 00 made payable to South Carolina Department of Highways and Public Transportation (marked to the attention of the District Engineer) within 30 days or your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90 days from the date of the first billing or April 1, 1992. Non-payment within this time cancels the permits and the signs become illegal.

Permits for Outdoor Advertising Signs that are not constructed within 180 days from the date the permit was issued become void, even if the renewal fees are paid.

I hereby certify that either written or verbal consent to erect and maintain the signs described on this renewal form has been obtained from the owners (or authorized agent) of the real property on which the signs are located.

I further certify that all information contained herein is true and correct.

David Ashfield

Signature 110HFT 3/10/927309

\$30 00HF

3-5-92

Date

SC DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
OUTDOOR ADVERTISING
1993 SIGN PERMIT RENEWAL NOTICE

Georgetownian Motel (#03710)

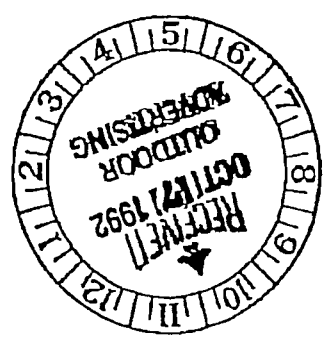
County	Route	Permit Number	SqFt/Ext	Permit Fee	Delinq Fee	Total
Georgetown	US 17	05-22-577050	380/	\$30.00	\$10.00	\$40.00

Grand Total \$40.00

I certify that the information contained herein is true and correct. I understand that I will be billed for all signs shown hereon and I forfeit my right of correction if this notice is not returned as specified above.

David Ashfield
Signature

10-5-92
Date



RECEIVED

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
OUTDOOR ADVERTISING
1993 SIGN PERMIT RENEWAL NOTICE

TO: MICHIGAN

Georgetownian Motel (#03710) JONAS SCHWARTZ

County	Route	Permit Number	Sq Ft/Cut	Permit Fee	Design Fee	Total
Georgetown	US 17	05-22 677050	320/	0 \$30 00	\$ 0 00 1	30 00
Grand Total \$						30 00

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P.O. BOX 191

COLUMBIA, SC 29202

January 3, 1993

Owner ID No. 03710

Invoice No. 830337

Georgetown Motel

600 Church Street

Georgetown, SC 29440

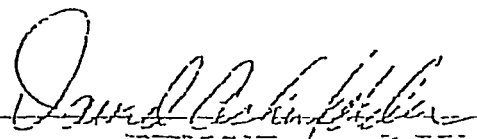
A signed copy of this invoice must be returned along with your check for \$ 30 00 made payable to South Carolina Department of Highways and Public Transportation (marked to the attention of the Secretary-Treasurer) within 90 days or your signs will be removed

South Carolina law requires sign permit fees be paid NO LATER than 90 days from the date of this billing, or April 3 1993
Non-payment within this time cancels the permits and the signs become illegal

Permits for Outdoor Advertising Signs that are not constructed within 180 days from the date the permit was issued become void even if the renewal fees are paid

I hereby certify that either written or verbal consent to erect and maintain the signs described on this renewal form has been obtained from the owners (or authorized agent) of the real property on which the signs are located

I further certify that all information contained herein is true and correct


signature

1-19-93
Date

SOUTH CAROLINA
Department of Highways and Public Transportation
Form 520 - Rev 7 1 78

RECEIPT

No. 38095

TRANSACTION NUMBER AND DATE AMOUNT CASHIER

ORIGINAL

1116FT 1-25-758095

\$30.00



SOUTH CAROLINA

RECEIPT

No 47643

Department of Highways and Public Transportation

Form 320 Rev 7-1-78

TRANSACTION NUMBER AND DATE

AMOUNT

CASHIER

ORIGINAL

110-PT-1-17-78-47643

\$30.00

SOUTH CAROLINA
Department of Transportation
Form 620-R (Rev. 1-64)

RECEIPT

No. 05718

TRANSACTION NUMBER AND DATE

AMOUNT

CASHIER

ORIGINAL

1110HPJ 3-10-955718

\$30.00



PHOTO# 43 DATE 8-9-90

ROUTE 11817 SIDE Left

LOCATION Georgetown County

MPM _____ DOI 8-9-90

PERMIT # 05-22-577050

PERMITTEE Georgetown Motel

SECT# _____ INV# _____

STATUS-CONF _____ N-CONF ☒

ACTIVITY _____

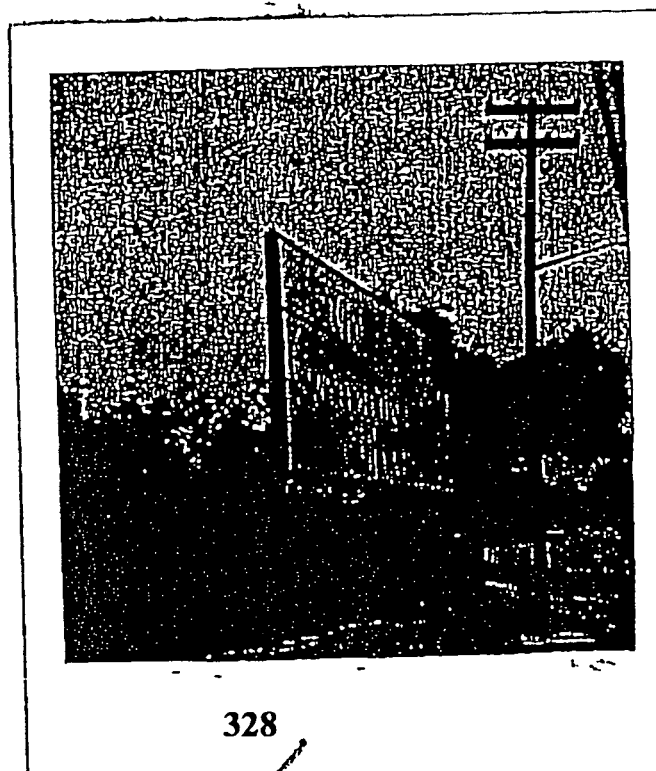
SIZE _____ TYPE SF

PNT ☒ PST _____ REF _____

ILLUM No MTD _____

TYPE POLES wood NUMBER 5

REMARKS 15.7 miles



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

P O BOX 191

COLUMBIA, SC 29202

January, 3 1995

Order ID No 00710

Invoice No 000011

Targeted Motel

10 000 000000

Targeted, SC 20440

SOUTH CAROLINA
Department of Transportation
Form 520 Rev 4/84

RECEIPT

No. 05896

TRANSACTION NUMBER AND DATE AMOUNT CASHIER

ORIGINAL

111DHPT-21-955896-11-360.00

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
P O BOX 191 ATTENTION CASHIER
COLUMBIA, SC 29202
January 2 1996

Owner ID No 03710

Invoice No 860313

~~Georgetown Hotel~~ Winyah Bay Outfitters
ATTN David Ashenfelder
37 Wedgefield Village
Georgetown, SC 29440

A signed copy of this invoice must be returned along with your check
for \$ 30 00 made payable to the South Carolina Department of
Transportation (marked to attention of the Office of Finance) within
90 days If this deadline is not heeded your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90
days from the date of this billing, or April 1, 1996
Non-payment within this time invalidates the permit making the sign
illegal

Permits for outdoor advertising signs not constructed within 180 days
om the date the permit was issued also become invalid regardless if
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct

Cheryl Ashenfelder
Signature

1-18-96
Date

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
P O BOX 191 ATTENTION CASHIER
COLUMBIA, SC 29202
January 2, 1997

Owner ID No 03710
GEORGETONIA MOTEL
ATTN DAVID ASHENFELDER
37 WEDGEFIELD VILLAGE
GEORGETOWN SC 29440

Invoice No 870295

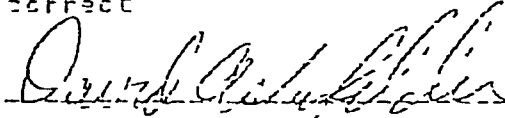
A signed copy of this invoice must be returned along with your check
for \$ 30.00 made payable to the South Carolina Department of
Transportation (marked to attention of the Office of Finance) within
90 days. If this deadline is not heeded your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90
days from the date of this billing, or April 2 1997
Non-payment within this time invalidates the permit making the sign
illegal

Permits for outdoor advertising signs not constructed within 100 days
from the date the permit was issued also become invalid regardless if
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct


Signature

1-15-97
Date

SOUTH COAST COMMUNITY DEVELOPMENT FUND 2011 REV 4/04		RECEIPT		No. 17927	
TRANSACTION NUMBER AND DATE			AMOUNT		CASHIER
ORIGINAL			17927		
17927			17927		

17927 17927

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
P.O. BOX 191 ATTENTION CASHIER
COLUMBIA, SC 29202
January 1, 1998

Owner ID No 03710
GEORGETONIA MOTEL
ATTN DAVID ASHENFELDER
532 CHURCH STREET
GEORGETOWN SC 29440

Invoice No 880341

A signed copy of this invoice must be returned along with your check
for \$30 00 made payable to the South Carolina Department of
Transportation (marked to attention of the Office of Finance) within
90 days of the first billing If this deadline is not heeded your signs
will be removed

South Carolina law requires sign permit fees be paid NO LATER than 90
days from the date of the first billing or [April 1, 1998]
Non-payment within this time invalidates the permit making the sign
illegal

Permits for outdoor advertising signs not constructed within 180 days
from the date the permit was issued also become invalid, regardless if
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct



Signature

1-6-98

Date

WORTH CAROLINA
UNIVERSITY
FARMER COLLEGE

RECEIPT

No. 23961

TRANSACTION NUMBER AND DATE	AMOUNT	CASHIER

ORIGINAL

RECEIPT 1-14-983961

30.00

VB

77 2913
1, 47,
17, 1

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
P O BOX 191 ATTENTION CASHIER
COLUMBIA, SC 29202
January 1, 1999

Owner ID No 03710
GEORGETONIAN MOTEL
ATTN DAVID ASHENFELDER
3030 S ISLAND RD
GEORGETOWN SC 29440

Invoice No 890345

A signed copy of this invoice must be returned along with your check for \$30 00 made payable to the South Carolina Department of Transportation (marked to attention of the Office of Finance) within 90 days of the first billing. If this deadline is not heeded your signs will be removed.

South Carolina law requires sign permit fees be paid NO LATER than 90 days from the date of the first billing or [April 1 1999]. Non-payment within this time invalidates the permit making the sign illegal.

Permits for outdoor advertising signs not constructed within 180 days from the date the permit was issued also become invalid regardless if renewal fees are paid.

I hereby certify that either written or verbal consent to erect and maintain the signs described on this renewal form has been obtained from the owners (or authorized agent) of the real property on which the signs are located.

I further certify that all information contained herein is true and correct.


Signature

1-14-99
Date

SAINT CAROLINA
UNIVERSITY
FOM 62-100-100

RECEIPT

No. 31709

TRANSACTION NUMBER AND DATE	AMOUNT	CASHIER
ORIGINAL 1110HPT 1/22/79 1709	30.00	
1110HPT 1/22/79 1709		

החשבונית נכנסה לזכרון
החשבונית נכנסה לזכרון
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החשבונית נכנסה לזכרון
החשבונית נכנסה לזכרון

South Carolina Department of Transportation

P O Box 191 Attention: Cashier

Columbia, SC 29202-0191

Invoice Statement

January 1, 2000

GEORGETONIAN MOTEL (03710)
ATTN DAVID ASHENFELDER
3030 S ISLAND ROAD
GEORGETOWN SC 29440

Invoice 000339

A signed copy of this invoice must be returned along with your check for \$30.00 made payable to the South Carolina Department of Transportation (marked to the attention of the Office of Finance) by April 1, 2000.

South Carolina law requires sign permit fees be paid NO LATER than 90 days from the date of the first billing, or April 1, 2000. Non-payment within this time invalidates the permit, making the sign illegal.

Permits for outdoor advertising signs not constructed within 180 days from the date the permit was issued also become invalid, regardless if renewal fees are paid.

I hereby certify that either written or verbal consent to erect and maintain the signs described on the Sign Permit Renewal Listing has been obtained from the owners (or authorized agent) of the real property on which the signs are located.

I further certify that all information contained herein is true and correct.


Signature

1-7-00
Date

SOUTH CAROLINA
Department of Transportation
Form 626 Rev. 4/84

RECEIPT

No. 38330

TRANSACTION NUMBER AND DATE

AMOUNT

CASHIER

ORIGINAL

100 RT 1-12-008330

530-0012

SOUTH CAROLINA DEPARTMENT ~~OF~~ TRANSPORTATION
P O BOX 191 ATTENTION ~~CASHIER~~
COLUMBIA, SC 29202
January 1, 2001

Owner ID No 03710
GEORGETONIAN MOTEL
ATTN DAVID ASHENFELDER
3030 S ISLAND ROAD
GEORGETOWN SC 29440

Invoice No 010332

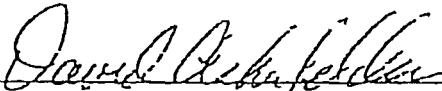
A signed copy of this invoice must be returned along with your check
for \$30 00 made payable to the South Carolina Department of
Transportation (marked to attention of the Office of Finance) within
90 days of the first billing If this deadline is not heeded your signs
will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90
days from the date of the first billing, or [April 1, 2001]
Non-payment within this time invalidates the permit, making the sign
illegal

Permits for outdoor advertising signs not constructed within 180 days
from the date the permit was issued also become invalid, regardless if
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct



Signature

1-11-01

Date

San Diego County
Department of Transportation
Form 20 (Rev. 1/74)

RECEIPT

No. 46770

TRANSACTION NUMBER AND DATE

ORIGINAL

San Diego County

AMOUNT

CASHIER

[Handwritten signature]

South Carolina Department of Transportation
P O Box 191 Attention Cashier
Columbia, SC 29202-0191
Invoice Statement

January 1, 2002

GEORGETONIAN MOTEL (03710)
ATTN DAVID ASHENFELDER
J030 S ISLAND ROAD
GEORGETOWN SC 29440

Invoice 820324

Change of Address

135 Pleasant Woods Rd
Piedmont, SC 29673

A signed copy of this invoice must be returned in the enclosed envelope along with your check for \$30.00 made payable to the South Carolina Department of Transportation by April 1, 2002

South Carolina law requires sign permit fees be paid NO LATER than 90 days from the date of the first billing, or April 1, 2002. Non-payment within this time invalidates the permit, making the sign illegal.

Permits for outdoor advertising signs not constructed within 180 days from the date the permit was issued also become invalid, regardless if renewal fees are paid.

I hereby certify that either written or verbal consent to erect and maintain the signs described on the Sign Permit Renewal Listing has been obtained from the owners (or authorized agent) of the real property on which the signs are located.

I further certify that all information contained herein is true and correct.

