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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes III, Master-In-Equity

Civil Action No. 2021-CP-07-1507
Appellate Case No. 2022-000681

Beaufort County, Appellant,

v.

Adams Outdoor Advertising Limited Partnership and Bo Hodges, Respondents.

RECORD ON APPEAL

VOLUME 1

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Beaufort County,

Plaintiff/Respondent,

vs.

Adams Outdoor Advertising Limited
Partnership and Bo Hodges,

Defendants/Appellants.

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-07-01507

ORDER ON APPEAL

This matter is before the Court on appeal by Defendants/Appellants Adams Outdoor Advertising Limited Partnership and Bo Hodges (collectively, “Appellants”) of a magistrate court verdict dated July 23, 2021 (the “Verdict”). The Verdict found Appellants guilty of two (2) criminal violations of Beaufort County Community Development Code (“CDC”) Section 5.6.50.E., and on August 13, 2021, the magistrate issued a Notice of Sentence imposing a fine of \$1,087.50 for each offense.

Appellants timely filed a Notice of Appeal on August 20, 2021, and the Court conducted a remote hearing via video conference on October 27, 2021 and a subsequent hearing via teleconference on November 24, 2021. Jeffrey S. Tibbals and Evan P. Williams appeared for Appellants during both hearings, and Scott D. Bergthold, Brittany Ward, and Thomas J. Keaveny, II were present for Plaintiff/Respondent Beaufort County (“Respondent” or the “County”). Having heard the arguments of counsel and reviewed the briefs filed with the Court, as well as the magistrate’s return and record from the proceedings below, the Court finds reversible error in the

Verdict. For the grounds and reasons set forth herein, the Verdict is reversed, and the sentence imposed by the magistrate on August 13, 2021 (the “Notice of Sentence”) is vacated.¹

STANDARD OF REVIEW

In deciding an appeal of a verdict from magistrate court in a criminal case, the Circuit Court’s standard of review is an error of law standard. ““In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception.”” *State v. Williams*, 417 S.C. 209, 218, 789 S.E.2d 582, 587 (Ct. App. 2016) (quoting *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001)). In these matters the appellate court “is bound by the trial court’s factual findings unless they are clearly erroneous.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (internal citation omitted).

RULES OF CONSTRUCTION

The underlying case involved the magistrate’s application of penal laws in the CDC which specifically set forth the circumstances under which a person may be held criminally liable for a violation of land use regulations, along with the required process and degree of penalties. Specifically, Sections 9.4.40 and 9.4.50 of the CDC govern the manner in which offenders may be criminally punished for noncompliance with the CDC. As such, this case arises from criminal proceedings initiated by the County to punish Appellants for alleged CDC violations. Therefore,

¹ This reversal on technical grounds should not be construed as a vindication or approval of Appellant company’s alleged actions in reconstructing the billboards.

this Court is bound to strictly construe the penal ordinances found in CDC Sections 9.4.40 and 9.4.50.

The principle is well established that penal statutes are strictly construed, and one who seeks to recover a penalty for the failure on the part of the defendant to discharge some duty imposed by law, must bring his case clearly within the language and meaning of the statute awarding the penalty. Such laws are to be expounded strictly against the offender and liberally in his favor.

Rorrer v. P.J. Club, Inc., 347 S.C. 560, 566, 556 S.E.2d 726, 730 (Ct. App. 2001) (quoting S.C. *Dep't of Revenue v. Collins Entm't Corp.*, 340 S.C. 77, 79, 530 S.E.2d 635, 636 (2000)).

The South Carolina Attorney General has summarized the rules of statutory interpretation generally, and specifically penal laws, in this state as follows:

In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. *Southern Ry. Co. v. S.C. State Hwy. Dept.*, 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. *Hay v. S.C. Tax Comm.*, 273 S.C. 269, 255 S.E.2d 837 (1979). The **statute's words must be given their plain and ordinary meaning** without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). Further, penal statutes must be strictly construed against the State. *Commercial Credit Corp. v. Webb*, 245 S.C. 53, 138 S.E.2d 647 (1964). In a previous opinion, this Office has opined that **the rules of strict construction apply to statutes involving criminal procedure** as well. See Atty. Gen. Op. 94-61, (October 18, 1994)

County Code Enforcement Officer use of the State Uniform Traffic Ticket under authority of S.C. Code Section 4-9-145, S.C. Atty. Gen. Op. 20-121, (October 10, 2000) (emphasis added)).

APPLICABLE CDC SECTIONS

The relevant provisions of the CDC, Sections 9.4.40 and 9.4.50, are set forth below verbatim.

9.4.40 - Notice of Violation

When the Code Enforcement Department finds and determines a violation of this Development Code exists, the Code Enforcement Department shall notify, in writing, the person violating the Code. Such notification shall serve as a warning notice of a violation. It shall be delivered via U.S. Mail or hand delivered to the last known address of to the

owner and or any person occupying the land or structure where the violation occurs. The notice shall state the following:

- A. The address and legal description of the land, structure, or sign that is in violation of this Development Code;
- B. The nature of the violation, the provisions of this Development Code being violated, and the necessary action to remove or abate the violation;
- C. The date by which the violation should be removed or abated; and
- D. The penalty for failing to remove or abate the violation, stating that if the nuisance recurs, a notice to appear in the appropriate court in Beaufort County will be issued without further notice.

9.4.50 - Failure to Correct Violation

- A. If the person(s) to whom a warning notice has been given in accordance with Section 9.4.40 (Notice of Violation), fails to remove or abate the violation in the time specified in the notice and severe conditions exist that affect health, welfare, or safety, or cause severe environmental degradation, the County through the Code Enforcement Department may lawfully enter upon the land where the violation remains unabated to remove or abate the violation, at the expense of the person(s) responsible for creating or maintaining the violation(s).
- B. Under all other circumstances, if the person(s) to whom a warning notice has been given in accordance with Section 9.4.40 (Notice of Violation), fails to remove or abate the violation in the time specified in the notice, the Code Enforcement Department shall fill out and sign, as the complainant, a Uniform Summons Ticket in the appropriate court of Beaufort County. The Uniform Summons Ticket shall include the following:
 - 1. Name of the owner of the land subject to the violation, any occupants, and any other person(s) responsible for the violation(s);
 - 2. The address or legal description of the land on which the violation is occurring;
 - 3. The nature of the violation;
 - 4. The provision(s) of this Development Code being violated;
 - 5. The date on which the case will be on the court docket for hearing; and
 - 6. Any other information deemed pertinent by the Code Enforcement Department.

- C. The original copy of the Uniform Summons Ticket shall be forwarded to the appropriate court of Beaufort County for inclusion on the court's docket for the date indicated on the notice.
- D. The Uniform Summons Ticket shall be provided to the owner or any person occupying the land or structure in violation of this Development Code. The notice shall be delivered by certified mail to the owner or any person occupying the land where the violation is occurring. In addition, the Code Enforcement Department shall fill out and sign the Uniform Summons Ticket as the complainant and deliver the original plus one copy to the Clerk of the Court. The Clerk shall verify or insert the date the case is set for hearing before the court. The Clerk shall mail a copy of the Uniform Summons Ticket, by certified mail, to all person(s) named in the Uniform Summons Ticket, at their last known address.

THE MAGISTRATE'S VERDICT

The Verdict found Appellants guilty of two (2) violations of Beaufort County's Community Development Code (the "CDC"). Specifically, the magistrate convicted Appellants of violations of Section 5.6.50.E. of the CDC for performing work on off-premises signs without County approval. The County cited Appellants for the alleged violations by issuing two Uniform Summons Tickets (Nos. 2434 and 2436) on April 12, 2021. *See* Plaintiff's Trial Ex. 6 at 4.

The Verdict reflects Appellants' argument, raised pursuant to CDC Sections 9.4.40 and 9.4.50, that "the County failed to comply with ordinance provisions requiring that a warning notice of the violation be given by the codes (sic) enforcement department in writing by mail or hand delivery." Verdict at 2. Regarding this contention, the magistrate found noncompliance with the CDC by the County, but disagreed with Appellants as to the import of this finding. The Verdict states, in relevant part:

- "The County's failure to adhere to the formal notice requirements were harmless errors on its part." Verdict at 4.

- “The summonses did not comply with the provisions of Section 9.4.50 B of the Community Development Code in that they failed to give the address or legal description on which the violation was occurring.” *Id.*

Although the magistrate did not specifically cite to CDC Section 9.4.40 in the Verdict, it is clear from the record that Appellants raised this specific issue and code section to the magistrate. *See* July 14, 2021 Trial Transcript (“Trial Tr.”), included in Return, at 86:5 – 87:18, 176:16 – 177:3. At trial, the County produced no evidence that a Notice of Violation, as defined and used in Sections 9.4.40 and 9.4.50 of the CDC, was issued to Appellants. However, a witness on behalf of the County testified that a Notice of Violation, as defined in Sections 9.4.40 and 9.4.50, was a predicate to issuing a Uniform Summons Ticket. *See* Trial Tr., at 87:13 – 88:14.

In accordance with governing law, this Court must accept the magistrate’s uncontroverted factual findings that: (1) the County failed to issue a Notice of Violation to Appellants in conformity with CDC Section 9.4.40; and (2) the County failed to comply with the requirements for the issuance of a Uniform Summons Ticket in conformity with CDC Section 9.4.50.

The Verdict concluded, as a matter of law, that the County’s failure in this matter to adhere to the CDC’s requirements as to Notices of Violations and Uniform Summons Tickets were harmless errors. *See* Verdict at 4. In so ruling, the magistrate determined that certain email communications between the parties constituted actual notice of the alleged violation(s), and in essence cured the deficiencies of the County’s process and its noncompliance with its own penal laws set forth in the CDC. *Id.*

THE APPEAL

Appellants’ Notice of Appeal sets forth forty-nine (49) grounds for their appeal, largely based upon application, construction, and interpretation of provisions of the CDC and South

Carolina Code of Regulations. This Order addresses a limited number of grounds, relating to the lack of a Notice of Violation and deficiencies in the Uniform Summons Tickets pursuant to CDC Sections 9.4.40 and 9.4.50. See Notice of Appeal, ¶¶ 6, 17-21, 24, 26-28, 30, 38, and 44.

DECISION ON APPEAL

I. The Verdict Contains an Error of Law by Failing to Hold the County to Strict Compliance with CDC's Notice of Violation Requirements.

The Court finds that the magistrate erred in its construction and reading of, and by failing to give proper weight to, CDC Section 9.4.40. In fact, the Verdict omitted any explicit reference to this section. Section 9.4.40, entitled "Notice of Violation," reads, in pertinent part:

When the Code Enforcement Department finds and determines a violation of this Development Code exists, **the Code Enforcement Department shall notify, in writing, the person violating the Code. Such notification shall serve as a warning notice of a violation.** It shall be delivered via U.S. Mail or hand delivered to the last known address of to the owner and or any person occupying the land or structure where the violation occurs.

Id. (emphasis added) (included in the record as part of Defendants' Trial Exhibit 3 ("DX-3")). The section also details certain information that must be included in a Notice of Violation:

A. The address and legal description of the land, structure, or sign that is in violation of this Development Code; B. The nature of the violation, the provisions of this Development Code being violated, and the necessary action to remove or abate the violation; C. The date by which the violation should be removed or abated; and D. The penalty for failing to remove or abate the violation, **stating that if the nuisance recurs, a notice to appear in the appropriate court in Beaufort County will be issued without further notice.**

CDC Sec. 9.4.40.A.-D. (DX-3) (emphasis added).

The magistrate erred by finding Appellants' guilty in the absence of evidence that the County issued a Notice of Violation in conformity with CDC Section 9.4.40 to either of the Appellants. The record contains no finding or evidence that the County delivered any warning notice of alleged CDC violation to Appellants by U.S. Mail or hand delivery, as required by the CDC. Additionally, the record shows no communication or notice to Appellants that contained

the requisite information of a Notice of Violation mandated by Section 9.4.40. In fact, the County witness who was the issuing officer of the Uniform Summons Tickets in this case testified that she did not know whether a Notice of Violation had been issued. See Trial Tr., at 87:13-18. There is no evidence to disturb the magistrate's finding of noncompliance by the County in this case with respect to the Notice of Violation requirements.

Moreover, interpreting the CDC by giving its words their plain and ordinary meaning, a Notice of Violation is a condition precedent to the County's issuance of a Uniform Summons Ticket. If "severe conditions exist that affect health, welfare, or safety, or cause severe environmental degradation" do not exist,² Section 9.4.50 states that the County may issue a Uniform Summons Ticket "**if the person(s) to whom a warning notice has been given in accordance with Section 9.4.40** (Notice of Violation), fails to remove or abate the violation in the time specified in the notice[.]" CDC Sec. 9.4.50.B. (DX-3) (emphasis added). The County admitted that CDC Section 9.4.50, entitled "Failure to Correct Violation," governs the issuance of such citations. See Trial Tr., at 87:19-23.

The failure of the County to follow its own process and procedures for criminal violations of the CDC is no mere technical flaw. The County's land use regulations set forth in the CDC are far-reaching and complex. Therefore, a person accused of a violation, and subject to criminal penalties such as fines and jail imprisonment, has the right to receive a warning notice and be informed of exactly what conduct is proscribed by the CDC. And, just as importantly, the County drafted its code of ordinances to provide for such a warning.

"Criminal ordinances are, of course, to be strictly construed and a defendant has a right to know just wherein he is charged with the commission of a crime[.]" *Town of Sullivan's Island*

² There is no evidence in the record to support that severe conditions that affected health, welfare or safety, or caused severe environmental degradation were present in this case, as contemplated by CDC Section 9.4.50.A.

v. Murray, Op No. 5856 (S.C. Ct. App. filed Sept. 1, 2021) (Adv. Sh. No. 30 at 120) (quoting *Town of Conway v. Lee*, 209 S.C. 11, 18, 38 S.E.2d 914, 917 (1946)). ““No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.”” *Id.* at 122 (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964) (internal citation omitted)). CDC Sections 9.4.40 and 9.4.50 are designed to provide the information and notice necessary to comport with due process for violations of the CDC. These protections cannot be swept under the rug when inconvenient to the County or where the accused party or his business is out of favor. South Carolina law clearly and unequivocally directs that such penal laws be strictly construed.

The County argues, in direct contravention of the plain and mandatory language in Section 9.4.50, that it was not required to provide any Notice of Violation prior to issuing the Uniform Summons Tickets in this case. The County points to two sections of the CDC, Sections 9.1.10 and 9.5.40, to attempt to excuse its noncompliance on the Notice of Violation. See County’s Opposition Brief, filed Nov. 8, 2021, at 9-12. The County relies upon Section 9.1.10’s statement that the “provisions of this Article are intended to encourage the voluntary correction of violations, where possible.” CDC Sec. 9.1.10. However, a simple policy statement encouraging voluntary correction does not obviate or diminish the enforcement procedure requirements of Sections 9.4.40 and 9.4.50.

The latter ordinance the County cites to, CDC Section 9.5.40, provides that remedies for violations of the CDC may be cumulative and “may be exercised in any order.” County’s Nov. 8, 2021 Memorandum at 9, 12 (quoting CDC Sec. 9.5.40). The fact that the County may exercise remedies in any order does not change the procedural requirements which enable pursuit of one of those specific remedies, criminal penalties. Sections 9.4.40 and 9.4.50 specify the enforcement

procedure necessary to pursue prosecution – the County must first issue a warning notice and then a citation ticket in order to prosecute for a conviction and remedy.³ The distinction is key, as the County’s election of remedies argument refers to the remedies set forth in CDC Division 9.5, entitled “Remedies and Penalties.” *See* DX-3 at 5. Sections 9.4.40 and 9.4.50 are contained within Division 9.4, entitled “Enforcement Generally[.]” *See id.* at 3. The issuance of a citation is not a remedy. The remedy of fines or imprisonment, contemplated in Section 9.5.10, may only be levied by a court if the County is successful in its prosecution – after it properly issues a Warning Notice and Uniform Summons Ticket in accordance with Sections 9.4.40 and 9.4.50. *See* DX-3 at 3-5.

Moreover, even if the clear language at issue could be stretched or contorted to find an ambiguity as to whether the Notice of Violation requirement is an “alternative” remedy that may be ignored, the law requires such an ambiguity to be resolved in favor of the Appellants.

In conclusion, because Sections 9.4.40 and 9.4.50 are penal ordinances which must be strictly construed, the magistrate erred in finding that certain email communications between the parties overrode or eliminated the requirements of the CDC. The Verdict must be reversed because there is no evidence that the County issued a Notice of Violation, a prerequisite to a Uniform Summons Ticket, and a requirement for criminal prosecution of an alleged violation of the CDC.

II. The Verdict Contains an Error of Law by Failing to Hold the County to Strict Compliance as to the Issuance of the Uniform Ordinance Summonses.

In addition to the failure to provide a Notice of Violation, the summonses issued by the County were also facially deficient. There are six criteria required to be included in citation, and in this instance, the County supplied no or insufficient information for half. The County failed to

³ If the recipient of a Notice of Violation issued under Section 9.4.40 does not remove or abate a violation in the time specified, the County’s Code Enforcement Department may fill out and sign, as the complainant, a Uniform Summons Ticket. *See* CDC Secs. 9.4.40, 9.4.50.B. The County must then provide the signed ticket to the Clerk of the appropriate Beaufort County court for inclusion on the court’s docket, and the Clerk then sends a copy of said Uniform Summons Ticket, by certified mail, to all persons named in the ticket. *See* CDC Secs. 9.4.50.C.-D. (DX-3 at 3-4).

(1) identify the owner of the land upon which the alleged violation took place; (2) list the address where the alleged violation took place with any specificity; and (3) the nature of the violation. The magistrate found that the “Summonses did not comply with the provisions of Section 9.4.50B[.]” There is no evidence in the record to disturb this finding.

Additionally, to constitute a chargeable offense, a violation of the CDC is not governed by strict liability. A violation must be preceded by a warning notice, and the **alleged violator must “fail[] to remove or abate the violation”** in the time specified in the notice” in order to be formally charged with any violation. CDC Sec. 9.4.50.B. (DX-3 at 4) (emphasis added). In this case, the County failed to provide a Notice of Violation; thus, Appellants could not be charged with violations of the CDC.

The Verdict found that the County did not strictly comply with the requirements of Section 9.4.50 of the CDC. The magistrate erred in finding this error harmless in the context of strict construction of a penal statute. Therefore, the Court finds that the Verdict is reversed on the ground that the County failed to properly issue the Uniform Summons Tickets to Appellants.

The Court declines to rule on, or does not find merit in, Appellants’ other grounds for appeal not specifically addressed herein.

CONCLUSION

For the above grounds and reasons, the Verdict and Notice of Sentence are hereby REVERSED. The Court finds that Appellants are not guilty of the charged violations, and the sentencing imposed by the magistrate is vacated.

IT IS SO ORDERED.

[SIGNATURE FOLLOWS]



Beaufort Common Pleas

Case Caption: Adams Outdoor Advertising Limited Partnership , plaintiff, et al VS
Beaufort County
Case Number: 2021CP0701507
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-04-21 15:28:07 page 12 of 12

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0701507

Adams Outdoor Advertising Limited Partnership et al.

Beaufort County

Appellant

PLAINTIFF(S)

Respondent

DEFENDANT(S)

Submitted by: Beaufort County Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **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:

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.**

4/21/2022

Date _____

R. p. 16

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: Adams Outdoor Advertising Limited Partnership , plaintiff, et al VS
Beaufort County
Case Number: 2021CP0701507
Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-04-21 15:28:05 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Beaufort County,

Common Pleas Case No. 2021-GS-10-_____
Magistrate Case Nos. 2434 and 2436

Plaintiff/Respondent,

vs.

Adams Outdoor Advertising Limited
Partnership and Bo Hodges,

**DEFENDANTS/APPELLANTS ADAMS
OUTDOOR ADVERTISING LIMITED
PARTNERSHIP AND BO HODGES'
NOTICE OF APPEAL**

Defendants/Appellants.

Adams Outdoor Advertising Limited Partnership and Bo Hodges (hereinafter "Appellants"), by and through their undersigned counsel, hereby serve notice of their appeal from the rulings, verdict and sentencing of Magistrate Nancy D. Sadler made on July 23, 2021 and August 11, 2021 in the above-captioned matters. Pursuant to Rule 18 of the South Carolina Rules of Magistrates Courts, and S.C. Code Ann. § 18-3-30, this appeal is timely filed and served within thirty (30) days after delivery by e-mail to counsel for Appellants on July 23, 2021 of written notice of the judgment, and within ten (10) days of sentencing of Appellants on August 11, 2021. This appeal is made to the Court of Common Pleas, in the County of Beaufort, South Carolina, pursuant to S.C. Code Ann. § 18-3-10, Rule 18, SCRMC, and Rule 74 of the South Carolina Rules of Civil Procedure.

Pursuant to S.C. Code Ann. §§ 18-3-20 and 18-3-30, the grounds upon which Appellants' appeal is founded, and particulars of Appellants' exceptions to the verdict and sentence of the Magistrate are set forth as follows:

1. The Magistrate erred, in both findings of fact, and conclusions of law, in convicting Appellants of two violations of Section 5.6.50.E. of the Beaufort County Community Development Code ("CDC").

2. The Magistrate erred in its construction and reading of the provisions of Section 5.6.50.E., by failing to give effect to the plain meaning of those provisions of the CDC.
3. The Magistrate ignored or failed to give proper weight to the fact that Section 5.6.50.E. of the CDC is unconstitutional.
4. The Magistrate ignored or failed to give proper weight to the fact that Section 5.6.50.E. of the CDC is preempted by S.C. Code Ann. Regs. 63-350.C.
5. The Magistrate erred in finding that the provisions of CDC Sec. 5.6.50.E. are more restrictive than the provisions of S.C. Code Ann. Regs. 63.350.C.
6. The Magistrate failed to adhere to applicable South Carolina law on statutory interpretation, by failing to give effect to the plain meaning of the State regulation(s) and local ordinance(s) at issue.
7. The Magistrate, in citing to S.C. Code Ann. § 57-25-22 for support, erred in citing to a statute that does not exist. *See* Magistrate's Verdict at 5.
8. The Magistrate ignored or failed to give proper weight to the fact that Appellants had obtained the necessary authorizations to perform the work at issue from the state agency with sole authority on the matter, the South Carolina Department of Transportation ("SCDOT"), pursuant to S.C. Code Ann. Regs. 63.350.C.(4).
9. The Magistrate ignored or failed to give proper weight to the fact that SCDOT never asked Appellants to obtain any permissions or permits from a local governing body prior to performing the work.
10. The Magistrate ignored or failed to give proper weight to the fact that Appellants gave Respondent Beaufort County ("Respondent") prior notice that it would be performing the work at issue pursuant to SCDOT's approvals.

11. The Magistrate failed to take notice of the correct subsection of CDC Section 5.6.50.E. which Respondent contends Appellants allegedly violated.

12. The Magistrate ignored or failed to give proper weight to the fact that the only subpart of CDC Section 5.6.50.E. that could be at issue is 5.6.50.E.4.c., which mirrors and is preempted by S.C. Code Ann. Regs. 63-350.C.(4).

13. As Respondent alleges that Appellants violated the CDC by failing to obtain a necessary permit or approval for work performed, the Magistrate erred by failing or refusing to recognize that subsection 4. is the only subsection of CDC Section 5.6.50.E. that contemplates the issuance of a permit or authorization from Respondent.

14. Thus, the Magistrate erred in finding Appellants guilty of violating CDC Sections 5.6.50.E.2. and 5.6.50.E.3., which do not contemplate the issuance of any permit, approval, or authorization by Respondent.

15. The Magistrate ignored or failed to give proper weight to CDC Section 5.6.50.E.4.c.'s requirement that the Director of Respondent's Community Development Department determine whether to allow repairs to a sign that is partially destroyed by wind or other natural forces.

16. The Magistrate ignored or failed to give proper weight to the fact that Respondent, at the time surrounding the alleged violation, no longer had a Community Development Department or a Director of that now defunct department.

17. The Magistrate erred in its construction and reading of certain provisions of Article 9 of the CDC at issue, including but not limited to Sections 9.4.40, 9.4.50, and 9.5.20, by failing to give effect to the plain meaning of those sections of the CDC.

18. The Magistrate ignored or failed to give proper weight to CDC Section 9.4.40 (and, in fact, omitted any reference to this section in her Verdict), which requires service of a warning notice of any alleged violation after the Beaufort County Code Enforcement Department finds and determines that a violation of the CDC exists.

19. The Magistrate ignored or failed to give proper weight to CDC Section 9.4.40's requirement that a warning notice of any alleged violation is to be delivered by the Beaufort County Code Enforcement Department by hand or via U.S. Mail, and requirement that any such notice include four (4) specific items of information relating to the alleged violation.

20. The Magistrate ignored or failed to give proper weight to the fact that emails from officials or administrative staff of Respondent did not constitute proper notice of any alleged violation in accordance with CDC Section 9.4.40.

21. The Magistrate ignored or failed to give proper weight to the fact that the contents of the email communications from Eric Greenway ("Greenway"), now the Beaufort County Administrator, on April 10 and 11, 2021, did not comply with the requirements of CDC Section 9.4.40 to constitute a notice of violation.

22. The Magistrate ignored or failed to give proper weight to the fact that said email communications from Greenway do not explicitly state that a violation occurred (or even identify any relevant section of the CDC).

23. The Magistrate ignored or failed to give proper weight to the fact that Greenway did not consider any information or documents prior to estimating that the work was improper.

24. The Magistrate erred by failing to recognize that Respondent never issued a notice of alleged violation in accordance with CDC Section 9.4.40 to either of the Appellants.

25. The Magistrate erred in failing to adhere to applicable South Carolina law as to the requirement of criminal intent or *mens rea*, for which the required notice of alleged violation was intended to satisfy.

26. The Magistrate ignored or failed to give proper weight to CDC Section 9.4.50's plain language that a Uniform Summons Ticket¹ may only be issued "if the person(s) to whom a warning notice has been given in accordance with [CDC] Section 9.4.40 (Notice of Violation) fails to remove or abate the violation in the time specified in the notice[.]" CDC Sec. 9.4.50.B.

27. The Magistrate erred by failing or refusing to recognize that Respondent was not permitted to issue a Uniform Summons Ticket to Appellants because no warning notice of violation had been issued in accordance with Section 9.4.40 of the CDC.

28. The Magistrate erred by failing or refusing to recognize that Respondent never specified a time or date by which Appellants were to remove or abate the alleged violation as required by Sections 9.4.40 and 9.4.50 of the CDC.

29. The Magistrate erred by failing or refusing to recognize that Appellants completed the work at issue on April 11, 2021, prior to the date that Respondent issued its Uniform Ordinance Summonses and Stop Work Order on April 12, 2021.

30. The Magistrate erred by acknowledging but failing to give proper weight to the fact that the Uniform Ordinance Summonses issued to Appellants in this case did not include the necessary information as required by Section 9.4.50 of the CDC.

¹ The terms "Uniform Summons Ticket," as used in the CDC, and "Uniform Ordinance Summons," as shown on the citations at issue, refer to the same type of document – a ticket issued under CDC Section 9.4.50.B. to a person who allegedly violated the CDC (following failure to adhere to a warning notice of said violation).

31. The Magistrate ignored or failed to give proper weight to CDC Section 9.4.50's requirement that a Uniform Summons Ticket be served on an alleged violator by the "Clerk of the Court" via certified mail.

32. The Magistrate erred by failing or refusing to recognize that no evidence was offered to show that the Uniform Ordinance Summonses were served on Appellants by the "Clerk of the Court." CDC Sec. 9.4.50.D.

33. The Magistrate erred by failing or refusing to recognize that separate copies of each of the Uniform Ordinance Summonses at issue were not separately served on each of Appellants.

34. The Magistrate erred by improperly admitting document(s) into evidence offered by Respondent relating to service of the Uniform Ordinance Summonses at issue in this case.

35. Thus, the Magistrate's convictions of Appellants are improper as its verdict found that Respondent, rather than the "Clerk of the Court," served the Uniform Ordinance Summonses on Appellants. *See* Magistrate's Verdict at 4.

36. The Magistrate ignored or failed to give proper weight to CDC Section 9.5.20(A)'s requirement that a Stop Order or Stop Work Order be issued and served by the Beaufort County Administrator or Beaufort County Attorney.

37. The Magistrate ignored or failed to give proper weight to the fact that the Beaufort County Administrator or Beaufort County Attorney did not serve the Stop Work Order upon Appellants in this case.

38. The Magistrate erred by refusing or failing to recognize the notice requirements contained in the CDC.

39. The Magistrate failed to follow applicable South Carolina law on criminal due process.

40. The Magistrate erred in its misapprehension of the meaning and legal significance of the term “actual notice” and therefore failed to adhere to applicable South Carolina law on the doctrine of actual notice.

41. The Magistrate erred by failing or refusing to recognize that Appellant Bo Hodges is not a proper party to the case because he was not responsible for, and did not participate in, manage, direct, control, or have power or authority over any of the repair work at issue, and therefore could not have committed the CDC violations alleged by Respondent.

42. The Magistrate erred in its finding that Appellant Bo Hodges proceeded with the work in question because there was no evidence to show that he was involved with, responsible for, or participated in said work. *See* Magistrate’s Verdict at 4.

43. The Magistrate erred by failing or refusing to recognize that Respondent did not prove Appellants’ guilt of the offenses alleged beyond a reasonable doubt.

44. The Magistrate erred by refusing to recognize the notice requirements set forth in the CDC, and finding Appellants guilty despite Respondent’s failure to comply with the notice provisions in connection with the alleged violations.

45. The Magistrate erred in convicting Appellants where Respondent failed to prove that Appellants violated any terms or provisions of CDC Section 5.6.50.E., which is preempted and made unconstitutional by South Carolina regulatory law.

46. The CDC, as applied, failed to provide due process of law (substantive and procedural) to Appellants and is unconstitutional under federal and state law.

