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.

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REPLY TO RETURN OF RESPONDENT

The Appellant respectfully submits this Reply to the Return to Petition for Writ of Supersedeas (the "Return") filed by the Respondent in the above-captioned action.

I. RESPONDENT ERRONEOUSLY CHARACTERIZES RULE 241(c)(2), SCACR AS THE APPLICABLE SCOPE OF REVIEW

It is well settled that the purpose of a Supersedeas is to preserve the status quo pending the determination of the appeal and to preserve to the Appellant the fruits of a meritorious appeal where they might otherwise be lost to him. *Graham v. Graham,* 301 S.C. 128, 390 S.E.2d 469 (C.t. App. 1990).

The Respondent asserts that Rule 241(c)(2), SCACR, constitutes the applicable scope of review and urges that it somehow limits this Court's consideration of this Petition for Supersedeas. No authority for that proposition is cited. Appellant is unaware of any competent

authority for Respondent's position.

This Court is vested with broad powers to fashion relief that protects all parties pending the final determination of an appeal. Rule 241(c)(3) contemplates a wide array of options for achieving the goal of protecting the rights and interests of the litigants pending the outcome of an appeal.

Rule 241(c)(2) provides that "[i]n determining whether an order should issue pursuant to this Rule, the ... appellate court ... ***should*** consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." (emphasis added).

Nothing in the foregoing rule mandates nor limits the scope of this Court's review. In fact, the rule simply provides one analysis that the Court should consider. The plain language of Rule 241(c)(2) leaves open this Court's discretion in considering other factors when determining if Supersedeas should issue. Issues of constitutionality and balancing of the equities are certainly fertile ground for this Court's review, and as has been briefed in Appellant's Petition, and as will be expounded upon below, such factors certainly weigh heavily in Ward's favor.

II. PRESERVING THE STATUS QUO IN THIS CASE.

This is a case that warrants the intervention of this court at this time so as to assure achievement of the ultimate goal of Supersedeas. Appellant is a seventy (70) year old small businessman - the obvious practical effect of the Order requiring him to remove his houses, tear down his sheds, and abandon his business practices will be to divest Appellant from any right to make use of his property as he has for decades thereby rendering this case moot.

In this case, as is outlined in Appellant's Petition, the equities weigh heavily in Ward's favor because if the Trial Court's Order is not superseded Ward will be required to abandon his

constitutionally protected property use, but if the Order is superseded the Town will not suffer any damage and the status quo will be maintained. The Town's contention that the status quo "works violence on the Town of Six Mile's statutory authority to regulate business within its municipal limits" falls flat. Respondent cites no particular violence that the Town will face, and this Court is left only with speculation as to what violence Respondent is referencing. There is certainly no evidence in this case that maintaining the status quo (as it has existed for decades) has a negative effect on safety or public health and welfare.

III. REQUIREMENT FOR TOWN BUSINESS LICENSE

At the hearing in this matter the Town finally conceded that it cannot charge Ward a fee or tax to operate his business and retreated to the position that S.C. Code § 58-23-620 should be narrowly construed to limit all local governments to impose only the burden of obtaining applicable licenses, but not to impose a minimal license fee. The statutory purpose of S.C. Code Section 58-23-620 was to allow Class E license holders to avoid having to deal with the burden of obtaining licenses in every jurisdiction they pass, not simply to prevent cities, towns and counties from obtaining minimal license fees.

The Trial Court requires the Appellant to obtain a Town of Six Mile business license. In order to even have a business license application processed, the Town requires that the Appellant surrender the fruits that he seeks to preserve in this appeal. It is clear that the Town's position is that the Appellant's property, purportedly zoned residential by the Town, has lost its grandfathered nonconforming status forever. The requirement that the Appellant obtain a Town business license is illusory and an unobtainable result.

