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May 02 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II Circuit Court Judge

Appellant Case No. 2024-000735

Spartanburg County and Cole Alverson in his Official Capacity as County Administrator

v.

The Spartanburg County Board of Zoning Appeals, and Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.

of which

The Spartanburg County Board of Zoning Appeals..... Respondent

v.

Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.....Appellant

**RESPONDENT’S RESPONSE TO APPELLANT’S MOTION TO SUPPLEMENT
RECORD ON APPEAL**

Respondent submits this response to Appellant’s request for leave to supplement the Record on Appeal, ostensibly to provide materials inadvertently omitted from its filing on April 3, 2025. Respondent requests that the Court deny Appellant’s motion, in part, and instruct Appellant to submit a Record on Appeal conforming with the South Carolina Rules of Appellate Procedure.

As required by S.C. APP. Ct. R. 212(b), Appellant must obtain leave of Court to supplement the Record on Appeal because Appellant did not seek, nor did they obtain, Respondent's consent before filing the motion.

With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.

Rule 211(b), SCACR.

Respondent, however, does not object to Appellant's request to supplement the Record on Appeal to include Exhibit E to Appellant's Response to Petitioner's Petition for Appeal filed in the Spartanburg County Court of Common Pleas, May 23, 2023. This exhibit contains four letters exchanged between Ginger Davis and Senator Shane Martin between August and September of 2022. Although omitted from the filed Record on Appeal, these materials were designated by Appellant and Respondent did not object to them.

Similarly, Respondent does not oppose supplementing the Record on Appeal with the email from David Wood to James Crocker, dated August 17, 2022, and labeled in Appellant's Supplemental Record on Appeal as pgs. 675-77. In its DOM, Appellant identified correspondence of like date between the same individuals.

Respondent does object to Appellant's attempt to supplement the Record on Appeal with materials never identified in either party's Designation of Matter to be included in the Record on Appeal ("DOM"). As it relates to Appellant's motion, the Court should deny that motion insofar as it seeks to supplement the record with the Affidavit of Service on Spartanburg County Board of Zoning Appeals, signed by Jesse Jones on May 4, 2023 (identified in Appellant's motion as #2 and labeled as pg. 678), because it was not included in any DOM. The Court should also take this

opportunity to address additional materials included in the Record on Appeal in violation of Rules of Appellate Procedure.

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.

Rule 210(c), SCACR. Despite this clear instruction, Appellant filed with the Record on Appeal, the following undesignated materials:

Board of Zoning Appeals Minute Meetings, January 31, 2023
Affidavit of Katharine Houston, February 3, 2023
Board of Zoning Appeals Minute Meetings, February 28, 2023
Board of Zoning Appeals Minute Meetings, April 25, 2023
Affidavit of Jesse Jones, May 4, 2023 (#1 and #2)¹

Record on Appeal, Vol. II, filed April 3, 2025.

Moreover, the Record on Appeal filed by Appellant included materials identified in its DOM, but subsequently objected to in Respondent's DOM, which was filed on January 6, 2025.

These objectionable materials include the following:

Affidavit of Hampton Chumley, September 9, 2024
Affidavit of James Crocker, September 16, 2024
Affidavit of James Crocker, September 16, 2024

None of these Affidavits, which were included in the Record on Appeal despite Respondent's objection, were considered by the circuit court prior to the issuance of the orders being appealed from, Therefore, these materials are not properly before this Court pursuant to S.C. APP. Ct. R. 209 and 210.

¹ The Affidavit of Service on Robert Merting, signed by Jesse Jones on May 4, 2023 (#1), was included in the ROA at pg. 653, but was not identified in Appellant's DOM.

Conclusion

Accordingly, the Court should deny Appellant's motion insofar as it attempts to supplement the record with the Affidavit of Service on Spartanburg County Board of Zoning Appeals (Jess Jones affidavit #2) and instruct Appellant to submit a Record on Appeal that does not include materials that violate the Rules of Appellate Procedure. If the Court grants Appellant's motion, whether in whole or in part, Respondent does not have additional materials that it seeks to supplement the Record on Appeal.

HOLCOMBE BOMAR, P.A.

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By: *s/ William B. Darwin, Jr.*

William B. Darwin, Jr. (S.C. Bar No. 15109)
A. Todd Darwin, (S.C. Bar No. 7032)

Attorneys for Respondent

Spartanburg, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that on the 23rd day of April 2025, he has filed by email and served by email counsel for Appellant with a copy of the **RESPONDENT’S RESPONSE TO APPELLANT’S MOTION TO SUPPLEMENT RECORD ON APPEAL** in this matter, to

the following addresses:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

&

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May 2, 2025



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May 2, 2025

VIA ELECTRONIC MAIL ONLY ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *Spartanburg County v. Adam Washington Ballenger Camp #68*
App. Case No. 2024-000735
Our File No. 17710

Dear Ms. Kitchings:

Please find attached with this correspondence the following documents for filing:

1. Respondent's Response to Appellant's Motion to Supplement Record on Appeal
2. Proof of Service

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

s/William B. Darwin, Jr.

William B. Darwin, Jr.

cc: Robert K. Merting, Esq. (Via E-Mail Only - robert@rkmerting.com)
Joshua T. Hawkins, Esq. (Via E-Mail Only - josh@hjlsc.com)
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