47. The CDC, on its face, is unconstitutional under federal and state law.

48. In assessing a fine of \$1087.50 against each Appellant, the Magistrate erred in exceeding the limit for monetary penalties proscribed under Section 9.5.10 of the CDC.

49. The Magistrate failed to act as proscribed by law in this case.

s/ Jeffrey S. Tibbals

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OUTDOOR ADVERTISING LIMITED
PARTNERSHIP AND BO HODGES*

August 20, 2021

Mt. Pleasant, South Carolina

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The sentencing proceedings before Honorable Marvin Dukes, in the above-entitled cause, taken before Naomi McCracken, Stenographic Court Reporter and Notary Public, at Beaufort County Magistrate's Court, 104 Ribaut Road, Beaufort, South Carolina, on the 27th day of October, 2021, commencing at or about the hour of 10:08 a.m.

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I N D E X

PAGE

COURT PROCEEDINGS ----- 4

CERTIFICATE ----- 60
(NO EXHIBITS)



1 THE COURT: Good morning. We are
2 here in 2021-CP-07-01507. This is
3 Adams Outdoor Advertising, Limited
4 Partnership, and Bo Hodges versus
5 Beaufort County. This is an appeal by
6 Adams Outdoor Advertising and Bo Hodges
7 to a finding by -- I believe, it was
8 Judge Sadler in The Magistrate's Court.

9 Before we begin, I note for the
10 record that there was a pro hac vice
11 petition filed and granted in
12 Magistrate's Court for Mr. Bergthold,
13 and to the extent that needs to be
14 renewed and/or granted in the Circuit
15 Court pursuant to the Administrative
16 order granting the Circuit Court
17 powers, hereby do so for Mr. Bergthold.
18 And I don't know if that's even
19 necessary. But to the extent it needs
20 to be done -- well, let me ask: Any
21 objection from counsel to me doing so?
22 All right. Just do it?

23 And Mr. Tibbals, you're muted, I
24 think.

25 MR. TIBBALS: Yes. I don't have



1 an objection.

2 THE COURT: Okay. I see

3 Mr. Keaveny has joined us.

4 Ms. Ward, any objection?

5 All right. I got a no-nod. But
6 that will work.

7 MS. WARD: I apologize. I'm
8 keeping myself phone on mute.

9 THE COURT: No worries. So to the
10 extent that that needs done, and I
11 don't even know if does, it probably
12 does not. But to the extent it needs
13 to be done, it's done.

14 All right, then. Let's see. And
15 Mr. Keaveny, are you going to join us?
16 It looks like you're telephone only, so
17 make sure that will just be -- just be
18 audio, which is fine.

19 MR. KEAVENY: I'm with -- (audio
20 interruption) -- the county trying to
21 attempt a courthouse call, Judge.

22 THE COURT: Oh, okay. All right.
23 Well, good luck with that WiFi or
24 telephone or whatever.

25 MR. KEAVENY: Thank you.



1 THE COURT: Good. All right. So
2 who is going to -- are y'all going to
3 argue separately on -- for Adams and
4 Hodges or together, or how will the
5 petitioner or appellant --

6 MR. TIBBALS: Your Honor, I'm here
7 on behalf of both defendants and will
8 handle the appeal on behalf of those
9 defendants.

10 THE COURT: All right. I'm happy
11 to hear from you then, sir.

12 MR. TIBBALS: Okay. Your Honor, I
13 know that we have submitted a brief
14 detailing various grounds and arguments
15 where we believe that the magistrate
16 erred in this case. I specifically am
17 preserving all of those arguments. In
18 the interest of time, I may not address
19 each and every one today because I know
20 that we're all busy with things to do
21 and I don't want to take too much of
22 everybody's time.

23 But I do want to start by -- in a
24 little bit of an unusual way. But I
25 want to start because I think it's



1 important and I think that it's --
2 gives us clarity. I want to start by
3 looking at a particular section of the
4 Beaufort County CDC, the Community
5 Development Code. And I hope that my
6 computer will cooperate. We'll try to
7 do this here.

8 All right. So I have up on my
9 screen, at least, Section 9.4.50 of the
10 CDC entitled, "Failure to correct
11 violation."

12 Do you -- does everybody see this?

13 THE COURT: I see it.

14 MR. TIBBALS: Okay. So 9.4.50 is
15 the enforcement mechanism by which the
16 County is able to issue a uniform
17 summons ticket to a person who has
18 allegedly violated the CDC. And if we
19 look at it, we note that it has two
20 subsections. Subsection A was not at
21 issue in this case. There was no
22 allegation or evidence that health,
23 welfare, safety, or severe
24 environmental degradation was present.

25 And, therefore, that takes us to



1 B. And B is the power and authority by
2 which the County may issue the uniform
3 citations such as those that were
4 issued in this case.

5 And Subsection B says, under all
6 other circumstances, i.e., those
7 circumstances other than Subsection A,
8 which is not an issue. A person --
9 excuse me -- under all other
10 circumstances, if the person to whom a
11 warning notice has been given in
12 accordance with Section 9.4.40, notice
13 of violation, fails to removed or abate
14 the violation in the time specified in
15 the notice, the Code Enforcement
16 Department shall fill out and sign as
17 the complainant, a uniform summons
18 ticket in the appropriate court in
19 Beaufort County. And then it goes on
20 to detail a number of requirements for
21 the uniform summons ticket.

22 We understand, from South Carolina
23 law and, specifically, most recently in
24 the case of Town of Sullivan's Island
25 vs. Michael Murray, which was decided



1 this last month on September -- opinion
2 was issued on September 1st of 2021
3 reversing the affirmation by the
4 Circuit Court of a magistrate's
5 conviction for a violation of a
6 development ordinances or, in this
7 case, it was dock permit.

8 But -- we know from that case that
9 penal statutes must be strictly
10 construed. And when you apply strict
11 construction principles to this
12 particular part of the ordinances,
13 9.4.50, you see that it has a condition
14 precedent to the issuance of a uniform
15 summons ticket. That condition is that
16 the person has to be given a warning
17 notice in accordance with
18 Section 9.4.40.

19 And in this case, there was no
20 warning notice in accordance with
21 Section 9.4.40. So, naturally, we're
22 lawyers, and what do we do? We -- we
23 see the reference to 9.4.40, and as
24 lawyers and judges, we're chained and
25 bound to look at 9.4.40.



1 Let's make sure that I can get
2 that one up. All right. Do we see --
3 I'm going to blow it up, but I want to
4 make sure we see 9.4.40 on the screen.

5 Is that on everybody's screen?

6 Okay. So 9.4.40 is entitled
7 "Notice of Violation," and the language
8 in 9.4.40 is important because,
9 naturally, 9.4.50 says that the warning
10 notice must be in accordance with
11 9.4.40 in order for the uniform summons
12 to be issued.

13 9.4.40 states, "When the Code
14 Enforcement Department finds and
15 determines a violation of this
16 Development Code exists, the Code
17 Enforcement Department shall notify, in
18 writing, the person violating the code.
19 Such notification shall serve as a
20 warning notice of the violation. It
21 shall be delivered via U.S. Mail or
22 hand delivered to the last known
23 address of -- this is a typo -- of the
24 owner and/or any person occupying the
25 land or structure where the violation



1 occurs."

2 And it goes to give the
3 requirements of the notice. The
4 notices must -- must -- because it's
5 shall, we know it's mandatory language
6 -- the notice shall state the
7 following, "The address and legal
8 description of the land, the structure,
9 or sign that's in violation. The
10 nature of the violation. The
11 provisions of the Development Code
12 being violated, the necessary actions
13 to remove or abate the violation. C,
14 the date by which the violation should
15 be removed or abated. And, D, the
16 penalty for failing to remove or abate
17 the violation stating that if the
18 nuisance reoccurs, a notice to appear
19 in the appropriate court in Beaufort
20 County will be issued without further
21 notice," i.e., the summons.

22 In this case, Your Honor, the
23 County did not issue a notice of
24 violation pursuant to 9.4.40 and
25 there's no evidence in the record that



1 the County issued a notice of violation
2 in accordance with 9.4.40. And so the
3 County has two excuses for its
4 noncompliance with its own ordinances.

5 Number one, it says, Mr. Greenway,
6 who is the county administrator, sent
7 an e-mail telling them to stop. That
8 e-mail is in the record. It is
9 Exhibit 6, I think, at the trial.

10 And I don't know if this is pulled
11 up yet or not. Let me see. It's
12 Exhibit Number 5 in the trial. Let me
13 see if I can share this.

14 All right. All right. Do we have
15 it up?

16 THE COURT: Yes.

17 MR. TIBBALS: Okay. So this is
18 the e-mail that is contended to be the
19 warning notice pursuant to
20 Section 9.4.40. And, again, keeping in
21 mind that the penal statute by law
22 requires strict construction and,
23 therefore, requires an exacting
24 compliance. This is the document that
25 they contend to be the warning notice.



1 I'll say a few things about this
2 warning notice. It doesn't comply with
3 any of 9.4.40. It wasn't sent as
4 required by U.S. Mail or hand delivery.
5 It did not follow the finding of a --
6 and I can -- because we're strictly
7 construing it, we need to look back at
8 the language. And I know you're
9 looking at the e-mail, but I'll be
10 reading from 9.4.40.

11 It did not follow a Code
12 Enforcement Department finding and
13 determination of a violation of the
14 Development Code. It did not -- was
15 not delivered via U.S. Mail or hand
16 delivered. It does not state the
17 address or legal description of the
18 land. It does not address the
19 provisions of the Development Code
20 being violated. It does not state a
21 date by which the violation should be
22 removed or abated. And, most
23 importantly, perhaps, it doesn't state
24 the penalties for failing to remove or
25 abate the violation. And it doesn't --



1 it doesn't contain the language
2 mandated by Beaufort County's own
3 ordinance, that if the -- that a notice
4 to appear in the appropriate court of
5 Beaufort County will be issued if the
6 violation continues.

7 So faced with this, the magistrate
8 said -- made a clear error of law
9 because what she said is that this was
10 a harmless error. And so I think what
11 she meant, Your Honor, was substantial
12 compliance. But under the law,
13 interpreting penal statutes/penal
14 ordinances and the fact that they must
15 be strictly construed, substantial
16 compliance is not sufficient.

17 She said basically, you know, we
18 think that that was enough to put him
19 on notice. And -- and that's just not
20 consistent with Beaufort County's own
21 CDC, it's not consistent with the
22 ruling South Carolina law. And because
23 there was no exacting compliance, no
24 strict compliance, no real -- nothing
25 really even that close to compliance



1 with 9.4.40, there's no basis, there's
2 no satisfaction that the condition
3 that's necessary prior to issuing the
4 -- the uniform summons. And,
5 therefore, there was a code violation
6 and -- and the case should've been
7 dismissed.

8 The -- you know, the interest --
9 you know, the County makes a
10 fascinating argument in its brief
11 recently. They say, "Well, we don't
12 have to use 9.4.50 to issue a summons,
13 we can -- we can rely upon the
14 cumulative remedies provision in the
15 CDC, and we can basically do what we
16 want, when we want. We have no
17 restrictions or prohibitions on when we
18 can issue a ticket. We can issue a
19 ticket anytime we want.

20 To my knowledge, 9.4.50 is the
21 only provision in the CDC that prevents
22 the issuance of a uniform summons, and
23 they would like for us to read out
24 of -- let me see if I can pull that
25 back up, again.



1 So they would like for us to
2 simply look at 9.4.50(b) and just sort
3 of say, you know what, this part says
4 doesn't matter, we can strike this,
5 Code Enforcement Department can fill
6 out and sign a uniform summons ticket
7 and the uniform ticket will contain the
8 following.

9 That's what they want you to do.
10 They want you to say you can strike
11 through the provision that they didn't
12 comply with.

13 I don't know that there's any
14 judge on the Court of Appeals who will
15 feel that way about their ignoring
16 their own ordinance. But I think it's
17 obvious that you can't just pick and
18 choose what it is that you want to
19 comply with and what you don't if you
20 are the County.

21 So, you know, I think it's obvious
22 that Beaufort County drafted and
23 approved the CDC, including this
24 language at issue. And now the County
25 is attempting to riddle out of its own



1 mandates. I think it's ironic to say
2 the least that the County is accusing
3 Adams and Mr. Hodges of violating its
4 ordinance while at the same time
5 ignoring its own duties and
6 requirements under that ordinances.

7 And why is the process important?
8 The process is important and, you know,
9 why must a warning notice be provided
10 before these criminal proceeding are
11 instituted? And I think the answer to
12 that is intuitive and it's critical,
13 really, to an understanding of the
14 entire CDC. And that is because we're
15 in a time, in an age right now where we
16 have unprecedented governmental
17 controls over land use and intrusion
18 into private property ownership.

19 So we don't want to see people
20 thrown in jail for painting their porch
21 swing the wrong color or having a roof
22 overhang or failing to meet a setback
23 requirement.

24 This is a criminal proceeding.
25 This is the deprivation of property in



1 the form of fines. It's the
2 depravation of liberty in form of
3 imprisonment. And, by the way, it was
4 not until the sentencing -- the warning
5 at the sentencing hearing that I was
6 finally notified, after several
7 attempts to understand what the
8 penalties Beaufort County were seeking,
9 that they decided to inform me of their
10 decision not to seek jail time for
11 Mr. Hodges.

12 Though not just saying, "Hey, this
13 could lead to jail time." They didn't
14 make a decision, and I didn't -- I
15 wasn't aware of the decision until the
16 morning of the sentencing hearing that
17 they were not going to seek to throw an
18 employee of this company in jail.

19 And so -- but they -- their
20 interpretation of their own CDC, if --
21 if that's true, if they can just issue
22 a citation that invokes criminal
23 penalties on a whim because their
24 director or county administer is doing
25 a drive-by, sees something that he



1 doesn't like, shoots an e-mail that
2 doesn't comply with any of the warning
3 notice provisions, and then they can
4 put somebody in jail, I think, that is
5 a failure of due process, and I think
6 that it renders the entire ordinance
7 unconstitutional, if they believe that
8 that is a proper interpretation.

9 You have to -- again, from the
10 Town of Sullivan Island's case, in
11 order for the -- this ordinance to work
12 and for any -- or any fair notice
13 issue, people are entitled to know
14 where the line is drawn between
15 innocent conduct and illegality. And
16 if -- I think the County wants to
17 portray Adams and Hodges in this case
18 as scofflaws.

19 I think that they overlook some
20 critical facts that are important for
21 you to understand as you review the
22 underlying petition, that is, that
23 Adams and Hodges didn't just go and do
24 repairs without authorization. They,
25 in fact, made application to the



1 governing body jurisdiction of sign
2 repairs and the -- and the government
3 authority that issues permits by which
4 those signs are permitted to stand, and
5 that is the South Carolina Department
6 of Transportation.

7 And they submitted permit
8 applications, they followed the
9 guidance and guidelines and regulations
10 that are in place that bears to those
11 signs, they obtained SCDOT approval.
12 And, furthermore, the record shows that
13 they actually notified Beaufort County
14 of their permit approvals and the fact
15 that they were going to do work.

16 Now, what criminal announces his
17 intent to commit a crime at the time
18 that it's planning to do it? I mean,
19 you know, it's just doesn't make any
20 sense. And I think one of the
21 underlying themes here as well is that
22 the criminal intent or mens rea is
23 absent in view of these defendants.
24 They believed what they were doing was
25 right and proper and in accordance with



1 the law.

2 If Beaufort County had a dispute
3 with that, they should have followed
4 their own ordinance and they should
5 have made a finding to the contrary,
6 and they should have issued a citation
7 only after a warning notice, in
8 accordance with their ordinance and
9 their own regulation. But what they
10 chose to do is they chose to wing it
11 and they chose to ignore, egregiously,
12 all of the protections that a criminal
13 defendant is entitled to receive under
14 their ordinance.

15 The -- there's a preemption issue
16 as well, Your Honor, and I'll just
17 touch on that. I'll try to be brief
18 with it. The SCDOT regulations allow
19 for repairs to signs in the event of
20 storm damage, potentially, if the
21 damage is not greater than 50 percent.
22 They have objective criteria, all of
23 this is in the record. DOT has
24 objective criteria to look at to see
25 whether or not that 50



1 percent-threshold is reached.

2 The DOT regulations in all of the
3 ways that Beaufort County claims that
4 its ordinance is more restrictive. In
5 all of those ways, the DOT contains
6 similar restrictions. Obviously, the
7 preemption issues is, if the Beaufort
8 County ordinance is more restrictive
9 than SCDOT regulations, then the
10 Beaufort County ordinance would still
11 have some power.

12 But, in this case, it's not
13 because all of the restrictions that
14 are contained in the Beaufort County
15 ordinance are also found in the DOT
16 regulations. And that's spelled out
17 for you in the brief that we filed.

18 They make another fascinating
19 argument, and they talk about the way
20 that their ordinance is more
21 restrictive. And they basically say,
22 our ordinance is more restrictive
23 because the director can do whatever
24 the director wants to do. If the
25 director finds that it's not 50 percent



1 or greater or isn't a 50 percent or
2 greater damage issue, then we can -- we
3 can say that it's a violation, and,
4 therefore, our ordinance is more
5 restrictive.

6 Well, when they use that argument,
7 Your Honor, they jump from the frying
8 pan into the fire because what they're
9 doing is they're giving the director
10 unbridled discretion to do whatever he
11 sees fit in an arbitrary and capricious
12 way, in a way that's not based upon any
13 evidence or any finding, and it's based
14 upon the whim of the director to make a
15 decision that's unsupported by any
16 evidence. And so if that's the way
17 that they think their ordinance should
18 be interpreted, then I've got news,
19 it's unconstitutional.

20 So, you know, either -- either way
21 you slice it, it's either not more
22 restrictive, or, if it is efface
23 restrictive, it's only because it's
24 either effacially and/or applied, it is
25 an abuse of power and it is



1 unconstitutional.

2 I know that there are other
3 issues, Your Honor.

4 I really think that the abject
5 failure of the County to follow it's
6 own provisions in the ordinance should
7 carry warning. And I -- I feel
8 confident that in the strict -- strict
9 interpretation is applied to the CDC,
10 that Your Honor will find that they
11 didn't follow their own requirements in
12 issuing the summonses and that the
13 magistrate made a clear error of law in
14 ignoring these failings.

15 THE COURT: Thank you so much.
16 Now can I hear -- Mr. Bergthold, am I
17 going to hear from you as well?

18 MR. BERGTHOLD: I think I will be
19 leading the argument this morning, Your
20 Honor.

21 THE COURT: Okay. All right. I'm
22 happy to hear from you, sir.

23 MR. BERGTHOLD: A couple
24 preliminary matters. First,
25 Mr. Tibbals, filed a brief or he



1 e-mailed us a brief about 5:25 p.m.
2 last night. There was 20 pages. And
3 so we read the statute as requiring the
4 grounds for the appeal to be set forth
5 in the notice of appeal that was filed
6 a couple of months ago. So we filed
7 our brief last week in response to
8 that. We're not really expecting
9 additional briefing.

10 And so we would ask that in
11 addition to hearing our argument today,
12 that Your Honor would receive a
13 response brief from us within ten days.

14 THE COURT: That -- that would be
15 fine.

16 MR. BERGTHOLD: Okay. Thank you,
17 Your Honor.

18 So I'm just going to quickly
19 highlight the standard of review and
20 then go through the chronology of what
21 happened with regard to these two
22 reconstructed signs and then address
23 Mr. Tibbal's arguments, and then we
24 will rely upon our briefing for the
25 remainder.



1 The standard review, of course,
2 Your Honor's well familiar with, and
3 that is if any evidence supports the
4 magistrate's findings of fact alone,
5 that that is to be credited and that is
6 the law of the case. And bind --
7 binding in this court sitting as an
8 appellate tribunal.

9 So I don't think that is in
10 dispute. What is in dispute is the
11 idea or notion that somehow Adams and
12 Mr. Hodges are not scofflaws. I think
13 the record shows that that is exactly
14 what they are and exactly what they
15 intended to do when they were told in
16 advance that they needed permits and
17 approvals for any work on these
18 billboards from the County.

19 And I want to share real quickly
20 what these documents look like or what
21 these poles look like going into the
22 relative time frame. This is -- this
23 is what they look like. Let me see
24 real quick. If you can see my screen
25 at this time. There's a picture of a



1 rotted pole. Can everybody see that?

2 Okay.

3 So these are actually photographs,
4 I believe, that Adams submitted to
5 SCDOT. And so what happened with these
6 poles, I copied them and Mr. Hodges
7 about it to tell me what wind event he
8 was talking to or trying to refer to as
9 the justification for doing the repairs
10 to these poles. He was unable to
11 identify any particular event.

12 And, really, all this was was the
13 dilapidation of two billboards that
14 were originally erected -- one was
15 erected in 1956, so more than 60 years
16 ago, approximately 65 years ago. The
17 other one was erected in 1981, so it
18 was still 40 years ago. And they were
19 basically coming to the end of their
20 useful life.

21 And under South Carolina law and
22 the Community Development Code in
23 Beaufort County, nonconforming land
24 uses are supposed to terminate at the
25 end of their useful life, when the



1 normal life of their structure is
2 dilapidated and it becomes, you know,
3 obsolete, then they are not supposed to
4 be rebuilt, reconstructed, re-erected
5 or anything like that.

6 They are supposed to live their
7 natural life as a nonconforming use,
8 and then die and go away and be
9 removed. And determination of the
10 nonconforming use is what the state
11 law, what the regulations of the South
12 Carolina Advertising Highway Act, HACA,
13 and the state law contemplates.

14 It's also what the state law
15 contemplates would happen under local
16 regulations. These are two billboards
17 that were definitely at that place.
18 They were at the place where they were
19 structurally unsound. In fact,
20 evidence in the record shows that prior
21 to this reconstruction, that they were
22 illegally braced and supported with
23 boards and 2x4s and things like that,
24 which is illegal.

25 But even all the bracing that



1 Adams has done over the years was
2 proving ineffectual. So what you have
3 is, you have pictures in the record
4 that I'm showing the Court now that
5 show groundwater basically rotting
6 these poles from the inside out such
7 that they had to attach boards to them
8 in times past and then strap them and
9 do more bracing boards and -- and wrap
10 them in steal wire to keep those
11 bracing boards on. Essentially, these
12 were rotten poles.

13 And when I cross-examined
14 Mr. Hodges at the trial in this matter,
15 he said, quote, "Wood poles cannot be
16 repaired." So he understands that when
17 it gets to this point, you don't repair
18 wood pole. The only thing you can do
19 is replace, if you're allowed, these
20 structural supports for the billboard.
21 And it's obvious under the state law
22 and the local Community Development
23 Code in Beaufort County that that is
24 prohibited.

25 So what they did was they -- they



1 knew that they couldn't do this with
2 County approval or that they would have
3 to get the County approval, so they
4 went to the state. They claimed that
5 there was a wind damage event, even
6 though they could identify none at the
7 trial in this matter. And they got
8 approval letters from SCDOT.

9 The first communication that
10 Beaufort County had about this was in
11 an e-mail that Bo Hodges, where he
12 described himself as the face of Adams
13 Outdoor in Beaufort County, he
14 described himself as the person in
15 charge of permitting.

16 He described himself as the person
17 who handles governmental relations for
18 Adams Outdoor, send Ms. -- Ms. Audra
19 Antonacci, the code enforcement
20 officer, this e-mail on Tuesday, April
21 6th late in the afternoon. Said,
22 "Please see attached. If you have any
23 questions, contact me." And attached
24 was a letter from SCDOT along with the
25 approval documents from SCDOT for these



1 two billboards.

2 Interesting to note, however, that
3 even in these documents -- and I'll
4 scroll to the bottom of one of these
5 approval statutes, it says -- and I'll
6 blow it up so that everybody can see it
7 a little bit better.

8 It says, "The undersigned hereby
9 agrees that the existing or proposed
10 structure described above was
11 constructed" -- I guess is going to be
12 constructed -- "in accordance with the
13 existing state laws, local ordinances,
14 and regulations."

15 In other words, even when they
16 issue approvals, SCDOT contemplates
17 that the applicant has to get the
18 appropriate approvals from the local
19 government, and that's because most
20 local governments in the state of South
21 Carolina do have their additional
22 permitting procedures and review
23 procedures.

24 And that's because there's a
25 provision in state law that



1 specifically allows for that. And I
2 have that up on the screen. This is
3 South Carolina Code Annotated
4 57-25-220. And it says, "Nothing in
5 this article" -- meaning the State
6 Highway Advertising Control Act --
7 "abrogates or affects provisions of a
8 lawful ordinance, regulation or
9 resolution which is more restrictive
10 than the provisions of this article."

11 So that's the framework under
12 which the SCDOT approvals are issued,
13 knowing that local governments have
14 their own additional -- meaning more
15 restrictive than the baseline of the
16 state because it's additional
17 restrictions on top of the state
18 regulation.

19 And even when they issue an
20 approval, they -- they make the person
21 certify that they're aware of those
22 local ordinances and that they are
23 complying and that they have to comply
24 with those local ordinances.

25 So what you have is a letter from



1 Bo Hodges with these approvals,
2 including the local ordinance
3 compliance conditions contained in them
4 to Ms. Antonacci. And what she says in
5 response on April 7th of the next
6 morning at 7:54 in the morning, she
7 said she spoke with Eric Greenway,
8 the -- at that time, the interim county
9 zoning enforcement officer, and he
10 advised that prior to any repairs being
11 done, Zoning will need to review the
12 billboards and give approval for any
13 repairs. Also, what storm are you
14 referring to that damaged the
15 billboards?

16 And then she informs Mr. Hodges
17 that Hillary Austin, the community
18 development director is who you need to
19 contact for any repair approvals or the
20 Zoning and Planning Division person.

21 And so what you see next, the very
22 next thing chronologically, is an
23 e-mail from Mr. Hodges on April 7th
24 that says, "Good morning. Audra
25 mentioned you're the person I need to



1 send this to. Please see our approval
2 from SCDOT about this. The wind" --
3 you know, "the wind damage rule and the
4 50 percent."

5 She said, "Hello, Bo Hodges,
6 please send me a picture of the sign as
7 it stands now. I will make the
8 decision after I have reviewed the
9 photograph."

10 So before the weekend even started
11 -- this is on Wednesday around
12 lunchtime -- Adams, Mr. Hodges, the
13 area representative and the person in
14 charge of governmental relations and
15 permitting is on notice. Wait a
16 second. We need to look at this. We
17 need to -- show us the pictures where
18 you're talking about. Give us the
19 opportunity to review these billboards.

20 What does Adams do to comply with
21 this clear request? They're clearly on
22 notice that they've got to comply with
23 County ordinances. What they do is
24 they wait until the weekend. They just
25 wait until everybody in Code



1 Enforcement's gone home on Friday for
2 the weekend and they start the work on
3 Saturday. And they do it in the middle
4 of the weekend.

5 So what happens is, when you --
6 when Mr. Greenway is coming back
7 through on a trip to Charleston on
8 Saturday night about 6:00, 7:00 in the
9 evening, he gets there and he sees the
10 rotten poles have been removed from the
11 ground.

12 What you see on the screen here in
13 the circle is across the road, you see
14 the old billboard structure, they've
15 already erected brand new structural
16 supports in the ground about 6 feet in
17 front of the old billboard. So they
18 not old reconstructed the billboard,
19 they've actually moved it closer to the
20 road. It's not in the same location.
21 That's another thing the SC -- even
22 SCDOT laws prohibits that.

23 But they're -- they've got this
24 new structure up. They've got the old
25 billboards shown behind it, and they're



1 about ready to take it down. And so
2 this shows them doing the construction
3 of the new structural supports in front
4 of the old sign. And this is at the
5 end of the day, they go out and you can
6 see the date on this, it's -- it's
7 April 12th, the Monday following the
8 weekend. A lot happened over the
9 weekend. And Mr. Tibbals kind of jumps
10 over a lot of what went on.

11 So I want to point the Court to
12 our Exhibit 5, or the Prosecution
13 Exhibit 5. Over the weekend, after the
14 April 6th and 7th correspondence
15 happened is correct, Mr. Greenway -- of
16 course nobody's in the office, no code
17 enforcement people are working, and he
18 writes Mr. Hodges as well as Elizabeth
19 Mitchum, who's also with Adams Outdoor,
20 Mr. Romera, he's also with Adams
21 Outdoor, and then all the people in the
22 County, puts everybody on notice and
23 says, "Look, I'm returning from
24 Charleston today. To my knowledge of
25 the highway report, Beaufort County has



1 issued no approvals for Adams to
2 conduct this work and will not issue
3 approval for the complete rebuild of
4 these signs because doing so will
5 violate the Community Development
6 Code."

7 He said, "The on-site contractor
8 called this a quote/unquote "repair,"
9 but he had no paperwork other than a
10 letter from SCDOT, which, as you should
11 know, is not a local permit nor a
12 proper authorization to reconstruct an
13 outdoor advertising display."

14 And this is what he said next.
15 This is when he was present at the site
16 when the work was illegally being done.
17 He says, "My attempts through the
18 on-site contractor at getting Mr.
19 Romera," which is the Adams person --
20 another Adams person, "to stop the work
21 failed repeatedly. And I repeatedly
22 asked him, you don't have permits, we
23 have to do a review, we have to see
24 what the scope of work is. You have to
25 comply with the Community Development



1 Code. All those efforts failed
2 repeatedly."

3 And then he says, "As did my
4 attempted phone calls to you. I tried
5 calling Bo Hodges. I had his number
6 and I tried Ms. Mitchum, and so I'm
7 sending this e-mail for you to
8 immediately cease and desist any
9 additional work on these two sites
10 until we've got a chance to discuss
11 this matter and decide on any course of
12 action."

13 That was at 9:18 on Saturday
14 night. Well, about an hour later, he
15 writes Ben Armitage, which was another
16 contact that he had for Adams Outdoor
17 in the region, he says, "Look, this is
18 very atypical. I'm shocked at the
19 blatant disregard for our approval
20 process and my request for work to
21 stop."