David Ashenfelder
Signature

1-30-02
Date

FOR SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION USE ONLY

Advertiser GEORGETONIAN MOTEL
Owner ID 03710

Invoice No 820324

<u>Trans. Code</u>	<u>Symbol</u>	<u>Gen. Led</u>	<u>Acty</u>	<u>Amount</u>	
59	100	1391	000	\$30.00	Debit
59	100	7941	941	\$30.00	Credit

TRANSACTION NUMBER AND DATE TO FROM AMOUNT CASHIER

ORIGINAL

RECEIPT 2-01-024741 \$30.00

South Carolina Department of Transportation
P O Box 191 Attention Cashier
Columbia, SC 29202-0191
Sign Permit Renewal Listing

March 10, 2003

Invoice 830304

GEORGETONIAN MOTEL (3710)

<u>County</u>	<u>Route</u>	<u>Permit #</u>	<u>SqFt</u>	<u>Fee</u>	<u>Paid</u>	<u>Due</u>
GEORGETOWN	US 17	05-22-577050	380	\$30 00	\$0 00	\$30 00
				<u>Total Due</u>		\$30 00



South Carolina
Department of Transportation

Engineering District Five
Drawer 1911
Florence South Carolina 29501

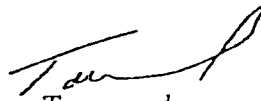
Tele. (843) 661-4710
Fax (843) 661-4704

April 1, 2003

From District Engineering Administrator D L Townsend
To Director of Outdoor Advertising K C Melvin
Subject Outdoor Advertising Permit No 05-22-577050
Georgetown County

Please remove the above permit number from your records and notify the
Company accordingly

Outdoor Advertising Coordinator Randy Ponton investigated the site on
03/24/03 and confirms that the sign has been removed.


Townsend

File D5/DLT/crp

OUTDOOR ADVERTISING Records Form

For Office Use Only		

Action	Tag #	05	/	22	/	577050
New						
Transfer						
Revision						
Replace Tag						
Cancel	X					
Other	#A000					

1	OWNER ID#	3710			
2	COMPANY NAME	Georgetown Motel			
3	COUNTY	Georgetown	8	SQUARE FEET	380
4	ROUTE	US 17	9	DEVICE TYPE	1
5	MILE	15 700	10	LIGHTED	N
6	DIRECTION	N	11	ZONING	1
7	SIDE	L	12	CONFORMING	2
			13	PERMITTED DATE	04 / 19 / 77
			14	ERECTED DATE	/ /
			15	CANCELLED DATE	/ /
			16	TYPE CANCEL	R
			17	INV #	

347

EXPLANATION OF CODES

DIRECTION - INTERSTATES REFLECT ACTUAL DIRECTION TRAVELED FAP'S ARE W (EVEN NUMBERS) OR N (ODD NUMBERS)

DEVICE TYPE

1 - SINGLE FACE
2 - SINGLE FACE BACK TO BACK
3 - DOUBLE FACE
4 - DOUBLE FACE BACK TO BACK
5 - V - TYPE

ILLUMINATION

Y - ILLUMINATED
N - NON-ILLUMINATED
R - REFLECTORIZED

TYPE LOCATION

1 - UNZONED COMMERCIAL
2 - UNZONED INDUSTRIAL
3 ZONED COMMERCIAL
4 ZONED INDUSTRIAL
5 - OTHER

SIGN TYPE

1 - CONFORMING
2 - NONCONFORMING
3 GRANDFATHERED

TYPE CANCEL

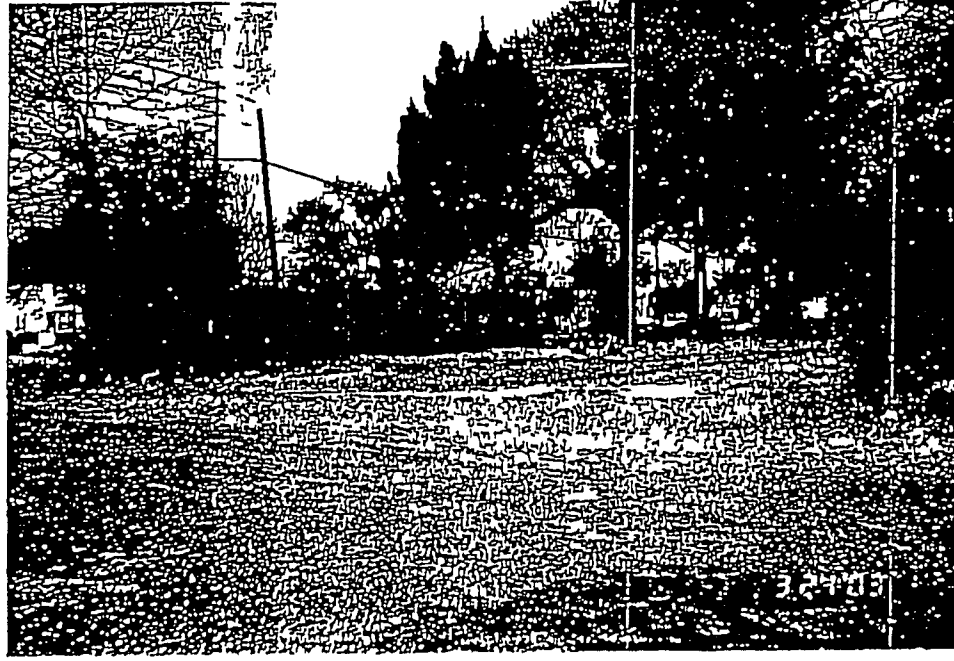
R - REMOVED
N - NOT CONSTRUCTED
A - ACQUIRED

DATE PROCESSED	04 / 02 / 03
INITIALS	CLD

SIGNATURE


OUTDOOR ADVERTISING COORDINATOR

DATE 04-01-03



Georgetown Motel

600 Church Street
Georgetown, SC 29440

File

Dear Sirs,

Will you please change the mailing address for the billing of the sign for the Georgetown Motel to

David Ashenfelder
37 Wedgefield Village
Georgetown, SC 29440

The owner ID number is 03710 and the permit number is 05-22-577050 The sign is located on US 17 in Georgetown.

Thank you for your attention

Sincerely,

Dave Ashenfelder

Dave Ashenfelder

Owner



South Carolina
Department of Transportation

April 2, 2005

GEORGETONIAN MOTEL
ATTN: DAVID ASHENEEDER
135 PLEASANT WOODS ROAD
PIEDMONT, SC 29673

Subject: Cancellation of Outdoor Advertising Sign Permit No. 05-22-577050
GEORGETOWN County

Gentlemen:

Our District Engineering Administrator has reported that the subject sign(s) have been removed.

Therefore, please accept this letter as notice of cancellation of the above permit in accordance with Department procedures.

If you have any questions or need further assistance, please contact the Outdoor Advertising Office at (803) 737-1339.

Yours truly,

Keith C Melvin
Director of Outdoor Advertising

CC

Dist # 05 Coordinator - Ponton

ODA

KCM/clb



350

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

P O BOX 191
COLUMBIA, SC 29202
January 3, 1995

Owner ID No 06777
organ Newsome Inc DBA Newsome Outdoor
Advertising
Post Office Box 738
Orangeburg, SC 29116-0738

Invoice No 850553

A signed copy of this invoice must be returned along with your check
for \$ 360 00 made payable to the South Carolina Department of
Transportation (marked to attention of the Office of Finance) within
30 days or your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90
days from the date of the first billing, or April 3, 1995
Non-payment within this time cancels the permits and the signs become
illegal

Permits for Outdoor Advertising Signs that are not constructed within
30 days from the date the permit was issued become void, even if the
renewal fees are paid

I hereby certify that either written or verbal consent to erect and
maintain the signs described on this renewal form has been obtained
from the owners (or authorized agent) of the real property on which the
signs are located

I further certify that all information contained herein is true and
correct

Signature

Date

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

P.O. BOX 191
COLUMBIA SC 29202

January 3, 1996

Owner ID No 06777
Morgan Newsome Inc DBA Newsome Outdoor -
Advertising
Post Office Box 738
Orangeburg SC 29116-0738

Invoice No 850503

A signed copy of this invoice must be returned along with your check for \$ 330.00 made payable to the South Carolina Department of Transportation (marked to attention of the Office of Finance) Within 90 days or your signs will be removed

South Carolina Law requires sign permit fees be paid NO LATER than 90 days from the date of this billing or April 3, 1996
Non-payment within this time cancels the permits and the signs become illegal

Permits for Outdoor Advertising Signs that are not constructed within 90 days from the date the permit was issued become void even if the permit fees are paid

I hereby certify, the written or verbal consent to erect and maintain the signs described on this renewal form has been obtained from the owners (or authorized agent) of the real property on which the signs are located

I further certify, the signs are not illegal under any local ordinance

Handwritten signature: Gary H. Johnston

Handwritten date: 1/11/96

FOR SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION USE ONLY

ADVERTISER Morgan Newsome Inc DBA Newsome Outdoor
OWNER ID 06777 INVOICE NO 850503

TRANS CODE	SIMBOL	SEN	LED	ACT	AMOUNT
52	100	1319	000	1	330.00 DEBIT
57	100	7941	341	1	330.00 CREDIT

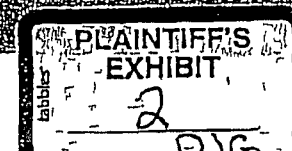
Handwritten: 26.00



CME Cantrell Mortgage Company
North America, Inc.

MORTGAGE BANKERS
BILL CONSOLIDATIONS *for* HOMEOWNERS...
1ST & 2ND MORTGAGES • REFINANCING •
Call 527-3333
GEORGETOWN

Dave Ashenfelder - cutting grass around billboard



KENNETH L MITCHUM

Attorney At Law
529 Prince Street
Georgetown South Carolina 29442

TELEPHONE (803) 527 3134

MAIL ADDRESS P C

April 15, 1986

Patrick J Doyle, Esquire
Post Office Box 404
Georgetown, South Carolina 29442

Re Off-site Sign, David Ashenfelder, Georgetownian Motel

Dear James

As a follow-up to our conversation of today, I indicated that I would be representing David Ashenfelder in the matter related to him in your letter of April 7 1986. It is my understanding that the city wishes to tear down a sign owned by Mr Ashenfelder. As I related to you, Mr Ashenfelder has advised me that he has been paying a permit fee to the S C Department of Highways and Public Transportation for the last several years.

I am in the process of obtaining documentary evidence of these payments, and will forward them to you as they are received. It is my understanding from our discussion that the city's position is that this sign is located on a city street which has never been opened. I am attempting to research the public records to determine whether the city has any claim in that area.

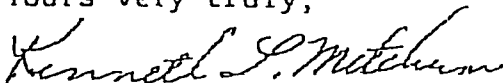
I should also add that Mr Ashenfelder is prepared to block any attempt to destruct this sign by the City of Georgetown until all the facts are in. I think it would be ridiculous to require us to obtain an injunction to prohibit the city from removing this sign at the present time, however, if the city does pursue or attempts to tear this sign down, I will be forced to obtain at least a temporary restraining order until such time as all the facts and circumstances are known.

This sign has been in place for thirty-five (35) years and it seems to me that any such destruction of this sign on April 28 1986, would be ridiculous.

I shall look forward to hearing from you on this matter further.

With kindest regards, I remain

Yours very truly,



KENNETH L MITCHUM

KLM bl:



cc David and Carol Ashenfelder, 600 Church St , Georgetown, S C 29440

SYLVAN ROSEN
MEYER ROSEN
JACK M. SCOVILLE JR.
LISA A. NINON

LAW OFFICES
ROSEN, ROSEN AND SCOVILLE
P O BOX 404 GEORGETOWN S C 29440
557

June 25, 1986

TELEPHO
546 11
546-11

Mr P J Doyle
Attorney at Law
PO Box 404
Georgetown, S C , 29442

RE Wolfgang Nelson City of Georgetown

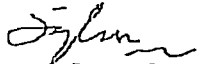
Dear James

We have finally received a response from the Highway Department regarding the above matter, a copy of which is enclosed. Said letter clearly indicates that the sign is not in the Highway right of way, for which reason it is my view that the City has jurisdiction of the matter, and that it would be in order to put Georgetownian Motel on notice, as was heretofore done, to remove the sign or, in the alternative, that the City would have it removed.

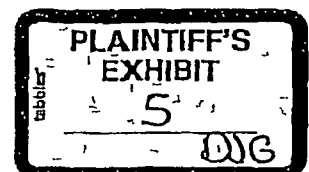
With kindest regards, we remain,

Sincerely,

ROSEN ROSEN & SCOVILLE


By Sylvan L. Rosen

SLR rm
enc





SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
ENGINEERING DISTRICT NO 5
DRAWER 1911
FLORENCE S C 29503
June 17, 1986

Mr Sylvan L Rosen
P O Box 557
Georgetown, S C 29440

Dear Mr Roser,

This is in reference to your Mar 2, 1986 letter to McRaney Fulmer concerning an outdoor advertising sign which is located in the City of Georgetown along US Route 17 This sign is permitted to the Georgetownian Motel

An investigation has been made and it has been determined that this sign is located adjacent to but not on the Department's right of way

If you have any questions concerning this matter, please contact me at the District Office in Florence at 669-1991

Yours Very Truly,


A P Catoe
District Engineering Administrator

D. E. P. & W. Inc.
INVESTMENTS & MORTGAGE LOANS

Corner of Prince & Dozier Sts

P O Box 190

Georgetown, S C
29440

Phone 546-6184

November 7, 1995

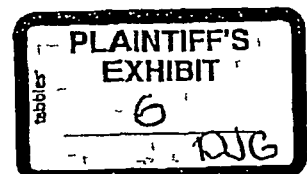
David Ashenfelder
Wedgefield #39
Georgetown SC 29440

Dear Mr Ashenfelder

I'm writing in reference to the billboard sign which is located on my property on Church St. It seems there has been a misunderstanding about who owns the sign. The sign was on my property when I purchased it. By law I own the sign, and if there is any disagreement about this issue please respond within 10 days to P O Box 190 Georgetown, SC 29442, or call 546-6184.

Sincerely

P Douglas Green / *Thy*
P Douglas Green
President



OFFICE OF CITY ATTORNEY

City of Georgetown

P O BOX 404

Georgetown, S. C. 29440

PATRICK J DOYLE
CITY ATTORNEY



October 20, 1986

Kenneth L Mitchum, Esquire
P O Box 436
Georgetown, South Carolina

Re Georgetownian Motel sign, Church Street

Dear Kenny

For your files, I enclose a copy of letter to Sylvan L Rosen, Esquire, who represents Burger King. The letter is in response to his letter to the Highway Department concerning whether or not the Georgetownian Motel sign is within the Highway Department right-of-way. Clearly by the terms of this letter, you can see that the sign is not within the highway right-of-way.

Under these circumstances it will be appreciated if you will within the next 30 days, have your client remove the sign from the City property now leased to Burger King.

I might add that the latest plat also confirms the fact that the sign is on City property.

In the meantime, if you have any questions concerning this problem, please so advise.

With kind regards

Yours very truly

Patrick J Doyle

PJD/sab

Enclosure

cc Sylvan L Rosen,
Attorney for Burger King

Mitch Sizemore,
City Administrator



SYLVAN ROSEN
MYER ROSEN
JACK M. SCOVILLE JR.
LISA A. KINON

ROSEN, ROSEN AND SCOVILLE
P O BOX 557 GEORGETOWN S C, 29440
557

June 25, 1986

TELEPHONE
546-4111
546-4111

Mr P J Doyle
Attorney at Law
PO Box 404
Georgetown, S C , 29442

RE Wolfgang Nelson - City of Georgetown

Dear James

We have finally received a response from the Highway Department regarding the above matter, a copy of which is enclosed. Said letter clearly indicates that the sign is not in the Highway right of way, for which reason it is my view that the City has jurisdiction of the matter, and that it would be in order to put Georgetownian Motel on notice, as was heretofore done, to remove the sign or, in the alternative, that the City would have it removed.