Furthermore, once the so-called "offending structures" are removed and bull dozed, it is clear that the Town will not issue a business license because the Town takes the position that just

as in the case of temporary removal after a sale, vacancy even for a moment in time causes the loss of protected nonconforming use status under its zoning ordinance. By analogy, one would suppose that a mobile home sales business would lose its protected nonconforming status if it momentarily was sold out of inventory and its lot became momentarily vacant.

South Carolina law affords protection to existing land uses when local authorities change the rules. Here, the Town authorities, by their own admission, "have no idea" concerning fundamental zoning principles, e.g. treatment of nonconforming uses. In the absence of Supersedeas the Appellant will suffer the consequences of the actions of those who "have no idea".

IV. APPELLANT HAS NOT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

Respondent contends that Supersedeas should not be granted because Ward: (1) failed to appeal for a variance of the Town's zoning ordinance; (2) could have appealed his stop work order; and (3) could have appealed his business license issue. All of these arguments are without any merit.

First, Ward did not need to "appeal for a variance"[1] or appeal any other zoning determination because he was found to have a vested nonconforming use in 2006 by the Town's own Zoning Administrator, Richard Davidson. Moreover, on August 2, 2006, the Town Council discussed the status of Ward's property use in public session, and its minutes show that the Zoning Administrator's interpretation was known and accepted by the Town Council. What was there to appeal? Simply, it is the Town that has failed to appeal, not Ward.

Second, Ward was not required to appeal any stop work order. Presumably, Respondent

[1] Respondent again demonstrates its lack of understanding of basic zoning law and procedure. A "variance" is an action by a Board of Zoning Appeals; the test for granting such is statutory. (S.C. Code Ann. § 6-29-800) A variance is simply not a concept which has application in the context of this case.

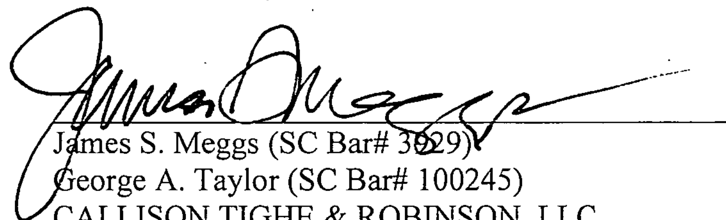
is referencing an Order that was issued with respect to Ward's sheds. However, as was outlined in Appellant's Petition, and as is abundantly clear by the evidence in the case, Ward received proper permissions from the proper authority (Pickens County Code Administration Office) before constructing his sheds.

Finally, the Town contends Ward "could have appealed his business license issue. He chose not to do so." While it is unclear what "business license issue" the Town is referencing, Ward was not required to obtain a business license by conflicting, preempting state law. Moreover, if the Town really only wanted Ward to obtain a business license then it would have issued a license when Ward made multiple provisional applications earlier this year.

CONCLUSION

For the reasons set forth herein, and in order to maintain the status quo, the Appellant prays that this Court grants its Writ of Supersedeas to stay the effect of the Trial Court's Order during the pendency of this appeal.

RESPECTFULLY SUBMITTED,



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

August 21, 2013
Columbia, South Carolina.

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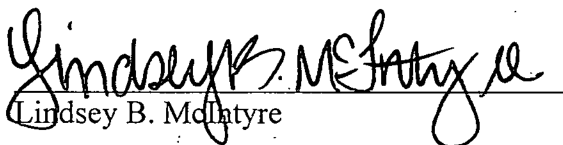
CERTIFICATE OF SERVICE

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 **Reply to Return of Respondent** 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 21, 2013

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

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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:

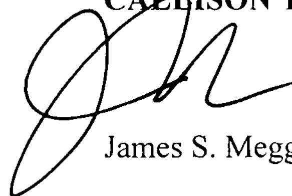
Enclosed herewith please find an original and seven (7) copies of the Reply to Return of Respondent along with Certificate of Service, in the above referenced matter. Kindly file the original and six (6) copies and return a clocked copy in the envelope provided for your convenience.

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.003

cc: Ken Roper, Esquire

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