22 And then after that, Mr. Romera
23 from Adams Outdoor refused to talked
24 to -- (audio interruption) -- after
25 discovering that your Beaufort staff



1 appears to have started the work
2 without proper permits. So all this is
3 going on. Then basically we get a
4 letter from -- or an e-mail on Sunday
5 morning from Adams's lawyer in Michigan
6 that basically said pound sand.

7 You look at the state code
8 provision, look at the Beaufort code
9 provision, I think this Beaufort code
10 provision is unconstitutional. And, by
11 the way, your e-mail and your e-mail
12 stop-work order has no legal effect.

13 He basically knew, hey, if we can
14 get in over the weekend, then we're
15 going to, you know, try to put the
16 County in a bind where, you know, the
17 work's going to be done and it's going
18 to be too late. They knew exactly what
19 they were doing.

20 And so Mr. Greenway wrote back to
21 him and said, "I forwarded this to my
22 legal counsel, but I would advise Adams
23 to hold off on any more construction
24 until this issue can be appropriately
25 resolved." And, of course, they say



1 pound sand, and they continue to do the
2 work. So we go out have a picture on
3 the morning of April 12th which shows
4 the completed construction.

5 I think that's the record that's
6 most important here, that everybody was
7 involved, everybody was on notice,
8 Adams Outdoor and Mr. Hodges knew
9 exactly what they were doing,
10 strategically chose when to do it, and
11 now what they want to do -- and
12 Mr. Tibbal's argument -- is rely upon a
13 section of the code that talked about
14 how to bring about voluntary
15 compliances to the ordinances. He
16 misreads the section to require
17 affirmatively a written warning that
18 they have -- that's not required, and
19 we'll look at that language in a
20 minute.

21 But more importantly on the issue
22 of harmless error, even if it were
23 required, it's not a -- even if it's a
24 technical requirement of the Community
25 Development Code and Beaufort County



1 said you have to issue a warning before
2 you ever issue a citation, it doesn't
3 say that, and we'll look at that in a
4 moment.

5 But even if it did, that is not a
6 constitutional problem. The Beaufort
7 County Community Development Code does
8 not set the constitutional standard for
9 due process. Due process is, very
10 simply, notice and an opportunity to be
11 heard.

12 They were very clearly on notice.
13 Everybody from April 6th, Bo Hodges
14 sending letters to the County telling
15 them, "Hey, this is the work we're
16 going to do," being told to hold off,
17 you need to get our approval, send us
18 pictures, let us do our process and go
19 through our permitting procedures, if
20 that's going to be allowed. Everybody
21 was on full notice.

22 And when they were cited for
23 violating this provision blatantly,
24 then they were given the opportunity to
25 be heard at trial. They were



1 represented by counsel. They put on
2 evidence. They subjected the County's
3 witnesses to cross-examination.

4 So there's no due process issue
5 here. Notice and opportunity to be
6 heard was had in spades. The problem
7 here is Adams Outdoor ignored the
8 County's processes that gave them the
9 full opportunity to be heard on their
10 application, and, instead, waited to
11 the cover of the weekend to do the
12 work.

13 Here's why that is not required by
14 code. And this is the Community
15 Development Code, Section 9.4. This
16 the overall arching -- call it a
17 directive on how to interpret the code.

18 9.9.10. Permits. "This article
19 establishes procedures to ensure
20 compliance with the provisions of this
21 Development Code and obtain corrections
22 for code violations. It also sets
23 forth the remedies and penalties that
24 apply to violations of this Development
25 Code. The provisions of this article



1 are intended to encourage the voluntary
2 correction of violations where
3 possible."

4 Obviously, the County is not going
5 to hamstring itself and say, "We always
6 have to wait for this process for
7 certified mail, which might take eight
8 or nine days in today's world -- in the
9 COVID world, that's the postal
10 service -- to fine someone when they
11 see a violation in the very act, when
12 they see a violator committing an
13 illegal reconstruction of the sign at
14 the time that it's happening.

15 So the whole idea of this is, this
16 is what it's intended to encourage
17 where that's possible. And obviously,
18 it contemplates circumstances where
19 it's not possible. And that's why in
20 the remedies to the section of 9.5.40,
21 the code says, "Whether civil or
22 criminal, these remedies may be
23 exercised in any order."

24 In other words, we don't have to
25 go through all these different steps,



1 if we have a clear violation, we can
2 issue a citation. And when you go to
3 the Section that is 9.4.50, which
4 Mr. Tibbals reads as requiring a
5 warning, it actually doesn't say that.
6 It says, "If the person to whom a
7 warning had been given notice in this
8 section fails to remove it, the Code
9 Enforcement Department shall fill out
10 and sign a complaint."

11 In other words, this is a
12 sufficient condition for issuance of a
13 ticket. In other words, in those
14 circumstances, which obviously, in 95
15 percent of the cases, the normal
16 circumstance of the code, that
17 someone's made aware by code
18 enforcement that, hey, that violated --
19 you extended your awning too far, it's
20 over the setback provision for the
21 property line, for example, and you
22 need to trim that back 2 feet so you're
23 not encroaching on the setback
24 provision or whatever the case may be.
25 And then they failed to do it, then



1 they can be cited.

2 But this does not say the County
3 shall not ever issue a uniform citation
4 or a uniform summons because -- where
5 an advance warning has not been given.
6 And that's why when Judge Sadler looked
7 at this and heard all the evidence, she
8 said this about the harmless error.

9 She said, "I find, however, that
10 the failure to issue a warning
11 according to that provision is harmless
12 in that the defendants were served
13 immediately after they had clear notice
14 and warning that the signs were issued
15 a violation. The communication between
16 the parties, Defendant Hodges, other
17 employees of Adams Outdoor, and the
18 administrative staff of Beaufort
19 County" -- sorry. I want to put it on
20 the right screen so you can see that.

21 "That communication which began
22 with Defendant Hodges's e-mail and
23 Ms. Antonacci on April 6th and
24 continued until Mr. Zecchino's e-mail
25 to Mr. Greenway on the morning of April



1 11th clearly showed that the defendants
2 received actual notice of the
3 violation, had actual knowledge of the
4 location of the violation. The
5 County's failure to adhere to the
6 formal notice requirements were
7 harmless errors on its part."

8 I will say they weren't even
9 errors to the extent that 9.5 -- or
10 9.1.10 said this was intended to -- be
11 construed as to get voluntary
12 compliance where possible, but not that
13 it's always required. Certainly, if
14 you look at the cumulative penalties
15 provision, it says these remedies can
16 be exercised in this order.

17 So I think there's no error there.
18 This is literally a -- a scofflaw who's
19 been told three days in advance of any
20 of the work starting that the County
21 will have to review and determine
22 whether approvals will occur. And then
23 when they don't do that and they
24 illegally start the work and the county
25 administrator happens to catch them in



1 the act over the weekend and says, my
2 repeated attempts to warn you and to
3 get you to stop the work that you had
4 illegally commenced failed, so now I'm
5 issuing a stop-work order.

6 Everybody was on notice and Adams
7 cannot hide behind a provision in
8 intended to encourage voluntary
9 compliance. But certainly, it's not a
10 requirement of constitutional due
11 process. All that is required is
12 notice and an opportunity to be heard,
13 and they clearly had that.

14 I want to make a quick comment
15 about the recent decision of the Town
16 of Sullivan Island versus Murray. That
17 was not a procedural due process case.
18 That was not a claim about whether the
19 process was -- the Town of Sullivan
20 Island's ordinance was followed.
21 Rather, it was a vagueness claim
22 against as-applied -- an as-applied
23 challenge to a zoning board.

24 What happened there, Your Honor,
25 was someone asked -- they sought a



1 building permit to build a dock and the
2 local zoning board said that you could
3 not build a dock that interferes with
4 the navigation of the waterway. That
5 was the law. That was all that the law
6 said, though shall not build a dock
7 that interferes with the navigation of
8 the waterway.

9 All the parties involved agreed
10 that there was no interference with the
11 navigation of the waterway by the dock
12 that Mr. Murray constructed, so there
13 was no legal violation of the code as
14 written. What happened was, when the
15 permit was granted, the building
16 official put a notation on there that
17 said, "Don't build past the neighbor's
18 dock."

19 Okay? So there was an argument
20 that they added a -- they made up a
21 condition on the fly and they said do
22 not build past your neighbor's dock.
23 Well, what he did was he built a dock
24 that did not interfere with the
25 navigation of the waterway, as all



1 parties agreed and the trial court
2 found, but it did step past the
3 protrusion of the neighbor's dock. So
4 if you see the dock, it comes out a
5 little bit past the neighbor's dock.

6 And when the County found out
7 about it, they went out and arrested
8 the guy and they arrested his
9 contractor. And eventually they were
10 fined for the violation. And when it
11 got to the South Carolina Court of
12 Appeals, they reversed the conviction
13 because they said the penal statute
14 issued, the zoning ordinance had one
15 standard, and the standard was don't
16 interfere with the navigation of the
17 waterway. And that didn't happen at
18 all.

19 All parties -- and the evidence
20 below showed it didn't happen.
21 Therefore, we reverse the conviction.
22 And as it applied to him, it would be
23 unconstitutional and vague to allow an
24 administrative official to basically
25 change the law or to add an unwritten



1 condition that the law itself does not
2 give the person notice of.

3 That's not an issue here. There's
4 not a question that completely
5 reconstructing the poles was against
6 the law in the County because this is
7 what the law says. And these are
8 provisions, by the way, that I've
9 highlighted in CDC Section 5.6.5082
10 that are not in state law.

11 Yes, it is true that some of the
12 Community Development Code Provisions
13 mirror or track somewhat those
14 provisions that are in state law. But
15 that doesn't help Adams, if anything,
16 it only shows that their reconstruction
17 of their billboards violated state law
18 also.

19 But it doesn't escape the
20 requirements that they comply with the
21 additional requirements of the
22 Community Development Code because that
23 obviously is an -- as an additional
24 requirement, is more restrictive than
25 the baseline of state law.



1 But here's two sections that are
2 not reflected in the regulations,
3 63-350, which is the state highway
4 regulations. E(2) says, "Commercial
5 off-premises signs may be maintained
6 only by painting or refinishing the
7 surface of the sign base or sign
8 structure so as to keep the appearance
9 of the sign as when it was originally
10 permitted."

11 There's nothing like that in state
12 law, but they obviously didn't just
13 paint the face of the sign or paint the
14 wooden poles that were rotting from the
15 inside out. They ripped them down, and
16 because there were cement footings in
17 the ground, they had to move the sign
18 and put them in a different location
19 closer to the road. That also made it
20 illegal.

21 So that's something they exceeded.
22 And then it says, "Any structural or
23 other substantive maintenance to a sign
24 shall be deemed an abandonment of the
25 sign, shall render the prior permit



1 void, and shall result in the removal
2 of the sign without compensation. Cost
3 and expenses of such removal shall be
4 paid by the owner of such sign."

5 I looked through 63-350 and I
6 didn't see the word -- a word about,
7 you know, doing this structural work,
8 substantive maintenance. Rather, this
9 is an additional condition that exists
10 in the Community Development Code in
11 Beaufort County that they violated.

12 So throughout his supplemental
13 brief, I did get a chance to read the
14 20-page brief Mr. Tibbals submitted at
15 the 11th hour after close of business
16 last night, and he's trying to really
17 direct the Court toward this 50-percent
18 rebuild, Your Honor.

19 That's not what we're dealing with
20 here. That's sort of a tertiary thing.
21 If you had hadn't reconstructed your
22 sign and if you hadn't completely
23 replaced the pole structures that
24 lengthened the life of the device for
25 decades, we might get into was there



1 wind damage, did you have to do some
2 additional repair beyond normal wear
3 and tear, and look at that 50-percent
4 rule.

5 But this is a violation not
6 just of before, the failure to get
7 approval from the County, it's a
8 violation of E(2), and Judge Sadler
9 found that, Your Honor, because this is
10 the holding in her verdict.

11 She said, "The Beaufort County
12 Code clearly prohibits restoration of
13 signs that have become structurally
14 unsound."

15 Okay. That's in E(2). It states
16 that any structural or other
17 substantive maintenance to a sign shall
18 be deemed an abandonment of the sign.
19 That's also the language in E(2), and
20 prohibits -- meaning the Community
21 Development Code prohibits -- quote,
22 "Replacement, rebuilding, or
23 re-erection of the sign."

24 That, Your Honor, is in part E(3)
25 of the code, which is on the next page.



1 That's the part I'm blowing up right
2 here that says, "Enlargement,
3 extension, rebuilding, or re-erection
4 of the sign are prohibited." So she's
5 relying on E(2), she's relying on
6 E(3) -- didn't mean to pull that
7 away -- and then she quotes the
8 language from E(4) and says, "The Code
9 does allow for repairs to damage in
10 excess of normal wear."

11 And, of course, that allowance is
12 for wind events. But at trial,
13 Mr. Hodges could identify no wind event
14 that caused any such damage that was
15 rotting wood from groundwater. The
16 Code does allow for repairs to damage
17 in excess of normal wear, but only upon
18 notification, the Code Enforcement
19 Department of the damage -- receipt of
20 a written notice from the Code
21 Enforcement Department authorizing the
22 repairs.

23 It is clear that the defendants
24 had actual notice of the requirement
25 that the County approve any work



1 undertaken by them to the signs in
2 question and that the defendants chose
3 to perform the work in spite of their
4 failure to obtain the proper approvals
5 from Beaufort County.

6 So even if we were to get down to
7 E(4) and talk about the 50 percent
8 rule, or 50 percent -- (audio
9 interruption) -- to be a precise
10 number. We can talk about whether you
11 use the local standards and cost
12 pricing in Beaufort County or if you
13 want to use the state's rule. But we
14 don't even have to get to that because
15 what they did in this case was
16 replacement, rebuilding or re-erection,
17 and it was structural or substantive
18 maintenance to the sign that under the
19 Code is deemed an abandonment of the
20 sign.

21 And so we don't even need to get
22 to the addition, but if we did, there's
23 no unconstitutional prior restraint.
24 He claims unbridled discretion. Those
25 are some buzzwords in a person



1 (unintelligible) for, Your Honor, and I
2 litigate persons all over the country
3 and we've had some of those cases in
4 South Carolina. The most recent, the
5 case in the Court of Appeals out of
6 Columbia and some cases pending now in
7 the Supreme Court of South Carolina for
8 Greenville County.

9 But the buzzwords don't apply here
10 because all the provision of
11 nonconforming use, dilapidated
12 structures, and the 50 percent rule
13 looked at is the physical condition of
14 the structure. There's nothing about
15 that provision that requires the Code
16 Enforcement Department or the community
17 development director to look at speech.

18 Whether they're advertising
19 McDonald's or a political campaign has
20 nothing to do with it. There's nothing
21 in the ordinance that talks about that.
22 So all we're dealing with is the
23 structure of a sign and whether the
24 wind damage from a hurricane event or a
25 storm event has caused more than 50



1 percent of damage.

2 And the reality is, that's not
3 what the problem was here. Mr. Hodges
4 testified -- couldn't testify to any
5 wind event. When he submitted his
6 pictures to SCDOT because those
7 applications and all the submittals are
8 in the record as Defendant's Exhibits 6
9 and 7, those contained the same exact
10 pictures of rotted wood at the base of
11 the pole that's caused by groundwater.

12 So that when the County prosecuted
13 it's case at the trial court, it not
14 only took it's own pictures of those
15 signs and the pictures that Mr.
16 Greenway took over the weekend while he
17 was there (unintelligible) admits that
18 they're illegally reconstructing them
19 and re-erecting brand new structural
20 supports, but they also included in
21 their exhibits, the pictures that Adams
22 supplied to SCDOT because it shows,
23 clearly, the reason they needed to
24 after the bracing, which was already
25 illegal, didn't work, the reason they



1 needed to replace the rotting poles was
2 because they were rotted from the
3 ground up because of groundwater. This
4 was not anything about a wind event,
5 which is where you get down to this
6 E(4) provision.

7 Therefore, Your Honor, we would
8 ask that this Court affirm the judgment
9 of the trial court, which is based on
10 violations of Section E(2) that are
11 highlighted here in yellow, based on
12 violations of E(3), and then even if
13 you got to a wind event requiring
14 repair more than normal wear and tear,
15 they clearly did not give the written
16 notice that Code Enforcement requires
17 authorizing that repair.

18 And we think the evidence is
19 clear, it's abundant that the trial
20 court's judge, the evidence, facts --
21 (audio interruption) -- Thank you.

22 THE COURT: Okay. Thank you very
23 much. Some jets are about go by behind
24 me. Hopefully they won't knock the
25 sound completely out.



1 Let me take a -- I'm supposed to
2 have an 11:00 live hearing starting
3 downstairs. Let me make sure Jerod's
4 got that under control. I'm just going
5 to mute y'all for just a second.

6 (Technical difficulties.)

7 (Whereupon, the proceeding was
8 adjourned 11:15 a.m.)

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA:

4 DORCHESTER COUNTY:

5

6 I, Naomi McCracken, Court Reporter and Notary
7 Public in and for the above county and state, do
8 hereby certify that the foregoing testimony was
9 taken before me at the time and place
10 herein-before set forth; that the witness was by
11 me first duly sworn to testify to the truth, the
12 whole truth, and nothing but the truth, that
13 thereupon the foregoing testimony was later
14 reduced by computer transcription; and I certify
15 that this is a true and correct transcript of my
16 stenographic notes so taken.

17 I further certify that I am not of counsel to
18 either party, nor interested in the event of
19 this cause.

20

21

Naomi McCracken

22

Naomi McCracken

23

Court Reporter

24

Notary Public

25

Beaufort, South Carolina



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NUMBER 2021-CP-07-01507
COUNTY OF BEAUFORT	)	Magistrate's Court: 2434/2436 BC
BEAUFORT COUNTY	)	
Vs.	)	MAGISTRATE'S RETURN
BO HODGES/ADAM'S OUTDOOR ADVERTISING ,	)	
Defendant	)	

2021 AUG 24 AM 8: 7
 JEROME A. ROSENHEAD
 CLERK OF COURT
 BEAUFORT COUNTY, S.C.

This matter was before me for trial on July 14, 2021. The Defendant Bo Hodges was charged with a violation of the Beaufort County Ordinance under the Community Development Code 5.6.50(E). Present in Court for the County of Beaufort were Brittany Ward and Scott Berthold. Present in Court representing the Defendant was Evan Williams of Bybee and Tibbals.

The following individuals testified during the course of the trial: Audra Antonacci, Eric Greenway, and Rex Allen (Bo) Hodges. Attached hereto is a transcription of the testimony submitted by a court reporter who was present at trial at the request of one of the parties. Also attached is a thumb drive containing the court's recording of the proceedings.

A copy of my verdict finding the Defendants guilty is attached. A sentencing hearing was held on August 11, 2021, and I have attached the written sentencing form. Also attached are the exhibits that were entered into evidence at the trial. The County's exhibits are contained in a notebook and contain two exhibits marked for identification purposes only – those numbered 8 and 9. The Defendants' exhibits are clipped together.

The County's exhibit 11 was not left with the Court. It was a receipt for certified mail purportedly sent to Defendants containing a stop work order and two citations after the work was completed on or about April 12, 2021.

The trial concerned the repair of two billboards in Beaufort County which are owned by Adam's Outdoor Advertising. It was uncontroverted at trial that Mr. Hodges, an employee of Adam's Outdoor Advertising, notified the county prior to performing any work on the billboards of his intent to repair two billboards pursuant to permission granted by the South Carolina Department of Transportation. The county's response was that the county needed to review the anticipated repairs and give approval for them. This was not done and Adam's Outdoor Advertising proceeded with the repairs.

The Appellants' Notice of Appeal points out a scrivener's error in the Court's verdict on page 5 of the Verdict. South Carolina Code Section 57-25-22 was cited and the code section should be 57-25-220.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy Sadler", is written over a horizontal line.

Nancy Sadler, Magistrate for Beaufort County

Beaufort, South Carolina

August 24, 2021

BEAUFORT COUNTY vs BO HODGES and ADAMS OUTDOOR
2434,2436 - COURT HEARING

1 STATE OF SOUTH CAROLINA
2 IN THE MAGISTRATE COURT
3 COUNTY OF BEAUFORT

4
5 BEAUFORT COUNTY,
6 Plaintiff,

7
8
9
10
11 vs. ORDINANCE SUMMONS NUMBER(s):
12 2434, 2436

13
14
15
16 BO HODGES and ADAMS OUTDOOR ADVERTISING,
17 Defendants.

18 -----/

19 The following Hearing in the above
20 mentioned matter was taken before the Honorable
21 Judge Nancy D. Sadler, on Wednesday, July 14,
22 2021, at the Beaufort County Courthouse,
23 Magistrates Court, 104 Ribaut Road, Beaufort
24 South Carolina, commencing at or about the hour
25 of 9:00 a.m.



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15

16

17 REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NUMBERS 10
18 AND 11 WERE RETAINED BY PLAINTIFF'S COUNSEL.

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1 D O C U M E N T A R Y E V I D E N C E

2	NUMBER	DESCRIPTION	PAGE
3	DX-1	E-mail string	64
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13		and pictures & invoices	
14	DX-7	Damage Repair form(s)	141
15		and pictures & invoices	



1 THE COURT: Good morning. We're
2 here for codes enforcement this
3 morning. My name is Nancy Sadler, I'm
4 a Beaufort County Magistrate.

5 I'll Let you get started.

6 CLERK: Your Honor, we're to hear
7 Beaufort County versus Adams Outdoor
8 Advertising.

9 THE COURT: Okay.

10 CLERK: Scott Bergthold is here
11 and he is an attorney out of Tennessee.
12 You've already received a copy of the
13 pro hac vice.

14 THE COURT: I did see that.

15 CLERK: And a copy of that was
16 also provided to Adams Advertising as
17 well.

18 THE COURT: All right. Okay. So
19 this is a matter of the County of
20 Beaufort versus --

21 CLERK: Bo Hodges and Adams
22 Advertising.

23 THE COURT: -- Adams Outdoor
24 Advertising and Bo Hodges, Case Number
25 234 -- 2434 and 2436.



1 THE CLERK: Yes, ma'am.

2 THE COURT: All right. And tell
3 me your name.

4 MR. WILLIAMS: Good morning, Your
5 Honor. My name's Evin Williams, I'm
6 with Bybee & Tibbals. This is my
7 client, Bo Hodges. Representing
8 Mr. Hodges and Adams Outdoor
9 Advertising, Limited Partnership.

10 THE COURT: And, I'm sorry, tell
11 me your name, sir.

12 MR. BERGTHOLD: Scott Bergthold,
13 Your Honor, B-E-R-G-T-H-O-L-D.

14 THE COURT: All right. Well, I'm
15 ready to proceed.

16 MR. BERGTHOLD: Your Honor, we
17 have some preliminary matters, and what
18 I'd like to do, if I could approach the
19 Court, we've prepared an exhibit
20 notebook that I think would be helpful.
21 And I'll give a copy to opposing
22 counsel.

23 MR. WILLIAMS: Thank you.

24 THE COURT: Thank you.

25 MR. BERGTHOLD: And essentially



1 what we have, I think a lot of the
2 facts will not be disputed in this
3 matter. But I'd like to take a moment
4 and go through the notebook and talk
5 about what's in it because it's mostly
6 certified copies of public records.
7 There's a table of contents under the
8 first tab, and that table of contents
9 lists six exhibits that have all been
10 certified as part of the Code
11 Enforcement file. The first thing is
12 --

13 THE COURT: Let me stop you for
14 just a minute, Mr. Bergthold.

15 MR. BERGTHOLD: Yes.

16 THE COURT: Do you want a minute
17 to look at it?

18 Oh, excuse me. Mr. -- Mr.
19 Williams.

20 MR. WILLIAMS: Yes. Yes, Your
21 Honor.

22 THE COURT: Do you want a minute
23 to look at it?

24 MR. WILLIAMS: That would be
25 great.



1 THE COURT: Let him just go
2 through it real quick --

3 MR. BERGTHOLD: Sure. Sure.

4 THE COURT: -- before we start
5 talking about it.

6 All right. Mr. Williams, I'll let
7 you make your objections as they come.

8 MR. WILLIAMS: Yes, ma'am. I
9 apologize, Your Honor.

10 THE COURT: No, I -- no, I --

11 MR. WILLIAMS: There's a number of
12 exhibits.

13 THE COURT: I know.

14 MR. WILLIAMS: I appreciate you
15 giving me time.

16 THE COURT: All right.

17 MR. BERGTHOLD: Your Honor, and I
18 think it's best to describe these.
19 I'll go through each one and explain
20 what they are. But behind the Table of
21 Contents are the Indexes of
22 Certification from the Director of the
23 Code Enforcement Department that all
24 Exhibits 1 through 6 are public
25 records. They're part of the file



1 maintained on these two signs that
2 we're here about today. And so she's
3 certified those compilations of photos.

4 And at this time, I would offer
5 Exhibits 1 through 6.

6 THE COURT: Any objection?

7 MR. WILLIAMS: No, Your Honor.

8 (Whereupon, Plaintiff's Exhibit
9 Numbers 1, 2, 3, 4, 5, and 6 were
10 marked for identification.)

11 MR. BERGTHOLD: And then next,
12 Your Honor, is seven. That tab is
13 essentially the code provision that the
14 citations were issued under. And it's
15 been certified by Mr. Merchant, who's
16 the active director of Planning for
17 Beaufort County, as a true and correct
18 copy of the Community Development Code
19 Section 5.6.50.

20 And so I would offer Exhibit 7 at
21 this time.

22 MR. WILLIAMS: No objection, Your
23 Honor.

24 THE COURT: All right.

25 (Whereupon, Plaintiff's Exhibit



1 Number 7 was marked for
2 identification.)

3 MR. BERGTHOLD: Next, Your Honor,
4 is not so much a piece of evidence as
5 it is just an authority. I'm sure this
6 is probably going to come up today.
7 There's some parallel litigation filed
8 by Adams in Federal Court.

9 We'd moved to dismiss that under
10 the Younger abstention. This is a
11 similar case out of Greenville County,
12 Federal Court deciding a Greenville
13 County on a sign ordinance. I know Mr.
14 Williams hasn't had time to read it, so
15 I'm not offering it as evidence. But I
16 may refer to that later.

17 And then Number 9, which is the
18 last tab in the binder, is just a
19 portion of the Highway Advertising
20 Control Act and the South Carolina
21 Statutes as well as a number of
22 regulations that have been adopted
23 pursuant to the state statute.

24 And so I just wanted those to be
25 in there because we highlighted them



1 and I'm going to offer Exhibit 9 at
2 this time.

3 THE COURT: As an exhibit?

4 MR. BERGTHOLD: Yeah. Just as an
5 exhibit.

6 THE COURT: I think since it's
7 statutory, I won't admit it as an
8 exhibit. But thank you for giving it
9 to me --

10 MR. BERGTHOLD: Yeah.

11 THE COURT: -- because I can look
12 at it.

13 MR. BERGTHOLD: Yeah. The
14 highlighted portion of it would be the
15 one, I guess, that would be a part of
16 the binder.

17 THE COURT: All right.

18 MR. BERGTHOLD: Given that all the
19 substantive evidence is in the record,
20 what I'd like to do is just sort of
21 begin with an explanation of how the
22 signs are regulated and then why we're
23 here today.

24 And essentially, the State issues
25 permits for signs that are visible from



1 highways or right-of-ways and they have
2 a permit number. But they also issue
3 ID tags, and each sign that we're
4 dealing with today on Trask Parkway,
5 there's an east-side sign and there's a
6 west-side sign. Each sign has two
7 faces and each of the faces receives
8 its own ID tag from the State.

9 And that's basically a white piece
10 of metal or material that has black
11 numbering on it that identifies the
12 sign. And so on the east side of the
13 road, there's a sign that has two
14 separate -- it's a double-sided sign
15 and so each side has an ID tag, and
16 those are the numbers that correspond
17 to the citations.

18 And the same is true on the west
19 side of the road. So what I'd to do is
20 start with Tab 1 and just kind of walk
21 through.

22 Tab 1 is a compilation of
23 photographs for the east-side sign.
24 And what it is, for each face, we go
25 through a chronological order of how



1 long these signs have been around and
2 how they've been developed.

3 The first picture is of the
4 east-side sign. It's Sign 74065 on one
5 face and then it's got ID tag 70091 on
6 the other side. And what this photo
7 is, is looking towards the south face
8 of that eastern sign. And that's a
9 County produced photo.

10 And then we just have a series of
11 Google images that show how that sign
12 has developed over time starting in
13 January of 2008, it's page 2 of
14 Exhibit 1. And then we move -- it's
15 kind of a small print, but in the lower
16 right-hand corner, it says, "Image
17 capture May 2012." And then we see
18 that it developed. You know, there's
19 all these different phases on it.
20 2013. April 2016.

21 And then on page 6, we get to an
22 inventory. This has the date actually
23 printed on it, 02/13/2018. And in
24 2018, the County went around the entire
25 county and they essentially took a



1 visual inventory and made a list of all
2 the signs that were preexisting in the
3 county.

4 These signs, one was built in
5 1956. The other one was built in 1981.
6 So they're -- they've been long in the
7 county for many decades. They're
8 nonconforming signs, meaning that they
9 are the subject -- subject to
10 restrictions of nonconforming uses in
11 the County's Development Code. So they
12 wanted to get a catalogue, if you will,
13 of these nonconforming signs and other
14 signs in the county. And that's what
15 page 6 is. It's the picture of the
16 eastern sign, the south face that they
17 took in 2018.

18 And then we see some more
19 development in 2019. And in some of
20 these pictures, you can see that over
21 time, they've been braced in one way or
22 the other. Like, for example, in
23 December of 2018, you can kind of see
24 shorter poles that are attached to
25 longer poles. And we'll talk about



1 that in a minute. But there have been
2 some repairs, if you will, or
3 modifications, structural supporting
4 that have been done over the years.