With kindest regards, we remain,

Sincerely,

ROSEN, ROSEN & SCOVILLE


By Sylvan L. Rosen

SLR rm
enc



SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
ENGINEERING DISTRICT NO 5
DRAWER 1911
FLORENCE S C 29503
June 17, 1986

Mr Sylvan L Rosen
P O Box 557
Georgetown, S C 29440

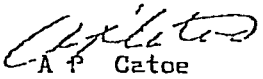
Dear Mr Roser,

This is in reference to your May 2, 1986 letter to McRaney Pulmer concerning an outdoor advertising sign which is located in the City of Georgetown along US Route 17 This sign is permitted to the Georgetownian Motel

An investigation has been made and it has been determined that this sign is located adjacent to but not on the Department's right of way

If you have any questions concerning this matter, please contact me at the District Office in Florence at 669-1991

Yours Very Truly,


A P Gatoe
District Engineering Administrator

February 6, 1990

Dave Ashenfelter
532 Church St
Georgetown, SC 29440

Dear Mr. Ashenfelter

I'm writing in reference to the letter that you left with my secretary, which was from Mr. Doyle City Attorney

Since the letter was left, I obtained a copy, which I am enclosing, of the original letter Mr. Doyle had wrote. It seems that the letter you sent to me had some information left out of it. Some important information I might add.

After the letter was obtained my secretary spoke to Pat Gregory, with the city in which she gave copies of both letters to.

I am now giving you 30 days from the date of this letter to remove the sign on the property or to call my office to arrange a rental agreement or further action will be taken.

If you should have any questions you can call, and speak with my secretary at 546-6184.

Sincerely

P Douglas Green
P Douglas Green



February 22, 1996

P Douglas Green
913 Church Street
P O Box 190
Georgetown S C 29440

Dear Mr Green

I am writing in response to your letter dated 2/6/96

You are requesting me to remove or rent my sign that is advertising Winyah Bay Outfitters, from property that does not belong to you

When Burger King originally bought that corner lot in 1985 they could not meet the parking space requirements by the city. In order to build they had to get a lease from the City on the lot that is adjacent to yours, on which my sign is located

On the day I left the letter from Mr Doyle City Attorney with your secretary I also left a map indicating where my sign is located according to the survey stakes that marked the property lines for Burger King. The letter indicated that the sign

- 1 Was not within the Highway right-of-way (That being Highway 17)
- 2 That the sign was on City property
- 3 That the property from the City was leased to Burger King.

I also have a letter dated April 7 1986 indicating that the sign is on a public right of way adjacent to the new Burger King. According to the letter "A recent survey confirmed the encroachment of this structure into the right-of-way"

It is not my intention to deny you anything that rightfully belongs to you. However, my sign is not located on the property that you purchased from a tax sale. It does in fact, belong to the City and is leased from the City to Burger King.

If you feel further communication is necessary please feel free to contact me at 546-1042 or 532 Church Street

Sincerely,

David Ashenfelder



JADE INNS, INC
135 Pleasant Woods Rd
Piedmont, SC 29673
(864) 845 9793

Mr Boyd Johnson
P O Drawer 939
Georgetown SC 29140

Dear Mr Johnson

I spoke with Gerald Freeman regarding the billboard that we own located adjacent to Burger King. In talking with Gerald he told me the sign had been damaged on or about 1-13-03 by a juvenile that had stolen a truck and in the process of being pursued ran into our billboard as well as Burger King's dumpster area doing quite a bit of damage. Gerald also informed me that he had instructed the City Maintenance Dept to remove the remaining part of the sign that was left standing. I asked Gerald about putting the sign back up and he suggested that I write a letter to you with my request. Gerald did explain that the billboard was in a non-conforming area by zoning regulations.

I would like to make a couple of observations and try to explain my position and then submit them to you for consideration.

- 1 We (Jade Inns Inc.) have owned that billboard for approximately 30 years.
- 2 We have maintained it and kept the area around it maintained for that period of time.
- 3 Jade Inns Inc has paid taxes to the City and I just sent another check for \$2500 for current taxes.
- 4 It was off the highway far enough that it did not obstruct the view of traffic coming from either direction.
- 5 The sign has been there longer than any of the other signage on that corner.
- 6 It in no way impedes or restricts any traffic since Burger King paved that road.
- 7 I have never seen any overflow parking from Burger King in that area.
- 8 It was my understanding that included in the non-conforming zoning clause that if the property were damaged and not completely destroyed it could be repaired. The police report indicates that only 2 of the 5 poles had been hit by the vehicle as it left the road.

On a personal basis I am retired and the billboard has been a substantial part of our income. It was leased to Randy Jones from the Litchfield Co currently and previously to Ken Altman with New York Life Insurance Co. It provided \$7800 a year in income. As I have been self employed most of my life the income from this sign has been planned over the years to help us get through our retirement so we are dependant on this to live on and at age 66 it would be almost impossible to replace that kind of income.

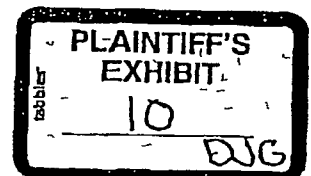
I hope these observations will be helpful in the decision process and it is my desire to replace the billboard as soon as possible.

Thank you for your consideration. I look forward to your soon response.

Sincerely,

W David Ashenfelder

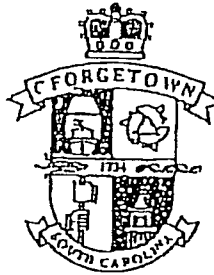
W David Ashenfelder



MAYOR
LYNN WOOD WILSON

ADMINISTRATOR
L BOYD JOHNSON

CITY CLERK
ANN U MERCER



COUNCIL MEMBERS
BRENDON M BARBI
JOHN P GRIMES
PAIGE B SAWYER II
CLARENCE C SHAL
LENORA F WALTER
PEGGY P WAYNE

City of Georgetown

EXECUTIVE OFFICES
(843) 545 4001

March 27 2003

Mr W David Ashenfelder
Jade Inns, Inc
135 Pleasant Woods Road
Piedmont, SC 29673

Subject Billboard

Dear Mr Ashenfelder

I am sorry it took so long to respond to your letter regarding a billboard recently destroyed. We cannot permit this billboard to be replaced as it was located in public property. It is my understanding that you had no lease arrangement for the sign to be on this property. Additionally, it is my understanding from Mr Gerald Freeman that a billboard on this site would not meet certain zoning requirements, such as required spacing. You need to find a new location on private property that meets our zoning requirements in order to erect a new billboard.

I realize you will be disappointed with this information, but it is the only position the City can take.

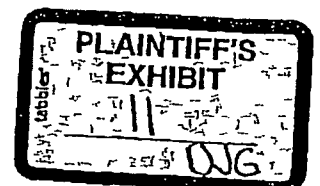
Sincerely,

L. Boyd Johnson
City Administrator

cc - Mr Gerald Freeman Building & Planning Director



DRAWER 939
Georgetown SC 29442
364



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

LEASE AGREEMENT

THIS AGREEMENT made and concluded by and between the City of Georgetown South Carolina a body politic under the laws of South Carolina hereinafter called LESSOR and Wolfgang K. Nelson of Myrtle Beach South Carolina hereinafter styled LESSEE

WITNESSETH

That the City of Georgetown may want to and in compliance with Ordinance enacted on July 25, 1985, a copy of which is hereto attached is a part and parcel hereof and LESSEE'S compliance with the terms and conditions thereof has and by these presents does demise and lease unto Wolfgang K. Nelson his heirs and assigns, the following described property to wit

A strip of land on the south side of a portion of Church Street between Highway 17 and Bonds Alley abutting the property of Wolfgang K. Nelson measuring in width ten (10) feet for a length of two hundred twelve and sixty-four one hundredths (212.64) feet is more particularly shown on sketch thereof hereto attached as a part and parcel hereof

for a period of forty (40) years commencing the 1st day of November 1985 and continuing through October 31, 2025

That the LESSEE in consideration of the above letten premises for the term set forth above has and by these presents does agree to comply in all respects with the provisions of said Ordinance attached hereto and made a part and parcel hereof

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS

- 1 That, subject to the provisions of said Ordinance the LESSEE may transfer set-over and assign the within lease
- 2 That LESSEE shall have and is hereby given 30 days within which to comply with paragraph (a) of said Ordinance

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals in duplicate this 8th day of November 1985

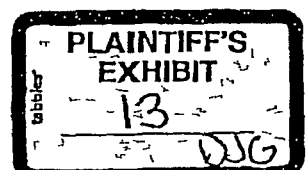
IN THE PRESENCE OF

Paul L. Hinds
John H. Goss
Clayton A. Brown
William L. Boren

CITY OF GEORGETOWN

BY *Paul L. Hinds* (SEAL)
Douglas L. Hinds, Mayor, LESSOR

ATTEST *Wolfgang K. Nelson*
Clerk
Wolfgang K. Nelson (LESSEE)



AN ORDINANCE TO AUTHORIZE LEASING OF A PORTION
OF CHURCH STREET, BETWEEN U S HIGHWAY 17
AND BONDS ALLEY, FOR PRIVATE PARKING BY
WOLFGANG K NELSON, HIS HEIRS OR ASSIGNS,
UPON COMPLIANCE BY HIM WITH CERTAIN CONDITIONS,
FOR A PERIOD OF 40 YEARS

WHEREAS, Wolfgang K Nelson, of Myrtle Beach, South Carolina, owns a parcel of land in Georgetown, S C located between U S Highway 17 and that portion of Church Street between said Highway 17 and Bonds Alley, on which his property abutts, and on which he anticipates construction of a fast food service business under the "Burger King" franchise, and, in connection with the development of said property for the operation of said business, additional parking space incident thereto is needed, and,

WHEREAS, That portion of Church Street between U S Highway 17 and Bonds Alley is not paved nor otherwise improved, and on which there is limited motor vehicular traffic and,

WHEREAS, Wolfgang K Nelson has offered to pave said portion of Church Street in its entirety, and curb the north and south sides thereof, for use of a portion thereof as a parking area in connection with the operation of the above mentioned fast food business, and,

WHEREAS, the improvement of said portion of Church Street, by pavement thereof and installation of curbs would benefit the City in that it will up-grade said portion of the street for motor vehicular traffic, improve drainage, and minimize, reduce or eliminate the City's maintenance problems in connection therewith, and,

WHEREAS, the portion of said street needed for parking as above described measures ten (10) feet in width and extends along the southern boundary, adjacent to the property of the said Wolfgang K Nelson for a distance of 212 64 feet

NOW, THEREFORE BE IT ENACTED BY THE CITY OF GEORGETOWN, SOUTH CAROLINA -

1 That the City of Georgetown be and is hereby authorized and directed to make, execute and deliver to Wolfgang K Nelson, his heirs and assigns, a lease of the following described portion of Church Street, between U S Highway 17 and Bonds Alley, to wit

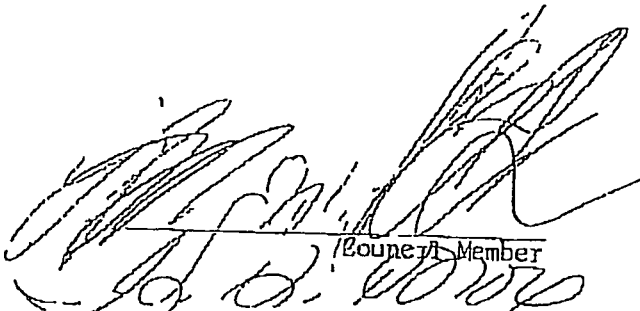
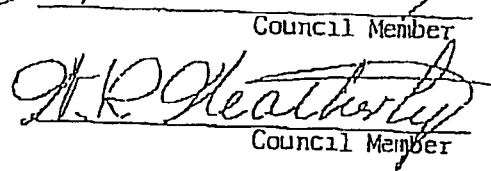
A strip of land on the south side of said portion of Church Street, abutting the property of the said Wolfgang K Nelson, measuring in width ten (10) feet for a length of two hundred twelve and sixty-four one hundredths (212 64) feet, as is more particularly shown on sketch thereof hereto attached as a part and parcel hereof

for a period of forty (40) years, upon compliance by Wolfgang K Nelson, hereinafter styled LESSEE, with the following conditions

- (a) That the LESSEE will pave the entire width of Church Street between U S Highway 17 and Bonds Alley, equal to or better than the specifications for paving of the South Carolina Department of Highways & Public Transportation,
- (b) That LESSEE will maintain said portion of Church Street during the period of said lease, including the repairs made to City water and sewer lines below the surface of said street, and that said provision shall be incorporated in the contemplated lease,
- (c) That the LESSEE will leave unobstructed for public motor vehicular traffic a portion of said street measuring in width not less than eighteen (18) feet,
- (d) That said lease agreement shall contain a reservation on the part of the City of Georgetown to maintain the water and sewer lines situate below the surface of said street,
- (e) That the said lease agreement shall provide for termination thereof upon abandonment or discontinuance of LESSEE'S business operation, as hereinabove described, or failure on the part of LESSEE to comply with one or more of the conditions hereinabove set forth

(F) That said lease agreement shall be
executed on the part of the City of
Georgetown by its Mayor, or in his absence
by the Mayor Protem, and attested by the
City Clerk

PASSID in Council Meeting duly assembled on the 25th day of
July, 1985

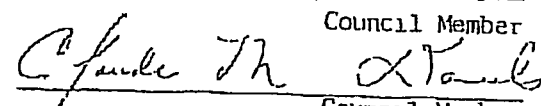

Council Member

Council Member

Council Member


Douglas L. Hanks, Mayor

ATTEST 
Clerk


Council Member


Council Member

Council Member

FIRST READING 06/20/85

SECOND READING 07/25/85

" 600/1111111

4716-B Northgate Blvd
Myrtle Beach, SC

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
AGREEMENT BETWEEN OWNER OF BILLBOARD 29377
AND ADVERTISER GRANTING RIGHT TO
EXHIBIT ADVERTISEMENT

1999

Agreement made this 1st day of August 1997, between WARREN
DAVID ASHENFELDER of Georgetown, South Carolina, hereinafter called the
owner, and Syd i luthers of
Georgetown, South Carolina, hereinafter called the advertiser

It is mutually agreed that the owner will let and the advertiser
will take the exclusive right of fixing and exhibiting on the front of
the Billboard located on the lot next to the Burger King in Georgetown,
South Carolina, an advertisement complying with all applicable
restrictions and codes, and also the right to connect the said lamps
with the street electric main cable through the said premises by all
convenient ways and means with all necessary switchboards, meters, and
clockwork machinery upon the terms and conditions following

1 Duration This agreement shall remain in full force for the
term of twelve (12) months The lease term shall commence on September
1, 1997 unless previously determined as hereinafter provided

2 Liberty to Enter The advertiser shall be at liberty
forthwith to enter into and upon the said premises with workmen and all
necessary appliances and to fix the said advertisement and also all
necessary electric wires, switchboards, meters, clockwork machinery,
and other things reasonably necessary for making the said advertisement
effective all which work shall be done by and at the sole expense of
the advertiser

3030 S Island Rd
29440

546-0464
369



3 Work to be Done in Certain Period and Hours All such work as aforesaid shall be done between the hours of 7 00 a m and 7 00 p m No damage whatsoever shall be done to the said premises, other than is necessary for fixing the said advertisement electric wires, switchboards, meters, machinery, and things aforesaid, and all damage so done shall be made good within the time aforesaid by and at the expense of the advertiser

4 Rent. The advertiser shall pay to the owner the monthly sum of Six Hundred ~~Eighty~~ ^{Two.00} and 00/100 (~~\$658.00~~) Dollars (hereinafter called the rent) for the privileges aforesaid during the continuance of this agreement payable in advance the first of such payments being made on the signing of these presents and all subsequent payments to be made on the first day of each calendar month

5 Payment for Electricity The advertiser shall pay all sums that may become due to the electric light company for electric energy supplied to the said lamps and shall keep the owner indemnified against being called on to pay the same

6 Owner to Switch Electricity On and Off The owner will at his own expense cause the electric energy to be switched onto the said advertisement

7 Liberty to Enter Premises for Repairs The advertiser shall have the right at all reasonable times during the day to enter into and upon the said premises for the purpose of repairing, inspecting or testing the said lamps and the electric and clockwork fittings in connection with the same, and of doing all work necessary for maintaining the same in a state of efficiency, all of which shall be

done at his sole expense.

