

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South Carolina, Respondent,

v.

Dan Ward, Appellant.

69345
RECEIVED

AUG 06 2013

SC Court of Appeals

PETITION BY APPELLANT FOR WRIT OF SUPERSEDEAS

Pursuant to Rule 241(c) SCACR, the Appellant, Dan Ward ("Ward"), seeks an Order staying the effect of the Order under appeal in these proceedings. The Trial Court has enjoined Ward from carrying on his lawful business activities on lands he owns until he is "granted a business license by the Town of Six Mile." The Town of Six Mile ("Town"), however, will not even "process a business license application" until Ward surrenders the use of his property which he has a vested, constitutionally protected right to continue. The Trial Court's Order terminates the status quo and requires Ward to surrender the use of his property as he has used it since 1994. His use predated any zoning regulations by the Town and had previously been found to be a valid, vested nonconforming use by Town officials.

This petition is supported by the following documents which are attached hereto and

incorporated herein by reference:

1. Complaint
2. Answer and Counterclaims
3. Plaintiff's Motion for Summary Judgment
4. Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment
5. Form 4- Order Granting Plaintiff's Motion for Summary Judgment
6. Defendant's 59(e) Motion to Alter or Amend and Cover Letter
7. Form 4- Order Denying Defendant's Motion to Alter or Amend
8. Defendant's Application for Supersedeas and Cover Letter
9. Trial Court's Order Denying Supersedeas
10. Affidavit of Dan Ward
11. Affidavit of Richard Davidson
12. Affidavit of Mike Albertson
13. Deposition Transcript of Steve Sanders (Excerpts)
14. Deposition Transcript of Woodrow Kelley (Excerpts)
15. Letter from Town Clerk dated July 17, 2013
16. Minutes of Six Mile Council Meeting, August 2, 2006
17. Magistrate Court's Order of Dismissal dated February 6, 2012

The practical effect of the Trial Court's ruling is to grant Summary Judgment in favor of the Town of Six Mile on all issues in this case, thereby rendering all of the parties' claims and counterclaims moot, destroying the jurisdiction of this Court, and depriving the Appellant of any opportunity to obtain the protection of this Court from the high-handed treatment of Town officials who seek to wrongfully deprive Ward of the constitutionally protected property rights.

FACTUAL BACKGROUND

This case presents a classic example of government run afoul and how local officials can twist a man's property rights and livelihood so as to look like a pretzel. Here, Town officials are attempting to deny a property owner the right to use his property as he has for over a decade by misapplying zoning and licensing regulations. By his own admission, the Town Zoning Administrator has "no idea" about the most rudimentary zoning principals.

Dan Ward is a seventy (70) year old Vietnam veteran (Navy), former highway patrolman, and for the last thirty (30) years he has served South Carolina as a professional house mover. Ward holds a Class E Certificate issued by the South Carolina Department of Motor Vehicles, which allows Ward to transport houses throughout South Carolina without obtaining a business license from every county and municipality in which he operates, except his principal place of business. (Exh. 10, Affidavit of Dan Ward, April 9, 2013, ¶¶ 3-5.) Ward lives in the unincorporated area of Pickens County and has his principal place of business at his home. (Exh. 10, Ward Affidavit, ¶ 1) As a part of his house moving operations, he owns several parcels of land throughout the upstate. On these parcels, Ward displays houses he has removed from customer's lands. While on display, these houses remain on the I-beam caissons upon which they are towed from their original location. Only after sale and relocation to a permanent site is the home placed upon a permanent foundation and equipped for occupancy. (Exh. 10, Ward Affidavit, ¶¶ 6-14.) For many years, Town and Pickens County officials have not required a building or other permit until the final move and placement upon a permanent foundation. (Exh. 12, Affidavit of Mike Albertson, April 22, 2013, ¶ 8; Exh. 11, Affidavit of Richard Davidson, April 10, 2013, ¶ 15.)

At least one of Ward's parcels is located within the town limits of Six Mile. On that parcel, he has displayed houses for sale as far back as 1994. (Exh. 10, Ward Affidavit, ¶¶ 6-10.) His business use has been uninterrupted and predates the initial zoning ordinance of the Town. (Exh. 10, Ward Affidavit, ¶¶ 10, 15-16.) Nonetheless, in 2006 his activities were scrutinized by the Town Zoning Administrator, Richard Davidson, for zoning compliance. (Exh. 11, Davidson Affidavit, ¶¶ 7-8.) The Zoning Administrator determined that Ward had a valid vested right to continue to use his property as a lawful non-conforming use. (Exh. 11, Davidson Affidavit, ¶ 9.)

The Town Council discussed the status of Ward's use in public session on August 2, 2006, and its minutes reveal that the conclusion was that the Zoning Administrator's interpretation was known and accepted by the Town Council. (Exh. 16, Minutes of Six Mile Council Meeting, August 2, 2006.)

On one of Ward's parcels, which he purchased in 2006, he has constructed two sheds with concrete knee walls.¹ The sheds were constructed in 2009. (Exh. 10, Ward Affidavit, ¶¶ 18, 21.) Ward contacted the Pickens County Code Administration Office to determine if building permits were required. (Exh. 10, Ward Affidavit, ¶ 21; Exh. 12, Albertson Affidavit, ¶¶ 5-6.) In 2009, the Pickens County Code Administration Office was responsible for performing permitting functions for the County and the Town. Mike Albertson, the Pickens County Building Inspector informed Ward that he did not need a building permit to construct the sheds. (Exh. 12, Albertson Affidavit, ¶¶ 4-6.)

Later in 2009, as a result of town elections, the Town's regime changed. Newly elected Mayor John Wade attempted to pressure Zoning Administrator Richard Davidson into bringing action against Ward to deprive him of his business use, to include the property previously found to comply with Town zoning. (Exh. 11, Davidson Affidavit, ¶¶ 12-13.) Davidson declined to obey the Mayor's unauthorized instruction and instead resigned his position with the Town. (Exh. 11, Davidson Affidavit, ¶ 13.)

Mayor Wade then hired a new Zoning Administrator, Steve Sanders, and instructed him to cause criminal charges to be brought against Ward. Steve Sanders undertook little to no investigation into the facts and circumstances surrounding Ward's property and his business use of the same. He did as Mayor Wade instructed and executed charging documents against Ward.

¹ Whether this parcel is within the Town limits is an issue in this case but that question is not pertinent to this Petition.

(Exh. 13, Deposition Transcript of Steve Sanders, April 12, 2012, Pg. 17:16 - 24.) These charges were ultimately dismissed by Pickens County Magistrate at a pre-trial hearing. (Exh. 17, Magistrate Court Order of Dismissal, February 6, 2012.)

The Town now employs Woodrow Kelley as it's Zoning Administrator to enforce the Town's zoning laws.² Woodrow Kelley is altogether ignorant with respect to how the Town's Zoning Ordinance treats non-conforming uses or the Town's prior interpretation of Ward's property use. During Mr. Kelley's deposition in this matter he testified to the following:

Q: Can you tell me how long Mr. Ward has been using what's marked as parcel A to store a house like this or any other house?

A: I have no idea

...

Q: Would you be surprised to learn that he's been using it to store houses since 1994?

A: I wouldn't be surprised at all.

Q: Do you know when Six Mile adopted their first zoning ordinance?

...

A: I have no idea when they adopted their first zoning ordinance.

Q: Would you be surprised to learn that it was adopted in November of 2007?

A: Again, I have no idea.

(Exh. 14, Deposition of Woodrow Kelley, February 25, 2013, Pg. 16:13- 17:8)

Q: Do you know what a vested non-conforming use is?

A: I have no idea.

(Exh. 14, Kelley Deposition, Pg. 17:16-17)

Q: So if someone came to you and said "Mr. Kelley, I think I have a right to continue to use my property the way I've been using it prior to the zoning ordinance being passed," you would not know how to give them an answer on whether or not they have vested right to use it the way they were using it?

A: I would not.

(Exh. 14, Kelley Deposition, Pg. 18:13-19)

Q: If I told you that [the previous Zoning Administrator] had rendered an interpretation that Mr. Ward has a vested right to continue to use parcel A to store his houses, would that influence how you treated Mr. Ward under the zoning ordinance:

A: It would not.

² Woodrow Kelley took over as Zoning Administrator for Six Mile on August 1, 2011, prior to the Plaintiff's Complaint being filed.

(Exh. 14, Kelley Deposition, Pg. 23:1-6)

The Town commenced this action on December 13, 2011. In its Complaint, the Town seeks, among other things, a ruling that Ward is required to obtain a Six Mile business license and that his business use of his property violates the Town Zoning Ordinance and Building Codes. Specifically, Plaintiff's Complaint provides: "Accordingly, Plaintiff is informed and believes that this Court should issue its ruling requiring Defendant to show cause, if he can, why he should not be temporarily restrained and enjoined from the *continued* operation of the Ward Parcels in such a manner as is in violation of the duly-enacted ordinances of Plaintiff. (Exh. 1, Compl. ¶ 31.) (emphasis added.) The Town moved for Summary Judgment on March 1, 2013 on four of its causes of action, including temporary injunctive relief.

Thereafter, the Trial Court granted Plaintiff's Motion for Summary Judgment as it relates to preliminary injunctive relief.³ (Exh. 5, Order, May 23, 2013.) The Order provides, *inter alia*: "The Defendant's *right to use the land for a business purpose* does not exempt him from complying with the Town's safety and licensing regulations..." (emphasis added)

Accordingly, Ward filed a Motion to Alter or Amend Pursuant to Rule 59(e). The motion was denied; however, the Trial Court used the opportunity to clarify its ruling and to correct portions of its previous Order. (Exh. 7, Order, July 10, 2013.) The subsequent Order provides: "this Court clarifies its previous order by requiring Defendant to remove offending structures from the land until he is granted a business license by the Town of Six Mile."

Concurrent with Ward's filing of his Rule 59(e) Motion, he made provisional application for a Town business license. After two attempts, the Town informed him that it would not even

³ The Trial Court's Order provides: "...this Court grants Plaintiff's Motion for Summary Judgment, Motion for Declaratory Judgment, and Motion to Enjoin." Appellant would respectfully show that the only Motion before the Court before or after the Trial Court's ruling was a Motion for Summary Judgment.

“process [his] business license application...” (Exh. 15, Letter from Town Clerk, July 17, 2013.)

The gravamen of the Trial Court’s ruling is that Ward must remove his houses and sheds until he applies for and is granted a business license. South Carolina Code Ann. §§ 56-3-661 and 58-23-620 exempt Ward from the requirement of a business license because Ward possesses a Class E license certificate. Further, the Town will not even process Ward’s license application due to the Town’s erroneous interpretation of its zoning ordinance and its officials’ ignorance of basic zoning principals.

On July 19, 2013, Ward applied to the Trial Court for supersedeas to stay the effect of the Trial Court’s ruling. The Trial Court denied supersedeas.

POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF SUPERSEDEAS

For the reasons outlined more fully below, this Court should grant supersedeas to maintain the status quo as it has existed since 1994.

1. Supersedeas is necessary to preserve jurisdiction of the appeal and to prevent a contested issue from becoming moot.

Ward respectfully submits that the effect of the Trial Court’s Order, if left undisturbed by this Court, will render this entire action moot and will deprive him of his constitutional rights and any chance for redress. Rule 241(c)(2), SCACR. The Trial Court’s Order dated July 10, 2013 provides: “this Court clarifies its previous order by requiring Defendant to remove offending structures from the land until he is granted a business license by the Town of Six Mile.” The catch 22 is that the Town will never grant Ward a business license in spite of the fact that the Town’s own Zoning Administrator found Ward to have a vested nonconforming use. The Town has taken the attenuated position that Ward abandoned his right to use his property for business purposes by removing the houses that were on the property when the nonconforming status was recognized by the Town Zoning Administrator (and Town Council). Of course this

position ignores the very nature of the nonconforming use, which is to temporarily store houses for sale or transit. In this case, were Ward to remove his houses and sheds and apply for a business license, there is no doubt the Town would take the position that he consequently lost the very rights which he seeks to preserve in this action.

2. The Trial Court' ruling deprives Ward of the constitutionally protected right to use his property

South Carolina law provides "that a landowner acquires a vested right to continue a nonconforming use already in existence at the time his property is zoned in the absence of a factual showing that the continuance of the nonconforming use would be detrimental to the public's health, safety, or welfare." Friarsgate v. Town of Irmo, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (1986) (citing James v. City of Greenville, 227, S.C. 565, 584, 88 S.E.2d 661, 671 (1955)). A non-conforming use of property is a use which existed lawfully before the enactment of a zoning ordinance and may continue after a zoning ordinance is passed even though the use no longer complies with the zoning restriction. See, 83 Am.Jur.2d. Zoning and Planning § 624 (1992). "The right to continue a prior nonconforming use is often stated in terms of the owner having acquired a 'vested right' to continue the prior use." Friarsgate, 290 S.C. at 269, 349 S.E.2d at 893. The purpose of grand-fathering in nonconforming uses is to protect the constitutional property rights of property owners. Heilker v. Zoning Board of Appeals, 346 S.C. 401, 419, 552, S.E.2d 42, 52 (2001). The value of property is based substantially in its use, therefore, "[i]f the right of use [is] denied, the value of the property is annihilated, and ownership is rendered a barren right." Vulcan Materials Company v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 499, 536 S.E.2d 892, 902 (2000).

Even the Town's own Zoning Ordinance recognizes the constitutional right of property owners to maintain a prior nonconforming use of their property. Nonetheless, the current Town

Zoning Administrator testified during his deposition that he had “*no idea*” what vested non-conforming use meant.

In the present case, it is uncontroverted that Ward has been using his property in the Town for decades in support of his business and that the Town recognized his nonconforming status. Furthermore, the Trial Court found that Ward has a “right to use the land for a business purpose...” However, the Trial Court’s second Order clarifying its ruling with respect to the injunction makes an unexplained quantum leap of reasoning to find inferentially that Ward’s “structures” offended Town regulations. This ruling ignores the Trial Court’s previous conclusion that Ward has a “right to use the land for a business purpose.”

3. Dan Ward will suffer immediate and irreparable harm.

Dan Ward will suffer immediate and irreparable harm if supersedeas is not granted. The effect of the Trial Court’s ruling is to require Ward to demolish two structures that have permanent foundations to the ground and to remove three houses that are being stored in support of his business operations. Requiring Ward to bulldoze his two sheds is particularly harmful in light of the fact that all the evidence in this case with respect to the construction of the sheds is that Ward requested permission from the Pickens County Building Inspector, the duly authorized agent of the Pickens County Code Administration Staff, the office responsible for performing permitting functions for the Town of Six Mile, and was told that no permit was required to construct the sheds.