5 And then in May of 2019, we see
6 another illegal sign. And then when we
7 get to page 9, pages 9 and 10 of this
8 exhibit are actually photographs
9 supplied by Adams. They took these
10 photographs and they had sent them into
11 the South Carolina Department of
12 Transportation in support of
13 applications they've made to do repairs
14 to the sign.

15 And so they show pretty clearly.
16 They're good quality photographs
17 showing, sort of, the state of the
18 signs, how they're -- especially on
19 page 10, you can see how it's leaning.
20 The sign is leaning backwards. And
21 then on page 11 is a photograph that
22 was taken during the time in question.

23 This -- all of these events that
24 led to these citations of the southward
25 corridor that we're here on today



1 occurred on April 10th, 11th, and 12th
2 of 2021.

3 And essentially, what's going on
4 with that sign is you see that they
5 have erected these brand new poles.
6 And right now, we can see five of them
7 in this picture. I think ultimately,
8 they might've got six on this sign.

9 But the next, page 12, is the
10 truck that was out there. And then on
11 page 13, you'll see the poles that are
12 laying on the ground. They're old
13 poles. You can see that they're kind
14 of rotted at the bottom. If you look
15 at page 13, the lower right-hand corner
16 shows rotting at the bottom of that
17 pole.

18 And then on page 14, it kind of
19 shows it more clearly where these poles
20 where dilapidated. And then finally,
21 as to this sign on the other sign face,
22 is a picture on page 15 which was taken
23 April 12th, 2021 by the Community
24 Development director after the new sign
25 was erected.



1 And here's the point,
2 nonconforming signs like all other
3 nonconforming uses in the county are
4 designed to deteriorate, to dilapidate
5 over time, and to be removed.

6 And things like groundwater that
7 rots out the base of the sign that
8 makes it structurally not sound because
9 the wood -- because of the moisture
10 that's gotten into the wood has caused
11 it to not be stable anymore. Over
12 time, the County's code clearly
13 contemplates that nonconforming uses,
14 including these signs, will go away,
15 that they will terminate at the end of
16 their useful life.

17 And we'll get to that in a second,
18 what the regulations say about that
19 particular issue. But that's clearly
20 the goal of these nonconforming signs.
21 What we see here is not a minor repair
22 to the wood or the face of the sign.
23 But we see, actually, new poles and
24 reconstruction of the sign.

25 And, essentially -- and I won't



1 take as long with the second sign or
2 the second face of that east side sign.
3 But the same is true when we get to
4 page 16 of Tab 1. As you go through
5 the tabs, it shows a series of
6 historical photos.

7 And I will jump directly to
8 page 20, and it shows a picture, an
9 image taken in May 2019 by Google
10 Street Maps. And you can see how it's
11 got these older poles that are being
12 braced and supported by shorter poles
13 attached to them. Now, on page 21, all
14 that's gone and you see the brand new
15 sign that was constructed over the
16 weekend of April 10th, 11th, and 12th.
17 That is the east side.

18 If we turn to Tab 2, we see a lot
19 of the same things with regard to the
20 west side of Trask Parkway, the sign
21 there, and we start with the photos
22 that are looking towards the north face
23 of that sign. This is a little bit
24 different sign. Instead of a billboard
25 that has two sides on one structure,



1 this is what they call a V-shaped sign.

2 So the two sides of the sign are
3 not actually touching each other. They
4 are separated by space and they have
5 their own support systems. But the
6 State, in permitting, treats them as
7 one sign with two independent sign
8 faces that they have their own ID tags.
9 And so this goes back to, again, 2008,
10 showing you those picture over the
11 years.

12 And we get to County's cataloguing
13 of this that occurred in February of
14 2018. They took a picture of this
15 sign, and you can see, especially on
16 the right side of the sign, it's
17 showing some McDonald's advertisements,
18 how there are multiple poles stuck
19 together at the base to help with brace
20 and supporting.

21 If we go on to page 9, we see
22 Adams Outdoors's pictures, the ones
23 that they submitted to the DOT to get
24 authorization to do repair work. And I
25 think what's really helpful is that



1 page 8, 9, 10, 11, and 12, you see
2 rotting at the core at the ground where
3 this wood, these supports, are
4 basically ruined.

5 And there's no indication
6 anywhere, and I don't think there will
7 be any testimony that that rotting in
8 the base of the wood is from a wind
9 event or a storm event or a hurricane
10 or anything like that, that's just
11 normal decay and decomposition of wood
12 that sits in soil that has moisture in
13 it.

14 So that's the type of thing that
15 there's really nothing that you can do
16 about that under the -- either the
17 state law or the local regulations, and
18 we'll talk about those in a moment.
19 But I think these pictures that Adams
20 submitted really illustrate that well.

21 And then finally on -- for that
22 sign, on page -- let's see here, on
23 page 13. And I apologize that some of
24 the page numbers are obscured by the
25 image. But the back of this sign shows



1 a lot of 2X4s and boards that are --
2 have been added to help structurally
3 support -- or over the years before the
4 reconstruction in April, have been
5 added to structurally support the sign.
6 And then the last page, page 14, in
7 following, are more pictures of rotting
8 wood.

9 So then we come to page 17 and
10 what you see here is interesting.
11 We're talking about that west side sign
12 and that one face that we've been
13 discussing. But what you can tell is
14 that these -- where it's circled in the
15 upper right-hand corner of the picture
16 is -- what they've done is they've
17 actually erected one, two, three, four,
18 five, six structural poles to hold the
19 new sign, but they didn't do it in the
20 same locations as the sign was.

21 They actually moved the sign
22 because the McDonald's image,
23 obviously, is still on the old sign
24 there in that picture. And they
25 encroached upon the roadway even more.



1 They came close to -- closer to the
2 road and they actually relocated that
3 sign. From what I can tell in the
4 images, it's probably 5- or 6 feet.

5 If you look at the next page,
6 page 18, the guys are standing between
7 the old sign and the new poles that
8 they're erecting, so I would say that
9 that's probably, you know, 5 or 6 span.
10 If you look at the right-hand corner of
11 that sign, it looks like the distance
12 between these poles would be at least
13 3- to 6 feet, I would say.

14 And then, last, on April 12th,
15 2021 is the director's picture of the
16 entirely new sign reconstructed in its
17 new location to where it was moved to.

18 And then -- I appreciate the
19 Court's patience with this. It's a
20 little bit gregarious, I know. But I
21 think these pictures tell the story.
22 Then we'll get to the law. It'll help
23 us to understand how the law relates to
24 the facts.

25 But the last space that we'll look



1 at is the south face on the west side
2 sign, and that's an inventory picture
3 from the County. I'll skip through the
4 historical Google photos and go
5 straight to page 25 of that exhibit.
6 It shows, basically, a face that
7 doesn't have any advertising on it in
8 February of 2018. It shows how there's
9 a little bit of a ledge out in front of
10 it. You can see that ID tag that's in
11 this green circle. It's kind of hard
12 to see, but there's a white metal ID
13 tag that's kind of dangling, hanging
14 down from the sign.

15 There's no indication on this sign
16 that Adams owns it like there is on the
17 McDonald's face next to it. But on
18 this face, you basically see that
19 dangling sign and an empty sign. Then
20 the next picture, page 26 of the
21 exhibit, shows that sign dangling down
22 again.

23 And then you come through May of
24 2019, and all of a sudden, on page 28,
25 April 12, 2021 photo, we have the new



1 sign -- or actually, what was done to
2 this was the Adams logo was added to
3 the front of it. They hung the ID tag
4 hanging down. It unclearly, frankly,
5 from the record exactly what was done
6 to this sign beyond, you know, hanging
7 up the 74062 ID tag and the Adams thing
8 as well.

9 So that's essentially the
10 historical nature of what happened to
11 the signs. We can skip over three and
12 four because those are just a subset
13 what was in one and two, and that was
14 the Adams photos that they submitted
15 with their application.

16 And then we come back to, sort of,
17 what happened on that weekend. And the
18 e-mail tells the story. This was
19 actually an e-mail exchange between
20 Eric Greenway, the Community
21 Development Director who's now a county
22 administrator as well -- and some staff
23 members, including -- I think Bo Hodges
24 might have been on some this, and the
25 lawyer for Adams.



1 But if you go to the last page of
2 this exhibit just before tab --
3 actually, the next to the last page,
4 there's just surplusage at the bottom.
5 But the bottom of third page of this
6 exhibit is an e-mail from Eric Greenway
7 to Mr. Hodges.

8 He said, "On the return trip from
9 Charleston today, I noticed that Adams
10 was in the process completely
11 rebuilding two signs located on both
12 sides of Highway 21 near the address of
13 3589. To my knowledge, Beaufort County
14 has issued no approvals for Adams to
15 conduct this work and will not issue
16 approval for the complete rebuild of
17 these signs since doing so will violate
18 the Community Development Code.

19 The onsite contractor called us to
20 repair, but had no official paperwork
21 other than a letter from Mr. Melvin
22 with the DOT, which, as you should
23 know, is not a local permit nor proper
24 authorization to reconstruct an outdoor
25 advertising display.



1 My attempts to the onsite
2 contractor, getting Mr. Romera to stop
3 the work, failed repeatedly as did my
4 attempted phone calls to you and
5 Ms. Mitchum -- from Ms. Mitchum, so I
6 am sending this e-mail to you ordering
7 you to immediately cease and desist
8 from any additional work on these two
9 sites until we have had a chance to
10 discuss this matter and decide a proper
11 course for further action."

12 Of course, this is 9:18 at night,
13 like, on a Friday or Saturday night.
14 And so it was over the weekend.

15 And then the next -- above that is
16 Mr. Greenway is forwarding that e-mail
17 to Ben Armitage at Adams Outdoor, and
18 he says, "I thought you should be aware
19 of what's going on. This is very
20 atypical of Adams. I'm shocked at the
21 blatant disregard for our approval
22 process and I request for the work to
23 stop." You know, basically, in the
24 future, please talk to us, let's get
25 our ducks in a row.



1 And then if you turn over to the
2 first page of this exhibit -- actually,
3 the first and second page. It's going
4 all the way to the first page of the
5 exhibit. The next e-mail is from
6 Richard Zecchino who, I think, is a
7 lawyer, maybe vice president of Adams,
8 and he basically says, Mr. Greenway,
9 pound sand. I mean, he doesn't use
10 those words, but he's essentially
11 saying, here's what the state statute
12 provides about repairing signs and
13 determinations if something's destroyed
14 by wind or natural forces. And then
15 here's what the Beaufort County Code
16 provides in those similar
17 circumstances. But we think your
18 code's invalid. And, either way, the
19 DOT's determination that we can do this
20 work trumps what you do and what your
21 code says.

22 So at the end of this e-mail, he
23 says, "Your e-mail below is not a
24 proper stop-work order, has no legal
25 effect." Basically, taking action is



1 just inviting a lawsuit against the
2 County and we're going to complete the
3 work. And they did, then, go ahead, as
4 we can tell from the pictures dated
5 April 12th, 2021, complete the work.

6 So that brings us to the
7 enforcement action by the County.
8 There were two forms of enforcement
9 action. The first one is at Tab 6, and
10 this is the April 12th, 2021 stop-work
11 order. And it says, you know, you
12 don't have a permit to do this, you're
13 ordered to stop. And it attaches the
14 off-premises sign standard section of
15 the code on next the page, 5.56 -- or
16 5.6.50.

17 And, then, the last page of this
18 exhibit, we went ahead and added the
19 citations that bring us before your
20 court today, Citations 2434, 2436.
21 They're both written under 5.5 -- or
22 5.6.50(E).

23 And then that brings me,
24 basically, to my argument. Since all
25 the evidence is essentially in the



1 record, we have people here who can be
2 cross-examined, but I think the
3 documents tell the story, and the story
4 is that neither the State code nor the
5 Beaufort County Community Development
6 Code allow a nonconforming sign to be
7 reconstructed.

8 And even if the State gave
9 approval, the statute, which is called
10 The Highway Advertising Control Act in
11 South Carolina, specifically gives
12 authority to local governments to enact
13 regulations and says that nothing in
14 this Act will aggregate a local
15 ordinance that is more restrictive than
16 the state Law.

17 So the state Law is the floor, the
18 minimum standard that you have to
19 comply with. But if something in the
20 local government code is more
21 restrictive, you have to comply with
22 that. There's very little case law on
23 that. There's a Fourth Circuit case
24 out in North Charleston that basically
25 says the Highway Control Act --



1 Advertising Control Act does not make
2 the State the exclusive arbiter of sign
3 regulations that are near highways.
4 And it specifically contemplates that
5 local governments can enact stricter
6 controls, so on and so forth. And
7 we'll get to that statute under Tab 9.

8 But, essentially, here's what the
9 County's regulations do. At the bottom
10 of the first page of Tab 7, it talks
11 about off-premises signs and
12 maintenance that can be done, because
13 there's no new commercial billboards
14 allowed in the county. And,
15 essentially, all these billboards that
16 we're talking about, one from 1956, the
17 other one from 1981, they're
18 nonconforming.

19 The key parts are (E)2 and (E)3.
20 (E)2 says, "Commercial off-premises
21 signs may be maintained only by
22 painting or refinishing the surface of
23 the sign face or sign structure," so
24 you can paint it, "so as to keep the
25 appearance of sign as it was when



1 originally permitted." So that
2 would've been 1956. 1981 for the
3 other.

4 And then it says, "Upon
5 determination by the Code Enforcement
6 Department and notice to the permittee
7 that the sign has become dilapidated or
8 structurally unsound, such signs shall
9 be removed within 20 days unless an
10 appeal of such determination has
11 previously been filed by the DBOA.
12 Such signs shall thereafter be removed
13 within 20 days of disposition of such
14 appeal in favor of the council, its
15 agencies, departments and/or
16 officials."

17 And then this is the key sentence:
18 "Any structural or other substantive
19 maintenance to a sign shall be deemed
20 an abandonment of the sign, shall
21 render the prior permit void, and shall
22 result in removal of the sign without
23 compensation. Costs and expenses of
24 such removal shall be paid by the owner
25 of such sign."



1 And then Paragraph 3 makes it very
2 explicit what is prohibited. It says,
3 "Extension, enlargement, replacement,
4 rebuilding, adding lights to an
5 unilluminated sign, changing the height
6 of the sign above ground, or
7 re-erection of the sign are
8 prohibited."

9 It's very clear, 5.6.50 does not
10 permit Adams to do what the pictures
11 show that they did, which is
12 reconstruct dilapidated signs that had
13 bad poles that were rotting from the
14 ground up and install new poles.

15 And then (E)4 says -- it's not
16 even really what we're talking about
17 here. But (E)4 talks about repairs,
18 "Any sign suffering damage in excess of
19 normal wear cannot be repaired." And
20 so this wasn't a repair. This was a
21 reconstruction. This was a
22 re-erection. This was a rebuilding of
23 the signs.

24 But even that, you would have to
25 go through all these approval



1 processes, which basically, Adams
2 blatantly thumbed their nose at.

3 And I think the argument is going
4 to be, and I'll let Mr. Williams make
5 his own argument, of course. But based
6 on the correspondence and what we've
7 already seen in the record, that if we
8 get approval from the State about the
9 amount of repairs so on and so forth,
10 your code doesn't matter. You have no
11 -- it's almost like you have no
12 jurisdiction here.

13 But the state statute says
14 otherwise, and this is behind Tab 9.
15 And the Highway Advertising Control Act
16 is a long statute, but South Carolina
17 Code Section 57-25-220 rule of
18 construction says, "Nothing in this
19 article abrogates or affects the
20 provisions of a lawful ordinance,
21 regulation, or resolution which is more
22 restrictive than the provisions of this
23 article."

24 And, in fact, SCDOT has adopted
25 regulations pursuant to the Highway



1 Advertising Control Act where they say
2 pretty much the same thing that the
3 Beaufort County regulations sign say.
4 They say, on page -- I think it could
5 be Exhibit 9 -- one, two, three, four,
6 it basically talks about maintenance
7 standards for nonconforming -- for
8 signs controlled by the Act.

9 It's 63-350. (C)1 says:

10 "Nonconforming signs must be maintained
11 subject to the following restrictions:

12 (1) No maintenance may occur which will
13 lengthen the life of the device."

14 Well, it's very clear, by taking rotted
15 wooden poles out of the ground and
16 putting in a new structure, you're
17 trying to get another 50 or 60 years
18 out of that sign.

19 And that's directly contrary to
20 what the state would allow, it's
21 directly contrary to what the County
22 allows, and that's exactly what they
23 did here.

24 And then sub four says -- has some
25 things about partially destroyed by



1 wind or other natural forces. But
2 there's no evidence that that's what
3 was at play here. But it basically
4 says here's the determinations that
5 need to be made.

6 But even if repairs are made, sub
7 seven says the sign must remain
8 substantially the same as it was on the
9 effective date of the state law of
10 regulations which rendered the sign
11 nonconforming. And then it says,
12 "Maintenance will be limited to, a)
13 replacement of nuts and bolts, b)
14 additional nailing, riveting, or
15 welding, c) cleaning or painting. And
16 this is when a hurricanes come and you
17 repair after that.

18 Turn over to the next page,
19 manipulation to level or plumb the
20 device. And then eight says, "The
21 department must be notified of any
22 maintenance to a nonconforming sign
23 prior to work being performed." And
24 nine says, "Any nonconforming sign
25 suffering damage in excess wear and



1 tear cannot be repaired without going
2 through all these steps."

3 So the crux of this case is, Adams
4 is going to claim that they were
5 repairing the sign and that they were
6 doing it pursuant to state law.

7 Our argument is two fold. Number
8 1, you weren't doing it pursuant to the
9 state law because the state law
10 prohibits something that extends the
11 life of the sign, like you did here,
12 and reconstruction or rebuilding of the
13 sign, and it goes beyond this.

14 But more importantly, and the
15 overarching contention, was that
16 regardless of what the State says, that
17 you are allowed to do or whatever
18 permit or letter you got from them --
19 which obviously didn't include moving
20 the sign closer to the road and all
21 that.

22 In addition to arguing that you
23 exceeded that, it doesn't matter
24 because 57-25-220 says that the
25 County's regulations are at play and if



1 those are more restrictive, you have to
2 abide by those as well. You have to
3 comply with the minimum floor of the
4 state regulations, but you also have to
5 comply with the additional regulations
6 that are imposed by Beaufort County's
7 Community Development Department.

8 They've essentially thumbed their
9 nose at that, and that's the evidence
10 that shows that they should be guilty
11 of these citations that were issued on
12 May 5th, 2021.

13 And if I could have just a second
14 to confer with my co-counsel about my
15 opening and see if we have anything
16 else.

17 THE COURT: Okay.

18 MR. BERGTHOLD: The only other
19 thing my co-counselor pointed out is
20 that on one of the sign faces, the
21 evidence from the picture show that
22 they also added a metal -- a maroon
23 metal skirting, I think, on the
24 McDonald's sign and they affixed their
25 Adams Outdoor. That's sort of an



1 extension of what the sign structure
2 was originally. But our main thing is
3 they rebuilt the signs and they are not
4 allowed to do that.

5 THE COURT: All right.

6 MR. BERGTHOLD: I'll rest and save
7 whatever time I have for rebuttal.

8 THE COURT: Okay. Let me ask you
9 first.

10 Mr. Williams, do you stipulate to,
11 generally, the facts as presented? And
12 by facts, I mean the facts supported by
13 the photographs?

14 MR. WILLIAMS: Your Honor, there's
15 a lot of --

16 THE COURT: I'm trying to figure
17 out if --

18 MR. WILLIAMS: There's a lot of
19 characterization of the facts --

20 THE COURT: I know.

21 MR. WILLIAMS: -- through the
22 photos.

23 THE COURT: Okay.

24 MR. WILLIAMS: And I'd like some
25 witnesses to corroborate.



1 THE COURT: Okay. That's all I
2 wanted to know.

3 So you are going to have to call
4 witnesses, sir.

5 But you can go ahead with your
6 opening, if you want to.

7 MR. WILLIAMS: Thank you, Your
8 Honor. I do appreciate Mr. Bergthold
9 laying out all these photos. I will
10 stipulate that they're accurate photos
11 of the signs and I do agree the
12 documents, state regulations, and the
13 CDC tell a story, but story's far
14 different than what Mr. Bergthold
15 wanted to present to the Court.

16 First of all, the work occurred on
17 April 10th and 11th, which was a
18 Saturday and a Sunday. The County
19 didn't an issue a stop-work order and
20 citations until the 12th, which was a
21 Monday. It didn't comply with the CDC
22 procedures prior to issuing the
23 citations. It didn't comply with the
24 CDC procedures in issuing a stop-work
25 order.



1 Moreover, as Mr. Bergthold points
2 out, the state regulations specifically
3 state that DOT is the authority to
4 decide if signs adjacent to a state
5 controlled highway should be repaired.
6 This is -- the signs are along the
7 Trask highway, it's maintained by DOT.
8 Adams Outdoor applied for permission
9 from DOT to repair these signs.
10 Beaufort County can construe these
11 pictures all they want to say that we
12 were rebuilding the signs, we took them
13 down, moved them, replaced things.
14 Your Honor, we'll present evidence
15 that in Adams's application to DOT made
16 under 63-350 Part C, Subsection 4, the
17 DOT, under its criteria here, made a
18 determination that the sign was less
19 than 50 percent damaged. If it's less
20 than 50 percent damaged, it's not being
21 replaced, it's being repaired.
22 With that permit in hand, DOT
23 never asked Adams for any local
24 permissions, county, town, any permits.
25 The sign's permitted through DOT. With



1 permit in hand, Adams's subcontractor
2 proceeded to do the work. Prior to
3 that, notified the County that he was
4 performing the work pursuant to DOT
5 permission.

6 We have filed suit, in Federal
7 Court, arguing that the statute -- or
8 the CDC, specifically subsection
9 5.6.5(E)(4)(c) Is unconstitutional in
10 that it gives the director of the
11 Community Development Department
12 unbridled discretion to determine if
13 the sign should be repaired and
14 violates state law. State law gives
15 DOT the sole authority to make such
16 decisions.

17 However, we'd like to note, for
18 the record, we don't believe the Court
19 has jurisdiction to hear these
20 constitutional claims. We're
21 preserving the argument for pursuit in
22 the proper form such as The United
23 States District Court with a lawsuit
24 pending.

25 Stop-work order, citations weren't



1 properly issued. They are based on an
2 unconstitutional ordinance, conflicts
3 with state law. Moreover, there's no
4 evidence that Bo Hodges is the proper
5 party in this case. I don't think the
6 County will have any evidence that he
7 directly participated in, authorized,
8 committed, oversaw any of the alleged
9 acts that purportedly violated the CDC.
10 This is a classic example of local
11 government overreach of its powers and
12 it's an indication of their animus and
13 ill will toward billboards.

14 As Mr. Bergthold said, the CDC is
15 intended to let billboard dilapidate,
16 go away. The County wants to get rid
17 of billboards. They were overeager
18 here to punish Adams for performing
19 work permitted at a proper agency. And
20 that's -- that's what the case is all
21 about, County overreach, Section of the
22 CDC is unconstitutional.

23 The one specific point I wanted to
24 go back to, the permit tag numbers on
25 the sign. Those are not issued by DOT.



1 Those are Adams's sign numbers, so
2 Adams affixes those to the signs. They
3 are not required by any state law
4 regulations.

5 I think as we go through the case
6 here, the evidence we put up, parts of
7 the CDC and state regulations will show
8 that citations here are improper and no
9 violations occurred. Thank you, Your
10 Honor.

11 THE COURT: All right, sir.

12 MR. BERGTHOLD: Your Honor, I
13 don't know -- could I approach and use
14 the screen real quick?

15 THE COURT: Sure.

16 MR. BERGTHOLD: A lot of these
17 arguments, we're hearing for the first
18 time. Some of them we knew about,
19 obviously. I don't think I heard the
20 one about Mr. Hodges not being the
21 proper party, but -- and I can provide
22 a paper copy of this as an exhibit, but
23 I don't have a copy with me right now.
24 I didn't realize this would be an
25 issue.



1 But I've already mentioned that
2 they did submit applications to the
3 State for work on these signs. And
4 Mr. Hodges is the one that signed the
5 application to the State, so he was the
6 one -- he's the local representative
7 for Adams Outdoor. We can put him on
8 the stand, I suppose, and have him tell
9 us that.

10 But -- let me see if I can get
11 this out. The zoom won't go up right
12 now, but essentially, we'll -- we'll
13 call Mr. Hodges as a witness and have
14 him confirm that he is the local area
15 representative for Adams Outdoor and
16 that he was doing the work. He was on
17 the -- on the information or on the
18 Exhibit 5 e-mail chain because he's
19 long been the local representative for
20 Adams in Beaufort County.

21 That's who Eric Greenway, the
22 Community Development director's e-mail
23 was directed to. So if you'll look at
24 page 3 of Exhibit 5, he's writing
25 Mr. Hodges and telling him, "Hey, you



1 guys are doing this. It's not
2 authorized. And Mr. Melvin's letter is
3 not a local permit and you knew that."
4 So we'll address that, I think, by
5 virtue of that testimony.

6 The second thing is, the argument
7 that the DOT is the authority. I don't
8 know how else to say that other than
9 that's just wrong as a matter of law.
10 I just showed you the state statute
11 that says local government regulations
12 are not abrogated and the sign has to
13 comply with state law as well as local
14 government regulations. That's pretty
15 clear. And the Court Circuit case out
16 of North Charleston says exactly that
17 about that provision of the statute.

18 There's no evidence in the record,
19 and I suppose that was just an opening
20 statement, he can put on his evidence
21 and case in chief. But there's no
22 evidence in the record about what form
23 of communications they allegedly had
24 with the County and on what date they
25 did those things. So we'll wait to



1 hear the evidence on that.

2 But Let me talk a little bit about
3 filing suit in Federal Court. This is
4 -- the best way to do this would be to
5 look at Tab 8, which is the Greenville
6 County one. This is a similar case to
7 what happened in Greenville County
8 where a business was in litigation in
9 state court with Greenville County.
10 They were denied a sign permit for that
11 business. They filed suit in Federal
12 Court. We filed a motion to abstain
13 under Younger abstention, which is what
14 we've done for Adams's case.

15 And real briefly, Your Honor, what
16 the Younger Abstention Doctrine says is
17 that if there's ongoing criminal
18 proceeding or a coercive civil
19 enforcement proceeding in any state
20 court system, including this one, the
21 South Carolina courts, then a federal
22 court must abstain from hearing
23 constitutional challenges, federal
24 challenges to that state law or local
25 ordinance, and they must do so because



1 of federalism and the dual system of
2 government we have in this country and
3 the dichotomy that exists between the
4 national government and the states'
5 governments.

6 And it's a -- it stems from a case
7 in 1971 called Younger v. Harris and it
8 was basically a criminal prosecution
9 and the defendants, in a criminal
10 context, ran to federal court and said,
11 "Hey, join this California law under
12 which we're being prosecuted." It went
13 all the way to the U.S. Supreme Court
14 and said no.

15 Now, going all the way back to
16 1926 in a U.S. Supreme Court case
17 called Fenner v. Boikin. The court
18 said it would be an intolerable
19 condition for someone who is about
20 ready to be charged with a state law
21 crime to be able to run to federal
22 court and do a run-around it. Instead,
23 what the criminal defendant, even if
24 it's a misdemeanor thing like this or a
25 fine or a citation, must do, is he must



1 set up his defenses and make his
2 constitutional defenses in state court
3 proceeding and that prosecution.

4 Otherwise, every time someone was
5 charge with a crime for drugs or
6 whatever, they would stop the criminal
7 prosecution in the South Carolina State
8 Courts, go to federal court and say the
9 drug statute is unconstitutional.
10 Whether that's valid or not, the state
11 court has to stop. And that just
12 doesn't make any sense at all.

13 And so the Supreme Court says that
14 Younger abstention applies when three
15 conditions are met. Number one. Is
16 there an ongoing state proceeding? And
17 it's not any state proceeding. It must
18 be a coercive proceeding like this one
19 where you've been charged with a wrong
20 in violation of the state law or local
21 ordinance.

22 Number two, does it raise
23 substantial government interest
24 enforcing zoning regulations has
25 repeatedly been held -- enforcing local



1 codes is repeatedly being held to be a
2 substantial government interest.

3 And then number three, does the
4 defendant in the state proceeding,
5 which would be Bo Hodges and Adams
6 Outdoor in this circumstance, do they
7 have the opportunity to raise their
8 constitutional claims as defenses in
9 that state proceeding? And the answer
10 is yes. And on each of those, there's
11 dozens of cases in the U.S. Supreme
12 Court.

13 But on first problem, they've
14 extended it to disciplinary proceedings
15 against lawyers and -- from the state
16 bar. So there's a large number of
17 enforcement actions that it applies to.
18 With regard to the substantial
19 government interests, they've said
20 adult entertainment regulations, zoning
21 regulations, like this one. Obviously,
22 whether the structure of the sign is
23 safe or it's going to fall down or fall
24 in the roadway, all those are
25 substantial government interests under



1 the local codes.

2 Then number three, does the
3 defendant have the opportunity to raise
4 their constitutional claims as defenses
5 in the state proceeding? The Supreme
6 Court has said that problem is met even
7 when the initial tribunal would not be
8 able to entertain their constitutional
9 claim.

10 In other words, Ohio Civil Rights
11 Commission v. Dayton Christian Schools
12 is an example where a private school
13 teacher gets pregnant out of wedlock,
14 she's told her contract's not going to
15 be renewed for the next year. She --
16 the state Civil Rights Commission
17 begins an investigation of the
18 Christian School. The Christian School
19 runs to federal court.