8 Rights on Termination of Contract On the termination of this agreement, the electric wiring of the said premises in relation to the said necessary equipment of wires, lights, supports, and all things necessary for advertisement and the switchboard in connection therewith shall become the property of the owner, but the said advertisement and the lamps and clockwork machinery used in connection therewith shall remain the property of the advertiser and shall be removed by him within fourteen days, advertiser making good all damage done to the said premises in consequence of such removal. If from any cause such removal shall not be effected within the time aforesaid the said rent shall continue to be payable until such removal shall be effected. The time fixed for the removal of the appliances and equipment in connection with the installation, maintenance, and operation of said advertising is of the essence of this agreement, and in the event of any failure on the part of the advertiser to remove the same, or any party thereof, within such time, such equipment or appliances remaining unremoved shall become the exclusive property of the owner.

9 Abatement in Rent for Interruption If at any time during the continuance of this agreement the said advertisement should temporarily cease to be exhibited by the owner for any reasonable cause (such as any part of the said premises requiring to be repaired, and the execution of such repairs necessitating the temporary removal or obscuration of the said advertisement), then and in every such case the owner will make a proportionate abatement in the said rent during such time as such exhibition shall be impeded, which abatement the

advertiser shall accept without making any further claim Save as above no abatement shall be made

10 Termination of Agreement This agreement may be terminated by either of the parties giving to the other one calendar month's notice in writing expiring on the first day of any calendar month Such notice may be sent through the post addressed to the last known place of abode or business of the party to whom it is given This agreement may also be terminated in like manner at any time if the exhibition of the said advertisement shall be prohibited by any lawfully constituted authority

11 Right to Terminate This Agreement, if Default If the advertiser shall fail to pay the said rent within days after the same shall from time to time become due, or if he shall not on demand pay any other moneys hereby made payable by him, or if he shall fail to perform or observe any of the stipulations on his part herein contained, it shall be lawful for the owner to terminate this agreement without any notice to the advertiser, without prejudice to any claims which the owner may have against the advertiser under the stipulations aforesaid or any of them, and thereupon the rights of the parties shall be the same as if the said period of twelve (12) months had expired and this agreement had been duly terminated by notice under paragraph 10

12. Option of Advertiser to Renew Lease Advertiser shall have the option to renew this lease for a period of thirty-six (36) months, from the date of expiration upon the same terms and conditions, by giving to the owner written notice of his intention to exercise said option at least thirty (30) days prior to the expiration date hereof

13 Option to Terminate upon Erection of Obstruction. If during the term of this agreement, any billboard, sign, fence, building, or addition to any building, or any other similar or dissimilar structure shall be erected upon any adjoining land or premises, of such a height and in such a position as to obstruct the view from the street or highway of the advertisement or sign of the advertiser as above provided, then the said advertiser shall have the right to cancel this agreement by giving to the owner thirty (30) days' written notice of the intention to do so

IN WITNESS WHEREOF, we have hereunto set our hands and seals this the 12th day of August 1999

IN THE PRESENCE OF

Bonnie M. Bumgardner
Shirley M. Hutcherson
As to Owner

Warren David Ashenfelder
Owner Warren David Ashenfelder

Sept. 1, 1999
Sept. 1, 1999
As to Advertiser

By Gudy B. Long
Title Owner

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
AGREEMENT BETWEEN OWNER OF BILLBOARD
AND ADVERTISER GRANTING RIGHT TO
EXHIBIT ADVERTISEMENT

Agreement made this 30th day of ~~December~~ ^{January}, between WARREN
DAVID ASHENFELDER of Georgetown, South Carolina, hereinafter called the
owner, and ISLAND ADVENTURES LLC
Georgetown, South Carolina, hereinafter called the advertiser

It is mutually agreed that the owner will let and the advertiser
will take the exclusive right of fixing and exhibiting on the front of
the Billboard located on the lot next to the Burger King in Georgetown,
South Carolina, an advertisement complying with all applicable
restrictions and codes, and also the right to connect the said lamps
with the street electric main cable through the said premises by all
convenient ways and means with all necessary switchboards, meters, and
clockwork machinery upon the terms and conditions following.

1 Duration This agreement shall remain in full force for the
term of twelve (12) months The lease term shall commence on ~~September~~ ^{January}
1, ~~1999~~ ²⁰⁰² unless previously determined as hereinafter provided

2 Liberty to Enter The advertiser shall be at liberty
forthwith to enter into and upon the said premises with workmen and all
necessary appliances and to fix the said advertisement and also all
necessary electric wires, switchboards, meters, clockwork machinery,
and other things reasonably necessary for making the said advertisement
effective all which work shall be done by and at the sole expense of
the advertiser

Warren David Ashenfelder
~~3030 S Island Rd~~
~~Georgetown S.C. 29440~~
135 Pleasant Woods Rd
And a unit SP 29673

~~546-6464~~
864-845-9793
843-240-0957 cell phone



3 Work to be Done in Certain Period and Hours All such work as aforesaid shall be done between the hours of 7 00 a m and 7 00 p m No damage whatsoever shall be done to the said premises, other than is necessary for fixing the said advertisement electric wires, switchboards, meters, machinery, and things aforesaid, and all damage so done shall be made good within the time aforesaid by and at the expense of the advertiser.

4 Rent. The advertiser shall pay to the owner the monthly sum of Six hundred Fifty and 00/100 (\$650.00) Dollars (hereinafter called the rent) for the privileges aforesaid during the continuance of this agreement payable in advance the first of such payments being made on the signing of these presents and all subsequent payments to be made on the first day of each calendar month

5 Payment for Electricity. The advertiser shall pay all sums that may become due to the electric light company for electric energy supplied to the said lamps and shall keep the owner indemnified against being called on to pay the same

6 Owner to Switch Electricity On and Off. The owner will at his own expense cause the electric energy to be switched onto the said advertisement

7 Liberty to Enter Premises for Repairs The advertiser shall have the right at all reasonable times during the day to enter into and upon the said premises for the purpose of repairing, inspecting or testing the said lamps and the electric and clockwork fittings in connection with the same, and of doing all work necessary for maintaining the same in a state of efficiency, all of which shall be

done at his sole expense

8. Rights on Termination of Contract On the termination of this agreement, the electric wiring of the said premises in relation to the said necessary equipment of wires, lights, supports, and all things necessary for advertisement and the switchboard in connection therewith shall become the property of the owner, but the said advertisement and the lamps and clockwork machinery used in connection therewith shall remain the property of the advertiser and shall be removed by him within fourteen days, advertiser making good all damage done to the said premises in consequence of such removal. If from any cause such removal shall not be effected within the time aforesaid the said rent shall continue to be payable until such removal shall be effected. The time fixed for the removal of the appliances and equipment in connection with the installation, maintenance, and operation of said advertising is of the essence of this agreement, and in the event of any failure on the part of the advertiser to remove the same, or any party thereof, within such time, such equipment or appliances remaining unremoved shall become the exclusive property of the owner.

9 Abatement in Rent for Interruption If at any time during the continuance of this agreement the said advertisement should temporarily cease to be exhibited by the owner for any reasonable cause (such as any part of the said premises requiring to be repaired, and the execution of such repairs necessitating the temporary removal or obscuration of the said advertisement), then and in every such case the owner will make a proportionate abatement in the said rent during such time as such exhibition shall be impeded, which abatement the

advertiser shall accept without making any further claim. Save as above no abatement shall be made

10 Termination of Agreement. This agreement may be terminated by either of the parties giving to the other one calendar month's notice in writing expiring on the first day of any calendar month. Such notice may be sent through the post addressed to the last known place of abode or business of the party to whom it is given. This agreement may also be terminated in like manner at any time if the exhibition of the said advertisement shall be prohibited by any lawfully constituted authority.

11. Right to Terminate This Agreement, if Default. If the advertiser shall fail to pay the said rent within _____ days after the same shall from time to time become due, or if he shall not on demand pay any other moneys hereby made payable by him, or if he shall fail to perform or observe any of the stipulations on his part herein contained, it shall be lawful for the owner to terminate this agreement without any notice to the advertiser, without prejudice to any claims which the owner may have against the advertiser under the stipulations aforesaid or any of them, and thereupon the rights of the parties shall be the same as if the said period of twelve (12) months had expired and this agreement had been duly terminated by notice under paragraph 10.

12. Option of Advertiser to Renew Lease. Advertiser shall have the option to renew this lease for a period of thirty-six (36) months, from the date of expiration upon the same terms and conditions, by giving to the owner written notice of his intention to exercise said option at least thirty (30) days prior to the expiration date hereof.

13. Option to Terminate upon Erection of Obstruction. If during the term of this agreement, any billboard, sign, fence, building, or addition to any building, or any other similar or dissimilar structure shall be erected upon any adjoining land or premises, of such a height and in such a position as to obstruct the view from the street or highway of the advertisement or sign of the advertiser as above provided, then the said advertiser shall have the right to cancel this agreement by giving to the owner thirty (30) days' written notice of the intention to do so

IN WITNESS WHEREOF, we have hereunto set our hands and seals this
the day of

IN THE PRESENCE OF:
Erica D. Ward
Kendra Wilson
As to Owner

Warren David Ashenfelter
Warren David Ashenfelter
Owner

Kelly T. Mann
Erica D. Ward
As to Advertiser

By [Signature]
Title Owner

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
AGREEMENT BETWEEN OWNER OF BILLBOARD
AND ADVERTISER GRANTING RIGHT TO
EXHIBIT ADVERTISEMENT

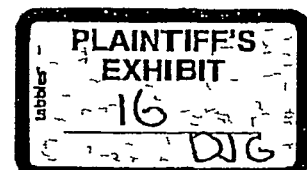
Agreement made this , st day of JANUARY 2007, between WARREN DAVID ASHENFELDER of Georgetown, South Carolina, hereinafter called the owner, and *Randy Jones of The Litchfield Co of Pawleys Island* Georgetown, South Carolina, hereinafter called the advertiser.

It is mutually agreed that the owner will let and the advertiser will take the exclusive right of fixing and exhibiting on the front of the Billboard located on the lot next to the Burger King in Georgetown, South Carolina, an advertisement complying with all applicable restrictions and codes, and also the right to connect the said lamps with the street electric main cable through the said premises by all convenient ways and means with all necessary switchboards, meters, and clockwork machinery upon the terms and conditions following

1 Duration This agreement shall remain in full force for the term of twelve (12) months The lease term shall commence on -

unless previously determined as hereinafter provided.

2 Liberty to Enter The advertiser shall be at liberty forthwith to enter into and upon the said premises with workmen and all necessary appliances and to fix the said advertisement and also all necessary electric wires, switchboards, meters, clockwork machinery, and other things reasonably necessary for making the said advertisement effective all which work shall be done by and at the sole expense of the advertiser



3 Work to be Done in Certain Period and Hours All such work as aforesaid shall be done between the hours of 7 00 a m and 7 00 p m No damage whatsoever shall be done to the said premises, other than is necessary for fixing the said advertisement electric wires, switchboards, meters, machinery, and things aforesaid, and all damage so done shall be made good within the time aforesaid by and at the expense of the advertiser

4 Rent. The advertiser shall pay to the owner the monthly sum of ~~Seven~~ Hundred Fifty and 00/100 (~~\$750.00~~) Dollars (hereinafter called the rent) for the privileges aforesaid during the continuance of this agreement payable in advance the first of such payments being made on the signing of these presents and all subsequent payments to be made on the first day of each calendar month

5 Payment for Electricity The advertiser shall pay all sums that may become due to the electric light company for electric energy supplied to the said lamps and shall keep the owner indemnified against being called on to pay the same

6 Owner to Switch Electricity On and Off. The owner will at his own expense cause the electric energy to be switched onto the said advertisement

7 Liberty to Enter Premises for Repairs The advertiser shall have the right at all reasonable times during the day to enter into and upon the said premises for the purpose of repairing, inspecting or testing the said lamps and the electric and clockwork fittings in connection with the same, and of doing all work necessary for maintaining the same in a state of efficiency, all of which shall be

done at his sole expense

8. Rights on Termination of Contract On the termination of this agreement, the electric wiring of the said premises in relation to the said necessary equipment of wires, lights, supports, and all things necessary for advertisement and the switchboard in connection therewith shall become the property of the owner, but the said advertisement and the lamps and clockwork machinery used in connection therewith shall remain the property of the advertiser and shall be removed by him within fourteen days, advertiser making good all damage done to the said premises in consequence of such removal. If from any cause such removal shall not be effected within the time aforesaid the said rent shall continue to be payable until such removal shall be effected. The time fixed for the removal of the appliances and equipment in connection with the installation, maintenance, and operation of said advertising is of the essence of this agreement, and in the event of any failure on the part of the advertiser to remove the same, or any party thereof, within such time, such equipment or appliances remaining unremoved shall become the exclusive property of the owner.