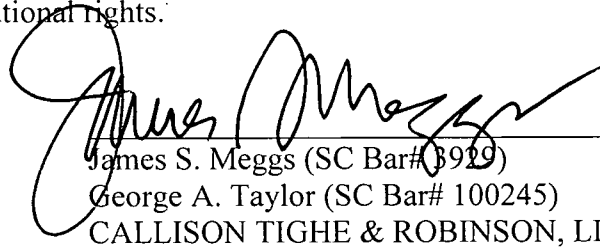
Furthermore, to require Ward to remove the display homes will cause him immediate and irreparable harm because of the burden and expense associated with removing the homes, coordinating and receiving permissions to transport the houses on public roadways, and finding locations to store the homes during the pendency of this litigation.

4. The Town will suffer no harm if this Court maintains the status quo.

The Town will not suffer any harm if supersedeas is granted and the status quo is maintained. Ward has been storing houses on his property in the Town since 1994. As noted above, Plaintiff filed its Complaint in December 2011. Other than the institution of criminal proceedings in April 2010, this is the first effort by the Town to seek legal action to stop Ward's business operations. Moreover, after filing the instant Complaint, the Town took no action to seek the issuance of the Court's rule to show cause. The Town's Motion for Summary Judgment was filed March 4, 2013⁴, nearly fifteen months after filing the Complaint. Given the foregoing, the Town can hardly contend that there exist exigent circumstances which necessitate Ward's removal of his inventory and demolition of his permanently affixed sheds pending the outcome of his appeal.

CONCLUSION

This case represents the collision of cultures. Town officials are ignorant of well-established constitutional protections or are willing to ignore basic zoning principals rooted in the constitution in order to attain their goals. This Court should grant supersedeas and stay the effect of the Trial Court's Order during the pendency of Ward's appeal in order to maintain the status quo and protect Ward's constitutional rights.



James S. Meggs (SC Bar# 3919)
George A. Taylor (SC Bar# 100245)
CALLISON TIGHE & ROBINSON, LLC

ATTORNEYS FOR APPELLANT

[ADDRESS AND TELEPHONE TO FOLLOW]

⁴ Plaintiff's Motion for Summary Judgment is dated December 13, 2011, but was not filed until March 4, 2013. The Motion is dated the same day as the Complaint and was likely done so in error.

1812 Lincoln Street, Suites 100 and 200
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Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901

August 6, 2013
Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Civil Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South Carolina, Respondent,

v.

Dan Ward, Appellant.

VERIFICATION AND AFFIDAVIT

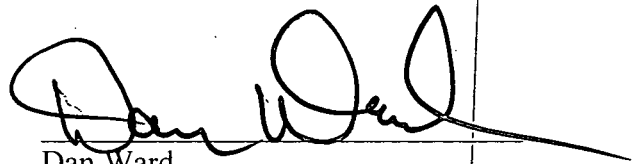
PERSONALLY APPEARED BEFORE ME, Dan Ward who being first duly sworn says
and deposes that:

1. He is over the age of 18 years and is competent to make this verification.
2. He is the Defendant in the within action.
3. He has read the foregoing Petition for Writ of Supersedeas and the matters set forth therein are true of his own knowledge, information and belief.
4. He is informed and believes that this Honorable Court should issue its Writ of Supersedeas staying the injunction issued by the Court of Common Pleas, Pickens County, South Carolina, in the within action.

5. Without the intervention of this Honorable Court and an Order staying the injunction issued by the trial Court, he will be forced to discontinue the use of his real property as a vested and valid non-conforming use which use pre-dates the first effort to zone the property by the Town of Six Mile.

6. His pre-existing non-conforming use has been well known to town officials for many years prior the commencement of this action by the Town to deprive him, unlawfully, of the benefit of his property.

FURTHER AFFIANT SAYETH NOT.


Dan Ward

Sworn to and Subscribed before me
this 5 day of August, 2013

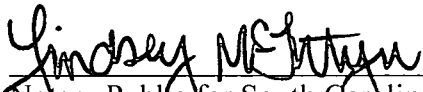

Notary Public for South Carolina
My Commission Expires: May 28, 2018

EXHIBIT 1
COMPLAINT

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Town of Six Mile, South Carolina,

Plaintiff,

vs.

Dan Ward

Defendant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

COURT OF COMMON PLEAS
Civil Action 2011-CP-39-

2011 DEC 13 P 1:32

2011-CP-39-

1849

COMPLAINT

TO: DAN WARD, THE DEFENDANT ABOVE NAMED:

The Plaintiff, complaining of the Defendant, alleges as follows:

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment - Building Permit Violation)

1. Plaintiff, Town of Six Mile, is a political subdivision of the State of South Carolina established and empowered by S.C. Code Sections 5-1-10, et. seq. and 5-7-30.
2. Plaintiff brings this cause of action under the Uniform Declaratory Judgments Act (S.C. Code Section 15-53-10 et seq.) and requests that this Court declare the rights, status, and legal relation of Plaintiff's building permit ordinance to the Defendant.
3. Plaintiff is empowered by S.C. Code Section 5-25-310, et. seq. to regulate and permit, where appropriate, the construction and/or moving of buildings.
4. S.C. Code Section 5-25-330 provides that no building may be moved until a permit has been obtained from a local inspector.
5. Defendant, Dan Ward, is the owner of two parcels of land, identified by Pickens County tax parcel numbers 4058-07-69-3858 and 4058-07-69-5660 (identified hereinafter as the "Ward Parcels").
6. At all times relevant to this Complaint, the Ward Parcels were and are located within the municipal boundaries of the Town of Six Mile.

7. In the fall of 2009, Defendant began operating a house moving business on the Ward Parcels.
8. As a part of his house moving operation, Defendant has moved various buildings on and off the Ward Parcels.
9. No building permits were obtained from Plaintiff for any of the buildings moved on or off of the Ward Parcels.
10. Plaintiff is informed and believes that it is entitled to an Order requiring Defendant to obtain a building permit under Plaintiff's ordinances.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment - Business License Violation)

11. Plaintiff reaffirms and reiterates all of the allegations in the First Cause of Action as if fully repeated and incorporated herein verbatim.
12. Plaintiff brings this cause of action under the Uniform Declaratory Judgments Act (S.C. Code Section 15-53-10 et seq.) and requests that this Court declare the rights, status, and legal relation of Plaintiff's business license ordinance to the Defendant.
13. Pursuant to its statutory authority, and prior to the Defendant's housing moving operations on the Ward Parcels, Plaintiff established a business license ordinance, which requires any person or company engaged in any business within the limits of the municipality to pay a license fee and obtain a business license.
14. Defendant has failed to pay the licensing fee or obtain the license for any of the calendar years in which he has operated his house moving business.
15. Plaintiff is informed and believes that it is entitled to an Order requiring Defendant to obtain a business license under Plaintiff's ordinances.

FOR A THIRD CAUSE OF ACTION

(Declaratory Judgment - Zoning Violations)

16. Plaintiff reaffirms and reiterates all of the allegations in the previous Causes of Action as if fully repeated and incorporated herein verbatim.

17. Plaintiff brings this cause of action under the Uniform Declaratory Judgments Act (S.C. Code Section 15-53-10 et seq.) and requests that this Court declare the rights, status, and legal relation of Plaintiff's zoning ordinance to the Defendant.
18. Pursuant to the specific grant of authority by S.C. Codes Section 6-29-10 et. Seq. as well as the other above-referenced statutes, Plaintiff established its official Zoning Ordinance on November 6, 2007.
19. Defendant's operation on the Ward Tracts violates numerous provisions of the Zoning Ordinance, including but not limited to, those provision relating to setbacks, building placement, accessory uses, buffer yards, permitting, property appearance, nuisance, and/or conditions creating a threat to public health and safety.
20. Plaintiff is informed and believes that it is entitled to an Order requiring Defendant to operate its business in compliance with the Plaintiff's zoning ordinances.

FOR A FOURTH CAUSE OF ACTION

(Nuisance)

21. Plaintiff reaffirms and reiterates all of the allegations in the Previous Causes of Action as if fully repeated and incorporated herein verbatim.
22. Defendant's operation on the Ward Parcels includes the locating of dilapidated and/or uninhabitable structures adjacent to the public roads.
23. Some of these structures are or have been located within the existing public road rights of way.
24. Location of such structures within the public right of way creates an unreasonable safety hazard for citizens traveling on the public roads.
25. These structures interfere with sight lines, produce annoyance in the public's use of the roads and/or unreasonably interference with the lawful use and enjoyment of such roads, and therefore constitute a nuisance.
26. Plaintiff is informed and believes that it is entitled to an Order requiring Defendant to end the operation of his business in such a manner that

constitutes a nuisance.

FOR A FIFTH CAUSE OF ACTION

(Injunctive Relief)

27. Plaintiff reaffirms and reiterates all of the allegations in the Previous Causes of Action as if fully repeated and incorporated herein verbatim.
28. The Defendant's current use of the Ward Parcels constitutes a continuing violation of the Plaintiff's established ordinances, as outlined and alleged above. As such, this use constitutes an irreparable harm, as each day of continued violation of the Town's ordinances negatively impact the health, safety, and welfare of its citizens.
29. As the Ward Parcels are, and at all times relevant to this complaint have been, located within the municipal bounds of the Town of Six Mile, and as the Defendant's use of the Ward Parcels is in contravention of duly established Town ordinances passed pursuant to specific grants of statutory authority, there is a likelihood that Plaintiff will be successful on the merits of one or more of its Causes of Action.
30. Plaintiff served Defendant with a uniform ordinance summons for one violation of the Town's laws, but that action carries a relatively small fine and is subject to continued delay due to the backlog of cases in the Magistrate Court. If the Plaintiff were to prevail on the uniform ordinance summons process, it would not mandate the correction of the multiple violations of Defendant's in his operation of the Ward Parcels, and as such, there is an absence of an adequate remedy at law for Plaintiff.
31. Accordingly, Plaintiff is informed and believes that this Court should issue its ruling requiring Defendant to show cause, if he can, why he should not be temporarily restrained and enjoined from the continued operation of the Ward Parcels in such a manner as is in violation of the duly-enacted ordinances of Plaintiff.

FOR A SIXTH CAUSE OF ACTION

(Recovery of Fees and Costs)

32. Plaintiff reaffirms and reiterates all of the allegations in the First Cause of Action as if fully repeated and incorporated herein verbatim.
33. On numerous and varied dates since the fall of 2009, Plaintiff and/or its agents have communicated verbally, and/or in writing to the Defendant that Defendant's operation on the Ward Parcels was in violation of numerous Town ordinances.
34. Despite these repeated attempts at resolution, Defendant has refused to comply with the Town's ordinances, causing Plaintiff to incur unnecessary attorney fees and costs in this matter which will be unfairly born by the taxpayers of the municipality.

WHEREFORE, Plaintiffs pray for judgment against Defendant, Dan Ward, finding him in contravention of the Town's above-listed ordinances, enjoining him from continuing with his use of the property without compliance with such ordinances, as well as awarding attorney's fees, and reimbursement for the costs of this action.

Liberty, South Carolina
December 13, 2011



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EXHIBIT 2
ANSWER AND COUNTERCLAIMS

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Town of Six Mile, South Carolina,

Plaintiff,

v.

Dan Ward,

Defendant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 2011-CP-39-1849
2012 JAN 17 A 10:49

**ANSWER AND
COUNTERCLAIMS
(JURY TRIAL REQUESTED)**

TO: KEN ROPER, ATTORNEY FOR PLAINTIFF.

The Defendant Dan Ward will respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not herein specifically admitted, qualified, or explained.
2. The Defendant admits the allegations of Paragraph 1 of the Complaint.
3. Paragraph 2 of the Complaint states a legal conclusion to which no response by the Defendant is necessary; however, to the extent a response from the Defendant is required, the Defendant denies the same.
4. The Defendant denies the allegations of Paragraph 3 of the Complaint.
5. The Defendant denies the allegations of Paragraph 4 of the Complaint in so far as the stated code section is intended by the Plaintiff to apply to the Defendant.
6. The Defendant denies the allegations of Paragraphs 5 and 6 as stated. Answering further, the Defendant specifically admits that the parcel bearing tax map number 4058-07-69-5660 (hereinafter Parcel "A") is and was at all times relevant to this litigation within the municipal boundaries of the Town of Six Mile. The Defendant denies that the parcel bearing tax map number 4058-07-69-3858 (hereinafter Parcel "B") is or was at any time relevant to this litigation located within the municipal boundaries of the Town of Six Mile.

7. The Defendant denies the allegations of Paragraph 7 of the Complaint.
8. The Defendant admits the allegations of Paragraph 8 of the Complaint.
9. The Defendant denies the allegations of Paragraph 9 of the Complaint. Answering further, the Defendant would show that he has obtained all required permits from appropriate authorities for his house moving operations. With respect to Parcel B, the Plaintiff is entirely without jurisdiction.
10. The Defendant denies the allegations of Paragraph 10 of the Complaint.

FOR A SECOND DEFENSE

11. The Defendant realleges and incorporates by reference hereto Paragraphs 1 through 10 in response to Paragraph 11 of the Complaint.
12. Paragraph 12 of the Complaint contains a conclusion of law to which no response is necessary from the Defendant. To the extent a response is required of the Defendant, the Defendant denies the same.
13. Defendant denies the allegations of Paragraphs 13, 14, and 15 of the Complaint. Answering further, the Defendant would show that he has not failed to obtain a business license from the Town of Six Mile because such business license is not required of the Defendant. As to Parcel B, the Plaintiff is entirely without jurisdiction.

FOR A THIRD DEFENSE

14. Defendant realleges and incorporates by references hereto Paragraphs 1 through 13 in response to Paragraph 16 of the Complaint.
15. Paragraph 17 is a conclusion of law to which no response by Defendant is required. To the extent a response is required of the Defendant, the Defendant denies the same.
16. Defendant admits the allegations of Paragraph 18 of the Complaint.
17. Defendant denies the allegations of Paragraphs 19 and 20 of the Complaint as stated.

Answering further, the Town of Six Mile is completely without jurisdiction as to Parcel B because Parcel B is not and never was within the municipal boundaries of the Town of Six Mile. To the extent a court determines that the Town of Six Mile has any jurisdiction over Parcel B, the Defendant has established a grand-fathered right to use the property to support his house moving operations as a valid non-conforming use. As to Parcel A, the Defendant also has established a grand-fathered right to use the property to support his house moving operations as a valid non-conforming use

FOR A FOURTH DEFENSE

18. The Defendant realleges and incorporates by reference Paragraphs 1 through 17 in response to Paragraph 21 of the Complaint.
19. The Defendant denies the allegation of Paragraphs 22, 23, 24, 25, and 26 of the Complaint.

FOR A FIFTH DEFENSE

- 
20. The Defendant realleges and incorporates by reference to the Paragraphs 1 through 19 in response to Paragraph 27 of the Complaint.
 21. The Defendant denies the allegations of Paragraphs 28 and 29 of the Complaint.
 22. The Defendant admits the allegations of Paragraph 30 to the extent it is alleged that the Plaintiff served the Defendant with a courtesy summons for one violation of one or more of the ordinances of the Town of Six Mile. The allegations of Paragraph 30 that any action relative to the courtesy summons would carry a relatively small fine and would be subject to continued delay is a conclusion of law to which no response from Defendant is necessary; however, to the extent a response to those allegations is required of the Defendant, the Defendant denies the same. The Defendant denies the remaining allegations of Paragraph 30 of the Complaint.
 23. The Defendant denies the allegations of Paragraph 31 of the Complaint.