20 The U.S. Supreme Court says, "No.
21 You have got to set up your defenses
22 before the Commission in that
23 administrative proceeding, just like
24 they had told a lawyer who was under
25 bar disciplinary proceedings in a case



1 called Middlesex. They say you've got
2 to set your defenses, and then it is
3 sufficient that you can -- on review in
4 the state trial court system, the state
5 court of appeals or the state supreme
6 court raise your constitutional
7 challenges. So it's a very, very broad
8 standard for that third one to be met.
9 And it's clearly met here.

10 So we -- we filed this motion with
11 the federal court to dismiss that case
12 under the Younger abstention, because
13 the only thing that's challenged in
14 their federal court complaint are these
15 two criminal citations issued under the
16 Community Development Code. This is a
17 classic -- they walked basically --
18 they stepped into a classic Younger
19 abstention case. I'm very confident
20 the federal court will grant our
21 motion.

22 But their brief was due about a
23 week ago and they asked for an
24 extension so their brief is due this
25 coming Friday, the 16th, which we're --



1 we were fine to grant.

2 But none of that really matters.

3 We're here today on a trial on their
4 violations of the Community Development
5 Code and we've proven, up through our
6 exhibits and evidence, that they've
7 violated that Code. The whole
8 linchpin, when you get beyond the
9 bluster of, you know, harassment
10 campaigns and animus and all this stuff
11 for which there's absolutely zero proof
12 in the record, when you get beyond all
13 that, their linchpin is that South
14 Carolina is the authority, and if they
15 say it's a repair and not a rebuild, go
16 pound sand, Beaufort County. And
17 that's not what South Carolina Code
18 57.5.220 says. It says that our Code
19 applies regardless -- even if it's more
20 restrictive, it would apply and make
21 them comply with it.

22 So I don't know what the claim is
23 on the jurisdiction of the Court. Even
24 assuming that it's a constitutional
25 claim, as I've explained, that doesn't



1 matter. They can raise their
2 constitutional claim, even if only
3 preserve it. And, basically, at this
4 point, I would just call Bo Hodges now
5 that I'm hearing that he is not a
6 proper party for these citations. I
7 think he is.

8 And, Your Honor, at this time, I
9 would to show to my opposing counsel, a
10 copy of a letter. And this might be
11 the claim about presenting information
12 to the County. And ask if this
13 exhibit, which be our Exhibit 10, could
14 be admitted into evidence.

15 MR. WILLIAMS: No objection, Your
16 Honor. I'll just note that this was
17 attached to an e-mail to the code
18 enforcement director. It wasn't
19 mailed.

20 MR. BERGTHOLD: All right. So
21 I'll mark this as exhibit --

22 THE COURT: So you don't have any
23 objection to that being admitted --

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: -- as an exhibit?



1 Okay.

2 (Whereupon, Plaintiff's Exhibit
3 Number 10 was marked for
4 identification.)

5 MR. BERGTHOLD: You know, there is
6 one thing kind of strange about this
7 exhibit, Your Honor, as I'm marking it,
8 and that is, if you look up here in the
9 head of it, that has Adams Outdoor, it
10 has a date of April 6, 2021. Down
11 below in the signature block, it says
12 March 1st.

13 Well, I don't -- when I got
14 involved in this case, we didn't --
15 until the federal case was filed and
16 this was attached to it, I didn't even
17 know if I had seen this. We were aware
18 that they were trying to communicate
19 with us. I don't know if they dropped
20 it in the mail on April 6th and it
21 showed up on April 12th or 13th or 11th
22 or 9th or whatever.

23 But this was nothing more than,
24 "Hey, we're going to go do this." And
25 it probably came after. It was



1 probably processed through the mail and
2 eventually received by the County. If
3 it was -- assuming it was mailed April
4 6th, and we have no testimony to that
5 effect, then it was actually, you know,
6 received right on the eve of when they
7 did the work.

8 But it's really neither here nor
9 there. It does show; however, that Bo
10 Hodges is a proper party to this
11 because he's the one corresponding on
12 behalf of Adams Outdoor. So when
13 Mr. Greenway sees the contractor doing
14 the work and tells him to stop and
15 knows that Mr. Hodges is the local
16 contact and e-mails Mr. Hodges, doesn't
17 receive a response even though that
18 letter shows that Mr. Hodges is the guy
19 involved in these two signs for Adams
20 Outdoor, and then receives, you know, a
21 threat, basically, from the lawyer for
22 Adams Outdoor. It simply shows that Bo
23 Hodges is the right guy.

24 THE COURT: All right. Sir, call
25 your first witness.



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1 MR. BERGTHOLD: Your Honor, on
2 behalf of Beaufort County, we don't
3 really have any witnesses to call. The
4 documents are the evidence that we
5 intended for that. If the Court would
6 like to hear from --

7 THE COURT: How about I have some
8 facts?

9 MR. BERGTHOLD: Okay. All right.
10 Then I will call Audra Antonacci.

11 THE COURT: Okay.

12 AUDRA ANTONACCI,
13 having been produced and first duly sworn as a
14 witness, testified as follows:

15 EXAMINATION

16 BY MR. BERGTHOLD:

17 Q Ms. Antonacci, what is your -- am I
18 saying your last name right?

19 A You are.

20 Q Okay. What is your position with
21 Beaufort County?

22 A I am the assistant county
23 administrator.

24 Q Okay. And is that a recent promotion?

25 A Yes.



1 Q Okay. And before you were the
2 assistant county administrator, what was your
3 position?

4 A I was Beaufort County Code Enforcement
5 director.

6 Q Okay. And how long were you involved
7 in Beaufort County Code Enforcement?

8 A Approximately 18 years.

9 Q Okay. Approximately 18 years.
10 And have you had occasion to review the
11 documents in this case?

12 A Yes, I have.

13 Q Okay. And tell me what the pictures
14 that you certified as Exhibits 1 and 2 tell,
15 generally, about what happened, what Adams
16 Outdoor and their contractors did to these two
17 signs on the weekend of April 10th, 11th, and
18 12th of 2021.

19 A I would like to review the --

20 Q Yeah.

21 A -- the section you referenced, please.

22 Q Yep. And the code section is seven.

23 A You stated one and two?

24 Q Yes, Tabs 1 and 2. One is the east
25 sign and two is the sign on the west side of the



1 Trask Parkway.

2 THE COURT: Audra, if you'll take
3 your -- thanks. Just so the microphone
4 can pick up what you're saying.

5 THE WITNESS: Can you please ask
6 your question again?

7 BY MR. BERGTHOLD:

8 Q Yeah. Sure. Just generally, tell me
9 what Adams did to these two signs. How would
10 you characterize the work that was done on the
11 weekend of April 10th, 11th, and 12th?

12 A From the photographs, it does appear
13 that substantial work was done, the poles
14 replaced. It appears that, from the photos,
15 that bracing on the back of the boards were also
16 replaced.

17 Q And would replacing the poles from the
18 rotting of wood, would that be rebuilding the
19 structure?

20 A I believe so, yes.

21 Q Yes. And would it be -- can you tell
22 from the signs and the progressions that the
23 signs were re-erected, taken -- say, taken down
24 and re-erected?

25 A Yes. In some of those photos, yes.



1 Q And then when you look at the provision
2 that says, in 5.6.50(E)3, which prohibits
3 extension, replacement, rebuilding, or
4 re-erection of the sign of a commercial
5 billboard like these, is it your determination
6 that based on the photos that you've observed
7 and the correspondence that you've read, that
8 Adams did, in fact, engage in a prohibited
9 extension, replacement, rebuilding, or
10 re-erection of these two signs?

11 A Yes.

12 Q And have you had a chance to review the
13 e-mail correspondence between Mr. Greenway and
14 the Adams folks on the weekend of October
15 12th -- or October 10th, 11th, and 12th, which
16 is Tab 5 in your binder?

17 If you would turn to Tab 5, page 3 and
18 that's the e-mail at the bottom that starts with
19 Mr. Hodges.

20 A Can you state the date again, please?

21 Q Yeah. The date was April 10th.

22 A April 10th, correct?

23 Q Which is a Saturday.

24 A Yes.

25 Q Yes. Okay. And then it says,



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1 "Mr. Hodges, on a return trip from Charleston."

2 A Yes.

3 Q Yeah. Okay. And where he says -- he
4 describes the location of these two signs. He
5 says, "Adams is in the process of completely
6 rebuilding them." And he says, "We've issued no
7 approvals," and then he says, "And will not
8 issue approval for the complete rebuild of these
9 signs since doing so will violate the Community
10 Development Code."

11 Based on what the Planning and Zoning
12 director said to Adams, was he talking about
13 prohibition at 5.6.50(E)3 that prohibits the
14 rebuilding of signs?

15 A Yes, I believe so.

16 MR. BERGTHOLD: Nothing further,
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. WILLIAMS: Do I have
20 permission to cross?

21 THE COURT: Certainly.

22 EXAMINATION

23 BY MR. WILLIAMS:

24 Q Good morning. Ms. Antonacci, is it?

25 A Yes.



1 Q How are you?

2 A I'm good. How are you?

3 Q Good.

4 My name's Adam Williams. I represent
5 Adams Outdoor and Bo Hodges.

6 And I apologize, I missed the opening
7 question there. I heard you were in code
8 enforcement for 18 years.

9 What is your current position with the
10 County?

11 A Assistant county administrator.

12 Q What are your responsibilities in your
13 current role?

14 A I oversee divisions for Community
15 Services.

16 Q And what divisions are within Community
17 Services?

18 A Alcohol and Drug, Human Services, DSN
19 and the liaison for Veteran Affairs --

20 Q And you said you were code enforcement
21 for 18 years.

22 What was your last position within the
23 Code Enforcement Department?

24 A I was director.

25 Q Director. Were you the director in



1 April of this year surrounding the events in
2 question?

3 A Yes, I was.

4 Q So you're -- what was your
5 responsibility or role as the director of the
6 code enforcement?

7 A I was in charge of overseeing the Code
8 Enforcement Department and staff, daily
9 operations.

10 Q Does that entail interpreting the CDC?

11 A I believe, yes.

12 Q So you're pretty familiar with the
13 provisions of the CDC? I'm not asking if you've
14 memorized them offhand, but you've reviewed and
15 are somewhat familiar?

16 A Some of it, yes.

17 Q Okay. I'm not trying to trap you. I
18 just wanted to ascertain if you've --

19 A Not all of them.

20 Q -- reviewed -- right. Right.

21 MR. WILLIAMS: Your Honor, may I
22 approach the witness?

23 THE COURT: Certainly.

24 BY MR. WILLIAMS:

25 Q I'm handing you what's been marked as



1 Defendant's Exhibit Number 1.

2 (Whereupon, Defendant's Exhibit
3 Number 1 was marked for
4 identification.)

5 MR. WILLIAMS: Your Honor, would
6 you like a copy?

7 THE COURT: If you'll just show it
8 to Mr. Bergthold.

9 BY MR. WILLIAMS:

10 Q Could you describe -- I guess this is
11 an e-mail chain.

12 Could you described, generally, the
13 date and the parties in this e-mail?

14 A Tuesday, April 6th is the date when I
15 received an e-mail from Bo Hodges with several
16 attachments.

17 Q Do you remember what attachments were
18 with the e-mail?

19 A It was a letter stating work that was
20 going to be conducted on the billboards, and I
21 believe, also, the attachments were copies of
22 applications and/or approval from SCDOT.

23 Q And you replied to Mr. Hodges's e-mail?

24 A Correct.

25 Q What was the date of your reply?



1 A April 7th.

2 Q And could you read the first sentence
3 there of your e-mail?

4 A "I spoke with Eric Greenway and he
5 advised me that prior to the repairs being done,
6 somebody will need to review the billboards and
7 give approval for any repairs."

8 MR. WILLIAMS: Your Honor, I'm
9 sorry.

10 THE COURT: Speak up just a little
11 bit.

12 MR. BERGTHOLD: Actually, I'm
13 going -- Your Honor, can I give you my
14 copy? I'm not going to use it.

15 THE COURT: Sure. Do you have any
16 objection?

17 MR. WILLIAMS: Is that within the
18 --

19 MR. BERGTHOLD: No. It's what you
20 just gave me. I just added your label
21 to it. Do you have another copy?

22 MR. WILLIAMS: Yes. In my -- I
23 got one for myself.

24 MR. BERGTHOLD: I think it would
25 be easier to be looking at it. Thank



1 you.

2 THE COURT: So no objection from
3 the County?

4 MR. BERGTHOLD: Your Honor, I have
5 no objection.

6 THE COURT: It's admitted.
7 All right, sir. You can resume.

8 MR. WILLIAMS: Thank you, Your
9 Honor.

10 BY MR. WILLIAMS:

11 Q So your e-mail states that you spoke
12 with Eric Greenway.

13 What did you speak with Eric Greenway
14 about?

15 A I believe when I received the e-mail
16 from Mr. Hodges, I forwarded that e-mail to
17 Mr. Greenway as an FYI.

18 Q And Mr. Greenway advised that the
19 Zoning Department would have to review the DOT
20 applications and approvals?

21 MR. BERGTHOLD: Objection.
22 Mischaracterizes what the document
23 says.

24 THE COURT: Sustained. What
25 did...



1 BY MR. WILLIAMS:

2 Q What did Mr. Greenway advise exactly
3 after you forwarded the e-mail to him?

4 A He advised me to contact Mr. Hodges and
5 make him aware of the process for Beaufort
6 County.

7 MR. WILLIAMS: Permission to
8 approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. WILLIAMS:

11 Q Showing you a document that's been
12 marked Defendant's Exhibit Number 2.

13 (Whereupon, Defendant's Exhibit
14 Number 2 was marked for
15 identification.)

16 MR. WILLIAMS: Your cover letter
17 is already in the record.

18 MR. BERGTHOLD: Okay.

19 MR. WILLIAMS: And I believe Mr.
20 Bergthold has gone over the first page,
21 Your Honor.

22 THE COURT: Is there an objection
23 from Mr. Bergthold?

24 MR. BERGTHOLD: Your Honor, if I
25 could just look at this real quick.



1 THE COURT: Okay.

2 MR. BERGTHOLD: No, Your Honor.

3 We have no objections.

4 I guess this is Defendant's
5 Exhibit 2?

6 THE COURT: That's correct.

7 MR. BERGTHOLD: All right.

8 BY MR. WILLIAMS:

9 Q And so I believe you stated --
10 testified earlier that attached to Mr. Hodges's
11 April 6th e-mail was some documents, including
12 approvals for repair work, from DOT.

13 Do you recognize those documents
14 enclosed with the letter as being the
15 attachments to that e-mail?

16 A I do.

17 Q And so the first document, there's a
18 header, SCDOT, South Carolina Department of
19 Transportation, it's dated February 22, 2021; is
20 that correct?

21 A Yes.

22 Q And what is the subject line? It says
23 "Re:"

24 A Repair of storm damage sign,
25 06-07-740884.



1 Q And so within this -- is this an SCDOT
2 letter acknowledging Keith with Adams's
3 application or request to repair one of the
4 signs in question?

5 MR. BERGTHOLD: Your Honor, I'm
6 going to object on foundation grounds.
7 I just don't know that it's been
8 established that this 06-07 number
9 relates any number the witness has
10 knowledge of.

11 THE COURT: What do you say, sir?

12 MR. WILLIAMS: Your Honor, the
13 06-07 refers to the permit number from
14 SCDOT. I believe that Ms. Antonacci
15 testified that she received a copy
16 within the -- actually, within this
17 exhibit are copies of the permit and
18 the approval showing the permit number.
19 She's testified this was attached to
20 the e-mail. If you look at the third
21 page, it says, "State of South Carolina
22 application for Outdoor advertising
23 permit."

24 MR. BERGTHOLD: Your Honor, I'll
25 renew the objection only because,



1 again, it's actually a fairly
2 complicated thing, keeping track of all
3 these permit numbers. And there's
4 nothing in here -- it says it's
5 somewhere on U.S. 21. It says it's
6 near the -- within the unzoned or
7 commercial industrial area, name
8 qualifying activity: Daisy Fresh Coin
9 Laundry, is what the third page of the
10 attachment to the cover letter says.
11 So I just don't know how we can tell
12 exactly which sign this is. But --

13 THE COURT: Well, what is Daisy
14 Fresh Coin Laundry? I haven't seen
15 that anywhere.

16 MR. WILLIAMS: When the sign was
17 permitted, I believe, in --

18 MR. BERGTHOLD: 1956.

19 MR. WILLIAMS: -- 1956, that was
20 the business on the property. So, Your
21 Honor, this is a copy of the sign
22 permit, the sign permit issued in 1956.

23 THE COURT: Do you know,
24 Ms. Antonacci, the answer to his
25 question?



1 MR. WILLIAMS: May I rephrase,
2 Your Honor?

3 THE COURT: Yes.

4 MR. WILLIAMS: Thank you.

5 BY MR. WILLIAMS:

6 Q Ms. Antonacci, counsel's testified that
7 Adams applied for and received approvals from
8 DOT to perform repair work.

9 Would you agree that the letters in
10 here from SCDOT relate to those applications and
11 approvals for -- to perform the repair work to
12 the subject signs?

13 A I would have to say no, only due to the
14 location on the permit application.

15 MR. WILLIAMS: Your Honor, if I
16 may point out, within plaintiff's
17 exhibit notebook, all the pictures of
18 the signs where you can see the signs
19 and the -- I believe they were
20 referring to them as permit ID tags,
21 the white tags on the bottom hanging at
22 the bottom of the sign.

23 Those actually show the -- those
24 are Adams ID tags, but within them,
25 they contain -- I'm trying to find it



1 -- number 28, the tab to Document 28.
2 Well, Tab 2, Number 25 for the -- at
3 the green circle, the white tag hanging
4 down apparently is the state tag. It's
5 illegible, of course.

6 All right. We'll move on from
7 Exhibit 2.

8 THE COURT: All right.

9 BY MR. WILLIAMS:

10 Q Ms. Antonacci, would you agree, though,
11 that Mr. Hodges's e-mail included attachments
12 with approvals from SCDOT to repair the signs in
13 question?

14 MR. BERGTHOLD: Objection.

15 Foundation. I think we've only had --

16 THE COURT: She can answer the
17 question.

18 Go ahead.

19 THE WITNESS: Can you please
20 repeat that question?

21 BY MR. WILLIAMS:

22 Q You testified earlier that Mr. Hodges
23 e-mailed you on April 6th, 2021 based on Exhibit
24 Number 1; correct?

25 A Correct.



1 Q And you testified that he attached a
2 number of documents to that e-mail; correct?

3 A Correct.

4 Q And within those documents that were
5 attached, did those include approvals from SCDOT
6 to perform repair work for the signs at issue?

7 MR. BERGTHOLD: Objection.
8 Foundation.

9 THE COURT: Denied.
10 Go ahead and answer.

11 THE WITNESS: I'm not quite sure
12 we are speaking of the same billboards.

13 BY MR. WILLIAMS:

14 Q Do you know which billboards these
15 letters refer to from the SCDOT?

16 A I do not.

17 Q How would you know, or Mr. Greenway,
18 know what to discuss or how to -- how it should
19 be referred to zoning?

20 A I've referenced the tag number in the
21 white. I mean, I believe there's several
22 different numbers. I referenced the white tag
23 numbers on the billboards.

24 Q Okay. So back to Exhibit 1, you
25 e-mailed Mr. Hodges back on April 7th, 2021 and



1 informed him that Mr. Greenway advised you that
2 prior to any repairs being done, Zoning needed
3 to review the billboards and give any approval
4 for any repairs; correct?

5 A Correct.

6 Q If you'd return to plaintiff's
7 notebook, Tab 7.

8 At issue here is CDC Sections
9 5.6.50(E); is that correct?

10 A Correct.

11 Q Could you point to the subsection where
12 approval from the Zoning Department is required?

13 MR. BERGTHOLD: Objection. Vague.

14 Approval for what?

15 BY MR. WILLIAMS:

16 Q Back to Exhibit 1, the e-mail says, "I
17 spoke with Eric Greenway and he advised me that
18 prior to any repairs being done, Zoning will
19 need to review the billboards and give approval
20 for any repairs;" is that correct?

21 A Yes.

22 Q So the approval -- he's stating that
23 Zoning needs to give approval for repairs; is
24 that correct?

25 A Correct. That is what I stated in my



1 e-mail.

2 Q Turning back to plaintiff's notebook,
3 Tab 7, as the Code Enforcement Department
4 director in April 2021 -- you stated you were
5 somewhat familiar with the provisions of the
6 CDC, and take your time to read through it, but
7 within 5.6.50(E) -- which plaintiff's counsel
8 stated was at issue here.

9 So within 5.6.50(E), what provision
10 requires the permission of the Zoning
11 Department?

12 THE COURT: The code speaks for
13 itself.

14 MR. WILLIAMS: Yes, Your Honor.

15 THE COURT: I mean, I know the
16 answers to these questions, so if we
17 could move on.

18 MR. WILLIAMS: Okay. Yes, Your
19 Honor.

20 BY MR. WILLIAMS:

21 Q Ms. Antonacci, within 5.6.50(E),
22 subsection 2 doesn't speak to any permissions
23 they needed; correct? It states the conduct as
24 prohibited or the actions?

25 A You stated under (E), subsection 2?



1 Q Yes, ma'am.

2 A Your question?

3 Q (E), subsection --

4 THE COURT: Does it say anything
5 about getting a permit?

6 THE WITNESS: No, it does not.

7 BY MR. WILLIAMS:

8 Q The only section that speaks to getting
9 permission or approval is sub E, subsection 4;
10 correct?

11 A Correct. "Authorizing repair work;"
12 correct.

13 Q And within subsection 4, there are
14 parts A, B, and C?

15 A Correct.

16 Q And within A, B, and C, the only
17 departments required to give approval, or the
18 only persons, are the Code Enforcement
19 Department and the director of the Community
20 Development Department; is that correct?

21 A Correct.

22 Q So turning back to Exhibit 1, why did
23 Mr. Greenway advise that the Zoning Department
24 approval is required?

25 A I cannot speak for Mr. Greenway.



1 Q Okay. Do you know who the director of
2 the Community Development Department was in
3 April of 2021?

4 A Eric Greenway.

5 Q Did he hold another title at that time?

6 A Yes.

7 Q What was it?

8 A Interim county administrator.

9 Q Interim county administrator.

10 THE COURT: Speak real loud --

11 THE WITNESS: Sorry.

12 THE COURT: -- Ms. Antonacci.

13 That's okay.

14 BY MR. WILLIAMS:

15 Q And so after this e-mail, as we've kind
16 of established a timeline of events in this
17 e-mail, your e-mail to Mr. Hodges is dated April
18 7th.

19 After that date, Adams started
20 performing repair work to the signs; is that
21 correct?

22 A Yes.

23 MR. BERGTHOLD: Objection. I'm
24 only going to object as to vagueness as
25 to the use of the word "repair" because



1 that term is not defined.

2 THE COURT: You said working on?

3 MR. WILLIAMS: Yes, Your Honor.

4 BY MR. WILLIAMS:

5 Q After your e-mail of April 7, 2021,
6 Adams began working on the signs at issue; is
7 that correct?

8 A Yes.

9 Q Turning to plaintiff's notebook,
10 Exhibit 5, page 3 of this e-mail has been
11 discussed somewhat.

12 Do you know why Mr. Greenway
13 characterized Adams's work as a complete
14 rebuild?

15 MR. BERGTHOLD: Objection.
16 Foundation.

17 MR. WILLIAMS: We've established
18 this e-mail as an exhibit. This is an
19 e-mail from Mr. Greenway to Bo Hodges.

20 THE COURT: I don't know why
21 you're asking Ms. Antonacci questions
22 about Mr. Greenway. But she can
23 answer.

24 If you know that, you can answer.
25 Although it would be hearsay, so



1 sustained. The objection is sustained.

2 BY MR. WILLIAMS:

3 Q If you'll stay on that exhibit, I want
4 to ask you about a specific statement. But on
5 page 2 at the bottom is an e-mail that starts
6 from Mr. Greenway to an individual named Ben
7 Armitage.

8 Do you see that?

9 A I do.

10 Q It continues on to the next page.
11 About the third line down, Mr. Greenway writes,
12 "In the future when I ask for work to stop, it's
13 probably in everyone's best interest for it to
14 stop until we can resolve the issue and
15 cooperate on a solution;" is that correct?

16 A Yes, sir. I do see that.

17 Q Based upon this situation, what type of
18 solution would the County have proposed?

19 MR. BERGTHOLD: Objection.

20 Speculation. And foundation, because
21 she's not the author of this.

22 THE COURT: Sustained.

23 BY MR. WILLIAMS:

24 Q Did the County ever provide Adams with
25 a notice or a warning of any alleged CDC



1 violation?

2 A When? I mean, can you --

3 Q After the work that was performed on --
4 I believe it started April 10th, beginning after
5 that date, did the County ever issue notice or a
6 warning to Adams or Mr. Hodges about any alleged
7 CDC violation for these signs?

8 A I'd have to review my file.

9 Q At some point in time, the County
10 issued a stop-work order; is that correct?

11 A That is correct.

12 Q Turning to plaintiff's notebook,
13 Exhibit 6, dated April 12th, 2021.

14 Is this the stop-work order that was
15 issued to Adams?

16 A Yes.

17 Q And this is your signature at the
18 bottom?

19 A Yes.

20 Q So the work started April 10th and this
21 was issued April 12th; is that correct?

22 MR. BERGTHOLD: Objection as to
23 foundation about when the work started.

24 MR. WILLIAMS: I will refer to
25 counsel's opening statement, but.



1 THE COURT: Do you know when the
2 work started, Ms. Antonacci?

3 THE WITNESS: I do not, Your
4 Honor.

5 THE COURT: Sustained.

6 MR. WILLIAMS: Your Honor, I'd
7 like to show the witness a portion of
8 the CDC Article 9. This was included
9 within the plaintiff's notebook.

10 THE COURT: Yes, sir.

11 MR. WILLIAMS: Do I need to mark
12 it with a sticker, or --

13 THE COURT: Any objection?

14 MR. BERGTHOLD: I don't have any
15 objection to it, Your Honor. But I
16 think, just to make sure the record is
17 clear, if he's going to introduce a
18 portion of the Code, it ought to be
19 marked and admitted into evidence since
20 I don't think South Carolina courts
21 takes judicial notice of ordinances.

22 THE COURT: That's what we're
23 doing. Do you have any objection?

24 MR. BERGTHOLD: No.

25 THE COURT: Okay. Defendant's 3.



1 (Whereupon, Defendant's Exhibit
2 Number 3 was marked for
3 identification.)

4 BY MR. WILLIAMS:

5 Q Ms. Antonacci, I'd like to show you
6 what's been marked as Defendant's Exhibit Number
7 3.

8 Could you describe this document,
9 please?

10 A It is Article 9 of the CDC enforcement.

11 Q And so this article is in the CDC, this
12 applies to enforcement of all provisions of the
13 CDC, all the code, different sections?

14 A Yes.

15 Q And does this Article 9 authorize the
16 issuance of stop-work orders?

17 A Can you please repeat that question?

18 Q I'll rephrase.

19 Could you turn to page 5, CDC Section
20 9.5.20?

21 What is the title of subsection A
22 within 9.5.20?

23 A Stop order.

24 Q And could you read -- it's a paragraph.
25 "The County administrator or designee



1 or county attorney may issue and serve upon a
2 person violating this development code, a stop
3 order requiring the person to stop all action in
4 violation of this development code, including
5 illegal occupation of a building or structure,
6 illegal work being done, or any other action or
7 violation of the building code;" is that
8 correct?

9 A Yes.

10 Q In April of 2021, were you the county
11 administrator or the county attorney?

12 A I was not.

13 Q You testified that's your signature on
14 the stop-work order, Plaintiff's Exhibit 6?

15 A It is my signature.

16 Q Do you know if Adams performed any work
17 to these signs after the stop-work order was
18 issued?

19 A I don't recall.

20 Q And turning to the stop-work order
21 itself, you write, "It has been determined that
22 pursuant to Beaufort County Ordinance 5.6.50,
23 off-premises Sign Standards E, maintenance
24 standards for off-premises signs, the required
25 Beaufort County approval was not granted for the



1 work and/or repairs to billboard numbers located
2 on Trask Parkway in Beaufort County;" is that
3 correct?

4 A Correct.

5 Q So as we established earlier,
6 5.6.50(E), the only section that talks about
7 permission is Section 4.

8 Who determined that the approval was
9 not granted?

10 A After speaking with Mr. Greenway.

11 Q Mr. Greenway advised you that the
12 necessary approval wasn't given?

13 A Correct.

14 Q If you turn to plaintiff's Tab 7,
15 within 5.6.50(E), as we discussed earlier, there
16 are four subsections, and then parts A, B, and
17 C.

18 Does the stop-work order refer to what
19 subsection that Adams purportedly violated?

20 MR. BERGTHOLD: Objection. The
21 document speaks for itself. You said
22 subsection E.

23 THE COURT: What are you trying to
24 get to?

25 MR. WILLIAMS: Your Honor, we're



1 just trying to get that stop-work
2 order -- Ms. Antonacci was not specific
3 as to within sub part E was violated.
4 Is that correct? Stop work order is
5 Plaintiff's Exhibit 6.

6 THE COURT: And it speak for
7 itself as well.

8 MR. WILLIAMS: Okay.

9 BY MR. WILLIAMS:

10 Q So then if we could turn to -- oh, it's
11 on the same exhibit.

12 The last page shows the uniform
13 ordinance summons that's at issue in this case;
14 is that correct?

15 THE COURT: What exhibit?

16 MR. WILLIAMS: Plaintiff's Exhibit
17 6. I'm sorry.

18 BY MR. WILLIAMS:

19 Q Are these the uniform ordinance
20 summonses at issue in this case?

21 A Yes.

22 Q And were you the issuing officer for
23 both of these?

24 A Yes.

25 Q Turning back to Defendant's No. 3, I



1 believe, Article 9 of the CDC. On page 3 --
2 sorry, it's Defendant's Exhibit 3. It's not
3 within that notebook.