9 Abatement in Rent for Interruption If at any time during the continuance of this agreement the said advertisement should temporarily cease to be exhibited by the owner for any reasonable cause (such as any part of the said premises requiring to be repaired, and the execution of such repairs necessitating the temporary removal or obscuration of the said advertisement), then and in every such case the owner will make a proportionate abatement in the said rent during such time as such exhibition shall be impeded, which abatement the

advertiser shall accept without making any further claim Save as above no abatement shall be made

10 Termination of Agreement. This agreement may be terminated by either of the parties giving to the other one calendar month's notice in writing expiring on the first day of any calendar month Such notice may be sent through the post addressed to the last known place of abode or business of the party to whom it is given This agreement may also be terminated in like manner at any time if the exhibition of the said advertisement shall be prohibited by any lawfully constituted authority

11 Right to Terminate This Agreement, if Default. If the advertiser shall fail to pay the said rent within days after the same shall from time to time become due, or if he shall not on demand pay any other moneys hereby made payable by him, or if he shall fail to perform or observe any of the stipulations on his part herein contained, it shall be lawful for the owner to terminate this agreement without any notice to the advertiser, without prejudice to any claims which the owner may have against the advertiser under the stipulations aforesaid or any of them, and thereupon the rights of the parties shall be the same as if the said period of twelve (12) months had expired and this agreement had been duly terminated by notice under paragraph 10

12. Option of Advertiser to Renew Lease Advertiser shall have the option to renew this lease for a period of thirty-six (36) months, from the date of expiration upon the same terms and conditions, by giving to the owner written notice of his intention to exercise said option at least thirty (30) days prior to the expiration date hereof

13 Option to Terminate upon Erection of Obstruction. If during the term of this agreement, any billboard, sign, fence, building, or addition to any building, or any other similar or dissimilar structure shall be erected upon any adjoining land or premises, of such a height and in such a position as to obstruct the view from the street or highway of the advertisement or sign of the advertiser as above provided, then the said advertiser shall have the right to cancel this agreement by giving to the owner thirty (30) days' written notice of the intention to do so

IN WITNESS WHEREOF, we have hereunto set our hands and seals this the 1st day of January 2003

IN THE PRESENCE OF

David Ashenfelder

As to Owner

Warren David Ashenfelder
Owner

Randall L Jones

As to Advertiser

By
Title

THE Litchfield Company
Pawleys PLANTATION

April Gardner
237-4000



WINNING PROPERTIES • WINNING LIFESTYLES

Randy Jones

237-5050



THE
Litchfield
C O M P A N Y

LLC
Royce King, BIC

PAWLEYS ISLAND



SOUTH CAROLINA

14240 Ocean Highway 17 PO Box 97 Pawleys Island, SC 29585 843.237.4000 Toll Free 1 800 476.2861 Fax 843.237.9509
Royce King, BIC www.thelitchfieldcompany.com

Developers of Willbrook Plantation Litchfield Country Club River Club
Pawleys Retreat Litchfield By The Sea Inlet Point South Commerce Cove The Reserve

4425 S H Oaks Dr
#1 rib Ch Irvine, CA
Phon (043) 710 7700

GREGORY F CUNNINGHAM

SCPLS No 17974



(מוסיקה)
1 שעה 15 דקות

SCALE 1 = 20

PLAINTIFF'S
EXHIBIT "A"

SKETCH
SHOWING 1 LOT AT THE INTERSECTION OF
CHUCH STREET AND US HIGHWAY 17
PREPARED FOR
DAVID ASHENFELDER
LOCATED IN THE CITY OF GFORGETOWN
GEORGETOWN COUNTY
SOUTH CAROLINA

07961

BOOK 356 PAGE 176

CERTIFIED A TRUE
AND CORRECT COPYWanda C. Gressett
REGISTER OF DEEDS
GEORGETOWN COUNTY S.C.STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

TAX SALE DEED

Pursuant to a tax execution(s) issued on June 20, 1988 and as provided by Chapter 81 of Title 12 of the South Carolina Code of Laws the below described real property was seized levied upon and sold for nonpayment of property taxes

That parcel lot or tract of land, together with improvements thereon situate lying and being
Fraser Alley & Church

The property is further identified upon the county's tax records by district # 05
map # 19 and parcel # 41

The property was acquired by the defaulting taxpayer by deed of Anna D. Reuben that is recorded in Deed Book Probate Estate at p. 8858522109

The required advertisements of the sale of the property were made in the Georgetown Times on September 14, 1988, September 21, 1988 and September 28, 1988

The property was thereafter sold on October 3, 1988 a legal sales day at the Georgetown County Courthouse at public outcry to Doug Green

for the sum of \$ \$1,500.00 that being the highest bid

The name of the defaulting taxpayer was Wilhelmina R Cooke Etal, Lucy J Reuben Anna Marie Reuben, Odell R Reuben, Jr Jayne S Reuben, Je'Nica S Reuben Exclusive possession of the property was taken by mailing the notice required by Section 12 51-40(b) on _____ that was received by the defaulting taxpayer on _____ or by the posting of the notice as required by Section 12 51-40(c) at one or more conspicuous places on the property on June 20, 1988 If by the latter notices were posted by Mary Ann G. Tuttle, Delinquent Tax Collector, William A Olliffe, Assessor's Office

The taxes having not been paid and there being no redemption from the sale, the property is this 17th day of October 1988 hereby sold conveyed transferred and set over unto Doug Green his heirs and assigns.

SIGNED SEALED AND DELIVERED this 17th day of October 19 89

Mary Ann G. Tuttle
TAX COLLECTOR
GEORGETOWN County

WITNESSES

Shirley M Long
Mary Casanova

NOV 14 3 45 PM '89
BETTY L WILLIAMS
CLERK
GEORGETOWN COUNTY S.C.



title omitted

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF GEORGETOWN)

PERSONALLY appeared before me Shirley M. Long
and made oath that she saw the within named
Mary Ann G. Tuffin sign seal, and as her set
and deed deliver the within written Deed for the uses and purposes
therein mentioned and that he with [Signature]
witnesses the execution thereof

Shirley M. Long

Sworn to before me this 17th
day of October 1989

Betty L. Williams (L.S.)
Notary Public of South Carolina
My Commission Expires 12-12-1996



400
330
165
895
The State of South Carolina
COUNTY OF GEORGETOWN

Wilhelmina R. Cooke Etal

Tax Collector of Georgetown County
To

Doug Green
Post Office Box 190
Georgetown, S C 29442

TAX COLLECTOR
TAX DEED

FILED
BETTY L. WILLIAMS
CCCP&CS

Nov 14 3 45 PM '89

GEORGETOWN COUNTY S.C.

BOOK 356 PAGE 176

Cheryl M. Stone
Deputy CCP

1 lot TD-5

BOOK 356 PAGE 177

Recorded this 16th day of
November A.D. 1989

In Book 356 Page 176
Cheryl M. Stone
Auditor Georgetown Co. S.C.

COUNTY PARCEL # 5-19-41
1-30

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

PROBATE COURT

IN THE MATTER OF ESTATE OF PAUL DOUGLAS GREEN
CASE NUMBER 99 ES-22 96

CERTIFIED A TRUE
AND CORRECT COPY
Walter + 1 Children
RECEIVED DEEDS
GEORGETOWN COUNTY SC

DEED OF DISTRIBUTION

WHEREAS the decedent died on the 16th day of March 1999 and

WHEREAS the estate of the decedent is being administered in the Probate Court for Charleston County South Carolina in File # 89 ES 22 96 and

WHEREAS the grantee herein is either a beneficiary or heir at law, as appropriate of the decedent and

WHEREAS the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter and

NOW THEREFORE in accordance with the laws of the State of South Carolina the Personal Representative has granted bargained sold and released, and by these Presents does grant bargain sell and release to

Julie Parker Green (1/2)
Mary Gillian Rae Green (1/8)
Paul Douglas Parker Green (1/8)
Jonathon Tyler Green (1/8) and
Walter Geoffrey Green (1/8)

Address 6924 Bay Road
Myrtle Beach SC 29588

the following described property

See Exhibit A attached Hereto

GEORGETOWN COUNTY PARCEL # *See Page 254*
SP

Form 4400PC (1/00)
87-3-107 87-3-908

P 20102



Case Number 99 ES-22-096

TOGETHER with all and singular, the Rights Members Hereditaments and Appurtenances to the said Premises/Property belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said beneficiaries and heirs at law their heirs and assigns forever

IN WITNESS WHEREOF, the undersigned as Personal Representative of the estate of the decedent has executed this Deed this 22nd day of September 2004

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

Estate of
by Signature

Julia P. Green
Julia P. Green
Personal Representative

Witness

Beverly A. Patrick

Witness

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

}

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Personal Representative(s) sign, seal and as their act and deed deliver the within written Deed and that he/she with the other witness above witnessed the execution thereof

SWORN to before me this 22nd day of
September 2004

Witness Signature

Beverly A. Patrick

[Signature]
Notary Public for South Carolina
My Commission Expires 6/1/10

EXHIBIT A

Partial interest in and to all that certain piece, parcel or lot of land situate lying or being in the County of Georgetown State of South Carolina, and shown and designated as Tract B containing 218.9 acres on that certain plat recorded in the office of the Georgetown County Register of Deeds in Plat Book II, at page 75. Said lot having such size, shape, form, marks, courses, distances, buttings, and boundings as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed recorded in the office of the Georgetown County Register of Deeds in Book 223 at page 397.

TMS# 1-414 001

And Also

All that certain piece, parcel or lot of land situate lying or being in the County of Georgetown State of South Carolina, and shown and designated as on that certain plat of Belle Isle Subdivision made by RLS and recorded in the office of the Georgetown County Register of Deeds in Plat Book 9 at page 3. Said lot having such size, shape, form, marks, courses, distances, buttings, and boundings as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed recorded in the office of the Georgetown County Register of Deeds in Book 253 at page 7.

TMS# 1 107A-020

And Also

One half interest in and to all that certain piece, parcel or lot of land situate lying or being approximately 2.10 acres located in the County of Georgetown State of South Carolina, and shown and designated as on that certain plat recorded in the office of the Georgetown County Register of Deeds in Plat Book U at page 26. Said lot having such size, shape, form, marks, courses, distances, buttings and boundings as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed of Walter Green dated and recorded the office of the Georgetown County Register of Deeds in Book 221 at page 829

TMS# 5-11-011

And Also

All that certain pieces parcels or lots of land, situate, lying or being in the County of Georgetown, State of South Carolina, and shown and designated as on that certain plat recorded in the office of the Georgetown County Register of Deeds Said lot having such size shape form marks courses distances buttings and boundings as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed recorded the office of the Georgetown County Register of Deeds in Book at page

TMS# 1-413-005
1-413 008
1-413-006 1

And Also

All those certain pieces parcels or lots of land, situate, lying or being in the County of Georgetown, State of South Carolina, and shown and designated as on that certain plat recorded in the office of the Georgetown County Register of Deeds in Plat Book, at page. Said lot having such size, shape, form, marks, courses distances buttings, and boundings as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed recorded in the office of the Georgetown County Register of Deeds in Book 356 at page 172 Book 309 at page 223 and Book 315 at page 80

TMS# 03-100 170
03-100 299
03 100 325

And Also

All those certain pieces, parcels or lots of land, situate, lying or being in the County of Georgetown, State of South Carolina, and shown and designated as on that certain plat recorded in the office of the Georgetown County Register of Deeds in Plat Book at page. Said lot having such size, shape form, marks, courses distances buttings, and boundings

as will be shown by reference to the aforesaid plat.

Being the same property conveyed to Douglas Green by deed recorded the office of the Georgetown County Register of Deeds in Book 309 at page 215 and Book 356 at pages 164 and 190

TMS# 4 187B 016
4-188 061
4-188-061 2

And Also

All that certain piece, parcel or lot of land, situate, lying or being in the County of Georgetown, State of South Carolina, and shown and designated as on that certain plat recorded in the office of the Georgetown County Register of Deeds in Plat Book, at page Said lot having such size, shape, form, marks courses, distances buttings and boundings as will be shown by reference to the aforesaid plat

Being the same property conveyed to Douglas Green by deed dated and recorded in the office of the Georgetown County Register of Deeds in Book 245 at page 1372.

TMS# 5-019 041 burger kang

~~burger kang~~
Not burger kang

Wrong

GEORGETOWN COUNTY PARCEL # 1-414-1, 5-11-11, 1-413-5
1-413-8, 1-413-61, 3-100-170, 3-100-171
3-100-325, 4-187B-16, 4-188-61, 4-188-1
5-19-41

SPE

Various properties
- TD 1, 3, 4 & 5

000018516 09/22/2004 801562 P00254

#12309 m Lee Robertson, Jr

000018516 10 34:51AM
RECORDED 09/22/2004
Blk:01562 Pg:00249 Pages:16
Feet:12 00 State:0 00
County:10 00
Georgetown County, SC
Register of Deeds

EXEMPT

Wanda G. Grevatta

Paul Douglas Green, estate

to

Julie Parker Green
Mary Kellian Rae Green
Paul Douglas Parker Green
Jonathon Tyler Green
Walter Geoffrey Green

RECORDED ON THE 23rd DAY
OF September A.D. 2004
James H. Duncan, Deputy
AUDITOR, GEORGETOWN CO., SC

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)

TITLE TO REAL ESTATE

KNOW ALL PERSONS BY THESE PRESENTS THAT

JULIE PARKER GREEN, individually and as Special
 Conservator for Walter Geoffrey Dillon Green, Jonathan Tyler
 Green, Paul Douglas Parker Green and Mary Gillian Rae Green as
 Grantors, in the County and State aforesaid, for and in
 consideration of the sum of Thirty Two Thousand Dollars
 (\$32,000 00), in hand paid at or before the sealing of these
 presents by Lucien A Bruggeman, as Grantee in the County and
 State aforesaid, the receipt of which is hereby acknowledged,
 has granted, bargained, sold and released and by these
 presents does hereby grant, sell and release unto the said
 Grantee, his heirs and assigns, forever, the following described
 property

SEE EXHIBIT "A" ATTACHED HERETO

Grantees' Address

110 Hickory Hollow
 Cincinnati, OH 45241

000027294 04 49P
 RECORDED 12/13/2005
 Bk 01757 Pg 00174-Page 1
 Fee 12 00 State 183
 County 35 20
 Georgetown County, SC
 Register of Deeds

TOGETHER with all and singular, the rights, members,
 hereditament and appurtenances to the said Premises belonging,
 or in anywise incident or appertaining to the said property

CERTIFIED A TRUE
 AND CORRECT COPY

RECORDS SECTION
 GEORGETOWN COUNTY S.C.

