

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2012-CP-26-06987

Appellate Case No. 2013-000971

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

v.

Richard Hinde and Horry County Zoning Administrator, *Defendants,*
of whom Richard Hinde is *Appellant.*

**APPELLANT'S REPLY TO RESPONDENT'S RETURN
ON MATTERS TO BE INCLUDED IN THE
RESPONDENT'S AMENDED DESIGNATION OF MATTER**

The Appellant Richard Hinde replies to the Respondent's Return on the issue of matters to be included in the Designation of Matter pursuant to Rule 209, SCACR.

The Appellant is attempting to comply with Rule 209(c), SCACR concerning the inclusion only of matter that is relevant to the Appeal in this case. The entire Record on Appeal transmitted to the Circuit Court from the Horry County Board of

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Zoning Appeals (“BZA”) is 1,127 Bates Numbered pages, plus the Transcript of proceedings before the BZA of some 153 pages.

The attached Affidavit explains that the Transcript of proceedings before the BZA remains sealed in the Circuit Court Clerk’s Exhibit Room, and an unsealed copy does not appear in the Circuit Court’s file. There are references in the Transcript of Hearing before the Circuit Court to matters that were submitted and statements made to the BZA, but the Transcript of proceedings before BZA was not itself moved into evidence at the Circuit Court by any of the parties.

The Respondent’s most recent Motion to Amend Designation of Matter contains a list of those matters the Respondent seeks to include in the Record on Appeal to this Court. The Appellant cannot stipulate to that listing, as it does not contain all those matters already designated by the Appellant, and also appears to contain other items that were not moved into evidence at the hearings in Circuit Court.

The Appellant therefore respectfully requests that the Court disallow the inclusion of the BZA Transcript in the Designation of Matter, or in the alternative, restrict the Designation of Matter to only those particular pages of the BZA Transcript that were identified and referred to in argument before the Circuit Court, plus those matters referenced by Bates numbered pages in the Initial Briefs filed in this Court. The Appellant would also respectfully request the Court to Order that other matters not directly moved into evidence before the Circuit Court should not be included in the Record on Appeal to this Court.

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520

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North Myrtle Beach, SC 29582

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North Myrtle Beach, South Carolina
October 7, 2013

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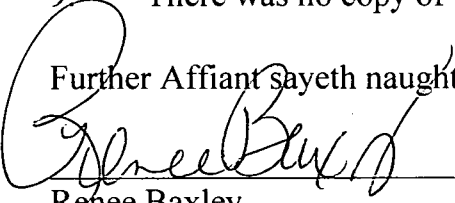
AFFIDAVIT

Being duly sworn, the Affiant states and affirms:

1. My name is Renee Baxley. I am over 21 and competent to make this Affidavit.
2. Those matters stated herein as being known to me are matters of which I have personal knowledge at the time that they are stated to occur.
3. I am employed as a Paralegal by the law firm of Wright, Worley, Pope, Ekster & Moss, PLLC.

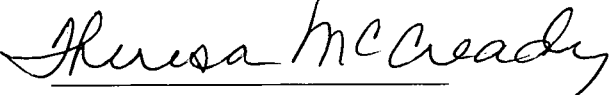
4. On Monday September 30, 2012 I was tasked with going to the Horry County Courthouse to ask the Clerk of Court to allow me to review the Court file on the Appeal that was heard in Circuit Court in this matter.
5. I was brought the Exhibit Box relative to this case at the desk at of a member of the Clerk's staff and was allowed to view the file maintained there on this matter.
6. I saw that the original Transcript from the Board of Zoning Appeals was still sealed inside its envelope from the Court Reporter who had transcribed the proceedings.
7. The sealed Transcript did not have an Exhibit sticker attached thereto. The sale was unbroken. The case number was written on the outside of the sealed envelope, and the Clerk's time-stamp was on a "post-it" note attached to the outside of the sealed envelope.
8. The word "EXHIBIT'S" was not visible through the sealed envelope window.
9. There was no copy of the Transcript in the Clerk's file.

Further Affiant sayeth naught.


Renee Baxley

October 04, 2013

Sworn and subscribed before me



Notary Public for the State of South Carolina

My comission expires 6-14-2015

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PROOF OF SERVICE

I certify that I have served a copy of the *Appellant's Reply to Respondent's Return on Matters to be Included in the Respondent's Amended Designation of Matter* in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

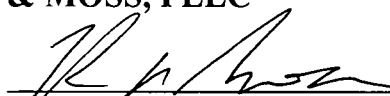
David B. Miller, Esq.
Benjamin A. Baroody, Esq.
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bbaroody@bellamylaw.com
Attorney for Respondent Helicopter Solutions, Inc.

– and –

Emma Ruth Brittain, Esquire
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Attorney for Defendant Horry County Zoning Administrator

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



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October 7, 2013

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O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH++
RICK W. SCOTT*
MARTHA HENLEY SLEDGE*
MELANIE C. NICHOLSON ***
KELLY SANSONE-GALLEY***
NAPOLEON B. BAREFOOT, JR. *
ELIZABETH W. EMBREY**
BOYD T. WORLEY*
D.F. McGOUGAN, JR.
(1921 - 1994)

OTHER OFFICES
TABOR CITY, NC
WHITEVILLE, NC
SHALLOTTE, NC
WILMINGTON, NC
SURFSIDE BEACH, SC

*licensed only in NC
**licensed in NC, DC & SC
**DRC-Certified Family Financial Mediator
** licensed in NC & SC
*** Certified Family Court Mediator, Guardian *ad Litem*

October 7, 2013

**VIA U.S. CERTIFIED MAIL # 7013 0600 0000 0368 0992;
RETURN RECEIPT REQUESTED**

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Helicopter Solutions, Inc., d/b/a Helicopter Adventures, *Respondent*,
vs. Richard Hinde and Horry County Zoning Administrator, *Defendants*
Of whom Richard Hinde is *Appellant*
Civil Action No. 2012-CP-26-06987
Appellate Case No. 2013-000971
Our file no. SC-5530-001

Dear Ms. Kitchings:


Please find enclosed for filing in the above-referenced appeal, one (1) unbound original and six (6) copies of *Appellant's Reply to Respondent's Return on Matters to be Included in the Respondent's Amended Designation of Matter*, and Proof of Service of same.

I have included an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

Honorable Jenny Abbott Kitchings
October 7, 2013
Page 2

With best regards, I am

Sincerely yours,



Kenneth R. Moss

KRM/tm

Enclosures as stated

cc: (via first-class U.S. Mail)

David B. Miller, Esq./Benjamin A. Baroody, Esq.

Emma Ruth Brittain, Esq.

Client (*via email only*)