4 A Oh. Oh. I'm sorry. I apologize.

5 THE COURT: It's the enforcement.

6 And what section?

7 MR. WILLIAMS: 9.4.40, Your Honor.

8 It's on page 3.

9 BY MR. WILLIAMS:

10 Q What's the title of 9.4.40?

11 A Notice of violation.

12 Q And what does the first sentence of
13 that paragraph state?

14 A "When the Code Enforcement Department
15 finds and determines a violation of the
16 Development Code exists, the Code Enforcement
17 Department shall notify, in writing, the person
18 violating the code."

19 Q It goes on, stated such --

20 A "Such notification shall serve as a
21 warning notice of a violation."

22 Q "And shall be delivered via U.S. Mail
23 or hand-delivered to a last known address to the
24 owner and/or any person occupying the land or
25 structure where the violation occurs;" is that



1 correct?

2 A Correct.

3 Q And did the County issue such written
4 warning notification?

5 MR. BERGTHOLD: Objection. I'm
6 just going to object to the extent he's
7 asking for whether the County did
8 something as a whole. I think she can
9 testify to what she did or someone else
10 did, but the County's a lot of things.

11 THE COURT: Sustained.

12 MR. WILLIAMS: I'll rephrase.

13 BY MR. WILLIAMS:

14 Q Ms. Antonacci, did you ever give
15 knowledge of anyone on behalf of the County
16 issuing a warning notice violation to Adams,
17 substantially under 9.4.40 of the CDC?

18 A I do not know.

19 Q Okay. And then citations, such as
20 Plaintiff's Exhibit 6 at issue in this case,
21 citations are issued under 9.4.50 of the CDC; is
22 that correct?

23 A Correct.

24 Q Could you read the first sentence of
25 9.4.50(B)?



1 A "Under all other circumstances, if a
2 person to whom a warning notice has been given
3 in accordance with Section 9.4.40, notice of
4 violation, fails to remove or abate the
5 violation in the time specified in the notice,
6 the Code Enforcement Department shall fill out
7 and sign, as the complainant, a uniform summons
8 ticket in the appropriate court of Beaufort
9 County. The uniform summons ticket shall
10 include the following."

11 Q So if a warning notice has been given
12 in accordance with 9.4.40, the County can issue
13 a uniform summons ticket; is that correct?

14 A Yes.

15 Q And within under part (B) of 9.4.50, it
16 was six criteria or subsets of information that
17 have to be included on the citation; is that
18 correct?

19 A Yes.

20 Q Do the tickets, as shown in Plaintiff's
21 Exhibit No. 6, do they name the owner of the
22 land where the alleged the violation occurs --
23 occurred?

24 A Exhibit -- what was that?

25 Q Number 6.



1 A You asked if the land owner --

2 Q Yes, ma'am. Does the ticket name the
3 owner of the land where the alleged violation
4 occurred?

5 MR. BERGTHOLD: Objection as to
6 foundation.

7 THE COURT: She knows what the
8 summons says.

9 MR. BERGTHOLD: She does. But I
10 don't think he's established if she
11 knows whether Adams Outdoor's the owner
12 of the land or not.

13 THE COURT: Does the ticket state
14 who the owner is, was the question;
15 correct?

16 MR. WILLIAMS: Yes, ma'am. Yes,
17 Your Honor.

18 THE COURT: Denied.
19 Go ahead and answer.

20 THE WITNESS: I don't know the
21 owner of the land. I can't recall.

22 BY MR. WILLIAMS:

23 Q Does the ticket contain the address or
24 a legal description of the land where the
25 alleged violation occurred?



1 THE COURT: You want to see the
2 ticket?

3 THE WITNESS: I would like to see
4 the ticket, Your Honor.

5 Yes, it does.

6 BY MR. WILLIAMS:

7 Q Can you tell me what the address or
8 legal description is as shown on the ticket?

9 A Beaufort County, Trask Parkway.

10 Q Approximately how many miles long is
11 Trask Parkway?

12 A I have no idea.

13 Q It's a large highway?

14 A I would say yes, it is a large highway.

15 Q If I told you someone's address --
16 you're going to a house with an address on Trask
17 Parkway and said it's on Trask Parkway, would
18 you know where it was?

19 A If you provided me with an address?

20 Q No, ma'am. If I just told you, let's
21 meet on Trask Parkway, would you know where to
22 meet?

23 A No.

24 Q Does the ticket state the nature of the
25 alleged violation?



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1 A Yes.

2 Q Could you read the description or the
3 nature of the alleged violation?

4 A "Ordinance Section 5.6.50(E)
5 off-premises signs."

6 Q So the alleged violation was that it
7 was an off-premises sign; is that what it's
8 stating?

9 MR. BERGTHOLD: Objection. The
10 document speaks for itself.

11 THE COURT: Sustained.

12 MR. WILLIAMS: I believe that's
13 all I have for Ms. Antonacci, Your
14 Honor.

15 MR. BERGTHOLD: Redirect, Your
16 Honor?

17 THE COURT: Sure.

18 EXAMINATION

19 BY MR. BERGTHOLD:

20 Q Ms. Antonacci, Defendant's Exhibit 2 is
21 the Adams letter from Bo Hodges to you dated
22 April 6th, 2021 across the top; is that correct?

23 A Correct.

24 Q Okay. Have you corresponded with Bo
25 Hodges with regard to billboards in Beaufort



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1 County on several occasions over the years?

2 A I have not.

3 Q Okay. So was this letter representing
4 to you that it was from Bo Hodges to tell you
5 that he was involved with at least two signs in
6 the County, if you look at this and the
7 attachments?

8 A Yes.

9 Q Okay. But if we look at the
10 attachments, you've already stated you weren't
11 sure if these deal with the billboards that you
12 wrote tickets on. But let's look at what he
13 gave you with his April 6th letter, anyway.

14 If you look at page 4 of the document,
15 and you -- it says, "State of South Carolina"
16 across the top. You go down to line number
17 eight and it talks about the value of this sign,
18 only. The total value of all signs.

19 Does it say, anywhere, the type of work
20 that is going to be performed to this sign,
21 whichever sign this is?

22 A No, it does not.

23 Q Okay. And if you turn to page -- the
24 last page of the document on a different sign.

25 Does it specify the amount of the work,



1 the dollar cost of the work that's going to be
2 done on this sign or the type of work that's
3 going to be done to this sign?

4 A It does not.

5 Q Okay. So when you get this letter from
6 Adams saying we're going to do some work on some
7 signs and you respond to him with Defendant's
8 Exhibit 1, which is your e-mail back to him, I
9 guess, the following day on April 7th.

10 When you referenced the word "repairs,"
11 at that point, after conferring with
12 Mr. Greenway, what did you know, if anything,
13 about what was actually going to be done to
14 these signs?

15 A better question: Did you know what
16 work was going to be done by looking at this
17 letter they sent you, or could you have known?

18 A To what extent, no.

19 Q Okay. So the fact you that use the
20 word "repairs" there is just a general term
21 about work done on the sign; is that right?

22 A Correct.

23 Q Because at that time, you didn't really
24 know what was going to be done?

25 A Right. Yes.



1 Q Okay. Now, let's go to that April 7th
2 e-mail again.

3 When you wrote Mr. Hodges, he
4 corresponded with you and sent you this letter
5 via e-mail; correct?

6 A Yes.

7 Q So did you have a high level of
8 confidence when you hit reply to Mr. Hodges
9 e-mail and you gave him the message that he
10 needed to get approval from the County for
11 whatever they were going to do before they
12 started doing that? Did you have high level of
13 confidence that Mr. Hodges would receive the
14 actual notice of the warning not to proceed
15 without approval?

16 MR. BERGTHOLD: That was bad
17 question.

18 MR. WILLIAMS: Objection.

19 BY MR. BERGTHOLD:

20 Q That was a bad question. I'm going to
21 ask a shorter question.

22 When you wrote Mr. Hodges, "Hey, I
23 talked to Eric Greenway. You need to get
24 approval," were you giving him a warning to get
25 approval from the County before he started work?



1 A Yes.

2 Q And because he corresponded with you
3 via e-mail, you had a high level of confidence,
4 didn't you, that when you replied to his e-mail,
5 that he would get the message?

6 A Yes.

7 Q And the purpose of the warning system
8 that's in the Code, that is simply to give
9 someone who may not know that they're engaged in
10 a violation or has just begun the work to tell
11 them that they need to abstain until they get
12 the proper approval; correct?

13 A Yes. Notice.

14 Q But do you have occasions where work is
15 being -- in your 18 years in the Code
16 Enforcement Division of Beaufort County, have
17 you had occasions where people were doing work
18 in blatant violation of the Code, and after
19 given a verbal warning, they refused to stop?

20 A Absolutely.

21 Q Okay. And then would you write them a
22 uniform ticket summons or a citation?

23 A Yes.

24 MR. WILLIAMS: Objection.

25 MR. BERGTHOLD: Well, I think



1 she's got --

2 THE COURT: Just a second.

3 MR. WILLIAMS: No foundation.

4 Asking for over 18 years, if she's ever
5 done something.

6 THE COURT: I don't know how
7 relevant it is, but you can go ahead.

8 BY MR. BERGTHOLD:

9 Q All right. Have you had people who are
10 defiant and ignored the verbal warnings?

11 THE COURT: Let's just move on
12 from there.

13 BY MR. BERGTHOLD:

14 Q The correspondence that is in Exhibit
15 5, this is the e-mails back and forth. Go to
16 the third page of Exhibit 5 and look at
17 Mr. Greenway's e-mail to Mr. Hodges.

18 Does he explain where on Trask Highway,
19 which is Highway 21, where the signs are?

20 MR. WILLIAMS: Objection.

21 Hearsay.

22 MR. BERGTHOLD: It's basically the
23 document.

24 THE COURT: Well, the document's
25 admitted and it speaks for itself, so



1 let's move on.

2 BY MR. BERGTHOLD:

3 Q In addition to your April 7th e-mail
4 back to Bo Hodges, did you consider
5 Mr. Greenway's e-mail on April 10th to
6 Mr. Hodges to also be a warning?

7 That's what -- actually, you had it,
8 the third page there at the bottom.

9 A Yes.

10 Q And at the time, Mr. Greenway was the
11 director of the Planning and Zoning Department;
12 correct?

13 A Yes.

14 Q And I want to direct your attention to
15 Defendant's Exhibit 3, which is the Code
16 Enforcement Division, and go to page 5 out of 6
17 on that document. And 9.5.20 says, "Other
18 remedies and penalties, in addition, the County
19 may use any combination of the following."

20 So there's a series of enforcement
21 options that are available to the County when
22 it's enforcing the Community Development Code;
23 correct?

24 A Yes.

25 Q Okay. Mr. Williams asked you if you



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1 were the county administrator or the county
2 attorney, and you said no.

3 But as the director of code
4 enforcement, are you not the designee of the
5 county administrator for enforcing the Code?

6 A Yes.

7 Q And at that time, in April of 2021, is
8 Mr. Eric Greenway was, in fact, the interim
9 County administrator at that time; correct?

10 A Yes.

11 MR. BERGTHOLD: Nothing further,
12 Your Honor.

13 THE COURT: All right. Anything
14 further?

15 MR. WILLIAMS: Yes, Your Honor.
16 If you don't mind real quick.

17 EXAMINATION

18 BY MR. WILLIAMS:

19 Q Ms. Antonacci, did Mr. Greenway ever
20 give you expressed authority, designation,
21 permission to act on his behalf in issuing and
22 serving this stop-work order at issue?

23 A On his behalf?

24 Q Yes, ma'am. If you -- I will pull it
25 up. But Article 9 states that stop-work orders



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1 -- we talked about earlier -- stop-work orders
2 have to be issued by the county administrator or
3 his designee.

4 Do you recall that?

5 A Yes.

6 Q Did Mr. Greenway -- at the time, I
7 believe, was the interim administrator. Did he
8 ever specifically tell you or write to you and
9 say, "You are my designee for issuing a
10 stop-work order, so you have permission to issue
11 a stop-work order"?

12 A Yes. I had the understanding that I
13 had the ability to do that.

14 Q Were -- was your e-mail of April 7th
15 and Mr. Greenway's e-mail of April 10th
16 delivered by U.S. Mail? Did you e-mail a copy
17 of the e-mail?

18 A I did not.

19 Q Did you hand deliver a copy of the
20 e-mail to Adams or Mr. Hodges?

21 A I did not.

22 MR. WILLIAMS: Nothing further,
23 Your Honor.

24 MR. BERGTHOLD: Nothing further,
25 Your Honor.



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1 THE COURT: Okay. You can step
2 down.

3 MR. BERGTHOLD: Your Honor, the
4 County has no further witnesses at this
5 time.

6 THE COURT: Okay.

7 MR. WILLIAMS: Your Honor, may I
8 ask for a quick recess?

9 THE COURT: Certainly.

10 MR. WILLIAMS: Thank you.

11 THE COURT: Five minutes.

12 (Whereupon, a break was taken
13 from 10:59 a.m. to 11:10 a.m.)

14 MR. WILLIAMS: Your Honor, the
15 defense would like to call Mr. Eric
16 Greenway.

17 THE COURT: All right.

18 ERIC GREENWAY,
19 having been produced and first duly sworn as a
20 witness, testified as follows:

21 EXAMINATION

22 BY MR. WILLIAMS:

23 Q Good morning, Mr. Greenway. How are
24 you?

25 A Good. How are you?



1 Q Good. We've heard some titles that
2 you've held recently and I just want to go
3 through your most recent employment history with
4 Beaufort County.

5 A Okay.

6 Q Currently, you're the county
7 administrator; is that correct?

8 A Yes.

9 Q And what position did you hold before
10 that?

11 A Before that, I was interim county
12 administrator. Before that, I was acting county
13 administrator, and before that, I was the
14 Beaufort County Planning and Zoning director.
15 Prior to that, I was Beaufort County Community
16 Development Director.

17 Q Could you give the Court a general time
18 frame or me a general time frame of each of
19 those positions?

20 A At the end of October 2020, I became
21 the acting county administrator to give the
22 County Council an opportunity to look for an
23 interim. Stayed in that role probably about
24 four or five weeks. And then the County Council
25 asked me to assume the role of interim county



1 administrator. I stayed in that role until
2 about three weeks ago, four weeks ago when the
3 County Council unanimously named the county
4 administrator for the County.

5 Q And you stated that before you were
6 acting administrator, which was in October of
7 2020, you were the Planning and Zoning director?

8 A That's correct. But I still carried
9 the responsibilities of both positions during
10 that time because I had a contract. When I
11 became interim, that basically said if something
12 were to happen where I did not become county
13 administrator, then I would be back immediately
14 into my role as the Planning and Zoning
15 director.

16 Q And did you also carry the title and
17 responsibilities of the director of the
18 Community Development Department during that
19 time?

20 A Well, the Community Development
21 Department, under the previous county
22 administrator, was changed to the Planning and
23 Zoning Department, so yes. The Planning and
24 Zoning Department is responsible for enforcing
25 the Community Development Code.



1 Q Okay. So as it exists right now in the
2 department structure, there's no Community
3 Development Department, necessarily, it's
4 consumed within --

5 A That's correct.

6 MR. WILLIAMS: Do you have an
7 extra copy of your exhibit number?

8 MR. BERGTHOLD: I have an extra
9 one on me, sure. Yeah.

10 MR. WILLIAMS: Thank you.

11 BY MR. WILLIAMS:

12 Q Mr. Greenway, would you turn to
13 Plaintiff's Exhibit 5, and on the third page, I
14 believe, is the first e-mail in the string.
15 This is the e-mail everyone's been discussing
16 sent April 10th --

17 A Yep.

18 Q -- to Mr. Hodges and you've copied a
19 number of people on there.

20 A Um-hmm.

21 Q I know who a few of those individuals
22 are.

23 Who is Charles Atkinson?

24 A He's the Beaufort County building
25 official and assistant county administrator for



1 Community Services that's overseeing
2 development.

3 Q And Robert Merchant?

4 A Robert Merchant is the interim county
5 Planning and Zoning director.

6 Q And so we've, at length, discussed, you
7 know, basic content.

8 A Um-hmm.

9 Q But you were returning from Charleston
10 on Saturday, April 10th, correct, when you saw
11 the work being done to the signs?

12 A I did.

13 Q And why did you -- did you stop and get
14 out? Why did you characterize the work being
15 done as a complete rebuild?

16 A Because I saw cranes parked on the side
17 of 21, in the right of way of 21, lifting poles
18 into position in front of the McDonald's sign,
19 and I knew that was not appropriate underneath
20 the Community Development Code. So I stopped in
21 a business lot on the left side of the road
22 heading in toward Beaufort. I walked across the
23 road, found the superintendant, asked him to
24 come over and show me his paperwork that he had
25 authorizing that work by the County and a copy



1 of his business license to do work in Beaufort
2 County. And he couldn't produce neither. All
3 he could produce was a letter from SCDOT.

4 I informed him that's not a local
5 permit. I would like for to you to get
6 Mr. Hodges on the phone so we could talk through
7 this situation. He attempted to call
8 Mr. Hodges, could not reach Mr. Hodges. He
9 attempted to call someone, I believe, by the
10 name of Romera. I've never talked to this
11 gentleman, don't know what his role is for Adams
12 or anything like that. Neither one of them
13 would talk to me on while I was on site.

14 Q Do you remember approximately what time
15 of day it was when you were on site?

16 A I would have to guess it was early
17 evening, 6:00, 7:00, something like that. I
18 don't know exact time, but, you know, usually
19 when I'm on my way back from Charleston on a
20 Saturday afternoon, I'm coming back at that time
21 --

22 Q Okay.

23 A -- for reasons that I will not state.

24 Q I will not ask you about those reasons.

25 A Thank you.



1 Q We introduced an exhibit earlier, it
2 was a letter to Ms. Antonacci, and behind it --
3 I believe it was Exhibit 2, Defendant's Exhibit
4 2.

5 A Okay. I'm somewhat familiar with the
6 letter.

7 Q Okay. The letter -- the DOT's letter
8 is attached to that.

9 A Um-hmm.

10 Q Do you remember if those were copies of
11 the letters that the on-site contractor showed
12 you when you asked for the approvals authorizing
13 the work?

14 A I didn't read either letter on site,
15 but they look similar. Because the DOT letter
16 is irrelevant, they don't comply with local
17 ordinances.

18 Q And we heard some testimony earlier
19 that prior to the work in question,
20 Ms. Antonacci had forwarded you e-mail from
21 Mr. Hodges and you had either corresponded in
22 the e-mail or talked with her --

23 A Uh-huh.

24 Q -- about those approvals; is that
25 correct?



1 A We did discuss that. And once I saw
2 the e-mail, I gave her instruction as to what
3 the County would need to see in order for her to
4 issue the approvals. That's referenced in the
5 section that you keep bringing up that says we
6 have 30 days to give an approval to them for the
7 work to be performed through the Code
8 Enforcement Division.

9 I was making her aware of what
10 documents that we would need to see in order to
11 approve that. I believe it's Section C of that
12 same paragraph that basically says that if the
13 sign is to be replaced, that the director has to
14 make that determination, and since it's in the
15 Community Development Code, that is talking
16 about the director of the Planning and Zoning
17 Department, not the director of code
18 enforcement.

19 So that would've been me, and I
20 would've needed to see the work to make sure it
21 complies with -- that section was complied --
22 was being complied with. So that's why I asked
23 Ms. Antonacci to get in touch with Bo Hodges and
24 say, "Hey, let's see what you submitted to DOT
25 other than just a letter. We need some drawings



1 so that we can comply with wind load
2 requirements and all the other things that signs
3 are required to comply with."

4 MR. WILLIAMS: Your Honor,
5 permission to approach the witness?

6 THE COURT: Yes.

7 BY MR. WILLIAMS:

8 Q Mr. Greenway, I would like to show you
9 what's marked as Defendant's Exhibit 4. It's a
10 portion of the CDC.

11 (Whereupon, Defendant's Exhibit
12 Number 4 was marked for
13 identification.)

14 BY MR. WILLIAMS:

15 Q Could you describe what section of the
16 CDC this is?

17 A It looks like it's a portion of the
18 definition section, Section 10.1.40.

19 Q And on that page, seven or eight
20 terms -- or words down is the word "director"?

21 A Yes.

22 Q Could you read the definition of
23 director?

24 A It says, "The community development
25 director or his or her duly-appointed designee."



1 Q So in 5.6.50(E)(4)(C), which you were
2 referencing, requires permission of the
3 director.

4 Doesn't the CDC say the director is the
5 director of the Community Development
6 Department?

7 A The definition of director in this
8 particular case is the Community Development
9 director, yeah.

10 Q And so did you testify that you advised
11 Ms. Antonacci to request from Mr. Hodges, more
12 specific information about what was sent to DOT?

13 A I told -- I asked Ms. Antonacci to make
14 sure she worked with members of the Planning and
15 Zoning Department to get the necessary documents
16 from Mr. Hodges before any work began to make
17 sure he complied with the requirements of the
18 CDC, yes.

19 And I do believe that Ms. Hillary
20 Austin, the zoning administrator, reached out to
21 Mr. Hodges and asked for information from him.
22 And I cannot recall if he responded to that or
23 not. That was, like, on Thursday or Friday of
24 that week, maybe, and the work started on
25 Saturday.



1 Q Yes, sir.

2 MR. WILLIAMS: Your Honor, do I
3 have to permission?

4 THE COURT: (Nonverbal response.)

5 MR. WILLIAMS I'll show you what's
6 marked as Defendant's Exhibit 5.

7 THE COURT: Any objection?

8 MR. BERGTHOLD: Your Honor, if I
9 can review it real quick.

10 Your Honor, no objection.

11 THE COURT: All right. Do you
12 want it submitted into evidence?

13 MR. WILLIAMS: Yes, Your Honor.

14 THE COURT: Okay. It's admitted.
15 (Whereupon, Defendant's Exhibit
16 Number 5 was marked for
17 identification.)

18 MR. WILLIAMS: Thank you.

19 BY MR. WILLIAMS:

20 Q Mr. Greenway, this appears to be an
21 e-mail dated April 7th, 2021.

22 A Uh-huh.

23 Q At the top, I guess, is the second
24 e-mail in the string. It's from Hillary Austin
25 to Bo Hodges, and you were copied on the e-mail;



1 is that correct?

2 A Yes. It's what the e-mail says.

3 Q Yes, sir. In the initial e-mail from
4 Mr. Hodges to Ms. Austin, he states, "Audra
5 mentioned that you were the person I needed to
6 send this notification to." He says, "In the
7 package, you will see our approvals from SCDOT
8 for wind damage repairs to two of our assets on
9 Highway 21. SCDOT has conducted the 50-percent
10 rule and found that those sites meet the
11 requirements of this rule and have granted
12 permission for the sites to be repaired;" is
13 that correct?

14 A That's what the e-mail says. I don't
15 know if -- I don't know if the information is
16 correct.

17 Q Were Adams's applications or requests
18 to SCDOT attached to that e-mail, do you
19 remember?

20 A I don't know.

21 Q Did you ever see the applications or
22 requests to DOT for the board?

23 A I do not recall. It was a long time
24 ago. I've dealt with a lot of issues between
25 then and now.



1 Q Yes, sir. I understand.

2 A I do recall seeing a letter with SCDOT
3 letterhead. What back-up materials were
4 attached to that, I do not recall.

5 Q Mr. Greenway, I'd like to show you
6 what's been marked as Exhibits 6 and 7.

7 MR. WILLIAMS: Your Honor, can I
8 provide him copies?

9 THE COURT: If you'll let him look
10 at them first.

11 Do you want these admitted?

12 MR. WILLIAMS: I would so move.

13 MR. BERGTHOLD: I object, Your
14 Honor. I think they --

15 THE COURT: Well, let him lay his
16 foundation.

17 MR. BERGTHOLD: Okay.

18 THE COURT: And then we'll talk
19 about your objection.

20 Go ahead, sir.

21 MR. WILLIAMS: Your Honor, would
22 you like to review the copies?

23 THE COURT: Sure.

24 MR. WILLIAMS: Six and seven.

25 BY MR. WILLIAMS:



1 Q Mr. Greenway, you testified earlier
2 that you cannot recall if you received copies of
3 Adams's application to DOT.

4 Do those documents refresh your memory
5 at all?

6 A They do not.

7 Q So you don't remember if you've
8 received or reviewed those documents?

9 A I would not recall reviewing these
10 documents. And it would be irrelevant to the
11 process at hand because I would be concerned
12 about local regulations, not what DOT is doing.

13 Q Thank you, sir.

14 Turning back to plaintiff's exhibit --

15 THE COURT: Let's go -- as far as
16 the admission of these documents,
17 what's your objection?

18 MR. BERGTHOLD: No foundation. He
19 just said he doesn't know.

20 MR. WILLIAMS: I can introduce it
21 through Mr. Hodges. He can lay the
22 foundation.

23 THE COURT: I'm going to lay them
24 right here.

25 MR. WILLIAMS: I should take those



1 back. Thank you.

2 BY MR. WILLIAMS:

3 Q I'm sorry, Mr. Greenway. Plaintiff's
4 Exhibit Number 5.

5 A Okay.

6 Q On page 2 at the bottom, there, it
7 looks like you forwarded your original e-mail to
8 an individual named Ben Armitage; is that
9 correct?

10 A Yes, I did.

11 Q And is Ben Armitage an Adams Outdoor
12 employee?

13 A I believe so, yes. I've had -- I've
14 had a few meetings with Ben Armitage as the
15 supervisor of Bo Hodges. So I'm assuming that
16 he is some officer with Adams. Now, do I recall
17 his exact title? I do not.

18 Q Thank you, sir. Your second sentence
19 of the e-mail states, "This type of thing is
20 very atypical of Adams Outdoor. I was honestly
21 shocked at the blatant disregard for our
22 approval process and my request for the work to
23 stop."

24 So is that true, in the past, this
25 wasn't a repeat violation for the signs;



1 correct? It was very atypical behavior?

2 A It was not a repeat violation of the
3 sign, and whenever I wrote that e-mail, I was
4 speaking about my knowledge and my experience in
5 dealing with Adams Outdoor in other
6 jurisdictions whereby they have a reputation of
7 trying to do the right thing. But in this
8 particular case, they, for some reason, felt the
9 need -- and I assume it because their local
10 employees felt the need to depart from doing the
11 right thing, so I was attempting to make
12 Mr. Armitage aware of that in case he wanted to
13 intervene.

14 And apparently, he did not wish to
15 intervene because he proceeded to forward that
16 e-mail, apparently, to an attorney in Michigan.

17 Q In the e-mail below your original
18 e-mail to Mr. Hodges, the second sentence
19 states, "To my knowledge, Beaufort County has
20 issued no approvals for Adams to conduct this
21 work and will not issue approval for the
22 complete rebuild of these signs."

23 A That's correct.

24 Q How did you know that Adams never
25 submitted an application, provided you with



1 information, et cetera?

2 A I know what a complete rebuild of a
3 sign is when I ride by it. I see new poles
4 standing up in front of the old sign. I don't
5 need an application to determine that.

6 Q If you could turn to Plaintiff's
7 Exhibit 1, page 1.

8 MR. BERGTHOLD: What's the page
9 number?

10 MR. WILLIAMS: Page 1.

11 MR. BERGTHOLD: Page 1 of our
12 exhibit?

13 MR. WILLIAMS: Yes, sir.

14 BY MR. WILLIAMS:

15 Q In green there is circled the location
16 of one of the signs at issue; is that correct?

17 A Yes.

18 Q There was some question earlier -- we
19 went over earlier, who the owner of the property
20 is.

21 A Okay.

22 Q Okay. My apologies. Exhibit 2,
23 page 1.

24 A Exhibit 2, page 1.

25 Q My apologies.



1 A All right.

2 Q In green is the sign that Adams
3 operates?

4 A Um-hmm.

5 Q Do you know who owns this parcel of
6 land this sign sits on?

7 A It appears, based on our GIS, but I do
8 not know that property to be located because
9 making those determination off of the GIS maps
10 is not always accurate. But it does appears
11 that that sign sits within the right of way of
12 Spanish Moss Trail, and the County would own the
13 right of way to the Spanish Moss Trail.

14 Q Do you remember how the County came to
15 own the land on Spanish Moss Trail?

16 A It was either given -- I do not.

17 Q But to officially state who owns that
18 parcel of land where the billboard sits, you'd
19 have to look at the property conveyances in
20 question and plats from the land; is that
21 correct?

22 A I'm just looking at the map here, and
23 based on what I saw on the GIS maps the night
24 that I sent the e-mail around 9:18.

25 Q Within the County, do you know who



1 decided to issue the uniform ordinances
2 summonses to Adams Outdoor and Bo Hodges?

3 A There was a group of us.

4 Q Can you describe the members of that
5 group?

6 A It was myself, Ms. Antonacci, Mr. Chuck
7 Atkinson, and our two county attorneys, Tom
8 Kevinney and Kurt Taylor, if I recall. Because
9 we got a call the Monday morning, had a Zoom or
10 Web-X call the Monday morning I came in and it
11 was determined, because I felt that we had a
12 violation.

13 Based on the e-mail that was sent to me
14 from the attorney in Michigan, I wanted to
15 verify my thinking so I set up a Web-X to talk
16 to these folks as a team, and we decided the
17 process that we would follow in order to try to
18 rectify the situation and hold Adams accountable
19 for the improper work that they had done,
20 completely rebuilding two signs within our
21 County.

22 Q Was Mr. Hodges's direct involvement or
23 involvement or knowledge of this specific
24 actions discussed at all during that meeting?

25 A What -- what do you mean by that? I



1 don't understand that question.

2 Q In other words, could you describe your
3 knowledge of how Mr. Hodges was directly
4 involved in any alleged violation that is the
5 subject of this ticket?