GEORGETOWN COUNTY PARCEL # 5-19-141
 SPE



TO HAVE AND TO HOLD all and singular, the said Premises
before mentioned unto the said Grantee, his heirs and assigns
forever

AND, the Grantors do hereby bind themselves and their heirs
and assigns to warrant and forever defend the said Premises unto
the said Grantee and his heirs and assigns against the Grantors
themselves, their heirs and assigns

WITNESS the Hand and Seal of the Grantors this 9th day of
December 2005

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Janet Green Julie Parker Green
Julie Parker Green
individually and as Special
Conservator for Walter Geoffrey
Dillon Green

Regina Green

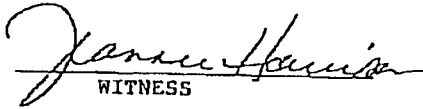
Jonathan Tyler Green
Jonathan Tyler Green

MARY Gillian Rae Green
Mary Gillian Rae Green

Paul Douglas Parker Green
Paul Douglas Parker Green

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposed and says that (s)he saw the within named Grantors, sign seal, and as their acts and deeds, deliver the within Deed and that (s)he with the other above-subscribed witness witnessed the execution thereof


WITNESS

SWORN TO BEFORE ME THIS
9th day of December, 2005

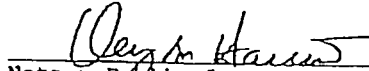

Notary Public for South Carolina
My Commission Expires 06-22-2010

EXHIBIT A

All that certain piece, parcel or lot of land, situate lying or being in the County of Georgetown, State of South Carolina, and shown and designated as an approximately one (1) acre parcel bounded by Church Street and Frazier Alley w/k/a Bond Street in the City of Georgetown. Said lot having such size shape form, marks courses distances buttings, boundings and contents as will be shown by reference to the applicable tax map

BEING the same property conveyed to Doug Green by deed of Mary Ann C. Tuttle dated November 14 1989 and recorded in Deed Book 356 at page 176 in the RMC Office for Georgetown County. The grantors herein received the property from the estate of Paul Douglas Green probated in the Georgetown County Probate Court, file number 99 ES 22 096 deed of distribution recorded in Book 1562 at page 249

TMS # 05 019 041-00-00

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown

AFFIDAVIT

Date of Transfer of Title

December 12, 2005

PERSONALLY appeared before me the undersigned who being duly sworn deposes and says

1 I have read the information on this Affidavit and I understand such information

2 The property is being transferred by Julie P. Green and TO Lucien A. Bruggeman and ON 12/12/05

3 Check one of the following The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth

(b) subject to the deed recording fee as a transfer between a corporation a partnership or other entity and a stockholder partner or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary

(c) EXEMPT from the deed recording fee because (Exemption n/a) (Explanation if required n/a if exempt, please skip items 4-6 and go to item #7 of this affidavit)

4 Check one of the following if either item 3(a) or item 3(b) above has been checked

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$32,000.00

(b) The fee is computed on the fair market value of the realty which is n/a

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a

5 Check YES or NO X to the following A lien or encumbrance existed on the land tenement or realty before the transfer and remained on the land tenement or realty after the transfer If "YES" the amount of the outstanding balance of this lien or encumbrance is n/a

6 The DEED Recording Fee is computed as follows:

(a) \$32,000.00 the amount listed in item #4 above

(b) 0.00 the amount listed on item #5 above (no amount please zero)

(c) \$32,000.00 subtract Line 6(b) from Line 6(a) and place the result here

7 As required by Code Section 12-24-70 I state that I am a responsible person who was connected with the transaction as Grantee

8 Check if Property other than Real Property is being transferred on this Deed

(a) Mobile Home

(b) Other

8 I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction must be fined not more than one thousand dollars or imprisoned not more than one year or both

Julie Parker Green
 Grantor, Grantee or Legal Representative
 Connected with this Transaction

SWORN to before me this
 12/12/05

Notary Public for South Carolina
 My Commission expires 06-22-2010

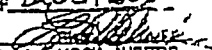
SOUTH CAROLINA

000027294 12/13/2005 801757 P00125

#33726 Lucien A. Bruggeman

000027294 04 49P
RECORDED 12/13/2005
LN 01757 P:00124 Pag 5:6
F 112 00 State:25 70
County 35 20
Georgetown County, SC
Register of Deeds

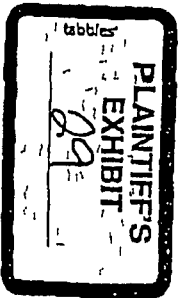
Wanda J. Grevette

RECORDED ON 40 13th
OF December 2005

LINDA E. MOCK, AUDITOR
GEORGETOWN COUNTY SC

PLAINTIFF'S
EXHIBIT
22
400
tabbles

Date: 5 day of October 2007

ASSESSOR'S OFFICE, GEORGETOWN COUNTY, SC





Cantrell Mortgage Company

North America, Inc.

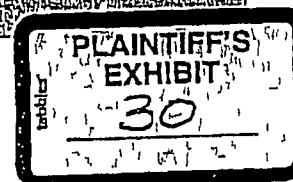
MORTGAGE BANKERS

BILL CONSOLIDATIONS *for* HOMEOWNERS...

1ST & 2ND MORTGAGES • REFINANCING •

Call 527-3333
GEORGETOWN

Photograph taken in 1998

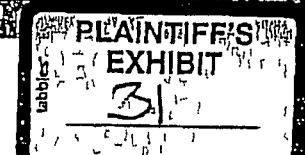


Billboard location

403



Second photograph from different perspective



Billboard location



Satellite photograph taken 3/1/1998



Billboard location

405

Actual position of
the billboard
based on the
lines of
perspective





Cantrell Mortgage Company

North America, Inc

MORTGAGE BANKERS

BILL CONSOLIDATIONS *for* HOMEOWNERS...

1ST & 2ND MORTGAGES • *REFINANCING* •

Call 527-3333
GEORGETOWN

PLAINTIFF'S
EXHIBIT

34



which the project is located or a smaller area per family than the minimum required in such district, or a greater height or a larger coverage than the requirements of this Ordinance permit in such a district

904 Exception on height limits

The height limitations of this Ordinance shall not apply to church spires belfries, cupolas and domes not intended for human occupancy, monuments water towers, observation towers transmission towers windmills, chimneys smoke stacks derricks, conveyors, flag poles radio towers, masts, and aerials

905 Off street parking in the Core Commercial District

The off-street parking requirements in this Ordinance shall not apply to permitted uses in the Core Commercial District The Zoning Administrator shall determine the off street parking requirements for conditional uses in the Core Commercial District

906 Buildings and structures allowed in front of the principal building

The requirement that all accessory buildings and structures are required to be located behind the principal building shall not apply to fences, gasoline service station fuel pump canopies, and signs

907 Exception for buildings in the Core Commercial District

The limitation of not more than four separate commercial establishments in one structure containing a total of not more than 7 500 square feet of floor area shall not apply to buildings in the Core Commercial District

908 Existing Mobile Homes in the R5 Zoning District

Any mobile home located within any R5 District may be subsequently replaced with a new mobile home provided the replacement is permitted within sixty days from the date of removal of the existing unit A new mobile home is defined as one that is purchased from a dealer and has never been titled before

(Ord of 2 19 04)

ARTICLE X. SIGN REGULATIONS

1000 Intent

The purpose or intent of these sign regulations [Article X] is to provide fair and comprehensive regulations that will eliminate confusing and unsafe signs foster a good visual environment and yet assure the efficient transfer of information These regulations are intended to enhance the City of Georgetown as a place to live, to conduct business and to visit It is declared that the regulation of signs within the City is necessary and in the public interest (a) To protect the general public from damage or injury caused, or partially attributable to the distractions and obstructions which are caused by improperly designed

APPENDIX A—ZONING

Art X, 1000

or situated signs, (b) To promote the public safety and welfare by regulating the location, erection maintenance, size and number of signs (c) To provide a pleasing overall environmental setting and good community appearance which is deemed vital to the

continued economic attractiveness of the City, (d) To protect property values within the City, (e) To improve the effectiveness of commercial and governmental signs, (f) To allow signs appropriate to the character of each zoning district

1001 Regulations applying to all types of signs

1001 1 A permit shall be required for the erection alteration or reconstruction of any sign and such permit shall be issued by the Zoning Administrator for the City of Georgetown

1001 2 A cap is hereby placed on the number of off site signs allowed in City Limits at the current number of such structures in existence as of the date of passage of these regulations [article] New off site signs are hereafter prohibited in all parts of the City Off-site signs in existence as of the date of this provision, and which are located upon a Federal Aid Primary Highway, as defined by the South Carolina Department of Transportation (SCDOT), shall not be amortized and forced to be removed, except as determined by the SCDOT The city reserves the right, however to cause the removal of said signs without compensation to the sign owner or lessee, if any such sign is declared to be a nuisance under the provisions of Section 1001 13

1001 201 Existing off-site signs located on Federal Aid Primary Highways as of the date of passage of these regulations may be replaced at other locations upon the City's Federal Primary Highways as determined by SCDOT provided

- a They conform to all other sign regulations contained in the Zoning Ordinance, including spacing requirements
- b The replacement sign face(s) may not exceed the size in square footage of the original sign face(s) or 300 square feet whichever is smaller
- c They are not being removed as a result of any action of the City or its authorized agents due to nuisance provisions herein, or for any other justifiable reason
- d Their height does not exceed a maximum of 35 feet

1001 202 If the SCDOT relinquishes jurisdiction over such signs, the City shall assume such authority immediately and may cause them to be removed without compensation in any appropriate legal manner

1001 203 Existing off site signs in all other parts of the City are hereby declared illegal and shall be amortized over a five-year period from the date of passage of this provision The Zoning Administrator shall notify the sign owner in writing that the sign must be removed no later than ten days after the expiration of the amortization period If the sign owner fails to do so, the City is authorized to cause the removal of the sign(s) at the owner's expense If at any time during the amortization period the Zoning Administrator declares such sign(s) to be a nuisance then the provisions of Section 1003 13 shall apply

- 1001 3 Off-site signs which are three hundred square feet or larger, and which are located on U S 17, U S 521, or U S 701, shall be required to utilize a decorative frame approved by the Zoning Administrator
- 1001 4 Signs shall not display intermittent lights or moving parts except those giving public service information such as time, date, temperature, weather or other similar information
- 1001 5 Signs shall not imitate or resemble traffic signals police, fire and ambulance or rescue vehicles
- 1001 6 Signs shall not be painted or attached to trees, fence posts, telephone or utility poles, rocks or other natural features No sign shall be painted on the roof of any structure
- 1001 7 Fluttering ribbons banners and similar devices shall be allowed as a temporary sign Permits for such signs shall expire thirty days after the date of issue and shall be renewable six months after the original permit has expired
- 1001 8 Off site signs shall not be located within three hundred feet of any officially designated historical site or monument, except signs pertaining to that particular site or monument This regulation shall not apply to the Georgetown Historic District
- 1001 9 Signs, which contain or consist of spinners or strings of light bulbs are deemed to be signs and are prohibited These devices when not part of any sign are similarly prohibited with the exception that this prohibition shall not apply to the holiday season from November 1st to January 15th of the next year, nor shall it prohibit indirect illumination of commercial buildings or portions thereof, such as utilizing white lights to outline commercial buildings
- 1001 10 No lights shall be utilized as a part of a sign illumination system that are not hooded or shielded so that the light source is not visible from any public right of way or adjacent property Such illumination system or sign shall not emit or reflect a glaring light so as to impair the vision of a motor vehicle operator as determined by the Zoning Administrator Such illumination, when utilized, shall be white or off-white light with no color shades, filters, etc
- 1001 11 No sign shall obstruct the view of motor vehicle operators entering a public roadway from any other public roadway, driveway, or alley There shall be no sign structure, or other obstruction to vision between the height of three feet and eight feet within the sight distance triangles established in Section 404 of this Ordinance In the event conditions at the time a permit is issued change due to street widening, driveway relocation or similar event, the sign owner shall relocate any sign deemed an obstruction to vision
- 1001 12 No sign shall project or be located beyond property boundaries except in the Core Commercial District and Intermediate Commercial District The exception regarding these two districts applies only to wall signs, and to sandwich board type signs placed within the multipurpose Downtown Parking and Street Franchise District, in accor-

dance with Section 20-7 of the Streets, Sidewalks and Public Places Ordinance not other free-standing ground signs or roof signs Wall signs shall meet the provisions set forth in Section 1002 2 of this Ordinance

1001 13 All signs are required to be maintained in such a manner as to protect the general public and adjacent property from damage and blight All signs and supports, structures braces guys and anchors thereof shall be kept in good repair, refurbished from time to time, as necessary and perpetually maintained in safe condition free from deterioration defective or missing parts, or peeling or faded paint, and able to meet the structural standards described in the building code Any sign not in compliance with this provision is hereby declared to be a nuisance

If a sign or any part thereof is declared to be a nuisance, the Zoning Administrator shall notify the appropriate person(s) in writing that the condition must be corrected within a specified time period If no action is taken within the time period by the person(s) charged with maintaining such sign, the Zoning Administrator shall initiate action to have the sign removed at the person(s) expense, in addition to being subject to Section 1106 of this Ordinance

In the event that the Zoning Administrator determines that such sign or parts thereof constitute an immediate threat to the public, he/she shall arrange for barricades to prevent public injury The person(s) charged with maintaining such sign shall be given twenty-four hours to eliminate the threat or the Zoning Administrator shall initiate action described in the preceding paragraph The Zoning Administrator shall document the reason(s) such sign is declared to be an immediate threat to public safety

1001 14 Any sign that does not meet the regulations herein in terms of size height construction, quantity, or type, as of the date of passage of this Ordinance shall hereby be declared nonconforming To avoid undue hardship, any nonconforming signs associated with single tenant uses, and wall signs in multiple-tenant developments may remain in use until such time as they are voluntarily removed by the owner; damaged in excess of fifty per cent of their current replacement cost by fire storm, or other act of God, or if the business or organization owning and/or being advertised by the sign ceases operation Any of the above conditions shall cause the sign to lose its grandfathered status, and the sign owner shall be required to remove the sign within thirty days Failure to do so shall constitute authorization for the City to remove it and assess the full cost to the sign owner, in addition to any other penalties prescribed for violation of this Ordinance Such signs shall not be expanded, even if the tenant does not change For multiple-tenant developments, existing, nonconforming directory signs (regardless of construction) may remain in use until such time as fifty per cent of the original tenants at the time of passage of this Ordinance change At such time, the nonconforming directory sign shall be removed by the landowner and may be replaced with a conforming monument style directory sign Failure to do so shall constitute authorization for the City to remove it and assess the full cost to the sign owner, in addition to any other penalties prescribed for violation of this Ordinance Such signs shall not be expanded, even if the tenant(s) does (do) not change

(Ord of 12-14-2000, § 1, Ord of 1-18-2001(1), Ord of 1-18-2001(2))

1002 Regulations applying to specified types of signs

1002 1 Roof signs Not more than one roof sign structure may be erected on the roof of any building. No roof sign may extend more than ten feet above the elevation of the roof. Roof signs shall not exceed thirty-five feet in height including the building upon which it is located.

1002 2 Wall signs Wall signs may consist of sign boards, raised relief letters, vinyl letters, or any other lettering painted on or attached to a wall, roof or window. Any sign element attached flat against a wall may extend outward not more than six inches from the wall. Signs projecting from a wall may extend outward not more than six and one half feet. Signs attached to a roof may be designed in such a way as to support the sign face in a perpendicular orientation to the ground. In no case shall a wall or roof sign be mounted on a pole or other type of vertical pylon or support. In no case shall signs project beyond property lines, except in the Core Commercial and Intermediate Commercial zoning districts. In the Core Commercial District, wall signs may project outward not more than six and one-half feet and may be located not closer than eighteen inches to a vertical plane at the street curb line. In the Intermediate Commercial District, wall signs may project beyond property lines not more than twenty-four inches.

1002 3 Portable signs Shall be allowed, but permits for such signs shall expire thirty days after the date of issue. Portable signs may be illuminated. Portable signs shall be located so as to comply with Sections 404 and 1001.11 of this Ordinance. Permits for such signs shall be renewable six months after the original permit has expired.

1002 4 Abandoned and/or obsolete signs removal of Signs or sign structures designated as abandoned or obsolete in Section 363 of this Ordinance shall be removed upon the written order of the Zoning Administrator. Such order shall be issued to the owner of the sign or structure or the owner of the premises and shall include a time period in which the sign or structure must be removed. If no action is taken within the stated time period by the person(s) charged with removing the sign or structure, the Zoning Administrator shall initiate action to have the sign removed at the person's expense. The person(s) failing to comply with the order of the Zoning Administrator shall be subject to Section 1106 of this Ordinance. The Board of Zoning Appeals may grant an extension to the time period described in Section 363 of this Ordinance if an undue hardship results and the applicant meets all established criteria regarding variances.

1002 5 Sandwich board type signs The following regulations apply to all sandwich board signs, regardless of where erected.

1002 501 They must be constructed of a durable, weather-resistant wood or wood product. Plastic, metal, and other non-natural materials may not be used. The exception to this is that a sign may have decorative wrought-iron framework if so desired.

