

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

---

Case No. 12-ALJ-17-0542-CC

---

Dorchester County Assessor .....Appellant,

v.

Middleton Place Equestrian Center, LLC .....Respondent.

---

**INITIAL REPLY BRIEF OF APPELLANT**

---

Andrew T. Shepherd, S.C. Bar No. 76859

*andrew@hartfirm.com*

Katherine H. Hyland, S.C. Bar No. 76436

*kate@hartfirm.com*

HART HYLAND SHEPHERD, LLC

207 East 1<sup>st</sup> North Street (29483)

Post Office Box 130

Summerville, SC 29484

(843) 410-0711

ATTORNEYS FOR APPELLANT

**RECEIVED**

APR 10 2014

**SC Court of Appeals**

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Arguments

1. THE INCORRECT CLASSIFICATION OF THE PROPERTIES AS AGRICULTURAL PROPERTY IS BASED UPON ASSUMPTIONS OUTSIDE OF THE PLAIN LANGUAGE OF THE COVENANTS AND RECORD .....1

2. THE EXCEPTIONS FOR THE AGRICULTURAL LAND USE CLASSIFICATIONS UNDER S.C. CODE ANN. § 12-43-232 DO NOT APPLY TO THE RESPONDENT’S PROPERTIES .....2

Conclusion .....3

**TABLE OF AUTHORITIES**

CASES

*Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980) .....1

*Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006) .....1

*Seabrook Is. Prop. Owners Ass'n v. Marshland Trust, Inc.*, 358 S.C. 655, 596 S.E.2d 380  
(Ct. App. 2004) .....1

*Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1994). .....1

STATUTES

S.C. Code Ann. § 12-43-220 (2005) .....2

S.C. Code Ann. § 12-43-232 (2005) .....2, 3, 4

S.C. Const. Art. X, Section 6 .....2

## ARGUMENT

### I. THE INCORRECT CLASSIFICATION OF THE PROPERTIES AS AGRICULTURAL PROPERTY IS BASED UPON ASSUMPTIONS OUTSIDE OF THE PLAIN LANGUAGE OF THE COVENANTS AND RECORD.

The clear and unambiguous terms of the Restrictive Covenants governing the Middleton Place properties mandate that lots are for residential use only. In order to support the erroneous interpretation that the Restrictive Covenants allow commercial use, Respondents rely on Mr. Duell's testimony regarding the intent behind the Restrictive Covenants' initial drafting. Consideration should not be given to the alleged intent behind the language, but to the plain and ordinary meaning of those words. *Seabrook Is. Prop. Owners Ass'n v. Marshland Trust, Inc.*, 358 S.C. 655, 596 S.E.2d 380 (Ct. App. 2004). *See Also, Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980); *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006); *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1998). Nowhere in the Restrictive Covenants does it state that the Covenants are only meant to govern the uses and restrictions of the platted house sites once they are sold to individual owners, as asserted by Respondents. "The court may not limit a restriction, nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time the restriction was written." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1994) (citations and quotations omitted). Viewed as a whole, the plain language of the Restrictive Covenants clearly states that the platted house sites are for residential use only. R. \_\_\_\_\_. (Petitioner's Exhibit 4, Restrictive Covenants, Part II, Art. 1, Sec. 1).

Even if the Covenants are interpreted to allow the commercial use of the house sites as contemplated by the agricultural use statute, Respondent has failed to show any such use. The Dorchester County Assessor's office requested proof the properties were being actively timbered prior to removing the agricultural use classification, but it was never provided. During testimony, the only trees Mr. Duell testified to removing from the house sites were trees affected by rot and lightening strikes. R. \_\_\_\_\_. (Transcript 108:23-109:1). By Appellant's own admission, Mr. Duell's ultimate goal is preservation and conservation of the land, not agricultural use, particularly that rising to the level of commercial use required by statute.

Further, the unique nature of the property and any alleged prior and agreements between Respondent and Dorchester County are irrelevant to the analysis for agricultural use classification. The South Carolina Constitution specifically prohibits the court from making an exception for the Respondent's property outside of the law. Article X, Section 6 of the South Carolina Constitution requires that "property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes." The subject house sites do not qualify as agricultural use under the relevant statutory authority. S.C. Code Ann. § 12-43-220. Exceptions cannot be made for the Respondent's property simply because of its "unique nature and character," as the Order describes. R. \_\_\_\_\_ (Final Order, pp. 5-6).

Whether the house sites can be classified as agricultural can only be based upon their actual use and their active dedication and commitment to such use. Per the plain language of the Restrictive Covenants, the subject properties were dedicated as house sites upon their subdivision on a final plat recorded with the County; and through such dedication, the Restrictive Covenants explicitly commit the properties to residential use

only, thereby restricting the commercial timbering use otherwise required by statute. Neither the Respondent's alleged intent in the applicability of the Restrictive Covenants to the platted house sites nor the alleged unique nature of the property: (1) constitute statutory elements for the qualification of an agricultural use classification, (2) qualify as an exception allowed by statute or the South Carolina Constitution, or (3) allow for court limitation or enlargement of the Restrictive Covenants by construction or implication beyond the clear meaning of its terms.