FOR A SIXTH DEFENSE

24. In response to Paragraph 32 of the Complaint, the Defendant realleges and incorporates by reference Paragraphs 1 through 23.
25. The Defendant admits the allegations of Paragraph 33 of the Complaint to the extent that the Plaintiff has from time to time asserted verbally or in writing that the Defendant's business operations were in violation of certain of the ordinances of the Town of Six Mile, which violations the Defendant expressly denies. The Defendant denies the remaining allegations of Paragraph 33 of the Complaint.
26. The Defendant denies the allegations of Paragraph 34 of the Complaint. Answering further, the Defendant would show that he has not refused to comply with the ordinances of the Town of Six Mile; in fact, he is not required to comply with those ordinances. In addition, there is no authority which permits the Plaintiff to seek fees and costs for this action.
27. Defendant denies all allegations contained within the prayer for relief set forth in the Complaint.

FOR A SEVENTH DEFENSE
(FAILURE TO STATE A CLAIM)

- 
28. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.
29. The Plaintiff fails to allege facts sufficient to state a claim upon which relief can be granted.
30. The Plaintiff's claims should, therefore, be dismissed

FOR AN EIGHTH DEFENSE
(UNCLEAN HANDS)

31. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.
32. The Plaintiff acted with unclean hands, and the Plaintiff is accordingly barred from recovery.

FOR A NINTH DEFENSE
(WAIVER/ESTOPPEL)

33. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.
34. The Plaintiff is estopped and/or has waived the right to pursue some or all claims against the Defendant.

FOR A TENTH DEFENSE AND FIRST COUNTERCLAIM
(DECLARATORY JUDGMENT AS TO PARCEL B - NOT WITHIN MUNICIPAL BOUNDARY OR JURISDICTION)

35. The Defendant realleges and incorporates herein all previous allegations consistent with this defense and counterclaim.
36. This cause of action seeks its declaratory judgment pursuant to South Carolina Code Ann. §15-53-30 and Rule 57 SCRPC for the purpose of determining the rights of the parties which are in controversy.
37. There exist an actual controversy between the parties as to whether Parcel B is situate within the municipal limits of the Town of Six Mile.
38. The Defendant is informed and believes that Parcel B is not located within the municipal limits of the Town of Six Mile. The Plaintiff's official maps will clearly reflect that Parcel B is without the municipal limits.
39. The Defendant is informed and believes that he is entitled to an Order of this honorable Court declaring that Parcel B is not within the municipal limits of the Town of Six Mile and that any attempt, past or future, by the Town to exercise jurisdiction over Parcel B is void and unlawful.

FOR AN ELEVENTH DEFENSE AND SECOND COUNTERCLAIM
(INVERSE CONDEMNATION)

40. The Defendant realleges and incorporates herein all previous allegations consistent with

this defense.

41. The regulatory actions of the Plaintiff in adopting zoning regulations and purporting to apply same to the Defendant's property constitute a taking of the Defendant's property for public purposes without compensation in violation of the Constitution of the State of South Carolina. Pursuant to Article I, §13, South Carolina Constitution.
42. Accordingly, the Defendant is entitled to an award of just compensation, attorney's fees and litigation expenses.

FOR A TWELFTH DEFENSE AND A THIRD COUNTERCLAIM
(DECLARATORY JUDGMENT AS TO VALID NON-CONFORMING USE)

43. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.
44. This cause of action seeks a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRPC, for the purposes of determining the question of an actual controversy between the parties.
45. There is an actual controversy regarding whether the Defendant has a right to utilize the subject property for his house moving operations.
46. The Defendant was utilizing the subject property for his house moving operations prior to the purported enactment of any zoning ordinances or application of zoning by the Plaintiff to the subject property.
47. Accordingly, the Defendant is informed and believes that he is entitled to an Order of the court setting forth his right to utilize the subject property for his house moving operations as a valid non-conforming use.

FOR A THIRTEENTH DEFENSE AND A FOURTH COUNTERCLAIM
(DECLARATORY JUDGMENT AS TO INVALIDITY OF ZONING ORDINANCE)

48. The Defendant realleges and incorporates herein all previous allegations consistent with

this defense.

49. This cause of action seeks a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRPC, for the purposes of determining the question of an actual controversy between the parties.
50. There is an actual controversy regarding whether the Town of Six Mile's purported application of a zoning district to Parcel B is invalid because the Six Mile Town Council failed to follow the proper procedure for the enactment of a zoning map amendment to Parcel B.
51. Accordingly, the Defendant is informed and believes that he is entitled to an Order of the court determining that the zoning applied by the Plaintiff to Parcel B is invalid.

FOR A FOURTEENTH DEFENSE AND A FIFTH COUNTERCLAIM
(REFUND OF TAXES PAID UNDER PROTEST)

52. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.
53. Because Parcel B is not and was not within the municipal boundaries of the Plaintiff, the Plaintiff had no authority to cause Pickens County to alter its tax records to show that Parcel B was within the Plaintiff's municipal boundaries.
54. The Plaintiff, therefore, has wrongfully assessed *ad valorem* taxes to the Defendant.
55. The Plaintiff paid all such *ad valorem* taxes under protest.
56. The Defendant is informed and believes that the Plaintiff should be made to disgorge all *ad valorem* tax payments wrongfully collected by the Plaintiff.

FOR A FIFTEENTH DEFENSE AND A SIXTH COUNTERCLAIM
(ATTORNEY'S FEE AND COSTS)

57. The Defendant realleges and incorporates herein all previous allegations consistent with this defense.

58. South Carolina Code of Laws authorizes the recovery of attorney's fees against a political subdivision of the State of South Carolina, including the Town of Six Mile, under the circumstances set forth in S.C. Code Ann. Section 15-77-300.
59. The Defendant is a party contesting the action of Town of Six Mile, a political subdivision of the State of South Carolina.
60. The Town of Six Mile has acted unlawfully and without substantial justification in numerous ways, including, without limitation, in that its officers or agents have acted in excess of their lawful authority by directing employees or officials of Pickens County to interrupt or interfere with the Defendant's use of his property.
61. There are no special circumstances that would make the award of attorneys fees to the Defendant unjust.
62. As a consequence of the actions of the Plaintiff, the Defendant is entitled to an award of attorneys fees.

WHEREFORE, having fully answered Plaintiff's Complaint, the Defendant prays as follows:

- A. The Plaintiff's Complaint be dismissed with prejudice;
- B. The Plaintiff recover nothing from the Defendant;
- C. The Defendant be awarded actual, consequential, incidental, and special damages as to the Defendant's Counterclaims;
- D. The Defendant be awarded prejudgment interest;
- E. The Court issue an Order declaring that Parcel B is not within the municipal boundary of the Town of Six Mile and that the Defendant has the right to continue to utilize Parcel A and Parcel B for his house moving operations as a valid, non-conforming use;
- F. The Defendant be awarded attorney's fees and costs; and/or

G. The Court award such other relief as the Court may deem just and proper.

The Defendant demands a trial by jury.



James S. Meggs (SC Bar# 3929)

Kathleen M. McDaniel

George A. Taylor

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, Suites 100 and 200

Post Office Box 1390

Columbia, South Carolina 29202

Telephone: 803-404-6900

Facsimile: 803-404-6901

ATTORNEYS FOR DEFENDANT

January 13, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Town of Six Mile, South Carolina,)
)
Plaintiff,)
)
v.)
)
Dan Ward,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 2011-CP-39-1849

CERTIFICATE OF SERVICE

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2012 JAN 17 A 10:49

I, Tiffany D. Burgess, an employee of Callison Tighe & Robinson, LLC, do hereby certify that I have served a copy of the **Defendant's Answer and Counterclaims**, by causing a copy of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
18 South Commerce Street
P.O. Box 330
Liberty, SC 29657

Tiffany D. Burgess
Tiffany D. Burgess

Columbia, South Carolina
January 13, 2012

EXHIBIT 3

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action 2011-CP-39-1108
COUNTY OF PICKENS	)	
Town of Six Mile, South Carolina,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	MOTION FOR SUMMARY
Dan Ward	)	JUDGMENT
	)	
Defendant.	)	
_____	)	

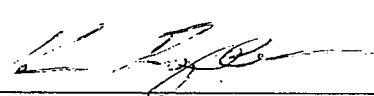
TO: GEORGE TAYLOR, ATTORNEY FOR DEFENDANT, ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Town of Six Mile, South Carolina, by and through its undersigned counsel, will move at a date and time to be set by the Court, but no sooner than ten (10) days after service hereof, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment as to Plaintiff's Causes of Action 1, 2, 3 & 5. This motion is based upon the following:

1. There is no genuine issue as to any material fact;
2. Defendant admits placing buildings and/or houses on the property at issue;
3. Defendant admits the placement of these buildings and/or buildings is in furtherance of his house moving business;
4. Defendant's actions are in contravention of established ordinance(s) of the Plaintiff;
5. Plaintiff is entitled to summary judgment as a matter of law

This motion is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, supporting memoranda of law filed or to be filed, supporting affidavits filed or to be filed, and the applicable common and statutory laws of the State of South Carolina.

Liberty, South Carolina
December 13, 2011



Ken Roper (SC Bar # 7047)
Attorney for Plaintiff
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, South Carolina 29657
Telephone (864) 843-0004
Fax (864) 843-4555
ken@roperlawfirm.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Town of Six Mile, South Carolina,)
)
Plaintiff,)
)
v.)
)
Dan Ward,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-89-1849

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the Plaintiff's MOTION FOR SUMMARY JUDGMENT upon counsel for Defendant on this 1st day of March, 2013, by depositing a copy of same in the United States mail, postage prepaid, and addressed as follows:

George Taylor, Esq.
Callison, Tighe & Robinson, LLC
PO Box 1390
Columbia, SC 29202


Heather Bruce

Liberty, South Carolina
March 1, 2013

EXHIBIT 4

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA 2013 APR 16 PM 3:25 IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS THIRTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 2011-CP-39-1849

Town of Six Mile, South Carolina,

Plaintiff,

v.

Dan Ward,

Defendant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

BACKGROUND FACTS

The above-referenced matter was commenced by the filing of the Summons and Complaint by the Plaintiff, Town of Six Mile ("Six Mile"), on December 13, 2011. The Complaint alleges the following causes of action against the Defendant, Dan Ward ("Mr. Ward"): (1) declaratory judgment - building permit violation; (2) declaratory judgment - business license violation; (3) declaratory judgment - zoning violations; (4) nuisance; (5) injunctive relief; and (6) recovery of fees and costs. Defendant filed an Answer on January 17, 2012, summarily denying Plaintiff's allegations and asserting various counterclaims.

The Plaintiff's allegations concern two parcels of property owned by Mr. Ward. The parcels are identified as Pickens County tax map numbers 4058-07-69-5660 ("Parcel A") and 4058-07-69-3858 ("Parcel B") and are depicted on the attached **Exhibit A**.¹ Parcel A and Parcel B neighbor each other and are separated only by Highway 137 and Bell Shoals Road. Mr. Ward uses the two parcels in support of his house moving and renovation business.

Essentially, Mr. Ward uses the property to store salvaged houses that he moves onto his property to renovate and sell. (Compl. ¶ 7-8; Ans. ¶ 7-8.) The houses rest on I-beam trailers

¹ Parcel B consists of two sections of property separated by Highway 137. The affidavits and depositions filed in support of this Memorandum refer to the southeastern section of Parcel B as "Parcel C," but the two sections are referred to collectively herein as Parcel B.

while stored on the property and are not permanently affixed to the land. (**Exhibit B**, Affidavit of Dan Ward, April 9, 2013, ¶ 11-13.)

The Defendant does not concede that both Parcels A and B are within the Town of Six Mile. There is a genuine issue of fact as to whether Parcel B is within the Town and thus subject to any regulation by the Town of Six Mile. Solely for the purposes of this memorandum, the issue of the Town's boundaries are not addressed because the Plaintiff's motion fails in any event.

This case presents the classic example of the modern phenomenon of newcomers "moving to the nuisance". Mr. Ward is a professional house mover and has operated a house moving business in Pickens County without objection for decades. (Ward Affidavit, ¶ 3.) To that end, Mr. Ward has been storing houses on Parcel A in support of his business since he purchased the property in 1994. (Ward Affidavit, ¶ 10.) Plaintiff's own records indisputably show that Mr. Ward was using Parcel A to store and sell houses as early as February 7, 1996. (**Exhibit C**, Letter from Town of Six Mile to Dan Ward, February 7, 1996.) A letter from Eleanor S. McGuire, the Six Mile clerk, to Mr. Ward states: "[T]his is in reference to the houses for sale at the corner of Bell Shoals road (sic). Since the houses are inside the town limits, it is necessary for you to purchase a business license." Id.

Further, Richard Davidson, the Six Mile Zoning Administrator from 2004 until October 2009, concluded in 2006 that Mr. Ward's use of Parcel A constituted a valid nonconforming use subject to the grandfathering provisions of the Six Mile Zoning Ordinance. (**Exhibit D**, Affidavit of Richard Davidson, April 10, 2013, ¶ 9.) Moreover, on August 2, 2006, Six Mile town council discussed the status of Mr. Ward's use of Parcel A. (**Exhibit E**, Minutes from Six Mile Council Meeting, August 2, 2006.) The meeting minutes provide:

Next on the agenda was a question concerning zoning of property located at the corner of Bell Shoals Road and SC 137. The question was if this

property was considered grandfathered in before the zoning went into effect in 1999. After discussion, council agreed that it was grandfathered...

Id. Thereafter, no action was taken by Six Mile or any officer thereof to appeal Mr. Davidson's or the town council's determination.

Since Mr. Davidson's determination and town council's August 2006 meeting, there has been no action by Mr. Ward that would constitute an abandonment of his right. (Ward Affidavit, ¶ 16.) Mr. Ward never intended to abandon his house moving business and "[s]ince [at least] November 6, 2007, there has not been a period of twelve consecutive months without a house being located on [Parcel A]." (Ward Affidavit, ¶ 17.)

Mr. Ward purchased Parcel B on November 20, 2006. He purchased Parcel B solely to use in support of his house moving business. Prior to purchasing Parcel B, Mr. Ward investigated whether the property was within the town limits of Six Mile. His inquiry revealed that the property was outside of the town limits. (Ward Affidavit, ¶ 20.) The official maps for Six Mile, compiled over many years and maintained by the town, all showed Parcel B to be outside the town limits. The Pickens County Tax Records also indicated that Parcel B was outside the town limits. (Ward Affidavit, ¶ 20.) Moreover, the serving mayor in 2009, testified at his deposition that he too believed Parcel B was outside the town limits of Six Mile until approximately August 2009. (**Exhibit F**, Deposition of John Wade, July 25, 2012; Pg. 8:20-9:10). Even today, Parcel B is shown as outside the town limits on a number of website resources including Google.