1002 502 They may consist of a maximum of two panels with each panel containing information or advertising material being considered as one sign face Both sign faces may be utilized for advertising purposes

1002 503 The maximum size allowed shall be twenty-six inches wide by forty five inches in height, including all necessary supports and framework The maximum allowable size of each sign face or panel shall be limited to twenty-four inches in width and forty two inches in height

1002 504 All such signs proposed for use in the Historic Buildings District must first be approved by the Board of Architectural Review

1002 505 All such signs must be removed and stored inside a structure at the close of business each day, and may be replaced in the permitted location at the opening of business the following day, for the period that the sign permit is valid

1002 6 Political signs

1002 601 Political signs are placed as temporary signs not to exceed six square feet in size

1002 602 That such signs comply with Section 404 (vision clearance) and Section 1001 6 (prohibiting placement on trees fence posts and utility poles)

1002 603 That each candidate must post a \$250 00 deposit with the City in order to obtain a permit to erect campaign signs Candidates will be refunded this deposit if all signs are removed by the seventh day following an election If this were not accomplished, the deposit will be forfeited to the City to cover cost of removal

In case of a runoff election signs could remain until the seventh day following the runoff election

1002 604 No campaign signs shall be erected until 30 days prior to a primary or general election

(Ord of 6-17 04)

1003 Signs allowed in specific zoning districts

1003 1 The following types of signs are permitted in Low Density Residential (R1), Medium Density Residential (R2 and R3) High Density Residential (R4), and Medical Residential (MR) For multi family dwellings, townhouses, condominiums, group dwellings, and for non-residential uses permitted in residential districts, a single, non illuminated business identification sign or bulletin board, which shall not exceed ten square feet in area

1003 2 The following types of signs are permitted in the Core Commercial (CC) Intermediate Commercial (IC) and Waterfront Commercial (WC) Districts

1003 201 Single tenant uses Wall signs free standing monument signs, and sandwich board style signs, subject to the following requirements

1003 2011 Total sign area shall be computed using lot frontage on a public street, for every linear foot of the lot that fronts on a street, 0 75 square feet of sign

area shall be allowed, not to exceed one hundred square feet. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 2012 The total number of signs allowed shall be three. Of those, not more than one monument sign and not more than one sandwich board sign may be permitted.

1003 202 Multiple tenant uses. Wall signs, monument style directory signs, and sandwich board signs, subject to the following requirements:

1003 2021 For the directory sign, 0.75 square feet of sign area for each linear foot that the lot fronts on a street, up to a maximum of eighty square feet. For wall signs, 0.75 square feet of sign area for each linear foot of store frontage, up to a maximum of sixty square feet. In cases where a business in the Core Commercial District has frontage on the public boardwalk along the Sampit River, the owner may utilize a single additional sign on the river side of the building. The sign area may not exceed twenty square feet, or whatever size the Board of Architectural Review determines is appropriate for the building, whichever is less. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 2022 One monument style directory sign shall be allowed per development. In addition, each tenant may have one wall sign, and one sandwich board sign.

1003 203 Off-site signs, subject to the following requirements:

1003 2031 Off-site signs shall be spaced apart from each other a distance exceeding five hundred linear feet. This spacing requirement shall apply to signs on the same or opposite sides of the street or highway.

1003 2032 Off-site signs shall be located at least ten feet from a street right-of-way. No portion of an off-site sign may be located within seven feet of any other property line.

1003 2033 Off-site signs shall not exceed 300 square feet in size per face.

1003 2034 Off-site signs may be illuminated.

1003 2035 Off-site signs are considered principal uses and may not be erected on a site where a principal use already exists.

1003 3 The following types of signs are permitted in the Neighborhood Commercial (NC) District:

1003 301 Single tenant uses. Wall signs, free-standing monument signs, and sandwich board style signs, subject to the following requirements:

1003 3011 Total sign area shall not exceed forty square feet, regardless of the amount of street frontage. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 3012 The total number of signs allowed shall be three Of those, not more than one monument sign and not more than one sandwich board sign may be permitted

1003 302 Multiple tenant uses Wall signs, monument style directory signs and sandwich board signs, subject to the following requirements

1003 3021 For the directory sign a maximum of twenty square feet shall be allowed regardless of the amount of street frontage In addition each tenant

shall be allowed a maximum of twenty square feet of wall sign area. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 3022 One monument style directory sign shall be allowed per development. In addition, each tenant may have one wall sign, and one sandwich board sign.

1003 4 The following types of signs are permitted in the General Commercial (GC) Zoning District:

1003 401 Single tenant uses. Wall signs, free-standing monument signs, sandwich board style signs and under certain conditions, pylon mounted signs, subject to the following requirements:

1003 4011 Total sign area allowed shall be computed using lot frontage on a public street. For every linear foot of the lot that fronts on a street, one square foot of sign area shall be allowed, not to exceed one hundred and thirty square feet. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 4012 The total number of signs allowed shall be three. Of those, not more than one monument sign and not more than one sandwich board sign may be permitted.

1003 4013 Pylon-mounted signs shall be permitted only when site conditions are not conducive to the placement of a free-standing monument sign and/or a wall sign as determined by the Zoning Administrator.

1003 402 Multiple tenant uses. Wall signs, free-standing monument signs, sandwich board style signs and under certain conditions, pylon mounted signs, subject to the following requirements:

1003 4021 For the directory sign, one square foot of sign area shall be allowed for each linear foot of lot frontage on a street, up to a maximum of one hundred square feet. For attached wall signs, one square foot of sign area shall be allowed for each linear foot of store frontage up to a maximum of seventy square feet. The area associated with sandwich board signs shall not be assessed against the allowed square footage.

1003 4202 One monument style directory sign shall be allowed per development. In addition, each tenant may have one wall sign, and one sandwich board sign.

1003 403 Off-site signs subject to the following requirements:

1003 4031 Off-site signs shall be spaced apart from each other a distance exceeding five hundred linear feet. This spacing requirement shall apply to signs on the same or opposite sides of the street or highway.

1003 4032 Off-site signs shall be located at least ten feet from a street right of-way. No portion of an off site sign may be located within seven feet of any other property line.

1003 4033 Off-site signs shall not exceed 300 square feet in size per face.

1003 4034 Off-site signs may be illuminated.

1003 4034 Pylon mounted signs shall be permitted only when site conditions are not conducive to the placement of a free-standing monument sign and/or a wall sign, as determined by the Zoning Administrator.

1003 4035 Off site signs are considered principal uses and may not be erected on a site where a principal use already exists.

1003 5 Heavy Industrial (HI), Light Industrial (LI), and Conservation Preservation (CP) zoning districts. All signage in these districts shall be considered a conditional use and shall be approved by the Zoning Administrator.

1003 6 The following types of signs are allowed in Planned Development Districts, and the Historic Buildings District:

1003 601 Signs incorporated in plans for Planned Development Districts and approved by the Zoning Administrator.

1003 602 Signs proposed for location within the boundaries of the Historic Buildings District shall conform in size, number, and location to the regulations of the underlying zoning district, and to the recommendations contained in the Board of Architectural Review Guidelines as determined by the Georgetown Board of Architectural Review.

1004 Application procedure for sign permits

Applications for sign permits shall be made with the City of Georgetown Building and Planning Department. In addition to general information regarding owner, erection, location, size, number, and value of the sign(s), the applicant must furnish a map indicating the exact location of the sign(s) and the distance (in feet) from the nearest on-site signs and off site signs in both directions. The map shall indicate the number and size of existing signs on the subject property and other information deemed by the Zoning Administrator to be necessary to assure the provisions of this Ordinance are met.

1004 1 Double permit fees shall be required of any person(s) or firm who actually begins any work for which a permit is required by this Ordinance before obtaining such permit. Such person(s) or firm shall, in addition, be subject to all the penalty provisions of this Ordinance.

(Ord. of 12-14-2000, §§ 2—5)

ARTICLE XI ADMINISTRATION, ENFORCEMENT, APPEALS, COMPLAINTS AND REMEDIES

1100 Administration and enforcement

It shall be the duty of the duly appointed Zoning Administrator, and he is hereby given the authority to administer and enforce the provisions of this Ordinance. If the Zoning

Administrator shall find that any of the provisions of this Ordinance are being violated he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it He shall order discontinuances of illegal uses of land, buildings, or structures, or of illegal additions, alterations, or structural changes, discontinuance of any illegal work being done or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions

APPENDIX A ZONING

Art XII 1202

It is the intention of this Ordinance that all questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Zoning Administrator

ARTICLE XII BOARD OF ZONING APPEALS

1200 Establishment of Board of Zoning Appeals

A Board of Zoning Appeals is hereby established. Said Board shall consist of nine members, who shall be citizens of the City of Georgetown and shall be appointed by the Georgetown City Council for overlapping terms of three years. Initial appointment shall be as follows: two members for a term of three years, two members for a term of two years and three members for a term of one year. The two members added by an Ordinance of December 15, 1994 shall be appointed for terms of at least three years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. Members cannot hold any other public office or position in the City. A member may serve a maximum of two consecutive terms. A member can be removed for cause.

1201 Proceedings of the Board of Zoning Appeals

The Board of Zoning Appeals shall elect a chairman and a vice chairman from its members who shall serve for one year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a City employee, or a member of the Planning Commission. The Board shall adopt rules and by laws in accordance with the provisions of this Ordinance and with S.C. Code 1994, Sections 6-29-310 through 6-29-1200. All meetings of the Board shall be open to the public.

1202 Decisions of the Board of Zoning Appeals

The concurring vote of a simple majority of members present shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variance of this Ordinance or to effect any variation of this Ordinance. The concurring vote of a simple majority of the members present shall be sufficient to carry any motion to deny a variance request from the applicant, or to effect administrative rulings such as adjournment, approval of minutes, setting of special meetings, and the like. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. On all appeals, applications, and other matters brought before the Board of Zoning Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons therefor.

(Ord. of 12-18-03)

1203 Appeals hearings and notice

Appeals to the Board may be taken by any person aggrieved, or by any officer, department, or board or bureau of the City. Such appeals shall be taken within a reasonable time as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal or other matters referred to it, and give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. Public notice of all meetings of the Board shall be provided by publication in a newspaper of general circulation in the City at least fifteen days in advance of the meetings. In cases involving variances, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

1201 Powers

The Board of Zoning Appeals has the following powers:

1201.1 To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance,

1201.2 To hear and decide appeals for variance from the requirements of the Zoning Ordinance when strict application of the provisions of the Ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

1204.201 There are extraordinary and exceptional conditions pertaining to the particular piece of property,

1204.202 These conditions do not generally apply to other property in the vicinity

1204.203 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

1204.201 The authorization of a variance will not be of substantial detriment to adjacent property or to the public good and the character of the district will not be harmed by the granting of the variance.

APPENDIX A—ZONING

Art XII 1205

1204 205 The Board may not grant a variance the effect of which would be to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

1204 3 In exercising the above powers the Board of Zoning Appeals may in conformity with the provisions of this Ordinance reverse or affirm wholly or in part or may modify the order, requirements, decision, or determination of the Zoning Administrator and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board in the execution of the duties for which appointed may subpoena witnesses and in case of contempt, may certify such fact to the Circuit Court having jurisdiction. All final decisions and orders of the Board must be permanently filed in the office of the Board as a public record. All findings of fact and conclusions of law must be delivered to parties of interest by certified mail.

1204 4 In certain exceptional cases the Board may grant a variance for the use of land or a building or structure, provided that such use does not generate noise, smoke, noxious odors, pollution or other nuisances exceeding those of the most intensive land use permitted in the district by this Ordinance and does not generate automobile traffic in excess of 125 per cent of that generated by the most intensive permitted land use and provided that all other provisions of this Ordinance relating to yard requirements, parking and landscaping, signage, drainage etc. be adhered to. The burden of proof in comparing the proposed use to other permitted uses in the district falls upon the applicant. Insufficient evidence provided by the applicant shall be cause for denial of the request.

1204 41 In order to grant a use variance, a two thirds vote of the membership present and voting must concur with the request.

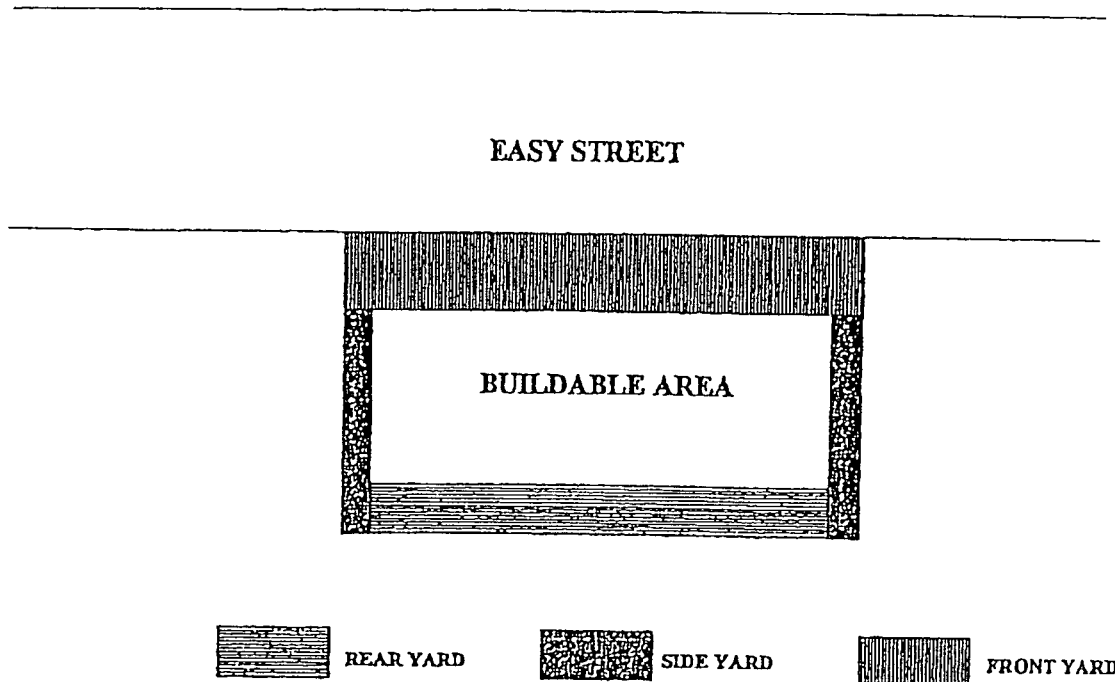
1204 42 Upon granting of a use variance by the Board of Zoning Appeals notification of such action shall be forwarded to City Council at least nine days prior to the next regularly scheduled Council meeting. Council may then choose to accept the Board of Zoning Appeals action as information only, or Council may choose to overrule the Board action via a simple majority vote of the Council members present and voting. Following Council action the applicant shall be notified as to the final status of the request.

1205 Appeals from decisions of the Board of Zoning Appeals

Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal from any decision of the Board to the Circuit Court in and for the County of Georgetown by filing with the Clerk of such Court a petition in writing, setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty days after the decision of the Board is rendered.