6 A The communications came from
7 Mr. Hodges. The communications went back to
8 Mr. Hodges. He was the only person we were
9 dealing with. He never instructed us to talk to
10 anyone else with Adams about the sign permits,
11 so I would assume -- and it would be a fair
12 assumption to me -- that we were to be
13 communicating with Mr. Hodges since he was the
14 one communicating with us.

15 You can't send an e-mail saying, "Hey,
16 we're getting ready to do work. But I'm not the
17 one responsible for taking care of this
18 project," after it goes awry on you.

19 Q So the County was operating under the
20 assumption that Mr. Hodges was responsible?

21 A We were operating under a clear
22 direction that Mr. Hodges was the person
23 responsible for doing this, authorizing this
24 work since he had communicated to us that his
25 company and he would be carrying out the work or



1 would have the work carried out on behalf of
2 Adams. He sent the e-mails.

3 Q What about -- I believe it was a
4 Mr. Romera. I think you said the subcontractor
5 --

6 A I didn't hear Romera's name until I got
7 on the site that Saturday night.

8 Q Did you look into or ask Adams about
9 Mr. Romera's involvement?

10 A I did not. I still, to this day, do
11 not know who he is or what his role is with
12 Adams.

13 MR. WILLIAMS: Your Honor, I
14 believe that's all the questions I have
15 for Mr. Greenway.

16 THE COURT: All right, sir.

17 MR. BERGTHOLD: Your Honor, we
18 have no questions for this witness.

19 THE COURT: All right, sir. You
20 can step down.

21 THE WITNESS: Thank you, Your
22 Honor.

23 MR. WILLIAMS: Thank you,
24 Mr. Greenway.

25 Your Honor, one final witness, Mr.



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1 Bo Hodges.

2 REX ALLEN HODGES, JR.,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q Mr. Hodges, could you state your full
8 name for the record?

9 A Rex Allen Hodges, Jr. Bo's a nickname.

10 Q What is your position at Adams?

11 A I'm the real estate manager.

12 Q What are your responsibilities as a
13 real estate manager?

14 A I manage our real estate portfolio and
15 handle government affairs, finding locations.

16 Q When you say you handle government
17 affairs, what does that entail?

18 A Obviously, billboards are a sensitive
19 subject across the country, and especially in
20 Beaufort County and other municipalities we
21 operate in. So real estate is typically the
22 department that will be somewhat of the face of
23 whatever billboard company it is you're dealing
24 with.

25 So there's a lot of efforts to, you



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1 know, open sign codes or, you know, expand your
2 portfolio. And that typically falls on the real
3 estate department.

4 Q You're not necessarily in charge of --
5 when you're communicating with the government,
6 you're not necessarily in charge of developing
7 the property in question or building a billboard
8 or repairing a billboard?

9 A No. At Adams Outdoor, we have multiple
10 departments at our office here. We have a real
11 estate department. We have a sales department.
12 We have an ops department.

13 Q What is ops department?

14 A Operations. They are the crews that go
15 out and put the new advertisements up and down,
16 any, you know, vegetation, repair work, all of
17 those, the construction side of the business.

18 Q How is it determined -- how does Adams
19 become aware when a sign should be repaired?
20 How is it determined it needs to be repaired?

21 A Typically -- so when these
22 advertisements go up, these contracts can last,
23 you know, three months, six months, a year at a
24 time. So whenever the ops guys go out and
25 change these faces, it's typically -- it's part



1 of their duty or responsibility to keep an eye
2 on things. And we have tried to have them
3 weekly, but we don't have them weekly, you know,
4 meetings and they bring information to us and
5 say, "Hey."

6 They've got to climb these things so a
7 lot of times they're saying, "Hey, man.
8 Something happened," and it's either leaning or
9 it's something -- you know, a tree fell on it,
10 happens, a pretty common occurrence.

11 Q They come to you meaning the department
12 heads?

13 A The department heads. Yeah. We have
14 weekly department head meetings and they bring
15 it to everybody.

16 Q And in this case, the signs at issue,
17 one of ops department guys came in and said,
18 "Hey, these two signs, they need to be
19 repaired"?

20 A Yeah.

21 MR. BERGTHOLD: Objection.

22 Hearsay.

23 THE COURT: Sustained.

24 BY MR. WILLIAMS:

25 Q You were in the department head meeting



1 when it was decided that these signs should --

2 A It was brought to our attention that
3 there were -- there had been some damage
4 suffered from the sign. We all know these signs
5 have been around for quite a while and they're
6 not -- they're not in the best condition.

7 MR. WILLIAMS: Your Honor,
8 permission to approach the witness?

9 THE COURT: Yes, sir.

10 BY MR. WILLIAMS:

11 Q Mr. Hodges, I'd like to show you what's
12 been marked as Defendant's Exhibits 6 and 7.

13 Do you recognize those documents?

14 A Yes.

15 Q Could you describe what those are,
16 please?

17 A These are the applications that are
18 created by our ops manager and submitted to
19 SCDOT. And part of these applications, which
20 you see on these first few pages, SCDOT requires
21 you to fill out an itemized sheet including
22 quotes, which are all included in here, quotes
23 and pictures.

24 And it's an itemized list showing the
25 cost, and the reason that's important is there's



1 a -- what we call the 50 percent rule, and as
2 long as the damage that is needed to be repaired
3 to the sign is less than 50 percent of the total
4 value of the sign, then it is not considered,
5 you know, you too far gone, for lack of better
6 term.

7 Q Yes, sir. So if it's less than 50
8 percent repaired under the state regulation, DOT
9 has the authority to give you permission to
10 repair it?

11 A Correct.

12 Q And in the process of applying for
13 these permissions from DOT, do they ever ask you
14 for any local approvals, local permissions,
15 local applications for the same work?

16 A No. There's a lot of processes we go
17 through with the State that require local
18 permission. And, again, this is a very common
19 -- wind damage is a very common thing in the
20 outdoor industry. So when you go through the
21 process with the State, on their website and
22 all, it requires you to submit information.

23 For instance, we're lowering some
24 billboards in Jasper County. And the first
25 thing I do is go to the State and have to apply



1 to lower these existing billboards. And one of
2 the pieces of information that they ask for from
3 us is local permission, whether that's a
4 building permit or a letter, it comes in a
5 different forms. But they won't even talk to me
6 until I present that. Wind damage does not
7 require that.

8 Q So if the State or DOT determines,
9 refers to the locality and their ordinance or
10 their regulations, DOT will ask for local
11 permission or approval?

12 A Yes.

13 MR. BERGTHOLD: Objection. I
14 think foundation of what the DOT would
15 do is speculation.

16 THE COURT: Sustained.

17 BY MR. WILLIAMS:

18 Q Based on your experience, Mr. Hodges,
19 when you are applying for different types of
20 permission and permits from DOT, they'll ask for
21 local permission if they determine that it is
22 necessary?

23 A Yes.

24 MR. BERGTHOLD: Objection. Again,
25 it's the same -- he can talk about



1 what's happened -- what he's done in
2 the past, but I think --

3 THE COURT: The question was based
4 on his experience.

5 BY MR. WILLIAMS:

6 Q And so you said that your operations
7 department filled out that application; is that
8 correct?

9 A Yes.

10 Q Do they compile all the -- you know,
11 the quotes and everything included in there?

12 A Yes. Yes.

13 Q They took the photos of the signs
14 included?

15 A I'm assuming. Again, I have no -- this
16 is put on my desk. We keep it down -- again, we
17 don't want a lot of people dealing the major --
18 SCDOT, all the municipalities, so we try to keep
19 that as -- down to a minimum. It's given to me
20 and I submit it.

21 Q So then your job as -- you said
22 government relation, I believe, your job is to
23 sign and submit the application?

24 A Correct.

25 Q And so then at some point in time, DOT



1 came back, sent a letter and said that your
2 applications were approved?

3 A Yes.

4 Q And, in fact, they had determined -- in
5 fact, with a group of --

6 MR. BERGTHOLD: Your Honor, in the
7 interest of time, I don't think there's
8 a dispute about -- I think we've
9 already established that there were
10 some state approvals given.

11 BY MR. WILLIAMS:

12 Q In the approvals, the letter says --
13 DOT writes, "After careful consideration, we've
14 determined that the signs are less than 50
15 percent damaged;" is that correct?

16 A I believe so, yes.

17 Q And so then after you got the approvals
18 from DOT, You sent an e-mail to Ms. Antonacci
19 informing her of the DOT approvals; is that
20 correct?

21 A Yes.

22 Q And why was that?

23 A Basically, out of a courtesy. I've
24 only been with Adams Outdoor for just -- I just
25 hit the three-year mark. So I come from a long



1 line of billboard experience down in South
2 Florida. Family is a billboard family. We had
3 our own business and it was -- one of the
4 reasons I was brought up here was to try to
5 better bridge the gap between the billboard
6 industry, which was really mainly Adams in this
7 area, and the local municipalities.

8 Not just Beaufort County, but I go from
9 Savannah so Saint George. There was definitely
10 a black cloud over the billboard industry
11 because of the conservation efforts in this area
12 and I made it -- that was -- again, I made it
13 one of my prime things, was to make everybody
14 get along.

15 Q Okay. So you reached out to the County
16 and said, "Hey, we got the DOT approvals. We're
17 going to be doing this work"?

18 THE COURT: Mr. Williams, let me
19 take you back for a minute.

20 Do you want these admitted?

21 MR. WILLIAMS: I'm sorry, Your
22 Honor.

23 Yes, I'll move to admit the
24 applications as exhibits.

25 MR. BERGTHOLD: Your Honor, now



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1 that's he's laid a foundation, I don't
2 think I have a problem. May I voir
3 dire the witness about this --

4 THE COURT: Sure.

5 MR. BERGTHOLD: -- document first?

6 THE COURT: Sure. Sure.

7 EXAMINATION

8 BY MR. BERGTHOLD:

9 Q Mr. Adams, if you look at the top
10 document, it says, damage repairs, page 1. At
11 the top, it says 10-18-2018 at 1:17:08 p.m.

12 A Um-hmm.

13 Q Is that when this document was printed?

14 A No. My understanding is -- and, again,
15 I didn't fill this out, but this is a
16 template --

17 Q Okay.

18 A -- Adams Outdoor uses, and we fill
19 these out. This is a very common thing that we
20 do that our ops department handles. And my
21 understanding is he uses a template.

22 Q Okay.

23 A So he probably is not updating this
24 template, obviously.

25 Q Can you maybe help me understand why



1 even though page 1 has that date on it, if you
2 turn to page 2, it has a completely different
3 date, a year earlier on October 5th, 2017?

4 A Yeah. Again, I don't fill them out.
5 But I know that there are templates for these
6 applications. You know, instead of going on the
7 DOT's website and printing this form every time
8 --

9 Q Um-hmm.

10 A -- I do the same thing with other forms
11 that I have to use. I usually print it. In
12 fact, my letters tend to do that. And I think
13 that was bought up earlier, that there's a date
14 in the footer of the bottom of one of my letters
15 and that's just simply because I use a template
16 and I didn't update that.

17 Q Okay. And I understand if a form is a
18 template. But I'm trying to figure out, is it a
19 separate template for each page of a form?

20 A Again --

21 Q Do you know what I mean? It's like --

22 A -- you have to find -- you have to ask
23 them. But I don't know how the -- exactly this
24 is saved on the operation manager's computer --

25 Q Okay.



1 A -- but it's -- I do the same thing. So
2 I know that we have -- he probably has a file of
3 templates.

4 Q Okay. Well, let me show you what's
5 been marked as Adams Exhibit 2. And if you
6 could turn to the fourth page of this, because
7 it relates to this document here. In the lower
8 right-hand corner, it looks like it's submitted
9 by you. It's got your name on it. It's got an
10 electric signature and it's got a 2012 date.

11 What is that about, as being prepared
12 almost a decade ago?

13 A So in the South Carolina DOT database,
14 which is archaic in its own right, when you --
15 when I signed on as the real estate manager with
16 Adams Outdoor for the -- for what we'll call the
17 Beaufort market, I have to update Adams's
18 information with SCDOT for this area because
19 obviously I'm the person that deals with all the
20 permitting and that kind of thing.

21 Q Okay.

22 A So parts of the -- all this is a copy
23 of the Outdoor advertising permit. It's not the
24 permit to work or anything like that. It's just
25 proof that we have State permits on that



1 billboard. It auto populates my name into the
2 preparer and company official name. Any time I
3 print a document from that website, it's going
4 to auto populate that. But these dates could be
5 from who knows what. I mean, I have no idea.

6 Q Okay.

7 A That might've been the last time --
8 maybe they had an update to this permit and it's
9 showing a date. I don't know. But more than
10 likely -- obviously, I wasn't here in 2012.

11 Q Okay. And about this document that
12 we're on now that your counsel's moved for
13 admission on, it looks like your ops department
14 prepared some quotes from various contractors.

15 A Uh-huh.

16 Q And in that, they talk about portions
17 that they believe need to be replaced on the
18 building because, as you said, they are
19 quote/unquote, not in the best condition because
20 they're old; correct?

21 A That -- I'm not going to speak to
22 whether -- me saying that our billboards are not
23 in good condition.

24 What was referenced as having suffered
25 wind damage in these applications.



1 Q Okay. And where in this document does
2 the sub -- any of the subcontractors say that
3 there was wind damage?

4 A I don't -- it's probably not in here
5 and it's not the subcontractor's duty nor job.
6 It's the department's job to determine whether
7 or not we meet that rule, and they send an
8 inspector to the site to inspect it prior to and
9 after.

10 Q Okay. But what they do here, when you
11 initially submit the application -- because
12 that's what triggers the inspection; correct?

13 A Yes.

14 Q The submission of the application?

15 A Yes.

16 Q Basically, at that point, Adams or
17 Adams's subcontractor is stating is what they
18 think needs to be replaced; correct?

19 A Again, I don't submit them and -- with
20 the -- knowledge -- I mean, they're put on my
21 desk: "Hey, here's a wind damage application.
22 We need you to send these off and keep going."

23 Q Well, they're moving -- you're moving
24 the admission of this document and you're
25 telling me that you are the person who does all



1 the permitting and that you submit these to the
2 SCDOT, but you're telling me you're really not
3 familiar with the contents of the document?

4 A I didn't build them; correct.

5 Q Okay. But you -- I'm hoping that
6 before you submit them to the SCDOT, you
7 reviewed them.

8 A Like I said, I skim through them. But,
9 I mean, they're -- I would sit with my office
10 manager if there was the question and say, "Hey,
11 what's this?" But, again, this is such a common
12 occurrence, to send these off to SCDOT. They're
13 for wind damage. They go in and say, "Okay.
14 When we look at the sign, obviously, it suffered
15 some damage and here's what is being reported
16 that needs to be fixed."

17 Q So when they gave that to you and said,
18 "Hey, we need these repaired for wind damage,"
19 What storm event was it that triggered the wind
20 damage causing you to submit this application to
21 DOT?

22 A Oh, man. Do you live here? Do you
23 live in the area?

24 Q No. But I live in the south.

25 A Well, we have quite -- quite a bit of



1 wind damage or wind scenarios that are enough,
2 especially on wooden structures that have been
3 deteriorating for --

4 Q Decades?

5 A Some of them are quite nimble and
6 easily --

7 Q Okay.

8 A -- damaged.

9 Q Can you even give me a guess as to
10 which wind event you were thinking of when you
11 submitted this to DOT for approval, supposedly,
12 for repairs to a wind -- based on a wind event?

13 A We can go back and look at every
14 thunderstorm in the spring that we have from
15 this area. That would be one. I also know that
16 there were government buildings shut down. I'm
17 pretty sure that was around before this was all
18 applied for, because we had a huge storm front
19 that came through. That happens quite often
20 here.

21 Q Right. So what --

22 A So our area's windy. When a
23 thunderstorm in the spring time pops up, it
24 could be quite gnarly and catch you off guard.

25 Q So I guess, would it be fair to say



1 that as to your testimony about this document,
2 you didn't have a particular event in mind when
3 you submitted to this to DOT that caused --

4 A That's not --

5 Q -- wind damage?

6 A -- how it works.

7 Q Okay.

8 A We go -- when our -- if we -- if I
9 drive by a billboard and see -- it's like "Whoa,
10 that thing is leaning, about to fall over.
11 Report it."

12 Q Uh-huh.

13 A And if -- yes, if at that moment I was
14 asked, "Hey, what do you think did this?" I'd
15 say, "Well, nobody's reported this yet so it's
16 probably happened within the last few weeks."

17 Q Okay.

18 A "Let's go back and look at the weather
19 reports for the last few weeks."

20 Q Got you. So with this one, what --
21 what would it have been?

22 A This was back in April?

23 MR. WILLIAMS: Objection. Asked
24 and answered.

25 BY MR. BERGTHOLD:



1 Q Would it be fair to say you don't know
2 exactly what particular event --

3 A What specific storm wind event?

4 Q Yes.

5 A No, I probably couldn't tell you that.
6 But I know there was quite a bit of them in the
7 spring in the south.

8 MR. BERGTHOLD: Your Honor, I
9 renew my objection on -- not that it
10 was submitted. I will agree it was
11 submitted to the State. But I think it
12 should come in for the limited purpose
13 of that fact, not necessarily for the
14 truth of the matters asserted in the
15 subcontractor bids that are attached to
16 it because Mr. Hodges has testified he
17 really doesn't know the basis for those
18 documents.

19 THE COURT: I'll admit it. And
20 I've listened to the testimony, so...

21 MR. BERGTHOLD: Okay.

22 MR. WILLIAMS: May I proceed, Your
23 Honor?

24 THE COURT: Yes.

25 EXAMINATION



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1 BY MR. WILLIAMS:

2 Q Mr. Hodges, does the DOT require, when
3 you're applying for wind damage repair
4 permission or wind damage work permission, does
5 the DOT require that it be caused by one -- one
6 wind event?

7 A No.

8 Q Do they require that you list any
9 storms or any dates of wind storms?

10 A No.

11 MR. WILLIAMS: Permission to
12 approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MR. WILLIAMS:

15 Q This has been marked, I believe, as
16 Plaintiff's Exhibit Number 2, page 18, and it's
17 a photo, I believe plaintiff's counsel stated
18 it's a photo of some of the work that was being
19 done.

20 Could you describe what's going on in
21 that photo?

22 THE COURT: Let me stop you. Tell
23 me again what we're looking at.

24 MR. WILLIAMS: Yes, ma'am.

25 Plaintiff's Exhibit 2, page 18.



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1 THE COURT: All right. Go ahead,
2 sir.

3 THE WITNESS: I could not give
4 you, really, any -- too much detail.
5 I'd have to ask the subcontractor,
6 whoever was -- you know, I wasn't there
7 so I don't know exactly what they are
8 doing in that photograph.

9 BY MR. WILLIAMS:

10 Q Was Adams rebuilding those two signs?

11 A We -- we repaired legally existing
12 billboards that had suffered wind damage. If it
13 was -- I've been doing this a long time, if it
14 was -- if it was a rebuild, the State would
15 never have allowed the approval for the repair
16 work to be done and we would not have used --
17 one, we would have not used all of the existing
18 components and parts of the billboard that were
19 not damaged, which we have to use to make these
20 rules work with the State.

21 Q If you rebuild a sign, do you use the
22 wood frames and wood posts?

23 A No.

24 Q Do you remember or do you know when the
25 repair work was completed?



1 A I don't know specifically. I want to
2 say -- I believe it was -- I want to say Sunday,
3 I believe, is when they wrapped it up.

4 Q How many days did they take to do the
5 work?

6 A One and a half. It was supposed to
7 begin on Friday, and my understanding is there
8 was a problem with scheduling. They couldn't
9 get parts there. They were staging, but
10 something happened. I don't know, a truck broke
11 or something. But they were there, just
12 couldn't start.

13 Q Were you on site for any of the work?

14 A No.

15 Q Did you communicate with or schedule
16 the subcontractor?

17 A No.

18 Q And I apologize, I don't have copies of
19 plaintiff's exhibits -- I believe it's Exhibit
20 6, the stop-work order.

21 (Whereupon, Defendant's Exhibit
22 Numbers 6 and 7 were marked for
23 identification.)

24 THE WITNESS: Yes.

25 BY MR. WILLIAMS:



1 Q How did you receive that document?

2 A It was either -- some of this stuff
3 came in e-mail.

4 Q What's the date of this stop-work
5 order?

6 A April 12th.

7 Q Did Adams -- do you remember if Adams
8 finished its work on the billboard before April
9 12th?

10 A Without seeing the days -- what was the
11 12th?

12 Like I said, I'm confident the work did
13 not extend past the weekend. So I don't know
14 exactly what those days were.

15 MR. WILLIAMS: Can we agree that
16 the 12th was a Monday, I think it was
17 stated?

18 MR. BERGTHOLD: Yes.

19 BY MR. WILLIAMS:

20 Q April 12th was a Monday.

21 A Okay.

22 Q Did you -- did Adams perform any more
23 work on the signs after it received the
24 stop-work order?

25 A No.



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1 Q Were you ever served by mail? Did you
2 ever receive, by mail or hand delivery, a
3 warning or a notice of violation from the
4 County?

5 THE COURT: You have to speak up,
6 sir.

7 THE WITNESS: No. No, ma'am.
8 Sorry.

9 MR. WILLIAMS: Your Honor, I
10 believe that's all I have for right
11 now.

12 THE COURT: County?

13 EXAMINATION

14 BY MR. BERGTHOLD:

15 Q Mr. Hodges, you said that you are the
16 real estate manager; correct?

17 A Yes.

18 Q Do the operations team and/or the
19 construction folks do work as directed by the
20 real estate manager?

21 A No.

22 Q Okay. So who's in between you and
23 them?

24 A We're equals.

25 Q Okay. Would the operations team go out



1 and start construction on a sign before you've
2 done the necessary paperwork to begin
3 construction on the sign?

4 A Construction on a sign's not really how
5 it works for our office --

6 Q Okay.

7 A -- or our market.

8 Q Well, let me ask you this: You --
9 what's been marked as Exhibit 2, dated April
10 6th, you sent that to Ms. Antonacci; correct?

11 A Um-hmm.

12 Q That was you telling her that some work
13 was going to happen, right?

14 A Correct.

15 Q All right. And then following day,
16 Defendant's Exhibit 1, you received this e-mail
17 from Ms. Antonacci where she said she's talked
18 to the human development director and you need
19 to get approval.

20 So you got that, right?

21 A She said that he would give approval.
22 I was not asking for approval. I didn't need
23 approval.

24 Q Okay. But where she says, "He advised
25 me that prior to any repairs being done, Zoning



1 will need to review the billboards and give
2 approval for any repairs."

3 That's what she said; correct?

4 A That's quite -- that's what she said,
5 yes.

6 Q Okay. And you received that e-mail,
7 right?

8 A I did receive the e-mail.

9 Q Okay. On April 7th?

10 A Yes.

11 Q Okay. And then a couple hours later,
12 at 12:26 p.m. -- oh, one other thing. Let me
13 ask you about this.

14 In this document, it says, "What storm
15 are you referring to that damaged the
16 billboards?"

17 Did you ever answer that question?

18 A I don't know. What was my response?
19 Do you have a response sheet from this?

20 Q No, I don't have one at this point.

21 A I'm sure I did, but I don't know what
22 -- without seeing it -- I send about 50 e-mails
23 -- you know how many of those go out a day?

24 Q So are saying you're sure that you did
25 respond to this e-mail on April 7th or are you



1 not sure?

2 A I'd have to see it to know.

3 Q Okay.

4 A I don't know. I mean, we definitely
5 conversed back and forth, obviously.

6 Q Okay. And then a couple hours later,
7 Defendant's Exhibit 5, Ms. Hillary Austin, who,
8 at that time, is the Zoning and Development
9 administrator, says "Hello, Bo Hodges. Please
10 send me a picture of the sign as it stands now."

11 A Um-hmm.

12 Q Let me ask you this: Did you send the
13 sign?

14 A I sent her these two applications,
15 which included the pictures. And I said,
16 "Pictures are included."

17 Q Right. But that was with your April
18 6th letter; correct?

19 A I don't think so. I think I might've
20 -- I think that was in response to her. Again,
21 show me otherwise. I could be wrong.

22 Q Well, let me --

23 A I sent these in response when they
24 asked for the pictures.

25 Q The second sentence of Defendant's



1 Exhibit 5 says, "I will make a decision after I
2 review;" correct?

3 A It does say that.

4 Q Okay. So at least before -- let me see
5 those back -- before the work began, you were
6 very much aware that Beaufort County was going
7 to require review and approval before you
8 commenced any work? At least from their
9 perspective, you understood that from their
10 communications to you; correct?

11 A I don't know that I was interpreting it
12 that way. I saw -- I see her words, but I was
13 not asking for approval. I didn't need it.

14 Q I understand. I understand. But if
15 you read her words, you understood that she was
16 saying you need to get approval; correct?

17 A That's on -- maybe that was what was
18 happening here.

19 Q I understand. But you understood the
20 words of her e-mail, right?

21 MR. WILLIAMS: Objection. Asked
22 and answered.

23 MR. BERGTHOLD: I don't think he
24 quite answered it.

25 THE COURT: I do think he can be



1 more clear on his answer.

2 BY MR. BERGTHOLD:

3 Q Did you understand the words of Ms.
4 Austin and Ms. Antonacci had e-mailed you on
5 April 7th?

6 A Yes, I understood the words.

7 Q Okay. And then, can you tell me if
8 this is your signature on that green card?

9 A No. It is not my signature.

10 Q Okay.

11 A But it's probably someone in my office
12 who -- I'm out on the road all day, so --

13 Q Okay.

14 A -- you know, we get these things all
15 the time. So that is not my signature.

16 Q Okay. But it does say on this
17 certified mail receipt, it's signed for, and it
18 says, received by and then the printed name is
19 Bo Hodges; correct?

20 A Yes. April 15th.

21 Q Okay. And day of delivery is April
22 15th.

23 So you don't have any dispute that you
24 or somebody acting on your behalf signed for
25 receipt of the stop-work order?



1 A No.

2 MR. WILLIAMS: Objection. No
3 foundation.

4 There's no information on what
5 that receipt is for.

6 BY MR. BERGTHOLD:

7 Q Well, did you receive the stop-work
8 order, eventually, via mail?

9 A Again, I don't -- I don't know. I
10 honestly do not know. It's probably -- we're a
11 team at my office and this was probably -- if it
12 exists, it was stuck in the paperwork that was
13 sent to the attorneys.

14 Q Okay. Let me ask you to turn in your
15 binder to Exhibit 1, and I would direct your
16 attention to the page regarding -- we've got in
17 the -- it's Exhibit 1, page 9. It's this
18 picture.

19 A Okay.

20 Q And in that picture, it looks like the
21 sign is leaning backwards a little bit.

22 It's -- it's at a lean; is that
23 correct?

24 A That's what it looks like.

25 Q Okay. And then the next picture,



1 page 10, shows it to be in a similar condition

2 --

3 A Uh-huh.

4 Q -- kind of tilting backwards?

5 And then page 11 looks like new poles
6 going up and T&B Outdoor -- are they one of your
7 subcontractors?

8 A Yes.

9 Q Okay.

10 A I don't know if those are new poles or
11 the existing poles. I can't tell from a
12 straight photograph.

13 Q Well, didn't you apply to DOT to put in
14 new poles?

15 A I believe -- if I can go back and look
16 at the application, I believe the poles were --
17 they were part of the application, yes.

18 Q So the poles were new; correct?

19 A I don't know if those in this picture
20 are new.

21 Is that what you're asking?

22 Q Yes.

23 A I don't know if those are the new ones
24 or if those are the old ones. I don't know.

25 Q Okay.



1 A I think those are old ones, to be
2 honest with you.

3 Q On both of the signs, though, you asked
4 to repair pole; correct?

5 A I believe they were a part of the parts
6 to be repaired, yes.

7 Q Okay. So there was not actual repair
8 to a pole, it was the repair. As you're
9 characterizing it, would be a new pole put in
10 place where the old pole was?

11 A Right. You can't repair a wooden -- a
12 wooden pole.

13 Q Right. And so if we can turn to page
14 13, one of the reasons that you can't repair a
15 wooden pole is because up in the upper left-hand
16 corner, when the pole sits in the ground over
17 time, it splits; correct?

18 A From rot, yes.

19 Q Yes. And the lower right-hand corner,
20 it shows a similar kind of rotting at the base
21 of the pole; correct?

22 A Yes.

23 Q Okay. And then if we turn to the next
24 page, page 14, that's another picture from rot;
25 correct? A picture of rotting?



1 A Some of them. Yeah, I mean, they're
2 all rotting. That's what makes them so easy to
3 fall over --

4 Q Right.

5 A -- when the wind blows --

6 Q Right.

7 A -- 40 miles an hour.

8 Q Okay. But the rotting that's occurring
9 is because a wooden pole is sitting in soil and
10 soil contains water; correct?

11 A I guess.

12 Q Well, let's talk about your background
13 --

14 A They also get wet from rain, and, you
15 know...

16 Q Right. A natural course.

17 A Of course.

18 Q Okay. But the top of the pole
19 typically doesn't rot from rain, right, as much
20 as the bottom of the pole that sits in the
21 ground, because groundwater contains moisture
22 that, over time, infiltrates the base of the
23 pole?

24 A Sure.

25 Q Correct?



1 A Sure.

2 Q Okay. And if you turn to Tab 2, Adam
3 supplied nine different pictures. And actually,
4 let's go to page 9 of Exhibit 2. And pages 9,
5 10, and 11 show so much rotting in the base of
6 this pole, that lot of it is actually rotted
7 away and it's kind of hollowed out below the
8 rest of the wooden pole; correct?

9 A That's what it looks like.

10 Q Okay. And then if you the turn over
11 two more pages, you see the picture with the
12 bracing.

13 There's some additional 2x4 type
14 supports that have been done across the back of
15 the pole over time to try to keep it
16 structurally sound; correct?