Additionally, as with Parcel A, Mr. Ward used Parcel B for business purposes prior to the property being zoned. (Ward Affidavit, ¶¶ 18-19.) Because the town did not believe Parcel B to be within its jurisdictional limits until late 2009, the property was not zoned when the rest of Six Mile was zoned. Only after discovering an old map purporting to show Parcel B to be within the Town, did the Town act to zone Parcel B Low Density Residential on December 1, 2009,

over three years after Mr. Ward purchased the property and began using it for business operations. (Ward Affidavit ¶¶ 18-19; Wade Deposition, Pg. 23:24-24:1.)

It was not until August 2009 that Six Mile took an interest in halting Mr. Ward's business operations. According to Mr. Wade, Six Mile got involved after a Six Mile resident complained about Mr. Ward's use of Parcel B. In spite of these facts, and despite the fact that Six Mile has produced no evidence contradicting Mr. Ward's vested land use, Six Mile has plowed ahead to attempt to stop Mr. Ward from operating his business as he has for decades.²

Six Mile now employs Woodrow Kelly as it's Zoning Administrator to enforce the towns zoning laws.³ Mr. Kelly has absolutely no knowledge of the facts necessitating Mr. Davidson's determination that Mr. Ward had a vested right to continue using Parcel A in support of his business, and likewise has no knowledge of Mr. Ward's use of Parcel B and the circumstances surrounding the purported zoning of Parcel B. In fact, Mr. Kelly is altogether ignorant with respect to basic zoning concepts including how Six Mile's Zoning Ordinance treats non-conforming uses. During Mr. Kelly's deposition in this matter he testified to the following:

Q: Can you tell me how long Mr. Ward has been using what's marked as parcel A to store a house like this or any other house?

A: I have no idea

...

Q: Would you be surprised to learn that he's been using it to store houses since 1994?

A: I wouldn't be surprised at all.

Q: Do you know when Six Mile adopted their first zoning ordinance?

A: You mean as the town of Six Mile itself?

Q: Well, yes.

A: I have no idea when they adopted their first zoning ordinance.

² In addition to filing this Civil Action, Six Mile initiated a criminal action against Mr. Ward by way of a Courtesy Summons issued on April 1, 2010, alleging Mr. Ward violated the Six Mile Code of Ordinances by failing to "obtain a permit to lawfully place or store structures or signs as described in the Town of Six Mile official zoning ordinance..." The criminal action appeared before the Honorable S. Michael Gillespie on January 20, 2012, wherein the Summons and the charges set forth therein were dismissed with prejudice upon the Motion of Mr. Ward's counsel. A true and accurate copy of the Order of Dismissal is attached hereto as **Exhibit H**.

³ Woodrow Kelly took over as Zoning Administrator for Six Mile on August 1, 2011.

Q: Would you be surprised to learn that it was adopted in November of 2007?

A: Again, I have no idea.

(Exhibit G, Deposition of Woodrow Kelly, February 25, 2013, Pg. 16:13- 17:8)

Q: Do you know what a vested non-conforming use is?

A: I have no idea.

(Kelly Deposition, Pg. 17:16-17)

Q: So if someone came to you and said "Mr. Kelly, I think I have a right to continue to use my property the way I've been using it prior to the zoning ordinance being passed," you would not know how to give them an answer on whether or not they have vested right to use it the way they were using it?

A: I would not.

Kelly Deposition, Pg. 18:13-19)

Q: If I told you that [the previous Zoning Administrator] had rendered an interpretation that Mr. Ward has a vested right to continue to use parcel A to store his houses, would that influence how you treated Mr. Ward under the zoning ordinance?

A: It would not.

Q: Well, I'm asking you if [Mr. Davidson] had rendered that decision, would it influence your position.

A: If he had rendered that decision to who? The town –

Q: To the town and to Mr. Ward.

A: It wouldn't have any affect on my job as the Administrator now, no.

Q: Are you familiar with an – of appeals under the zoning ordinance?

A: I have read some appeals, yes.

Q: Okay, If Mr. Davidson had rendered an interpretation that Mr. Ward has a non-conforming use, how long would the town have had to appeal that decision?

A: I have no idea.

(Kelly Deposition, Pg. 23:1-24)

In December 2009, Six Mile Town Council conducted its second reading to zone Parcel B Low Density Residential. Up to that point Parcel B was never zoned because the Town's official maps showed the Parcel as being outside the town limits. Mr. Ward was already using this property in support of his house moving business and had acquired a vested right to maintain his use of Parcel B for his business. Zoning Administrator Kelly did not know when Mr. Ward began using Parcel B for business purposes. (Kelly Deposition, Pg. 24:3-18.) Six Mile's former Mayor, John Wade, testified that he believed Mr. Ward was using Parcel B at least prior to August 5, 2009 to store houses or carports. (Wade Deposition, Pg. 23:3-8.)

Clearly, Mr. Ward's right to continue business use of Parcel B was vested and is protected from interference.

STANDARD OF REVIEW

The party moving for summary judgment must show there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. LaMotte v. Punch Line Columbia, Inc., 296 S.C. 66,69, 370 S.E.2d 711, 712 (1988). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Brandt v. Gooding, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). To determine whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). In the present case, the Plaintiff has failed to show there are no genuine issues of material fact and that the Plaintiff is entitled to judgment as a matter of law. Therefore, Plaintiff's motion should be denied.

ANALYSIS

Plaintiff has moved for summary judgment on its first, second, third and fifth causes of action. For the following reasons, Plaintiff's Motion should be denied.

1. Plaintiff's motion with respect to the first cause of action (building permit) fails because the statute upon which Plaintiff relies is inapplicable in this case.

Plaintiff's first cause of action is for a declaratory judgment "ordering Defendant to obtain a building permit..." Plaintiff relies on S.C. Code § 5-25-310, *et. seq.* which Plaintiff claims requires Mr. Ward to obtain a building permit. However, Plaintiff's reliance on S.C. Code § 5-25-310 is misplaced because the cited statute is inapplicable.

S.C. Code § 5-25-10 states: "[n]one of the provisions of this chapter, except §§ 5-25-20,

5-25-40, and 5-25-160 to 5-25-210, shall apply to towns of less than five thousand inhabitants..." According to the South Carolina Appalachian Council of Governments, in 2010 Six Mile had a total population of 675. (**Exhibit I**, Municipal Fact Sheet, Appalachian Council of Governments.) Therefore, § 5-25-310, upon which Plaintiff relies, is expressly inapplicable in this case because Six Mile does not have the requisite threshold of citizens to enable the authority of the statute. Because the statute is wholly inapplicable, Plaintiff's motion for summary judgment with respect to its first cause of action should be denied.

2. Plaintiff's motion with respect to the first cause of action (building permit) fails because there is no requirement that Ward secure permits.

It is not clear whether the town asserts that Mr. Ward was required to secure a permit for his business activities on Parcel A or Parcel B. With respect to Mr. Ward's activities as a professional house mover, permits for movement of houses are issued by the state of South Carolina Department of Transportation. State Law preempts local regulation of house movers who are utilizing state highways to transport salvaged houses, as does Mr. Ward.

On Parcel B, Mr. Ward during the Summer of 2009, constructed concrete block knee walls. At that time, Parcel B was depicted as being outside the town limits of the Town of Six Mile. Mr. Ward contacted the Pickens County Building Official's office and was informed that he did not need a permit from Pickens County to construct the knee walls on Parcel B. It was only later that then Mayor Wade decided to classify Parcel B as being within the town limits. Ironically, Mr. Ward would have called Pickens County for inquiry on permitting even if Parcel B had been depicted as being in the Town of Six Mile. This is because the Town of Six Mile's own ordinance requires permits to be procured from "the Pickens County." (sic)

The Defendant concedes that it is necessary to secure building and other permits from appropriate regulatory officials at the town and county level when a salvaged house is being located at its final destination and being up-fitted with foundation, utilities and other

improvements. Until that transit takes place, building or moving permits are not required at the local government level. This practice is evidenced by Mr. Ward's course of dealings over the years and the Affidavit of Richard Davidson. (Davidson Affidavit ¶ 15.)

3. Plaintiff's motion with respect to Plaintiff's second cause of action (business license) fails because Mr. Ward is exempt from the business license ordinance.

Plaintiff's second cause of action seeks a declaratory judgment "requiring Defendant to obtain a business license under Plaintiff's ordinances." (Compl. ¶ 15.) Plaintiff's motion for summary judgment on this cause of action should be denied because Mr. Ward is exempt from the business license ordinance. "[N]o city, town, or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F, Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal place of business." S.C. Code § 58-23-620.

Mr. Ward holds a Class E Certificate issued by the South Carolina Department of Motor Vehicles. (Ward Affidavit, ¶ 3; **Exhibit J**, Ward's Class E Certificate.) Mr. Ward's principal place of business is located at 281 Cedar Hill Road, Six Mile, South Carolina, 29682, in the unincorporated area of Pickens County, South Carolina. (Ward Affidavit, ¶ 4.) Because Mr. Ward's principal place of business is not within the town limits of Six Mile, Mr. Ward is not required to obtain a business license from Six Mile. The Town's assertion is expressly preempted by S.C. Code § 58-23-620. Thus, Plaintiff's motion with respect to its second cause of action should be denied.

4. Plaintiff's motion with respect to the third cause of action (zoning violation) should be denied because the evidence shows Plaintiff has a vested nonconforming use of the property.

Plaintiff's third cause of action seeks a declaratory judgment requiring Mr. Ward "to operate his business in compliance with the Plaintiff's zoning ordinances." (Compl. ¶ 20.) However, Mr. Ward has a valid nonconforming right to continue using his property for his house

moving business. Consequently, his operations comply with the Town's own ordinance.

South Carolina law provides "that a landowner acquires a vested right to continue a non-conforming use already in existence at the time his property is zoned in the absence of a factual showing that the continuance of the nonconforming use would be detrimental to the public's health, safety, or welfare." Friarsgate v. Town of Irmo, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (1986) (citing James v. City of Greenville, 227, S.C. 565, 584, 88 S.E.2d 661, 671 (1955)). A non-conforming use of property is a use which existed lawfully before the enactment of a zoning ordinance and may continue after a zoning ordinance is passed even though the use no longer complies with the zoning restriction. See, 83 Am.Jur.2d. Zoning and Planning § 624 (1992). "The right to continue a prior nonconforming use is often stated in terms of the owner having acquired a 'vested right' to continue the prior use." Friarsgate, 290 S.C. at 269, 349 S.E.2d at 893. The purpose of grand fathering in nonconforming uses is to protect the constitutional rights of property owners. Heilker v. Zoning Board of Appeals, 346 S.C. 401, 419, 552, S.E.2d 42, 52 (2001). The value of property is based substantially in its use, therefore, "[i]f the right of use [is] denied, the value of the property is annihilated, and ownership is rendered a barren right." Vulcan Materials Company v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 499, 536 S.E.2d 892, 902 (2000).

Six Mile's very own Zoning Ordinance recognizes the constitutional right of property owners to maintain a prior nonconforming use of their property. Section 707(g) of the Six Mile Official Zoning Ordinance ("Zoning Ordinance") provides:

Nonconforming Buildings or Uses.

Nonconforming buildings or 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 use at the time of the enactment of this Ordinance may be continued even though such use does not conform to the provisions of this Ordinance.

(Official Zoning Ordinance, Town of Six Mile, Adopted November 6, 2007. Excerpt, **Exhibit K**).

In the present case, Mr. Ward has a vested right to continue to use his property to store houses in support of his house moving business. Prior to the Zoning Ordinance's adoption, Mr. Ward had been lawfully using his property for his business purposes.

By affidavit, Mr. Ward has shown that he has been using Parcel A since 1994 for his house moving business. (Ward Affidavit, ¶ 10.) In fact, Mr. Ward purchased the property to use for his business. (Ward Affidavit, ¶ 12.) Since purchasing Parcel A, Mr. Ward has moved numerous homes on and off the property as he renovated and sold the homes. (Ward Affidavit, ¶ 13.) Further, Six Mile's own records show that Mr. Ward was using Parcel A as early as February 7, 1996, for his house moving, renovation and sales business. By letter dated February 7, 1996, Eleanor S. McGuire, the Six Mile Town Clerk, wrote Mr. Ward stating: "[t]his is in reference to the houses for sale at the corner of Bell Shoals road (sic). Since the houses are inside the town limits, it is necessary for you to purchase a business license." (Letter dated February 7, 1996, **Exhibit C**)

Further, prior to Six Mile's purported zoning of Parcel B in December 2009, an action Defendant disputes was invalid based on lack of jurisdiction, Mr. Ward was using Parcel B to support his business. Mr. Ward purchased Parcel B solely for business purposes on or about November 20, 2006. (Ward Affidavit, ¶¶ 18-19.)

In sum, the evidence in this case is that Mr. Ward has owned and used Parcel A since May 1994 and has owned and used Parcel B for his business prior to that property being zoned. The use was never abandoned. Therefore, Mr. Ward has a vested, nonconforming right to continue to use his property for his business. Summary Judgment would not be proper.⁴

⁴A genuine issue of material fact exists as to whether Parcel B is even within the jurisdictional limits of Six Mile. Official Six Mile maps signed by previous mayors and councilmen and compiled over a period of over forty years all indicate that Parcel B is without

5. Plaintiff's motion with respect to Plaintiff's fourth cause of action (preliminary injunction) should be denied.

As a preliminary matter, the Plaintiff does not seek an injunction to maintain the status quo, but alternatively, to reverse the status quo as it has existed in many respects since 1994 and, in all respects, since 2009.

The essential purpose of a preliminary injunction is to preserve the status quo until a matter has been adjudicated, thereby avoiding the possibility of irreparable injury to the aggrieved party until a full hearing on the merits can be heard. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009). To state a claim for preliminary injunction, a party must demonstrate (1) irreparable harm, (2) likelihood of success on the merits, and (3) no adequate remedy at law. Id.

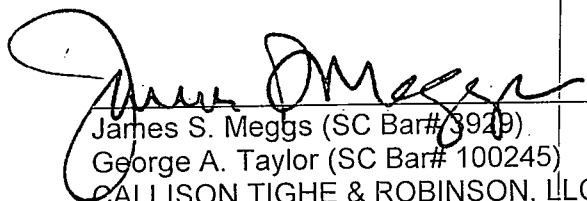
Although several prior opinions stated as an additional requirement that a court balance the equities prior to granting a preliminary injunction, the South Carolina Supreme Court clarified that such balancing of the equities is not a requirement prior to issuing a preliminary injunction, but is subsumed by the irreparable harm and no adequate legal remedy elements. Poytner Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010). In addition to these two elements, a court must also consider a party's likelihood of success on the merits. An injunction is a drastic remedy and ought to be applied with caution. Strategic Res. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

Plaintiff has failed to meet any of the required elements to state a claim for a preliminary injunction. Plaintiff has offered no evidence to support its claim for a preliminary injunction and has therefore failed to demonstrate any of the elements required for this Court to issue a preliminary injunction.

the jurisdictional limits of Six Mile.