376 2 Yard, rear The yard extending across the rear of the lot between inner side yard lines (see Figure)

376 3 Yard side A yard extending along the side lot line from the front yard to the rear lot line and lying between the side lot line and the building line (see Figure)



377 Zoning Administrator The local official responsible for granting permits and interpreting the regulations contained herein
(Ord of 11-16 2000)

ARTICLE IV GENERAL PROVISIONS

400 Continuance of nonconforming uses Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. However, to avoid undue hardship, the lawful use of any building or land at the time of the enactment of this Ordinance may be continued even though such use does not conform with the provisions of this Ordinance except that the nonconforming building or land use shall not be

400 1 Changed to another nonconforming use

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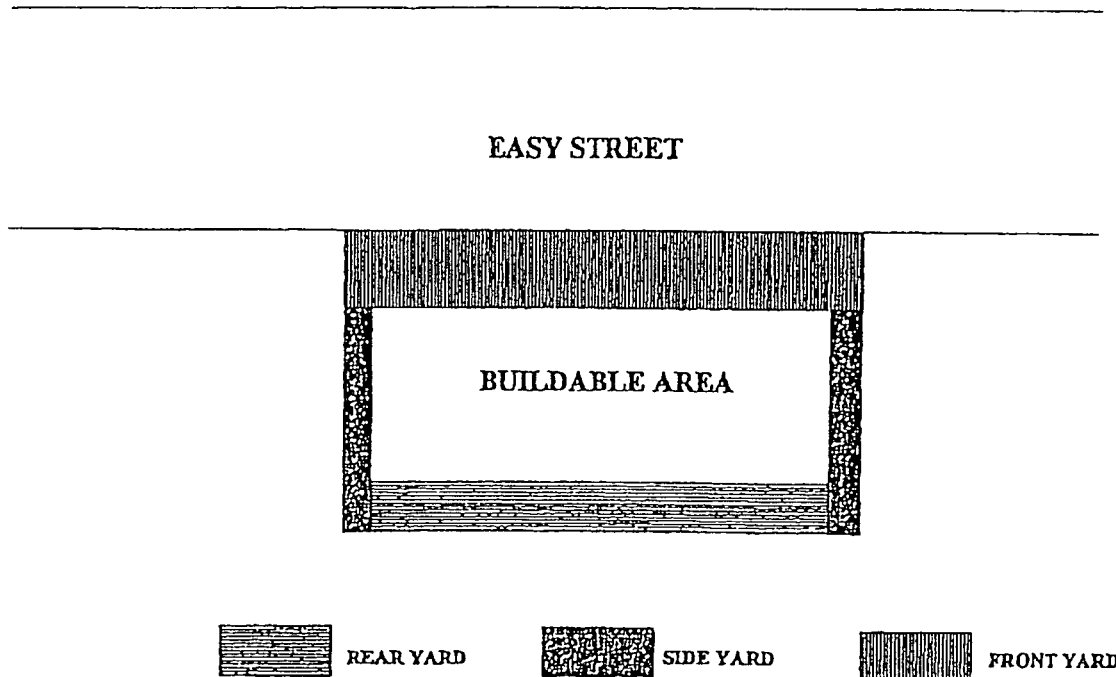
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400 1 Changed to another nonconforming use

400 2 Reestablished after discontinuance for one year

400 3 Repaired, rebuilt, or altered after damage exceeding fifty percent of its replacement cost at the time of destruction Reconstruction shall begin within six months after damage is incurred

400 4 Enlarged or altered in a manner which increases its nonconformity

400 5 Replaced by a nonconforming use of the same type (refers to mobile homes)

Editor's note—At the request of the city, an ordinance adopted Nov 18, 1999 amended the above § 400(400 5) to read as herein set out

400 6 Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official
(Ord of 11-18-99)

401 *Discontinuance of certain nonconforming uses* Notwithstanding other provisions of this Ordinance, certain nonconforming land uses shall be discontinued either generally or in specific districts after set periods of time Upon application to the Board of Zoning Appeals, the Board either according to general rule or upon findings in a specific case may permit not more than one extension for more than the time indicated

401 1 The date on which the nonconforming land use listed must cease shall be set forth on the Certificate of Occupancy for each, and if an extension is granted, the termination date of such extension shall be added to the Certificate of Occupancy

<i>Nonconformities</i>	<i>In Districts</i>	<i>To Be</i>	<i>Extension</i>
		<i>Discontinued</i>	<i>Permitted</i>
Automobile wrecking junk scrap or salvage yards	All but Heavy Industrial District	2 years	6 months
Automotive storage and sale lots, outdoor storage yards for lumber, building materials, and contractor's equipment	Residential	2 years	6 months
Fences, hedges and signs impeding vision at intersections	All	180 days	30 days
Off-site signs	All	5 years	1 year
Freestanding mailboxes, newspaper receptacles and other similar structures on private property	Historic Buildings District	90 days	30 days

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Freestanding mailboxes, news- paper receptacles and other sim- ilar structures on private prop- erty	Historic Build- ings District	90 days	30 days

<i>Nonconformities</i>	<i>In Districts</i>	<i>To Be</i>	<i>Extension</i>
		<i>Discontinued</i> <i>Within</i>	<i>Permitted</i>
Fluttering ribbons, banners and flags	All	90 days	30 days

(Ord of 12-14-2000 § 1)

402 Off street parking Off-street automobile storage or parking space shall be provided on each lot on which any of the following uses are hereafter established except in the Core Commercial District. The number of parking spaces provided shall be at least as great as the number specified herein for various uses. When application of said provision results in a fractional space requirement, the next larger requirement shall prevail.

402.1 Site plan submission requirements As part of the normal site plan requirements of the Zoning Ordinance, parking and landscaping plans shall be provided to the Building and Planning Department for review. These plans shall clearly illustrate the proposed parking layout in relation to the building site, and the location of the required landscaping buffers. Additionally a proposed planting plan shall detail the location and species of all plants used to fulfill these requirements. The plans need not necessarily be prepared by a registered architect or landscape architect. Information regarding the proposed surfacing of the lot shall also be included.

402.2 Parking space and aisle dimensions Regular parking spaces intended for the use of standard sized automobiles shall have a minimum dimension of nine feet by eighteen feet for non-angled spaces. Compact car parking stalls shall have a minimum size of seven feet by fifteen feet, and may account for a maximum of ten per cent of the total spaces provided. All compact stalls shall be marked by appropriate signage with a sign face no larger than one hundred square inches.

402.201 Angled parking stalls When angled parking stalls are chosen, they shall be provided with the dimensions illustrated in the Approved Plant and Parking Space Dimension List maintained by the building and planning department, and shall require the provision of traffic circulation aisle widths specified below according to the degree of angle.

402.2011 Angled stalls, required aisle widths one way traffic

<i>Angle of Stall</i> <i>(degrees)</i>	<i>Required Aisle</i> <i>(feet)</i>
45	13
60	18
80 or 90	22

402.2012 Aisle width two way traffic Twenty two feet, regardless of angle.

402.202 Parallel parking Parallel parking stalls for standard sized automobiles shall have a minimum size of eight feet by twenty-three feet, and seven feet by

nineteen feet for compact autos. All parallel parking stalls shall have a minimum of twelve feet for maneuvering space in one-way traffic and twenty-two feet maneuvering space for two-way traffic.

402.3 Handicapped parking requirements. The table below shall govern the minimum number of handicapped spaces that must be provided on the lot. Handicapped stalls shall have a minimum size of twelve feet by eighteen feet, and shall be adjacent to a three foot wide handicapped accessible sidewalk that allows easy access to the building entrance. In the event of a conflict in the number of spaces required under the provisions of the Standard Building Code, as adopted, the stricter regulations shall apply.

<i>Total Spaces in Lot</i>	<i>Required Handicapped Spaces</i>
Up to 25	1
26 to 50	2

<i>Nonconformities</i>	<i>In Districts</i>	<i>To Be</i>	<i>Extension</i>
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Art X, 1003

GEORGETOWN CODE

1003 4032 Off-site signs shall be located at least ten feet from a street right of way No portion of an off site sign may be located within seven feet of any other property line

1003 4033 Off-site signs shall not exceed 300 square feet in size per face

1003 4034 Off site signs may be illuminated

1003 4034 Pylon-mounted signs shall be permitted only when site conditions are not conducive to the placement of a free standing monument sign and/or a wall sign, as determined by the Zoning Administrator

1003 4035 Off site signs are considered principal uses and may not be erected on a site where a principal use already exists

1003 5 Heavy Industrial (HI), Light Industrial (LI), and Conservation Preservation (CP) zoning districts All signage in these districts shall be considered a conditional use, and shall be approved by the Zoning Administrator

1003 6 The following types of signs are allowed in Planned Development Districts, and the Historic Buildings District

1003 601 Signs incorporated in plans for Planned Development Districts and approved by the Zoning Administrator

1003 602 Signs proposed for location within the boundaries of the Historic Buildings District shall conform in size, number, and location to the regulations of the underlying zoning district, and to the recommendations contained in the Board of Architectural Review Guidelines as determined by the Georgetown Board of Architectural Review

1004 Application procedure for sign permits

Applications for sign permits shall be made with the City of Georgetown Building and Planning Department In addition to general information regarding owner, erection, location, size, number, and value of the sign(s), the applicant must furnish a map indicating the exact location of the sign(s) and the distance (in feet) from the nearest on site signs and off site signs in both directions The map shall indicate the number and size of existing signs on the subject property and other information deemed by the Zoning Administrator to be necessary to assure the provisions of this Ordinance are met

1004 1 Double permit fees shall be required of any person(s) or firm who actually begins any work for which a permit is required by this Ordinance before obtaining such permit Such person(s) or firm shall, in addition, be subject to all the penalty provisions of this Ordinance

(Ord of 12-14 2000 §§ 2—5)

ARTICLE XI ADMINISTRATION, ENFORCEMENT, APPEALS, COMPLAINTS AND REMEDIES

1100 Administration and enforcement

It shall be the duty of the duly appointed Zoning Administrator, and he is hereby given the authority, to administer and enforce the provisions of this Ordinance If the Zoning

Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuances of illegal uses of land, buildings, or structures, or of illegal additions, alterations, or structural changes, discontinuance of any illegal work being done, or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

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It is the intention of this Ordinance that all questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Zoning Administrator

ARTICLE XII BOARD OF ZONING APPEALS

1200 Establishment of Board of Zoning Appeals

A Board of Zoning Appeals is hereby established. Said Board shall consist of nine members, who shall be citizens of the City of Georgetown and shall be appointed by the Georgetown City Council for overlapping terms of three years. Initial appointment shall be as follows: two members for a term of three years, two members for a term of two years and three members for a term of one year. The two members added by an Ordinance of December 15, 1994 shall be appointed for terms of at least three years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. Members cannot hold any other public office or position in the City. A member may serve a maximum of two consecutive terms. A member can be removed for cause.

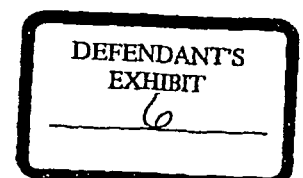
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The Board of Zoning Appeals shall elect a chairman and a vice chairman from its members who shall serve for one year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a City employee, or a member of the Planning Commission. The Board shall adopt rules and by laws in accordance with the provisions of this Ordinance and with S.C. Code 1994, Sections 6-29-310 through 6-29-1200. All meetings of the Board shall be open to the public.

1202 Decisions of the Board of Zoning Appeals

The concurring vote of a simple majority of members present shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variance of this Ordinance or to effect any variation of this Ordinance. The concurring vote of a simple majority of the members present shall be sufficient to carry any motion to deny a variance request from the applicant, or to effect administrative rulings such as adjournment, approval of minutes, setting of special meetings, and the like. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. On all appeals, applications, and other matters brought before the Board of Zoning Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons therefor.

(Ord. of 12-18-03)



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The Board of Zoning Appeals shall elect a chairman and a vice chairman from its members who shall serve for one year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a City employee, or a member of the Planning Commission. The Board shall adopt rules and by-laws in accordance with the provisions of this Ordinance and with S.C. Code 1994, Sections 6-29-310 through 6-29-1200. All meetings of the Board shall be open to the public.

1202 Decisions of the Board of Zoning Appeals

The concurring vote of a simple majority of members present shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variance of this Ordinance or to effect any variation of this Ordinance. The concurring vote of a simple majority of the members present shall be sufficient to carry any motion to deny a variance request from the applicant, or to object administrative rulings such as adjournment, approval of minutes, setting of special meetings, and the like. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. On all appeals, applications, and other matters brought before the Board of Zoning Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons therefor.

(Ord. of 12-18-03)

1203 Appeals hearings and notice

Appeals to the Board may be taken by any person aggrieved, or by any officer, department, or board or bureau of the City. Such appeals shall be taken within a reasonable time as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds thereof. The

Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal or other matters referred to it, and give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. Public notice of all meetings of the Board shall be provided by publication in a newspaper of general circulation in the City at least fifteen days in advance of the meetings. In cases involving variances, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

1204 Powers

The Board of Zoning Appeals has the following powers:

1204.1 To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance,

1204.2 To hear and decide appeals for variance from the requirements of the Zoning Ordinance when strict application of the provisions of the Ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

1204.201 There are extraordinary and exceptional conditions pertaining to the particular piece of property,

1204.202 These conditions do not generally apply to other property in the vicinity.

1204.203 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

1204.201 The authorization of a variance will not be of substantial detriment to adjacent property or to the public good and the character of the district will not be harmed by the granting of the variance.

1204.205 The Board may not grant a variance the effect of which would be to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

1204.3 In exercising the above powers, the Board of Zoning Appeals may in conformity with the provisions of this Ordinance reverse or affirm wholly or in part or may modify the order, requirements, decision, or determination of the Zoning Administrator and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board in the execution of the duties for which appointed may subpoena witnesses and in case of contempt, may certify such fact to the Circuit Court having jurisdiction. All final decisions and orders of the Board must be permanently filed in the office of the Board as a public record. All findings of fact and conclusions of law must be delivered to parties of interest by certified mail.

1204.4 In certain exceptional cases, the Board may grant a variance for the use of land or a building or structure, provided that such use does not generate noise, smoke, noxious odors, pollution, or other nuisances exceeding those of the most intensive land use permitted in the district by this Ordinance and does not generate automobile traffic in excess of 125 per cent of that generated by the most intensive permitted land use and provided that all other provisions of this Ordinance relating to yard requirements, parking and landscaping, signage, drainage, etc. are adhered to. The burden of proof in comparing the proposed use to other permitted uses in the district falls upon the applicant. Insufficient evidence provided by the applicant shall be cause for denial of the request.

1204.41 In order to grant a use variance, a two-thirds vote of the membership present and voting must concur with the request.

1204.42 Upon granting of a use variance by the Board of Zoning Appeals, notification of such action shall be forwarded to City Council at least nine days prior to the next regularly scheduled Council meeting. Council may then choose to accept the Board of Zoning Appeals action as information only, or Council may choose to overrule the Board action via a simple majority vote of the Council members present and voting. Following Council action, the applicant shall be notified as to the final status of the request.

1205 Appeals from decisions of the Board of Zoning Appeals

Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal from any decision of the Board to the Circuit Court in and for the County of Georgetown by filing with the Clerk of such Court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty days after the decision of the Board is rendered.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material

DAVIDSON & LINDEMANN, P A

BY Andrew F Lindemann KPW
ANDREW F LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant-Respondent

Columbia, South Carolina

December 18, 2008

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1204.42 Upon granting of a use variance by the Board of Zoning Appeals, notification of such action shall be forwarded to City Council at least ten days prior to the next regular scheduled Council meeting. Council may then choose to accept the Board of Zoning Appeals action as information only, or Council may choose to overrule the Board action via a simple majority vote of the Council members present and voting. Following Council action, the applicant shall be notified as to the final status of the request.

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