

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Larry B. Hyman, Circuit Court Judge

69952

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OCT 01 2013

Case No. 2012-CP-26-6987

SC Court of Appeals

Appellate Case No. 2013-000971

Helicopter Solutions, Inc.
d/b/a Helicopter Adventures Respondent,

v.

Richard Hinde and Horry County Board of Zoning Appeals, Defendants,

of whom Richard Hinde is Appellant.

**RESPONDENT'S MOTION TO AMEND DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL, RETURN TO APPELLANT'S
MOTION FOR A MORE DEFINITE STATEMENT BY THE RESPONDENT OF
MATTER DESIGNATED FOR INCLUSION IN THE RECORD ON APPEAL,
AND RETURN TO APPELLANT'S MOTION TO EXTEND TIME TO FILE
APPELLANT'S INITIAL REPLY BRIEF PENDING THE COURT'S
DISPOSITION OF APPELLANT'S MOTION FOR A MORE DEFINITE
STATEMENT BY THE RESPONDENT OF MATTER DESIGNATED FOR
INCLUSION IN THE RECORD ON APPEAL**

Respondent moves pursuant to Rule 240, SCACR for an Order allowing it to Amend its Designation of Matter to be included in the Record on Appeal. This Motion is grounded upon inadvertence by counsel to designate the Certified Record on Appeal to the Circuit Court, which consists of the transcript and exhibits submitted by the parties to the Board of

Zoning Appeals. Counsel for both the Appellant and Respondent cite to certain portions of that Certified Record in their Initial Briefs. Since Appellant's Motion for a More Definite Statement by the Respondent of Matter Designated for Inclusion in the Record on Appeal is now pending before the Court, Appellant has yet to file a Reply Brief. Therefore, Appellant will suffer no prejudice as the result of an amendment thereof.

In addition to the foregoing, Respondent opposes Appellant's Motion for a More Definite Statement by the Respondent of Matter Designated for Inclusion in the Record on Appeal in-part and consents to the relief sought therein in-part. In this case, the Court must review the Order of the Board of Zoning Appeals to determine whether it was correct as a matter of law, whether there is no legal evidence to support its decision, whether the Board acted arbitrarily, or whether the Board abused its discretion. Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 SC 480, 536 SE2d 892 (Ct. App. 2000). Therefore, the record before the Board of Zoning Appeals is relevant to determine whether the Board's decision was correct as a matter of law, whether that record contains evidence to support its decision, or whether it acted arbitrarily as the result of the record being devoid of any support of its decision.

The Certified Record on Appeal to the Circuit Court consists of 1331 pages of documents, including a 153 page transcript, eleven pages of exhibits submitted by the parties' counsel to the Board at the hearing, and 1127 bates numbered pages of various other documents and records submitted by the Zoning Administrator, Appellant Hinde, and Respondent Rick to the Board. Respondent and Appellant both agree that not all of the documents and records contained in the Record on Appeal are relevant to the determination

of the issues raised in this appeal, but many are and most of those documents are cited by the parties in their Briefs. For that reason, Respondent is willing to consent to eliminating from the Record on Appeal all Bates numbered exhibits from the Certified Record on Appeal to the Circuit Court except those referenced and/or relied upon by the parties in their Initial Briefs. As the result, Respondent is willing to include only the following:

1. Transcript of that hearing (153 pages);
2. Plaintiff's Exhibit 1 (FreeDictionary.com Definition of Depot);
3. Plaintiff's Exhibit 2 (Wikipedia Definition of Depot);
4. Defendant's Exhibit 1 (Flight Routes, 1 page, plus Bates No. 285-298);
5. Defendant's Exhibit 2 (SC Memorandum, 3 pages);
6. Bates Nos. 3-6 (Order of Board);
7. Bates Nos. 8-10, 15-28, and 44-47 (Staff Review/Presentation to Board by Zoning Administrator);
8. Bates Nos. 30 (Hinde Appeal);
9. Bates Nos. 61 (Ordinance);
10. Bates Nos. 238 (Timeline);
11. Bates Nos. 240-278 (Rick Affidavit).

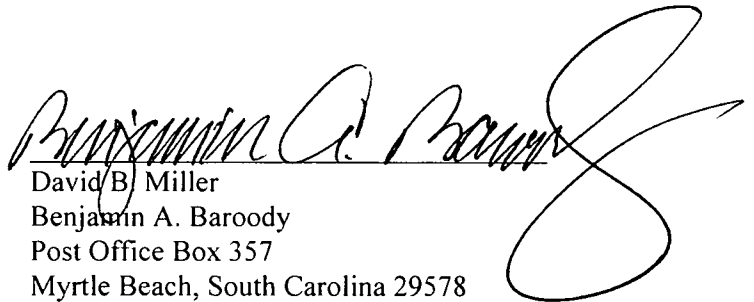
Respondent otherwise opposes Appellant's Motion as all other documents designated by Respondent for inclusion in the Record on Appeal are relevant to this Appeal and required for inclusion. Appellant makes several representations of fact in his Brief that are not correct because they are contrary to the underlying Record. Therefore, those portions of the Record are necessary for inclusion in order to refute those representations or prove a negative. Other

than the relevant portions of the Certified Record to the Circuit Court, Respondent only designates relevant pleadings, Orders, and transcripts from the underlying action in the Circuit Court. Those items are also necessary for inclusion in the record in order to properly verify the procedural history in this case and the facts and legal arguments made by counsel before the Circuit Court.

Alternatively, Respondent requests a ten (10) day extension of time to allow the parties to resolve these motions. Counsel is in the midst of such negotiations right now and are likely to resolve these disputes within the next few days.

Respondent does not oppose Appellant's Motion for an Extension of Time to file its Reply Brief.

Respectfully submitted,


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September 30, 2013

EXHIBIT A

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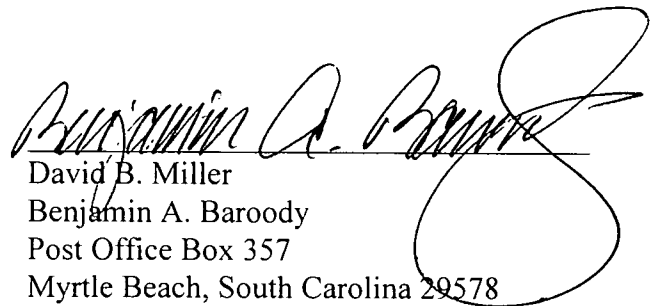
PROOF OF SERVICE

The undersigned certifies that he is employed with the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., attorneys for the Respondent, Helicopter Solutions, Inc. d/b/a Helicopter Adventures, that he has mailed a copy of the Respondent's Motion to Amend Designation of Matter to Be Included in the Record on Appeal, Return to Appellant's Motion for a More Definite Statement by the Respondent of Matter Designated for Inclusion in the Record on Appeal, and Return to Appellant's Motion to Extend Time to File Appellant's Initial Reply Brief Pending the Court's Disposition of Appellant's Motion for a More Definite Statement by the Respondent of Matter Designated

for Inclusion in the Record on Appeal and Proof of Service to Counsel listed below this
_____ day of September, 2013, with proper postage attached thereto:

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Respectfully submitted,



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September 30, 2013