CONCLUSION

This Court should deny Plaintiff's motion for summary judgment on its first, second, third and fifth causes of action. State law preempts the Town's business license ordinance in the context of professional home movers. The enabling act relied on by the Town for its claim that Mr. Ward needed permits is not available to Six Mile as it lacks the requisite population. Further, it will be demonstrated that no permits were required from the Town in any event. With respect to Plaintiff's claim of zoning violations, it is clear that Mr. Ward has a vested right to use his property for his business, and there is a genuine dispute as to whether Parcel B is even within Six Mile's jurisdiction. Finally, Plaintiff's fifth cause of action fails to meet the requirements of a preliminary injunction and is unnecessary at this late date. For the reasons set forth herein and those which will be asserted at hearing, Plaintiff's motions should be accordingly denied.



James S. Meggs (SC Bar# 39219)
George A. Taylor (SC Bar# 100245)
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901

ATTORNEYS FOR DEFENDANT

April 12, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-39-1819 **APR 16 PM 3 29**

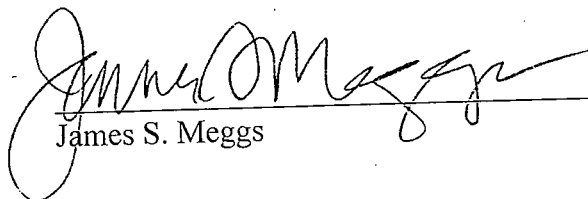
Town of Six Mile, South Carolina,)
Plaintiff,)
v.)
Dan Ward,)
Defendant.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CERTIFICATE OF SERVICE

I, James S. Meggs, Esquire, of Callison Tighe & Robinson, LLC, do hereby certify that I have served a copy of the **Memorandum in Opposition to Plaintiff's Motion for Summary Judgment**, on April 13, 2013, by causing copies of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, SC 29657


James S. Meggs

Columbia, South Carolina
April 13, 2013

EXHIBIT 5

**FORM 4- ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS**

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3901849**

Town of Six Mile

2013 MAY 29 P 12

Dan Ward

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

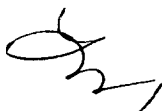
☐ See attached order; (formal order to follow)

☒ Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Motion for Summary Judgment. Plaintiff asks this Court to grant Summary Judgment on the issue of the Defendant's property being within the town of Six Mile and issue a Declaratory Judgment requiring the Defendant to obtain a business license and permit. The Plaintiff also asks this Court to enjoin the Defendant from operating his business until such time. The Defendant argues that a genuine issue of material fact exists as to the town limits. The Defendant also argues that his use of the property constitutes a valid non-conforming use and that his use of the property has been "grandfathered" in by the Town Council, exempting him from the business license requirement.. The Defendant opposes any injunction.

Upon review of the pleadings, documents presented, case law, and statutes, this Court grants Plaintiff's Motion for Summary Judgment, Motion for a Declaratory Judgment, and Motion to Enjoin. Defendant's property (Parcels A & B), is within Six Mile's town limits. Defendant has admitted that Parcel A is within the town limits. Parcel B was annexed in 1965. At some point, the town's maps and tax records erroneously reported Parcel B as being outside of the town limits. However, no de-annexation has ever occurred. In 2009, the town corrected the maps to reflect the correct designation. As such, this Court grants Plaintiff's Motion for Summary Judgment as to Parcel B being within the town of Six Mile.

Regarding the declaratory judgment sought, the Defendant argues that because he has a State-issued Class E Permit (allowing



him to transport homes on roadways) the Town of Six Mile is preempted from requiring him to obtain a business license. The Defendant relies on S.C. Code Ann. Sections 56-3-661 which exempts Class E permit holders from having to obtain a business license in any other jurisdiction other than their principal place of business. The Defendant further asserts that his principal place of business is Parcel B, which he claims to be an unincorporated area of Pickens County. This Court has found Parcel B to be within the town limits; however, Parcel B was zoned in 2009 as "low-density residential." The Defendant argues that because the Town Council found him to have a "valid non-conforming use" he should be exempted from the business license requirement. The business license requirement and the zoning variance are two separate issues. The Defendant's right to use the land for a business purpose does not exempt him from complying with the Town's safety and licensing regulations. Section 56-3-661 exempts Class E permit holders from having to pay taxes or fees in their principal place of business, but not from being required to obtain a business license. As such, this Court grants Plaintiff's Motion for a Declaratory Judgment requiring the Defendant to apply for a business license. Plaintiff's Motion to Enjoin is granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Signature]
Circuit Court Judge

2162

Judge Code

5/23/13
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 5/29/13, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Roper

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jim Meggs

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
County Clerk Of Court - Clerk of Court

Court Reporter

[Handwritten mark]

EXHIBIT 6

**DEFENDANT'S 59(e) MOTION TO ALTER OR AMEND
AND COVER LETTER**

James S. Meggs
803.404.6900 ext. 3011
JimMeggs@callisontighe.com

CALLISON  TIGHE

June 6, 2013

VIA Regular Mail and email: lverdinj@sccourts.org; lverdinlc@sccourts.org
Honorable Letitia H. Verdin
Circuit Court Judge, Thirteenth Judicial Circuit
305 E. North Street, Suite 318
Greenville, SC 29601

Re: Town of Six Mile v. Dan Ward
Case No. 2011-CP-39-1849
Our File No. 5532.001

Dear Judge Verdin:

Enclosed please find a chambers copy of our Rule 59(e) Motion to Alter or Amend your Order dated May 23, 2013 and filed May 29, 2013.

I write to request a brief clarification of your order. At the close of your third paragraph, you provide as follows:

"...this Court grant's Plaintiff's Motion for Declaratory Judgment requiring the Defendant to apply for a business license. Plaintiff's Motion to Enjoin is granted."

If the mandate of your Order is that Mr. Ward make application for a Town of Six Mile business license, we are proceeding to make a provisional application for the same. No need for a stay or supersedeas arises if this application satisfies your directive.

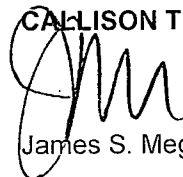
If your intention is to enjoin Mr. Ward in other respects (e.g. moving from Parcel A or B), then we hereby request that you stay the effect of your Order at least until your ruling on our Rule 59 motion.

I have sought Ken Roper's consent to the above, but he informs me that he is not authorized to consent at this time.

I appreciate your consideration of this request.

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



James S. Meggs

JSM/lbm
Enclosures

cc: Ken Roper, Esquire (via Regular Mail and email: ken@roperlawfirm.com)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Town of Six Mile, South Carolina,

Plaintiff,

v.

Dan Ward,

Defendant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 2011-CP-39-1849

2013 JUN - 7 P 2: 25

**MOTION TO ALTER OR AMEND ORDER
PURSUANT TO RULE 59(E) SCRPC**

TO: KEN ROPER, ATTORNEY FOR THE PLAINTIFF, TOWN OF SIX MILE.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof or as soon thereafter as counsel may be heard, the Defendant Dan Ward ("Ward") will move pursuant to Rule 59(e), SCRPC, for an Order from this Honorable Court to alter or amend its Order dated May 23, 2013, and filed May 29, 2013, which Order granted the Plaintiff Summary Judgment in certain respects and its Motion to Enjoin as will more fully appear by way of reference to the aforesaid order. The grounds for this motion are as follows:

This Court's Order of May 23, 2013, sets forth facts which are not consistent with the record before it on Plaintiff's Motion for Summary Judgment. The following facts and conclusions are in error and should be corrected by Amended Order:

1. Ward does not claim the property designated as Parcel B as his principal place of business. The Court's assertion that he "...asserts that his principal place of business is Parcel B, which he claims to be an unincorporated area of Pickens County.", mistakes Ward's argument. Ward's principal place of business is not Parcel B and he did not so argue.

2. The Court errs in its observation that Ward "argues that because Town Council found him to have a 'valid non-conforming use' he should be exempted from the business license requirement." The fact that Ward possesses a vested right to continue to use Parcel B (as well as Parcel A) for business purposes has no bearing on whether he must secure a Town of Six

Mile business license. He is exempt from that requirement pursuant to South Carolina Code Annotated 56-3-661 and 56-3-620 because his principal place of business is not located on Parcel A or Parcel B and regardless of whether Parcel B is located within the town limits. Ward's principal place of business is located well outside the Town of Six Mile.

3. The Court erroneously characterizes Ward's argument concerning his vested right to continue a valid non-conforming use as a "zoning variance" issue. A zoning variance is an action by the Board of Zoning Appeals, authorized by the South Carolina Planning Enabling Act, § 6-29-820 (a)(2). Ward does not claim a variance. Rather he asserts his vested right to continue to use his property as a non-conformity which is a concept rooted in the Constitution.

4. This Court's conclusion that Ward's "right to use the land for a business purpose does not exempt him from complying with the Town's safety...regulations." (emphasis added) exceeds the scope of the record. The inference is that there was evidence of safety regulations and violation of those regulations by Ward presented at the hearing in this matter. No such evidence was presented.

5. The Court erred in considering the issue of the Town's municipal boundary in relation to Parcel B. The issue was not fairly framed in the Town's Motion for Summary Judgment.

6. The Court overlooks the applicable evidentiary standard in concluding that Summary Judgment on the question of Parcel B's status as within or without the town limits. There was at least a scintilla of evidence presented which would support a fact finders conclusion that Parcel B is not within the town limits.

7. The Court erred in granting the Town's "Motion to Enjoin". There was no evidence presented that would support a finding that Ward's activities on Parcels A or B violated any town ordinance. His right to use both parcels in support of his business is vested as a pre-existing non-conforming use and he is not required to obtain a town business license because he is exempt pursuant to state law.

8. There was no "Motion to Enjoin" before the Court. The Town's Motion for Summary Judgment included its fifth cause of action which essentially is a petition for a rule to show cause and a request for temporary restraint. To grant an injunction when such was not fairly framed by the Pleadings is error and gravely prejudicial to Ward. Moreover, there was no evidence offered by the Plaintiff which substantiated any material municipal code violations.

9. The Order does not specify what Ward is enjoined to do or refrain from doing. If the Court intends that Ward apply for a business license, that application is being made, provisionally, contemporaneously with the filing of this Motion to Alter or Amend. If the scope of the Court's injunction is to require this application, the Defendant requests that the Court enter its Supplemental Order clarifying the limit of the scope of its mandate.

ARGUMENT

A. STATUTORY EXEMPTION FROM BUSINESS LICENSE FEES

South Carolina Code Ann. § 56-3-661 provides in pertinent part:

* * * *

The holder of a Class E certificate may be eligible for exceptions provided by § 58-23-620 and 44-96-160(w)(1).

South Carolina Code Ann. § 58-23-620 provides:

* * * *

...no city, town or county shall impose a license fee or license tax on the holder of a Certificate E or a Certificate F, Certificate of Compliance,....except the city or town of such carrier's residence or the location of his principal place of business.

The Court has erroneously construed the statute. The order provides that

§ 56-3-661 exempts Class E permit holders from having to pay taxes or fees in their principal place of business, but not from being required to obtain a business license.

This conclusion is plainly not consistent with the language of the statute. To the

contrary, 56-3-661 and 58-23-620 clearly exempt Class E permittees from business licensing in all jurisdictions except their principal place of business or place of residence.

The Defendant respectfully requests that the court alter or amend its order to conform the language of the order to the literal language of the statute.

B. WARD'S PRINCIPAL PLACE OF BUSINESS

The Court misapprehended Ward's argument concerning the application of South Carolina Code Ann. § 56-3-661 and the exemption from business licensing for Class E permittees set forth in that statute. Ward does not claim Parcel B as his principal place of business as the Order erroneously concludes. Ward's principal place of business is located at 281 Cedar Hill Road, Six Mile, South Carolina and while in the Six Mile zip code area, it is in the unincorporated area of Pickens County. 281 Cedar Hill Road is not Parcel B. The statute, therefore, would require Ward to obtain a Pickens County business license (if required), but no other.

There is no genuine issue of material fact that Ward's principal place of business is not on Parcel B and it appears that the Court misconstrued or misapprehended Ward's argument, the brief submitted in opposition to Plaintiff's Motion for Summary Judgment, and the Affidavit of Dan Ward specifying the location of his principal place of business. Therefore, Ward respectfully requests that this Court amend its Order to correct the error in the Court's finding that Parcel B is Ward's principal place of business and declare that the exemption of South Carolina Code Ann. § 56-3-661 exempts Ward from the business license requirement of the Town of Six Mile.

C. WARD'S VALID NON-CONFORMING USE

The Court has correctly concluded that Ward has acquired a valid non-conforming use for his property. However, the Court again misapprehends Ward's argument concerning the

requirement for a business license.

Ward's right to use the land for a business purpose does not exempt him from obtaining a business license. Rather the exemption is based on the fact that Ward's principal place of business is located at 281 Cedar Hill Road, Six Mile, South Carolina. If Parcel B was, in fact, Ward's principal place of business, and if it were finally determined that Parcel B is within the town limits of the Town of Six Mile (which is not conceded) there would be no question that Ward would be required to apply for and would be entitled to be issued, a Town of Six Mile business license. His entitlement to such a license would be based upon the fact that he has acquired a vested right to continue his non-conforming use on both Parcels A and B.

The Defendant respectfully requests that this Court issue its Amended Order to correct its erroneous findings and conclusions as set forth herein.

D. EVIDENTIARY STANDARD FOR SUMMARY JUDGMENT

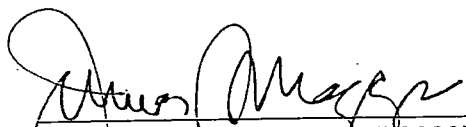
Our Supreme Court has made it crystal clear that on rulings on Motions for Summary Judgment, the non-moving party is only required to submit a mere scintilla of evidence to withstand Summary Judgment. *Hancock v. Mid South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Ward has submitted far more than the scintilla threshold of evidence on each and every one of Plaintiff's claims. For example, the Affidavits of Ward and Davidson reveal the history of Ward's use of Parcels A and B, the fact of the Town Official's actual knowledge of that use, the decades long discrepancy in the Town's official maps, Ward's good faith efforts to verify the need (or lack thereof) for permits from Pickens County officials who are charged with the permitting function under the Town of Six Mile's own regulations, the location of Ward's principal place of business, and the fact that Ward has been determined by the proper town officials to have acquired a valid, vested right to use his property for his business purposes

regardless of whether one or both Parcels A and B is in or outside of the Town of Six Mile.

In contrast, the Town offers no evidence of code violations other than the unverified allegations of its Complaint and the assertions of John Wade, the former Mayor who orchestrated the Town's actions against Ward and who is and was without authority to make any interpretive decisions or take unilateral action under the Town's regulations.

Applying the evidentiary standard, it is clear that the Court is erred in each of its findings outlined above. Therefore, Dan Ward respectfully requests that this Honorable Court enter its order denying the Plaintiff's Motion for Summary Judgment and vacating the injunction heretofore entered.