17 A That's what that looks like, yes.

18 Q Okay. And last picture -- I'm sorry.
19 The next two pictures on that sign are more
20 picture of other poles that have rotted at the
21 base where the pole is in the ground?

22 A Yes.

23 Q And then turning over to page 17, it
24 looks to me that the circled picture in the
25 upper right-hand corner in front of the -- the



1 sign that has the McDonald's advertisement.

2 This is on the west side of Trask Parkway. But
3 there are one, two, three, four, five, six new
4 poles that have been erected there because while
5 they were doing the work, the old sign stayed
6 up; correct?

7 A Yes.

8 Q And then in the next page here,
9 page 18, actually shows those gentleman erecting
10 those new poles. And eventually, over the
11 course of the weekend, if you turn to page 19,
12 on those new poles, there were a few -- maybe 3-
13 to 6 feet in front of where the old poles were,
14 they put the sign face and the skirting and the
15 Adams logo on that new -- on those new poles a
16 few feet of where the old sign sat; correct?

17 A Yes.

18 MR. BERGTHOLD: Your Honor, just
19 one moment. I may be very close to
20 finishing.

21 BY MR. BERGTHOLD:

22 Q Moving the sign closer to the road by
23 three, four, five, whatever, any distance, is
24 that moving of the sign to be closer to the road
25 is not a repair of the sign, is it?



1 A I don't agree that we moved it,
2 necessarily. When you say closer to the road,
3 like we were trying to gain something out of
4 moving it closer to the road?

5 Q No, I'm not talking about what you're
6 trying to gain. I'm just talking about, you
7 know, the physics of it, the location of the
8 poles that we looked at on Exhibit 2, page 17,
9 show the poles, you know, a few feet proud
10 because there's men standing in between the
11 preexisting sign.

12 A Right. Because they can't -- they
13 couldn't replace those over top of the existing
14 ones.

15 Q Okay. So when they went to replace
16 this, they had to move the sign forward because
17 there were already holes in the ground with
18 probably rotted wood in it?

19 A Concrete.

20 Q Okay.

21 A There's a footer.

22 Q Okay.

23 A You can't remove that, so you place the
24 new poles and then take all old parts of the
25 existing billboard and --



1 Q You put in a new footer?

2 A No. You take the old parts, like the
3 skirting and all --

4 Q Yeah.

5 A -- of the break --

6 Q Right. Right. Right.

7 A -- the stringers and stuff on the back
8 that aren't --

9 Q Right.

10 A -- that aren't damaged, that didn't get
11 damaged --

12 Q Okay.

13 A -- and you use those same materials.

14 Q Understood. But the structure of the
15 sign is the new poles and you affix those facing
16 to the --

17 A Those are components of the structure
18 of the sign. They are parts of the structure;
19 correct.

20 Q Okay. And then --

21 A They were, obviously, damaged in
22 whatever -- when the event happened.

23 Q When you installed these new signs in
24 the ground, do they go in concrete in the
25 ground, too?



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1 A I don't know. I wasn't in building.

2 Q Okay. But either way, we can agree
3 that there's some space between the old sign and
4 where the new poles are placed, and then
5 eventually, the pictures tell us that the sign
6 was place on the new poles?

7 A Yes.

8 MR. BERGTHOLD: Okay. Your Honor,
9 nothing further from this witness.

10 MR. WILLIAMS: May I, Your Honor?

11 THE COURT: Redirect? Yes, sir.

12 EXAMINATION

13 BY MR. WILLIAMS:

14 Q Ms. Hodges, on Defendant's Exhibits 6
15 and 7, these were the applications to DOT, and
16 there were -- we didn't admit those, or there
17 was objections about the authenticity. They are
18 in, but in those applications on page 1 states
19 that poles will be replaced.

20 A I believe it does. I don't have my --
21 (Unreportable cross-talk.)

22 A -- but I can confirm. Yes.

23 Q And you said DOT came out --

24 THE COURT: Show me where it --
25 oh, I see. Yeah. Go ahead.



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1 BY MR. WILLIAMS:

2 Q And you said DOT came out. Before
3 approving the application, came out and expected
4 the signs?

5 A They sent an inspector out to make sure
6 we're not just pulling these things out of our
7 pocket.

8 Q And then they came out afterwards,
9 after the work was done, and inspected the site?

10 A Yeah. I have -- we're required to let
11 them know when the work's going to start, who is
12 going to do the work, and then they'll come do a
13 ride-by, you know, afterwards.

14 Q So DOT, you advised -- I don't speak to
15 what DOT knew, but Adams advised DOT that poles
16 would be replaced and they inspected and they
17 said, "Yep, that's fine"?

18 A They are very stringent. There are
19 times when we've had it come down to a matter of
20 dollars with these applications and we have to
21 go back and forth with the State to make sure
22 that they are comfortable with us meeting that
23 50 percent. They are very stringent about it.

24 Q If DOT had said to Adams -- when
25 you-all applied, DOT had said "Hey, we need



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1 local approval," Adams would've gone and gotten
2 local approval, right?

3 A As I always do.

4 MR. WILLIAMS: Your Honor, I
5 believe that's it.

6 MR. BERGTHOLD: One follow-up
7 question.

8 EXAMINATION

9 BY MR. BERGTHOLD:

10 Q Mr. Hodges, under Tab 5, there is an
11 e-mail sent to you by Eric Greenway on April
12 10th, that Saturday night.

13 Do you remember receiving that e-mail
14 on April 10th?

15 A I believe I woke up Sunday and saw it
16 and sent it to -- sent it to Rich Zecchino.

17 Q To Counsel?

18 A That's way above my head. It's not --

19 MR. BERGTHOLD: Nothing further of
20 this witness, Your Honor.

21 MR. WILLIAMS: Can he --

22 THE COURT: You're fine.

23 MR. BERGTHOLD: Your Honor, I
24 would like to offer the certified mail
25 exhibit, though, at this time.



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1 THE COURT: Any objection?

2 MR. WILLIAMS: Yes. I still
3 haven't seen whether it applies to --
4 and again, I'll object. There's no
5 indication of what this tracking number
6 was for.

7 MR. BERGTHOLD: Your Honor, I
8 think it goes to the weight of it, not
9 the admissibility. It has Bo Hodges
10 listed here. It's addressed to them.
11 It's signed for by Bo Hodges on 4/15,
12 which is around the date in question of
13 the transmittal of the April 12th
14 letter. We may need to put on
15 additional testimony to piece that
16 together, but I think this is
17 admissible for --

18 THE COURT: Why don't you just
19 call your witness, then, in rebuttal.

20 MR. BERGTHOLD: Okay.

21 THE COURT: Do you have anything
22 further?

23 MR. WILLIAMS: I have no other
24 witnesses to call, Your Honor.

25 THE COURT: Okay.



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1 MR. BERGTHOLD: Your Honor, I
2 would just call Ms. Antonacci for a
3 quick rebuttal.

4 THE COURT: You're still under
5 oath, Ms. Antonacci.

6 THE WITNESS: Yes, ma'am.

7 REBUTTAL EXAMINATION

8 BY MR. BERGTHOLD:

9 Q Ms. Antonacci, could you look at that
10 real quick?

11 A Yes.

12 Q Did you have occasion to send the
13 stop-work order via certified mail to Mr. Hodges
14 on or about April 12th?

15 A It was sent on April 12th certified
16 restricted.

17 Q Okay. Did you send anything else to
18 Mr. Hodges via certified e-mail within the month
19 of April?

20 A Yes.

21 Q What else did you send?

22 A Two citations.

23 Q Okay. And would that -- do they go
24 together?

25 A Yes.



1 Q Okay. So would that receipt, in your
2 opinion, be the receipt for the certified mail
3 that you sent?

4 A Yes.

5 MR. WILLIAMS: Your Honor, I offer
6 Exhibit 11.

7 THE COURT: Any objection?

8 MR. WILLIAMS: Yes. We still
9 haven't seen the underlying document
10 with the tracking number on it or the
11 envelope.

12 THE COURT: I'll allow it.

13 MR. BERGTHOLD: Okay. And this is
14 --

15 THE COURT: And that will be
16 Plaintiff's --

17 MR. BERGTHOLD: 11. And I'll put
18 the sticker on the back because
19 everywhere else will obscure something.

20 (Whereupon, Plaintiff's Exhibit
21 Number 11 was marked for
22 identification.)

23 MR. WILLIAMS: Your Honor, as
24 housekeeping, have we admitted the
25 whole -- all of these exhibits in the



1 binder?

2 THE COURT: No. I did not admit
3 Exhibit 9, Exhibit 8.

4 MR. BERGTHOLD: I think just those
5 two.

6 THE COURT: And I'll tell you what
7 I didn't -- I didn't get a copy of this
8 exhibit -- Defendant's Exhibit Number
9 3.

10 (Whereupon, Plaintiff's Exhibit
11 Numbers 8 and 9 were marked for
12 identification.)

13 (Whereupon, an off-the-record
14 discussion was held.)

15 THE COURT: What was 4?

16 MR. BERGTHOLD: I think that was
17 the e-mail from Ms. Austin.

18 THE COURT: I don't have that.

19 MR. WILLIAMS: I'll grab the
20 e-mail from Ms. Austin.

21 MR. BERGTHOLD: That was 5.

22 THE COURT: We didn't have a 4, I
23 don't think. Did we?

24 MR. BERGTHOLD: I don't have one.

25 MR. WILLIAMS: Was it Section



1 10.1.40 CDC.

2 MR. BERGTHOLD: I have a copy of
3 that, but it's not marked as a number,
4 so that might've been it.

5 MR. WILLIAMS: I believe that was
6 it.

7 THE COURT: Any objection to my
8 marking that as Defense Exhibit Number
9 4?

10 MR. BERGTHOLD: Your Honor, I have
11 no objection to marking or admitting
12 that if I could ask one follow-up
13 question with Ms. Antonacci about that.

14 THE COURT: All right. Just one
15 second. And then I still need a copy
16 of Number 5. Okay.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 BY MR. BERGTHOLD:

20 Q All right. Ms. Antonacci, now that
21 we've marked and admitted Defendant's Exhibit 4,
22 which is a portion of the definition in
23 Article 10.

24 Do you understand Article 10 of the
25 Community Development Code to be the definitions



1 that are used in the Community Development Code?

2 A I have to review it. Yes.

3 Q Okay. And I'm going to show you, on my
4 computer, from Municode, another section of
5 Article 10 with the definitions.

6 Can you read the definition of
7 structure that is within the Community
8 Development Code?

9 A "Something constructed or re-erected,
10 the use of which requires attachment to the
11 ground, attachment to something located on the
12 ground, or placement on the ground."

13 Q And that is the definition of structure
14 in the Community Development Code?

15 A Correct.

16 MR. BERGTHOLD: Nothing further,
17 Your Honor.

18 THE COURT: All right. You can
19 step down.

20 Any questions?

21 MR. WILLIAMS: No, Your Honor.

22 Will we have an opportunity for closing
23 arguments or --

24 THE COURT: Do you have anything
25 further?



1 MR. WILLIAMS: I would just like
2 to know -- I don't think we ever read
3 in 63.350(C)4. But I believe you have
4 a copy. And so I'd just like to note,
5 for the record, that that was the
6 provision of the South Carolina state
7 regulations that Adams applied to DOT
8 under. And it provides that the
9 Department must determine whether to
10 allow a sign to be repaired.

11 THE COURT: Tell me the code
12 section again.

13 MR. WILLIAMS: This is the Code of
14 Regulations, 63 -- Chapter 63, Section
15 350.

16 THE COURT: Okay.

17 MR. WILLIAMS: And it's part
18 (C)(4).

19 THE COURT: All right. Anything
20 further?

21 Okay. You-all can close.

22 MR. BERGTHOLD: Your Honor, I'll
23 go first since I have the burden of
24 proof, and I'll reserved a couple
25 minutes for rebuttal.



1 Essentially, this case started
2 where it began, with a flouting of the
3 Community Development Code in Beaufort
4 County based on the assumption that it
5 is legally wrong, that Adams Outdoor
6 doesn't need to comply with community
7 regulations in the Community
8 Development Code here in the County.

9 And throughout this entire
10 proceeding, you've heard no argument
11 and no testimony that negates
12 Section 57-25-220 of the South Carolina
13 Code of Laws. And that is the
14 provision in the Highway Advertising
15 Control Act. It says, "Nothing the
16 article abrogates or affects the
17 provisions of lawful ordinance,
18 regulation, or resolution which is more
19 restrictive than the provisions of this
20 Article."

21 And the testimony from Mr. Hodges,
22 the testimony from Ms. Antonacci, and
23 the testimony from Mr. Greenway all
24 support -- as well as the pictures that
25 are in the record, support that they



1 replaced the structure.

2 They were -- Mr. Hodges
3 individually, who handles all the
4 permitting for Adams and is the face of
5 the organization and submitted the
6 documents to the South Carolina
7 Department of Transportation and
8 submitted the documents to
9 Ms. Antonacci on or about April 6th,
10 and was told, pretty much immediately
11 thereafter, at 7:54 a.m. on April 7th,
12 their Exhibit 1, that, "Hey, you know,
13 we don't know what you're doing because
14 the documents that you sent us don't
15 detail anything. But you've got to get
16 approval. You've got to get this
17 reviewed by the County. You're on
18 notice to do that."

19 And then a follow-up conversation
20 later that day on April 12th from
21 Hillary Austin that basically told
22 Mr. Hodges the same thing. And then we
23 have Exhibit 5, page 3, where on April
24 10th, Mr. Greenway's coming back into
25 town and he sees all this unlawful



1 construction work. Essentially, this
2 is nothing more than a flouting of the
3 local code and an attempt to tell the
4 County to go pound sand when they try
5 to enforce their ordinances.

6 But if we look at Exhibit 7 and we
7 look at the violations under 5.6.50(E)
8 that we have established by the
9 evidence -- we have established that
10 under (E)2, that their commercial
11 off-premises sign, that they did more
12 than only painting or refinishing the
13 surface of the sign face or the sign
14 structure.

15 But rather, they -- if you look at
16 the last sentence on the page, they did
17 structural or other substantive
18 maintenance to the sign which affected
19 the length of the sign. And that was
20 deemed an abandonment of the sign under
21 the County Code, it renders the prior
22 permit void, and results in the removal
23 of the sign without compensation. And
24 when the County has to do the removal,
25 the cost and expense of such shall be



1 paid by the owner of such sign.
2 And then three is very clear. It
3 says, "Extension, replacement,
4 rebuilding," and then the last
5 phraseology is "re-erection of the sign
6 are prohibited." So that's when
7 Mr. Greenway came back into town from
8 Charleston on Saturday night and saw
9 the cranes out there lifting poles and
10 erecting a sign, a new structure of the
11 sign.

12 We just had Ms. Antonacci read the
13 definition of "structure." It's
14 anything that's attached to the ground,
15 which these are clearly attached to the
16 ground. Then he wrote to Mr. Hodges,
17 who had been the face of the
18 organizations, communicating on all
19 permitting matters both with the State
20 and with Beaufort County, said, "Y'all
21 need to stop. This is a violation of
22 our code. You haven't gotten approval.
23 And we would not approve the rebuilding
24 or the replacement of these structural
25 supports."



1 And that's exactly what the Code
2 says they're not supposed to do. And
3 the state law says you've got to comply
4 with local ordinances. And if they're
5 more restrictive -- you've got those --
6 especially the kind of ordinances that
7 you have to comply with. So all the
8 stuff that they want to tell us about
9 the State, all they've done, really, is
10 confirm that they've replaced the
11 structure.

12 The rotting that you see at the
13 base of those poles is not because of
14 wind. That is because, as Mr. Hodges
15 recognized, these signs are not in good
16 shape at all. They are really old.
17 Wood rots. In fact, I think his exact
18 words were, "You can't repair a wooden
19 pole." So these weren't repairs.
20 These were replacements of the
21 structural supports, and that is
22 expressly prohibited by the ordinance.

23 We don't need to get into, well,
24 if you've suffered excess wear and
25 tear, you know, beyond the normal, you



1 know, you got to go through all these
2 processes because they thumbed their
3 nose at that as well. But the reality
4 is, they've re-erected a sign, they've
5 rebuilt it, they've replaced the
6 structure of it, and the whole purpose
7 of that was for things that even the
8 state law prohibits.

9 The state law says, look, all
10 nonconforming uses are supposed to
11 terminate over time. You don't go in
12 and put new structural supports moving
13 the sign feet closer to the road and
14 actually replacing the sign in a
15 different location than it was before,
16 because the whole purpose of
17 terminating nonconforming uses over
18 time is that they will die their
19 natural life.

20 So a billboard erected in 1956 or
21 a billboard erected in 1981 was
22 designed that after it eventually
23 rotted and the structure of it became
24 dilapidated and it was leaning. We had
25 no testimony about what that was from,



1 but we know, from the pictures and from
2 the testimony, that the rotting at the
3 base of the pole was because of
4 groundwater. That's not a wind event.
5 That's not a hurricane event.

6 And the state law says that you
7 are not supposed to do anything that
8 would extend the life of the sign.
9 It's very clear what happened. They
10 had two dilapidated structures that
11 were decades old and they went and they
12 replaced them with brand new structural
13 supports so they could get 50 or 60 or
14 70 more years of revenue out of this
15 sign.

16 The state law says you have to
17 comply with the local ordinances.
18 They've thumbed their noses at the
19 local ordinances, so we would ask for
20 an adjudication that they are guilty of
21 the violations of 5.6.50(E) and we
22 would asked for all the remedies that
23 are available to Beaufort County under
24 the ordinance.

25 Thank you.



1 THE COURT: Yes, sir.

2 MR. WILLIAMS: Thank you, Your
3 Honor.

4 I think what's been missed here in
5 this whole hearing is the fact that
6 both entities, the County and DOT,
7 apply the same standard to determine
8 whether signs damaged by wind events
9 should be repaired.

10 If you look at CDC 5.6.50(E) sub
11 part 4(C) it says, "If the sign is
12 partially destroyed by wind or other
13 natural forces, the director must
14 determine whether to allow the sign to
15 be rebuilt." It doesn't have any
16 objective criteria. But it says that
17 the director determines if the damage
18 to the sign is greater than 50 percent
19 of its replacement cost at the time of
20 damage, the sign must be consistent
21 with all current requirements of the
22 chapter.

23 That is mostly consistent with
24 South Carolina Regulation 63-350(C)4,
25 except that the state regulation



1 provides objective criteria for the
2 Department of Transportation to
3 determine if the sign should be
4 rebuilt. 63-350(C)4 states that the
5 Department must determine whether to
6 allow the sign to be rebuilt.

7 If the Department determines the
8 damage to the sign is greater than 50
9 percent of its replacement cost, as
10 determined by a nationally recognized
11 catalogue, the venders of construction
12 or outdoor advertising materials as of
13 the time of the damage, the sign must
14 be dismantled at no cost to the
15 Department."

16 It goes on, salvaged parts shall
17 not be subjected to criteria. Then
18 sets out how the DOT determines whether
19 the signs should be rebuilt, if it's
20 repaired/rebuilt if it's less than 50
21 percent damaged.

22 The portion of the CDC that we're
23 operating under here is not more
24 restrictive than the DOT regulations,
25 the state regulation. State



1 regulations applies and controls. DOT
2 has sole authority in this matter. The
3 DOT did not ask for local permits.
4 Didn't ask for local permission.

5 The signs at issue are adjacent to
6 a DOT controlled, DOT maintained road.
7 That's why Adams applied with the DOT.
8 Both entities use the 50 percent rule.
9 The wind caused the damage to the
10 poles. The wind knocks the sign over.
11 The wind knocks the poles over. DOT
12 reviewed this application, inspected
13 the site twice. They knew the poles
14 were going to be replaced. They signed
15 off, said yes, you have permission.

16 The County was so quick to ask
17 them -- want them gone so badly, it
18 didn't consider the provisions of its
19 own CDC. It didn't issue the required
20 notice of warning violation, didn't
21 serve anything by mail or hand
22 delivery, which is required before
23 issuing a citation. The citations are
24 invalid under the CDC if they're not a
25 proper issue. The same with the



1 stop-work order. It wasn't issued by
2 the county administrator or county
3 attorney.

4 5.6.50(E)(4)(C), that we're
5 operating under, the 50 percent rule of
6 the County is unconstitutional. The
7 director has unbridled discretion to
8 determine whether a sign should be
9 rebuilt. There's no objective
10 criteria.

11 Moreover, the Plaintiff has not
12 proved beyond a reasonable doubt that
13 Bo Hodges participated, committed any
14 violation of the CDC. Improper party.

15 As such, Your Honor, we ask that
16 the defendants be found not guilty of
17 violating the CDC.

18 MR. BERGTHOLD: Your Honor, a
19 quick rebuttal.

20 There's nothing in doubt about the
21 notice. The only purpose of the CDC to
22 have a certified mail requirements, you
23 have the luxury of someone who would
24 wait to receive something via certified
25 mail so that they'd be on notice.



1 There's no constitutional
2 requirement of certified mail. All
3 that's necessary is that someone have
4 reasonable notice of violations that
5 they're claiming -- that the government
6 is claiming that they are violating or
7 conditions and regulations they claim
8 they are violating, and an opportunity
9 to be heard.

10 Well, it's very clear that he was
11 on notice. Mr. Hodges said he sent
12 them a letter on the 6th. He received
13 a response back on the morning of the
14 7th from Ms. Antonacci. He testified
15 that he received a response back from
16 his Ms. Hillary Austin at 12:26 p.m. on
17 the 7th. He testified that he received
18 the e-mail from Mr. Greenway that was
19 sent on the evening of April 10th.

20 He had notice. I mean, it's very
21 close that he was actually aware. He
22 said he understood the words of those
23 communications, that Adams Outdoor, his
24 company that he's the face of, had the
25 duty to get prior approval for any work



1 in the County.

2 Now, at that point the County,
3 whatever term they used, "work,"
4 "repair," "rebuild," "reconstruction,"
5 they didn't even know, on April 6th,
6 what was involved because the documents
7 attached said zero dollars, zero
8 whatever, none of the information.

9 But it's clear that under
10 57-25-220, that the local ordinance, in
11 addition to whatever state law
12 requirements exist, are imposed upon it
13 and he understood those requirements.
14 He understood that when they went
15 forward with the ops division, which
16 they wouldn't do without Mr. Bo
17 Hodges's involvement, to repair or
18 reconstruct or do work with cranes in
19 rebuilding these signs, that he was
20 fully aware that the County had told
21 him that he had to have prior approval.

22 So he not only had notice, and
23 there was no confusion about which
24 signs were at play. He not only had
25 notice that he had to get County



1 approval and Adams had to get County
2 approval, but he also had the
3 opportunity to be heard because he
4 could have communicated with
5 Mr. Greenway. He could have gone
6 through the process here in the
7 Community Development Department.

8 And everybody was telling him, Ms.
9 Austin, Ms. Antonacci to Mr. Greenway,
10 that he needed to do that. He flat out
11 decided to flout or ignore or thumb his
12 nose at that process and that
13 requirement.

14 Now we get into what happened, and
15 Mr. Williams is being a little bit
16 fanciful with the evidence of record
17 and the testimony here today, there is
18 no evidence whatsoever that wind damage
19 was the source of the poles and there's
20 no logical evidence that would show
21 that rotting from the ground up is the
22 source of a wind causation.

23 In other words, wind did not cause
24 these poles to rot. Wind did not cause
25 these poles to be structurally unsound.



1 There's no evidence and there's no
2 testimony about what -- if that were
3 the case, what wind event it would have
4 been. And, frankly, they might have
5 gotten away with it with DOT.

6 They might have, you know, gotten
7 more than DOT. Even by its own
8 regulations, is allowed to approve
9 because if you look at -- he wants to
10 point you to 63-350 in the regulations.
11 But he actually pointed to C(4).
12 Subsection (C)1 says, "Nonconforming
13 signs" -- which they have admitted
14 these are nonconforming signs -- "must
15 be maintained subject to the following
16 restrictions: 1) no maintenance may
17 occur which will lengthen the life of
18 the device."

19 Now, it is absolutely undisputed
20 that erecting new structure supports in
21 a new location closer to Trask Parkway
22 or even in the same location, putting
23 in new structural poles will lengthen
24 the life of this sign for decades.
25 That is precisely what the



1 nonconforming use provisions in the
2 County's Development Code and in the
3 state law are designed to prevent.

4 But regardless of whether they got
5 away with one, they came over to the
6 County and they didn't -- they can't
7 get away with it because the way the
8 state law is set up, is that in
9 addition to State approval, you have to
10 get County approval.

11 He makes a number of arguments
12 about, you know, that County's
13 regulation's not more restrictive.
14 Well, that's kind of silly since the
15 director said, under the County's
16 regulation, you can't do what you did.
17 And under the state regulation,
18 somehow, even though it lengthens the
19 life of the device by decades, you,
20 nevertheless, got some letter from the
21 DOT.

22 What was asked for, what was
23 approved from the DOT, we don't really
24 know the details. We think it exceeds
25 the authority under 63-350 sub (C)1 of



1 the regulations. But it doesn't really
2 matter for the purposes of this hearing
3 because this hearing is a citation
4 under the Community Development Code in
5 the County, which is still operative
6 per the state law, that they violated
7 Section 5.6.50 sub 2 and sub 3.

8 And even if it were to be
9 interpreted not as a replacement, a
10 rebuilding, or a re-erection sign,
11 because that's where we are at, we're
12 not on the repair side. We're in sub 2
13 and sub 3 where they basically did
14 substantive work to the sign that is
15 deemed an abandonment of the sign or
16 they did extension, replacement,
17 rebuilding, or the re-erection of the
18 sign, which is clear from the pictures.

19 So we don't even need to get to
20 sub 4. But if we get to sub 4, they
21 also violated that because had they
22 been able to argue that this was just a
23 repair, that it wasn't just the natural
24 deterioration of the sign at the time,
25 which is what it was, they still would



1 have had to get the approval.

2 So we have proven, beyond a
3 reasonable doubt, the violation by Bo
4 Hodges as well as Adams Outdoor of the
5 citations that were issued for both
6 signs on either side of Trask Parkway
7 for violating Community Development
8 Code 5.6.50. Thank you.

9 THE COURT: All right. Well, I'm
10 going to look at all this and I'll let
11 you-all know something.

12 Brittany, I'll send my response to
13 you and you can forward it?

14 CLERK: Yes, Your Honor.

15 THE COURT: Okay. And tell me
16 your e-mail, sir.

17 MR. WILLIAMS: Yes, Your Honor.
18 It's EWilliams@bybeetibbals.com.

19 THE COURT: And Mr. Bergthold, if
20 you want me to e-mail it to you --

21 MR. BERGTHOLD: Yes, Your Honor.

22 THE COURT: Okay. Tell me yours.

23 MR. BERGTHOLD: Sure. It's
24 sbergthold@sdblawfirm.com.

25 THE COURT: All right. I'll try



1 to get something out by the end of the
2 week. I might not, but I'll try.

3 MR. WILLIAMS: Thank you, Your
4 Honor.

5 MR. BERGTHOLD: Thank you, Your
6 Honor.

7 (Whereupon, the Hearing
8 Was concluded at
9 approximately 12:13 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina



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- Transcript of 7-14-2021 Hearing
- Audio of 7-14-2021 and 8-11-2021 Hearing
- Exhibits

UNIFORM ORDINANCE SUMMONS NO. 136
COUNTY/CITY OF BEAUFORT VERSUS#

Hodges Bo Adams Outlook
Last Name First Name Middle Name

174 S.
Street Address City State Zip Code

YOU ARE SUMMONED TO APPEAR BEFORE THE COURT

☒ Magistrate ☐ Municipal Judge
Trial Date 5-5-21 Trial Time 9:30 A.M. P.M.

104 Ribaut Rd. Beaufort SC 29902
Street Address City Zip Code

FOR TRIAL CONCERNING VIOLATION OF

County/City of Beaufort
Ordinance Sec. No. 5.6.50(E) OFF Premises Sign Ordinance Description

4-12-21 2:00 Certified mail
Citation Date Citation Time Citation Location

if different from citation date:

4-10-21 ... Beaufort County
Violation Date Violation Time Violation Location

Antonacci 20- 1087.50
Issuing Officer Employee ID No. Suggested Bond Amt.

\$
Bond Received Date Received by

Presiding Judge Disposition Date

Defendant ☐ Did Not ☐ Did Appear

☐ Forfeited Bond ☐ Dismissed ☐ Nolle Prosequi
☐ Pled Guilty ☐ Nolo Contendere
☐ Bench Trial ☐ Jury Trial ☐ Guilty ☐ Not Guilty

\$ \$ \$ \$
Fine Imposed Suspended Assessments Total Collected

Jail Term Suspended Committed to

Certified Correct by Date

I, _____ acknowledge
receipt of this citation. Date _____

UNIFORM ORDINANCE SUMMONS NO. 134
COUNTY/CITY OF BEAUFORT VERSUS#

Hodges Bo Adams Outlook
Last Name First Name Middle Name

174 S.
Street Address City State Zip Code

YOU ARE SUMMONED TO APPEAR BEFORE THE COURT

☒ Magistrate ☐ Municipal Judge
Trial Date 5-5-21 Trial Time 9:30 A.M. P.M.

104 Ribaut Rd. Beaufort SC 29902
Street Address City Zip Code

FOR TRIAL CONCERNING VIOLATION OF

County/City of Beaufort
Ordinance Sec. No. 5.6.50(E) OFF Premises Signs Ordinance Description

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\$ \$ \$ \$
Fine Imposed Suspended Assessments Total Collected

Jail Term Suspended Committed to

Certified Correct by Date

I, _____ acknowledge
receipt of this citation. Date _____

Certificate of Compliance with Rule 210(g)

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ Brittany Ward
Brittany Ward

Proof of Service

I certify that on October 11, 2022, a copy of this **Record on Appeal** was served by depositing same in the U.S. Mail, first class postage prepaid, and addressed to the following:

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s/ Brittany Ward
Brittany Ward

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