James S. Meggs (SC Bar# 3929)
George A. Taylor (SC Bar# 100245)
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901

ATTORNEYS FOR DEFENDANT

June 6, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-39-1849

Town of Six Mile, South Carolina,

Plaintiff,

v.

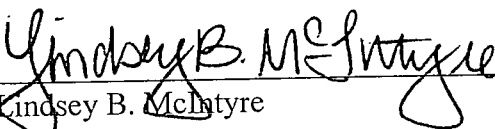
Dan Ward,

Defendant.

CERTIFICATE OF SERVICE

I, Lindsey B. McIntyre, an employee of Callison Tighe & Robinson, LLC, do hereby certify that I have served a copy of the **Motion to Alter or Amend Order Pursuant to Rule 59(e) SCRPC**, on June 6, 2013, by causing copies of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, SC 29657


Lindsey B. McIntyre

Columbia, South Carolina
June 6, 2013

EXHIBIT 7

**FORM 4- ORDER DENYING DEFENDANT'S MOTION
TO ALTER OR AMEND**

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3901849

2013 JUL 12 PM 4 23
CLERK OF COURT
PICKENS COURT
SOUTH CAROLINA

Town of Six Mile

Dan Ward

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before the Court on Defendant's Motion to Alter or Amend. This Court respectfully denies Defendant's Motion but issues this order clarifying its previous order. First, this Court corrects its previous order to find that Defendant's Principal Place of Business is not within Six Mile. However, with regards to the parcel at issue, this Court reaffirms its finding that the Defendant failed to provide any evidence that the parcel was not within town limits. Further, this Court clarifies its previous order by requiring Defendant to remove offending structures from the land until he is granted a business license by the Town of Six Mile.

Handwritten signature/initials

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

2013 JUL 12 PM 4 23
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2162

Judge Code

7/10/13
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorney of record to parties (when appearing pro se) as follows:

Kenneth Roper

✓

us mail

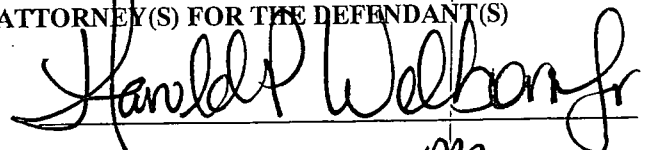
MB

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jim Meggs

✓

ATTORNEY(S) FOR THE DEFENDANT(S)



MB

TRUE COPY


CLERK OF COURT

PICKENS COUNTY, S.C.

22

EXHIBIT 8
DEFENDANT'S APPLICATION FOR SUPERSEDEAS
AND COVER LETTER

James S. Meggs
803.404.6900 ext. 3011
JimMeggs@callisontighe.com

CALLISON  TIGHE

July 19, 2013

VIA Regular Mail and email: lverdinj@sccourts.org; lverdinlc@sccourts.org
Honorable Letitia H. Verdin
Circuit Court Judge, Thirteenth Judicial Circuit
305 E. North Street, Suite 318
Greenville, SC 29601

Re: Town of Six Mile v. Dan Ward
Case No. 2011-CP-39-1849
Our File No. 5532.001

Dear Judge Verdin:

We have your Order entered July 12, 2013 denying our Motion to Alter or Amend your previous Order filed May 29, 2013. In this new Order, you have clarified your prior order and now require the Defendant to remove "offending structures" from the land until he is granted a business license by the Town of Six Mile.

I write to respectfully request that you supersede the effect of your Orders pending our appeal to the Court of Appeals. As you evaluate our request, I ask that you consider the following:

First, Dan Ward has been using the subject property for many years for his business purposes and prior to Six Mile's adoption of *any* zoning. Consequently, the Town can hardly contend that there exists exigent circumstances which necessitate Dan's interim removal of his inventory pending the outcome of his appeal. This is particularly true when the Town sat on its hands for two years after filing this action.

Second, after your Order, filed May 29, 2013, we made provisional application for a business license from the Town on June 6, 2013 and a second application was made on July 8, 2013. Now we are informed that the Town will not issue a business license because Town officials contend that Dan has no vested right to continue to use his property as a non-conforming use (see letter of Rita Martin, Town Clerk, attached). Therefore, we are really back to the core issue in this case – whether Dan has a right to continue to use his property in support of his business. We believe that it is uncontradicted that he has such a right, and it would be grossly unjust to place him in a Catch 22 position on the business license question pending a judicial resolution of his rights.

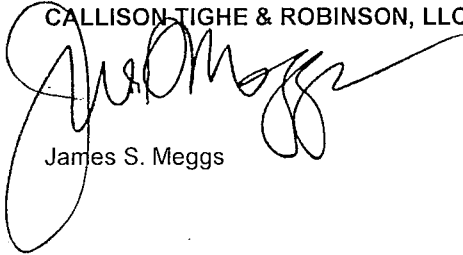
Since it is obvious that the Town will continue to stonewall our license application, and since the license issue is but a minor one in the larger constitutional land use aspects of this case, we believe that equity favors your grant of your own supersedeas while we take this case to the higher Court.

I have enclosed competing Orders for your convenience. One is a draft granting your own supersedeas, the other one denying same. We look forward to hearing from you.

Thank you for your kind attention to this matter.

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC


James S. Meggs

JSM/lbm
Enclosures

cc: Ken Roper, Esquire (via Regular Mail and email: ken@roperlawfirm.com)

MAYOR
ROY C STODDARD

TOWN CLERK & TREASURER
RITA H. MARTIN

ZONING ADMINISTRATOR
WOODROW KELLEY



TOWN COUNCIL
JAMES ATKINSON
JEFF DENNIS
AARON SMITH
DAVID T. YONGUE

Mr. Dan Ward
Dan Ward House Movers
281 Cedar Hill Road
Six Mile, SC 29682

July 17, 2013

Dear Mr. Ward:

I am writing in response to your application for 2013 Town of Six Mile Business License. Your Application is denied at this time.

Please be advised that the Town of Six Mile will not process a business license application from you until such time as you have removed all noncompliant structures, obtained a certificate of zoning compliance for your proposed use, and secured the proper building permit(s).

Sincerely,

Rita Martin,

Business License Coordinator

cc: Ken Roper, Esquire
James S. Meggs, Esquire

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

THIRTEENTH JUDICIAL CIRCUIT

Town of Six Mile)

CASE NO.: 2011-CP-39-1849

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

Dan Ward)

Defendant.)

Plaintiff's Attorney:

Ken Roper, Esquire, Bar No. _____

Address:

P.O. Box 330

Liberty, SC 29657

Phone: 864-843-0004 Fax 864-843-4555

E-mail: ken@roperlawfirm.com Other: _____

Defendant's Attorney:

James S. Meggs, Esquire, Bar No. 3929

George A. Taylor, Esquire, Bar No. 100245

Address:

P.O. Box 1390

Columbia, SC 29202

Phone: 803-404-6900 Fax 803-404-6902

E-mail: jimmeggs@callisontighe.com Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: _____

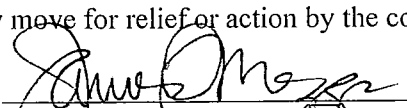
Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

July 19, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

EXHIBIT 9

TRIAL COURT'S ORDER DENYING SUPERSEDEAS

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Town of Six Mile, South Carolina,)
)
Plaintiff,)
)
v.)
)
Dan Ward,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

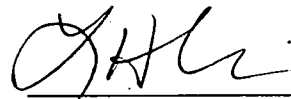
Case No. 2011-CP-89-1849

ORDER DENYING SUPERSEDEAS

Upon Motion of the Defendant I hereby decline to supersede the effect of my Order filed May 29, 2013 and modified by Order filed July 12, 2013.

SUPERSEDEAS IS HEREBY DENIED.

SO ORDERED.



Honorable Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
July 26, 2013

EXHIBIT 10
AFFIDAVIT OF DAN WARD

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
TOWN OF SIX MILE, SOUTH CAROLINA
THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-39-1849

2013 APR 15 P 4:12

Town of Six Mile, South Carolina,)

Plaintiff,)

v.)

Dan Ward,)

Defendant.)

AFFIDAVIT OF DAN WARD

PERSONALLY APPEARED before me this 9 day of April, 2013, Dan Ward, being first duly sworn, deposes and states as follows:

1. My name is Dan Ward. I am over the age of eighteen (18) years old. I have personal knowledge of the truth of the facts stated herein and I am competent to testify as to the matters set forth herein.
2. I am the Defendant in the within action.
3. I am a professional house mover and have been so engaged for many years. I hold a Class E Certificate issued by the South Carolina Department of Motor Vehicles.
4. My principal place of business is located at 281 Cedar Hill Road, Six Mile, South Carolina 29682 in the unincorporated area of Pickens County, South Carolina.
5. I do not maintain a business license in the Town of Six Mile because South Carolina law, specifically Sections 58-23-620 and 56-3-661, exempt my company from the business license ordinance of the town as my principal place of business is not within the town limits.
6. I am the owner of property in Pickens County identified as parcel map numbers 4058-07-69-5660 ("Parcel A") and 4058-07-69-3858 ("Parcels B and C").
7. Parcel A is within the town limits of Six Mile.
8. I purchased Parcel A on May 5, 1994.

9. Though not subject to this litigation, I own a parcel of property south of Parcel A, identified as parcel map number 4058-07-69-6418. I purchased parcel map number 4058-07-69-6418 on February 10, 1998.

10. Since approximately May 1994, I have used Parcel A for my house moving business.

11. Part of my business consists of acquiring used homes that are in need of repair, moving the homes on my property (including Parcel A), displaying the homes for sale on my property (including Parcel A), and eventually selling the homes.

12. I purchased Parcel A for my house moving business.

13. All the homes I have placed on Parcel A have rested on I-beams, and none of the houses have been permanently affixed to the property.

14. I have sold numerous homes on Parcel A since May 1994.

15. My use of Parcel A for my house moving and renovation business has been continuous.

16. I have never intended to abandon my business and my intent has always been to continue using my property for my business.

17. Since November 6, 2007, there has not been a period of twelve consecutive months without a house being located on my property and my use of it has not changed since I purchased it.

18. I also own property shown as tax parcel 4058-07-69-3858, Pickens County tax records (herein after Parcels B and C). I purchased this property in 2006. The property is depicted on the attached Exhibit A. I purchased this property for use in support of my business.

19. I have used Parcels B and C continuously in support of my house moving business since I purchased the same. I have never intended to abandon my use of these

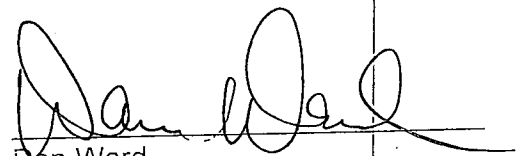
parcels, either now or in the future.

20. Prior to my purchase of Parcels B and C I investigated whether these parcels were within the Town of Six Mile. My inquiry revealed that the parcels were shown as being outside the Town of Six Mile according to the official Town of Six Mile maps, compiled over many years. These same maps show Parcels B and C as unzoned. The Pickens County Tax Records confirm that the Parcels were not within the Town of Six Mile.

21. In the Summer of 2009, I telephoned the Pickens County Building Official Office to determine whether a permit was required for my planned construction of two concrete ~~pads~~ ^{with} block knee walls on Parcel C. I was informed that no permit was required and I placed the improvements on Parcel C without interference or molestation by anyone. DJK

22. In the Fall of 2009, I was confronted by the Pickens County Building Official who issued a "stop work" order concerning carport roofs I was erecting on Parcel C on the pads and ~~pads~~ ^{with} knee walls previously installed. I am informed and believe that this action was precipitated by the then Mayor of Six Mile, John Wade and his directive to the county officials to order me to stop. DJK

Further Deponent Sayeth Not.


Dan Ward

Cecilia W. Lesley

Sworn to and Subscribed before me
This 9 day of ~~January~~ ^{April}, 2013

Cecilia W. Lesley
Notary Public for South Carolina
My Commission Expires June 1, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS OF COURT
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-39-1849
PICKENS COUNTY
SOUTH CAROLINA

Town of Six Mile, South Carolina,)

Plaintiff,)

v.)

Dan Ward,)

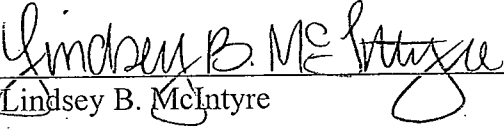
Defendant.)

2013 APR 15 P 4:13

CERTIFICATE OF SERVICE

I, Lindsey B. McIntyre, an employee of Callison Tighe & Robinson, LLC, do hereby certify that I have served copies of the **Affidavit of Dan Ward** and **Affidavit of Richard W. Davidson**, on April 12, 2013, by causing copies of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, SC 29657


Lindsey B. McIntyre

Columbia, South Carolina
April 12, 2013

EXHIBIT 11

AFFIDAVIT OF RICHARD DAVIDSON

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Town of Six Mile, South Carolina,

Plaintiff,

v.

Dan Ward,

Defendant.

CLERK OF COURT
PICKENS COUNTY

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 2011-CP-39-1849
2013 APR 15 4 01 PM

AFFIDAVIT OF RICHARD W. DAVIDSON

PERSONALLY APPEARED before me this 10 day of April, 2013, Richard W. Davidson, being first duly sworn, deposes and states as follows:

1. My name is Richard W. Davidson. I am over the age of eighteen (18) years old and am competent to make this Affidavit.
2. I have personal knowledge of the facts set forth in this Affidavit.
3. I am currently employed as the Zoning Administrator and Codes Administration Officer for the towns of Liberty and Central in Pickens County, South Carolina.
4. I have been employed in the local zoning and building codes area for more than thirty (30) years and have received extensive training and experience in these fields.
5. I served as the Zoning Administrator for the Town of Six Mile from 2004 until my resignation on October 30, 2009.
6. I have personal knowledge of and have personally observed the activity of Dan Ward and the conduct of his house moving business in and around the Town of Six Mile and other areas of Pickens County for many years.
7. In 2006 during my tenure as Zoning Administrator for the Town of Six Mile, complaints were made to town officials concerning Mr. Ward's business activity on property at the corner of Bell Shoals Road and Main Street on a parcel designated as Parcel A on the attached Exhibit A.

8. In light of the complaints, I conducted an inquiry into the nature and history of Mr. Ward's business activities on Parcel A.

9. As a consequence of my investigation of the nature and history of Mr. Ward's business use of Parcel A, I concluded that Ward's use of the property constituted a valid nonconforming use subject to the grandfathering provision of the Town of Six Mile Zoning Ordinance.

10. Concurrent with my determination, Six Mile Town Council discussed the matter in public session on August 1, 2006. The minutes of that meeting reveal that council was fully apprised of the fact that Ward's use of Parcel A was a valid grandfathered nonconforming use.

11. During my tenure as Zoning Administrator for the Town of Six Mile, the Pickens County Code Administration Staff performed the permitting functions for the town, as is contemplated by provisions in the Town of Six Mile Zoning Ordinance.

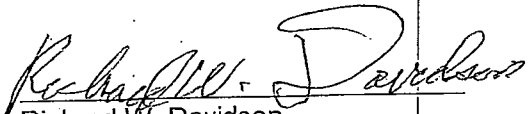
12. Notwithstanding the fact that the Pickens staff was vested with the code administration function for the town, in 2009 newly elected Mayor John Wade unilaterally determined that he would impose his will and personal agenda on zoning and land use permitting decisions for the town.

13. Mayor Wade repeatedly pressured me to "take action" against Dan Ward to deprive him of his grandfathered use of Parcel A. This included pressure to bring criminal charges against Mr. Ward in Magistrate's Court. Largely as a result of Wade's demands, I elected to resign from my post as Zoning Administrator for the Town of Six Mile.

14. During my tenure as Zoning Administrator for the Town of Six Mile, the town's official maps, adopted by ordinance on a number of occasions over a period of many years, established that Parcels B and C are outside of the corporate limits of the Town of Six Mile and the town accordingly has no regulatory or other jurisdiction over those parcels.

15. In my experience, in the building codes and zoning administration fields it is the common practice in Pickens County and in most jurisdictions in Upstate South Carolina that house movers such as Dan Ward, are not required to procure permits from local governments in order to move houses, except to the final destination of the structure at which time a foundation is affixed and utilities are attached. Until that transit takes place the only permit that is required is that which is issued by the State of South Carolina. Until a structure is to be permanently affixed to its permanent location, it is no more than a large oversized trailer.

Further Deponent Sayeth Not


Richard W. Davidson

Sworn to and Subscribed before me
This 10th day of ~~January~~ APRIL, 2013

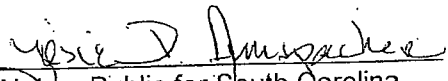
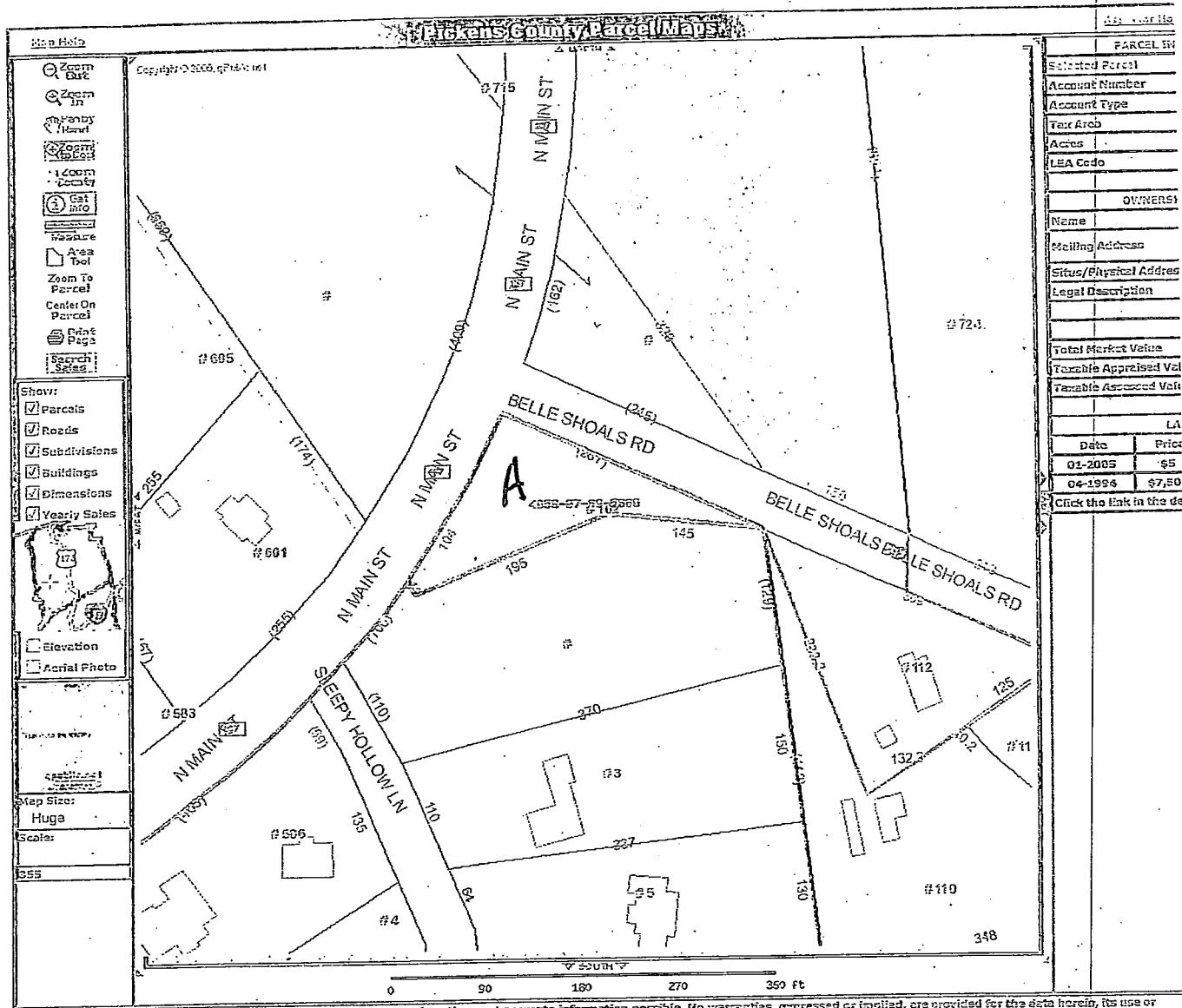

Notary Public for South Carolina
My Commission Expires: 12/13/21

Exhibit A

COPY



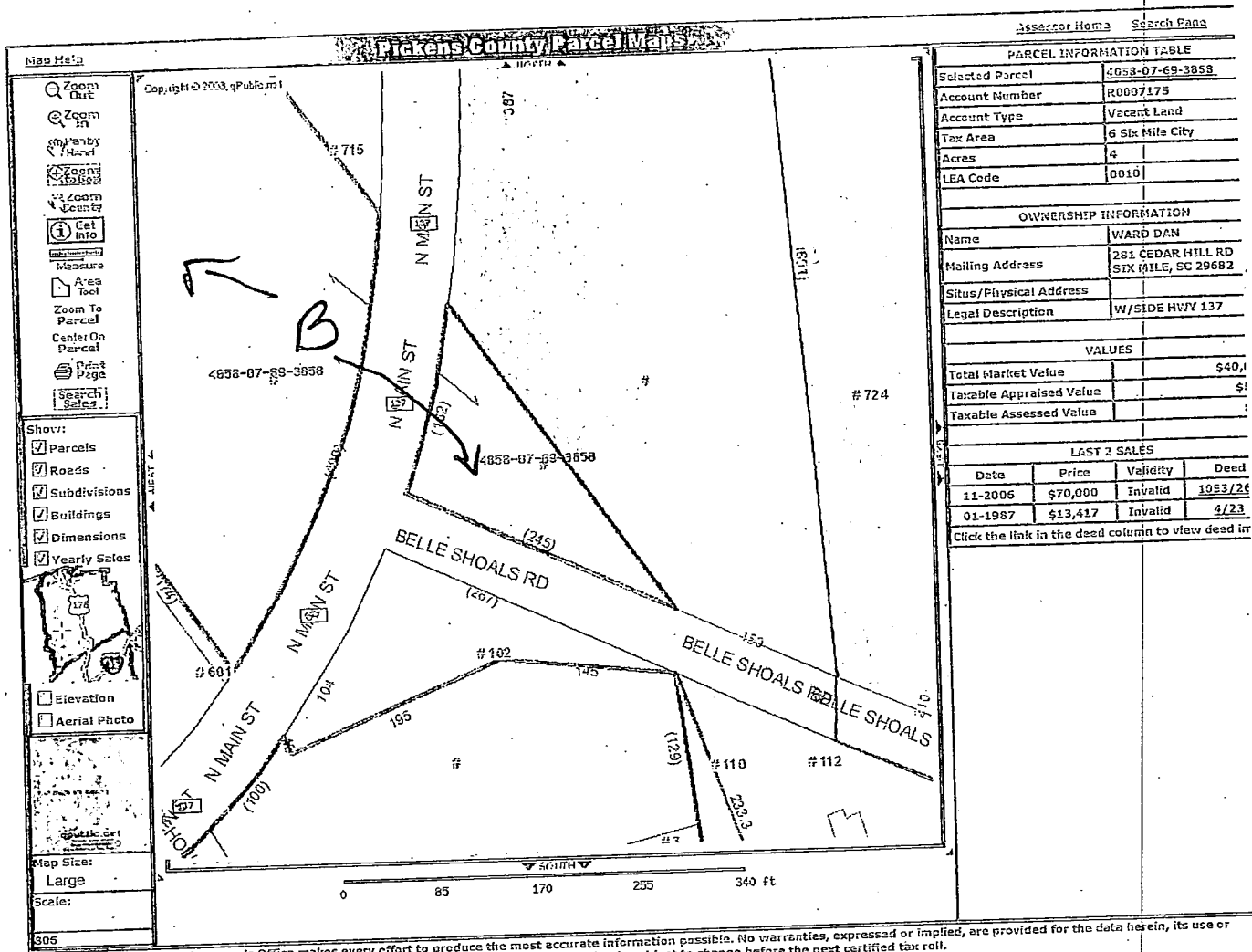
The Pickens County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. All assessment information is subject to change before the next certified tax roll.

[Assessor Home](#) [Search Page](#) © Website design by [qpublic.net](#)

Lot A - 102 Belle Shoals Rd.

Map# 4058-07-69-5660 .45 ac.

Bought this property from Major John F. Griffin & Marie K. Griffin
May 5, 1994



The Pickens County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. All assessment information is subject to change before the next certified tax roll.

Assessor Home Search Page Website design by qpublic.net

Lot s B + C
 Map # 4058-07-69-3858 4 acres
 Bought this property from George Kessler
 Nov. 20, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS OF COURT
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-39-1849
PICKENS COUNTY
SOUTH CAROLINA

Town of Six Mile, South Carolina,)

Plaintiff,)

v.)

Dan Ward,)

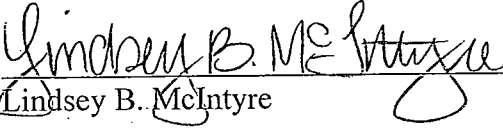
Defendant.)

2013 APR 15 P 4:13

CERTIFICATE OF SERVICE

I, Lindsey B. McIntyre, an employee of Callison Tighe & Robinson, LLC, do hereby certify that I have served copies of the **Affidavit of Dan Ward** and **Affidavit of Richard W. Davidson**, on April 12, 2013, by causing copies of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, SC 29657


Lindsey B. McIntyre

Columbia, South Carolina
April 12, 2013

EXHIBIT 12

AFFIDAVIT OF MIKE ALBERTSON

CLERK OF COURT
STATE OF SOUTH CAROLINA PICKENS COUNTY THE COURT OF COMMON PLEAS
SOUTH CAROLINA THIRTEENTH JUDICIAL DISTRICT
COUNTY OF PICKENS) CIVIL ACTION NO. 2011-CP-39-1849
2013 MAY -6 A 10:12

Town of Six Mile, South Carolina,)

Plaintiff,)

v.)

Dan Ward,)

Defendant.)

AFFIDAVIT OF MIKE ALBERTSON

PERSONALLY APPEARED before me this 22 day of April, 2013, Mike Albertson, being first duly sworn, deposes and states as follows:

1. My name is Mike Albertson. I am over the age of eighteen (18) years old and am competent to make this Affidavit.

2. I have personal knowledge of the facts set forth in this Affidavit.

3. I am currently employed as the Building Inspector for Pickens County, South Carolina and have been so employed for approximately 15 years.

4. Prior to and during 2009, the Pickens County Code Administration Staff performed the permitting functions for the Town of Six Mile, as is contemplated by provisions in the Town of Six Mile Zoning Ordinance.

5. In the Summer of 2009, I received a telephone inquiry concerning the need (or lack there of) for building permits for concrete block knee walls proposed to be placed on tax parcel number 4058-07-69-3858. I informed the caller that no permits were required for the proposed work.

6. Subsequent to the phone call summarized in paragraph 6 above, I accompanied my supervisor to the scene of the work. It then became apparent to me that the person who had called to the office concerning permits was Dan Ward, as the property that we were viewing was owned by Mr. Ward.

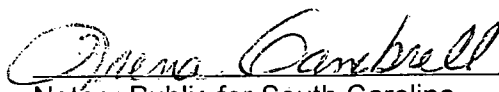
7. There are a number of professional house movers who operate in Pickens County. I believe that we (the County Building and Codes Administration Staff) do not require house movers to get permits for moving or renovating salvaged houses until the house is moved to its final destination.

8. In my experience, it is the common practice in Pickens County and in most jurisdictions in Upstate South Carolina that house movers such as Dan Ward, are not required to procure permits from local governments in order to move houses, except to the final destination of the structure at which time a foundation is affixed and utilities are attached. Until that transit takes place the only permit that is required is that which is issued by the State of South Carolina.

Further Deponent Sayeth Not


Mike Albertson

Sworn to and Subscribed before me
This 22nd day of April, 2013


Notary Public for South Carolina
My Commission Expires: 1-24-23

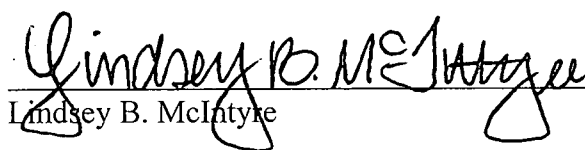
CLERK OF COURT
PICKENS COUNTY
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS SOUTH CAROLINA THIRTEENTH JUDICIAL CIRCUIT
2013 MAY -6 A 10:12 CIVIL ACTION NO. 2011-CP-39-1849.

Town of Six Mile, South Carolina,)
)
Plaintiff,)
)
v.)
)
Dan Ward,)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

I, Lindsey B. McIntyre, an employee of Callison Tighe & Robinson, LLC, do hereby certify that I have served a copy of the **Affidavit of Mike Albertson**, on May 1, 2013, by causing copies of the same to be deposited in the United States mail, with postage prepaid, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
18 South Commerce Street
Liberty, SC 29657


Lindsey B. McIntyre

Columbia, South Carolina
May 1, 2013

EXHIBIT 13
DEPOSITION TRANSCRIPT OF STEVE SANDERS
(Excerpts)

STATE OF SOUTH CAROLINA)

)

COUNTY OF PICKENS)

C.A. NO. 2011-CP-89-1849

TOWN OF SIX MILE,)

)

PLAINTIFF,)

)

VERSUS)

)

DANNY RAY WARD,)

)

DEFENDANT.)

)

 COPY

DEPOSITION OF
STEVE SANDERS

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF STEVE
SANDERS WAS TAKEN ON THE 12TH DAY OF APRIL, 2012,
COMMENCING AT THE HOUR OF 1:27 P.M., IN THE OFFICES OF R.
MURRAY HUGHES, ATTORNEY AT LAW, 4606 MOOREFIELD MEMORIAL
HIGHWAY, PICKENS, SOUTH CAROLINA.

REPORTED BY: ANDREA S. SHORB, VERBATIM REPORTER

CANNON COURT REPORTING
Post Office Box 2727
Greenville, South Carolina 29602
864-298-0082

- 12 Q. Okay. But you saw a file that was the town's Dan Ray
13 ward file?
- 14 A. I would assume, yes. They had documentation associated
15 with it, yes.
- 16 Q. Okay. All right. But in so far as -- as far as you
17 were concerned, there was not -- you didn't go back
18 through this compilation of documents to determine what
19 had happened in the past?
- 20 A. No, sir.
- 21 Q. Okay. You relied strictly on what Mayor Wade told you
22 about prior transactions with Mr. Ward?
- 23 A. I drew no conclusions. I mean, this was already in
24 place. They were already going to the magistrate.

Deposition of Steve Sanders

4 Q. Okay. So the mayor decided that we would initiate --
5 that the town would initiate the "Courtesy Summons"?

6 A. Yeah. That would be the next step.

7 Q. Okay. And that was the mayor's decision?

8 A. Well, that was the recommendation from Judge Snow.

9 Q. Okay. And the mayor said --

10 A. Yes.

11 Q. -- okay, "Mr. Sanders, do your duty"?

12 A. Yes.

13 Q. Okay. And so you did?

14 A. I did.

15 Q. All right. I think your testimony is already in
16 response to this, but I'll just run through this little
17 laundry list, if I may. As I -- as I understand your
18 testimony, before this affidavit was executed and
19 charges initiated against Dan Ward, you -- you
20 personally didn't consult any maps of the town to
21 determine all these questions of where the town limits'
22 line --

23 A. No, sir.

24

25

EXHIBIT 14

DEPOSITION TRANSCRIPT OF WOODROW KELLEY

(Excerpts)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL DISTRICT
) C.A. NO. 2011-CP-39-1849

TOWN OF SIX MILE, SOUTH CAROLINA,)

PLAINTIFF,)

VERSUS)

DAN WARD,)

DEFENDANT.)

 COPY

DEPOSITION OF
WOODROW C. KELLEY

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF WOODROW C.
KELLEY WAS TAKEN ON THE 25TH DAY OF FEBRUARY, 2013,
COMMENCING AT THE HOUR OF 10:57 A.M., AT THE LAW OFFICES OF
KENNETH S. ROPER, 18 SOUTH COMMERCE STREET, LIBERTY, SOUTH
CAROLINA.

REPORTED BY: KAREN E. HOLLEY, CVR-M

CANNON COURT REPORTING
Certified Verbatim Reporters
Post Office Box 2727
Greenville, South Carolina 29602
864-298-0082 or 864-316-4918
cannonreporting@charter.net

13 Q. I understand. Can you tell me how long Mr. Ward has
14 been using what's marked as parcel A to store a house
15 like this or any other house?

16 A. I have no idea how much time.

17 Q. Okay.

18 A. None at all.

19 Q. Would you be surprised to learn that he's been using it
20 to store houses since 1994?

21 A. I wouldn't be surprised at all.

22 Q. Do you know when Six Mile adopted their first zoning
23 ordinance?

24 A. You mean as the town of Six Mile itself?

25 Q. Well, yes.

1 A. I have no idea when they adopted their first zoning
2 ordinance.

3 Q. Do you know when they adopted the first zoning
4 ordinance that zoned parcel A?

5 A. I do not.

6 Q. Would you be surprised to learn that it was adopted in
7 November of 2007?

8 A. Again, I have no idea.

16 Q. Do you know what a vested non-conforming use is?

17 A. I have no idea.

- 13 Q. So if someone came to you and said "Mr. Kelley, I think
14 I have a right to continue to use my property the way
15 I've been using it prior to the zoning ordinance being
16 passed," you would not know how to give them an answer
17 on whether or not they have a vested right to use it
18 the way they were using it?
19 A. I would not.

- 1 Q. If I told you that he was the previous Zoning
2 Administrator and he had rendered an interpretation
3 that Mr. Ward has a vested right to continue to use
4 parcel A to store his houses, would that influence how
5 you treated Mr. Ward under the zoning ordinance?
6 A. It would not.

EXHIBIT 15

LETTER FROM TOWN CLERK DATED JULY 17, 2013

MAYOR
ROY C STODDARD

TOWN CLERK & TREASURER
RITA H. MARTIN

ZONING ADMINISTRATOR
WOODROW KELLEY



TOWN COUNCIL
JAMES ATKINSON
JEFF DENNIS
AARON SMITH
DAVID T. YONGUE

Mr. Dan Ward
Dan Ward House Movers
281 Cedar Hill Road
Six Mile, SC 29682

July 17, 2013

Dear Mr. Ward:

I am writing in response to your application for 2013 Town of Six Mile Business License. Your Application is denied at this time.

Please be advised that the Town of Six Mile will not process a business license application from you until such time as you have removed all noncompliant structures, obtained a certificate of zoning compliance for your proposed use, and secured the proper building permit(s).

Sincerely,

Rita Martin,

Business License Coordinator

cc: Ken Roper, Esquire
James S. Meggs, Esquire

EXHIBIT 16
MINUTES OF SIX MILE COUNCIL MEETING,
AUGUST 2, 2006

AUG. 2, 06

MAYOR CHEEK CALLED THE MEETING TO ORDER. ALL RECITED THE PLEDGE OF ALLEGIANCE AND FIRE CHIEF DUNCAN DID THE INVOCATION.

A MOTION WAS GIVEN BY COUNCILMAN GARRETT TO APPROVE THE MINUTES AS WRITTEN, A SECOND WAS GIVEN BY COUNCILMAN YONGUE AND ALL VOTED IN FAVOR.



NEXT ON THE AGENDA WAS A QUESTION CONCERNING ZONING OF PROPERTY LOCATED AT THE CORNER OF BELL SHOALS ROAD AND SC 137. THE QUESTION WAS IF THIS PROPERTY WAS CONSIDERED GRANDFATHERED IN BEFORE THE ZONING WENT INTO EFFECT IN 1999. AFTER DISCUSSION, COUNCIL AGREED THAT IT WAS GRANDFATHERED, HOWEVER THE OWNER OF THE PROPERTY WOULD NEED TO PURCHASE A TOWN BUSINESS LICENSE.

EXHIBIT 17

**MAGISTRATE COURT'S ORDER OF DISMISSAL
DATED FEBRUARY 6, 2012**

STATE OF SOUTH CAROLINA	)	IN THE PICKENS COUNTY
	)	SUMMARY COURT
COUNTY OF PICKENS	)	
	)	I-688663-CSW
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER OF DISMISSAL WITH PREJUDICE
	)	
Danny Ray Ward,	)	
	)	
<u>Defendant.</u>	)	

ENTERED

This is a misdemeanor action initiated by the Town of Six Mile against Danny Ray Ward by way of a Courtesy Summons Number I-688663-CSW. The Summons issued on April 1, 2010, alleges that Ward violated the Six Mile Code of Ordinances, §801 of the chapter pertaining to zoning, by failing to "obtain a permit to lawfully place or store structures or signs as described in the Town of Six Mile official zoning ordinance on property within the Town limits of Six Mile...." The Summons further alleges that a total of five structures are not properly permitted.

The action came before the Court for trial on January 20, 2012. Representing the State (Town of Six Mile) was assistant Solicitor Mitchell Byrd, Esquire. James S. Meggs, Esquire and George A. Taylor, Esquire appeared on behalf of the Defendant Danny Ray Ward.

Prior to commencing trial, a conference was held in chambers at which time the attorneys reviewed the facts of the case and the relevant provisions of the Town of Six Mile Zoning Ordinance and the allegations of the Courtesy Summons. Based upon the representations of counsel for the State and for the Defendant and on Motion of the

#1 

Defendant to dismiss the charges set forth in the Courtesy Summons, it is clear that the motion must be granted as will more fully appear below.

UNDISPUTED FACTS

The Courtesy Summons was issued on April 1, 2010. It charges Ward with failing to obtain a permit to place or store structures or signs on several parcels alleged to be located within the Town limits¹. A total of five (5) "structures" are alleged to be unpermitted. The charges are based on §801 of the Town of Six Mile Zoning Ordinance.

Three of the "structures" are houses which were transported to the several properties on metal I-Beams, upon which they continue to rest pending relocation to other sites. None of these three houses are affixed to a foundation or is otherwise more or less permanently located on the ground.

CONCLUSIONS OF LAW

The charge contained in Warrant I-688663-CSW for failure to obtain a permit pursuant to §801 of the Ordinance must be dismissed with prejudice.

1. Three Houses Resting On I-Beams

The charge with respect to the Defendant's houses situated on I-beams does not fall within the Ordinance's definition of building, sign or structure and, therefore do not require permits. The terms "building," "sign," and "structure" are defined terms within the Ordinance. A building is defined as:

A structure which is completely enclosed by a roof and by solid exterior walls along whose outside faces can be traced an unbroken line for the

¹ The Defendant contends that not all of the parcels are within the Town limits. In light of my findings concerning the Ordinance, I need not reach that issue.

complete circumference of the structure, which is *permanently affixed* to a lot or lots, and used or intended for the shelter, support or enclosure of persons, animals, or property of any kind. (Emphasis added.) Zoning Ordinance § 1200.7.

By definition, a building must be “permanently affixed” to a piece of property. It is undisputed that the Defendant’s houses are, and have been, resting on I-beams on the subject property and can be readily removed at any time. Therefore, as a matter of law, the Defendant’s three houses are not buildings as defined in the Ordinance.

A structure is defined as:

Anything constructed or erected, the use of which *requires more or less permanent location on the ground, or which is attached to something having more or less permanent location on the ground*. A “building” as defined in 1100.7 [sic], is a structure. (Emphasis added.) Zoning Ordinance § 1200.61.

By definition, a structure requires some permanent location on the ground or attachment to something with permanent location. In fact, the homes are resting on I-beams without any fixation whatsoever to the ground. Therefore, as a matter of law, the Defendant’s three houses are not structures as defined in the Ordinance.

A sign is defined as:

[E]very sign, billboard, poster panel, free-standing ground sign, roof sign, projecting sign, pylon sign, illuminated sign, sign painted on a wall, window, marquee, awning or canopy, and shall include any announcement, declaration, demonstration, display, ribbon, banner illustration, or insignia used to advertise or promote the interests of any person when the same is placed in view of the general public, traveling along a public street right-of-way. Zoning Ordinance § 1200.55.

23 (ma)

A plain reading of the Ordinance indicates that the three houses are not signs, and the State does not argue to the contrary.

Based on the following, with regard to the three houses resting on I-beams, the State cannot show that the Defendant violated §801 of the Ordinance for failure to obtain a permit because the houses do not fall within the Ordinance's express definitions of building, structure, or sign.

2. Two Carports

The other two items in issue are metal roofed carport style facilities with short concrete block knee walls on three sides. The charge with respect to Defendant's carports is dismissed because the language of §801 of the Ordinance is ambiguous. §801 of the Ordinance provides:

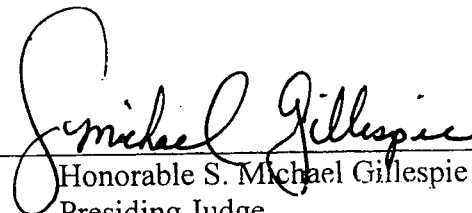
[n]o building, sign, or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the Pickens County.

The Ordinance does not define "the Pickens County." A reasonable person would believe that contacting the Pickens County Building Official to obtain a permit and being told by the Official that no permit was required would be sufficient to comply with the Ordinance. Under the Solicitor's interpretation of the Ordinance, an individual who contacts the Pickens County Building Official and is instructed that no permit is required is nonetheless criminally liable because the Pickens County Building Official is not "the Pickens County." However, a reasonable person would believe that the Pickens County Building Official is the proper representative of Pickens County to contact for a permit. To the extent that the Ordinance fails to identify "the Pickens County," the Ordinance is ambiguous as a law abiding citizen would reasonably believe that contacting a duly-

authorized representative of Pickens County to obtain a permit would be in full compliance with the Ordinance. Therefore, the charge with respect to the carports is dismissed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Summons and the charges set forth therein be **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.


Honorable S. Michael Gillespie
Presiding Judge
Pickens County Magistrate's Court

February 6, 2012
Central, South Carolina

TRUE COPY

Pickens Co. Summary Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Civil Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South Carolina, Respondent,

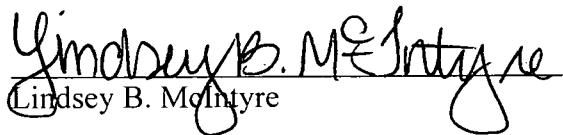
v.

Dan Ward, Appellant.

CERTIFICATE OF SERVICE

I, Lindsey B. McIntyre, an employee of Callison Tighe & Robinson, LLC, Attorneys for the Appellant, do hereby certify that, on this date, I caused to be served a copy of the **Petition by Appellant for Writ of Supersedeas** upon counsel for the Respondent, by depositing a copy of the same in the United States mail, with proper first-class postage affixed thereon, addressed as follows:

Ken Roper, Esquire
Roper Law Firm, LLC
Post Office Box 330
Liberty, SC 29657


Lindsey B. McIntyre

August 6, 2013

RECEIVED

AUG 06 2013

SC Court of Appeals

James S. Meggs
803.404.6900 ext. 3011
JimMeggs@callisontighe.com

CALLISON  TIGHE

August 6, 2013

VIA HAND-DELIVERY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
PO Box 11629
Columbia, SC 29211

Re: Town of Six Mile v. Dan Ward
Case No. 2011-CP-39-1849
Our File No. 5532.001

Dear Ms. Kitchings:

Enclosed herewith please find an original and seven (7) copies of the verified Petition by Appellant for Writ of Supersedeas in the above referenced matter. Kindly file the original and six (6) copies and return a clocked copy to my courier. Also enclosed, please find my firm's check # 101130 in the amount of \$25.00 for the filing fee. By copy of this letter, the enclosed verified Petition by Appellant for Writ of Supersedeas is being served upon Respondent's counsel.

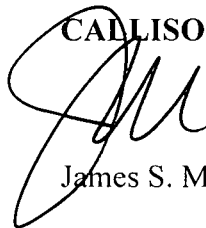
Please also find enclosed for filing, certified copies of Judge Verdin's Order filed on May 29, 2013 and Order Denying Motion to Alter or Amend, filed on July 12, 2013, a clocked copy of the Notice of Appeal and its Proof of Service.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



James S. Meggs

JSM/lbm
Enclosures
5532.001/Clerk-Appeal.002

cc: Ken Roper, Esquire

RECEIVED

AUG 06 2013

SC Court of Appeals