**II. THE EXCEPTIONS FOR THE AGRICULTURAL LAND USE CLASSIFICATIONS UNDER S.C. CODE ANN. § 12-43-232 DO NOT APPLY TO THE RESPONDENT'S PROPERTIES.**

The facts clearly show that the nature and the ownership of the subject house sites have changed and do not fall under a "grandfather clause" of the applicable statute. The properties have been subdivided into residential properties and are now owned by an LLC, not Charles Duell, individually. S.C. Code Ann. § 12-43-232 states that *nontimberland* agricultural property which has been continuously owned since January 1, 1994 can maintain its classification "until the property is applied to some other use or until the property is transferred to other than an immediate family member." Without proof that the properties are being used for agricultural purposes, the subject house sites do not qualify for the agricultural use assessment exception under S.C. Code Ann. § 12-43-232.

Respondents further assert that the subdivision of the property was done at the request of the Dorchester County Planning Board and not desired by Mr. Duell. Despite his claims, Mr. Duell, through an LLC, has continued to sell the platted house sites as residential property for his own financial benefit. His actions contradict the implication

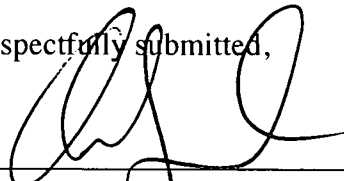
that he is a victim of government bureaucracy. The nature of these properties has clearly changed and they are no longer dedicated to agricultural land use.

S.C. Code Ann. § 12-43-232 only provides an exception for nontimberland property that has been owned by the same owner or an “immediate family member of the current owner” since January 1, 1994. No exception is given for a separate LLC. The nature and ownership of the subject house sites has changed since January 1, 1994 making them ineligible for the agricultural land use exception under S.C. Code Ann. § 12-43-232, and there is no evidence in the Record to suggest the alleged agricultural use is anything other than that of timberland to which the exception also would not apply.

#### CONCLUSION

For the reasons set forth herein, the Final Order and Decision of the Administrative Law Court should, respectfully, be reversed.

Respectfully submitted,



---

Andrew T. Shepherd, S.C. Bar No. 76859  
*andrew@hartfirm.com*

Katherine H. Hyland, S.C. Bar No. 76436  
*kate@hartfirm.com*

HART HYLAND SHEPHERD, LLC  
207 East 1<sup>st</sup> North Street (29483)  
Post Office Box 130  
Summerville, SC 29484  
(843) 410-0711

ATTORNEYS FOR APPELLANT

Summerville, South Carolina  
April 7, 2014.

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

Case No. 12-ALJ-17-0542-CC

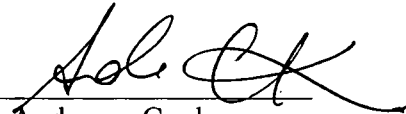
Dorchester County Assessor .....Appellant,

v.

Middleton Place Equestrian Center, LLC .....Respondent.

**PROOF OF SERVICE**

I certify that I have served the Appellant's Initial Reply Brief by depositing a copy of it in the United States Mail, postage prepaid, on April 7, 2014, addressed to Thomas B. Pritchard, Esquire, Pritchard Law Group, 129 Broad St., Charleston, South Carolina 29401.



E. Andersen Cook  
HART HYLAND SHEPHERD, LLC  
Post Office Box 130  
Summerville, SC 29484  
(843) 410-0711  
ATTORNEY(S) FOR RESPONDENT

Summerville, South Carolina  
April 7, 2014

**RECEIVED**

APR 10 2014

**SC Court of Appeals**

April 7, 2014

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

*Re: Dorchester County Assessor v. Middleton Place Equestrian Center, LLC*  
*ALC Case No.: 12-ALJ-17-0542-CC*  
*Appellate Case No.: 2013-002320*

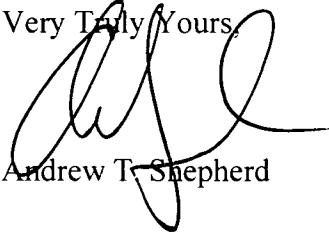
Dear Madam Clerk:

Please find enclosed the Appellant's Initial Reply Brief, inclusive of the Certificate of Service, together with two copies of the same. Please return the received-stamped copies in the envelope provided.

Thank you for your assistance and should you require anything further, please do not hesitate to contact our office. By copy of this letter and enclosures to Thomas B. Pritchard, Esquire, Counsel for the Respondent, I have served the same.

With warm regards, I remain,

Very Truly Yours,

  
Andrew T. Shepherd

ATS/  
Enclosure(s): none

Cc: Thomas B. Pritchard, Esquire (Counsel for Respondent w/ enclosures)  
R. Wayne Welch (w/ enclosures)  
John G. Frampton, Esquire (w/ enclosures)

**RECEIVED**

APR 10 2014

**SC Court of Appeals**

Hart Hyland Shepherd, LLC  
Attn: Andrew T. Shepherd, Esquire  
PO Box 130  
Summerville, SC 29484

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

Stampit.com  
Stampit.com  
Stampit.com

B96914.25  
US POSTAGE  
FIRST-CLASS  
062S0008355896  
29483

\$0.48 0

B96912.08  
US POSTAGE  
FIRST-CLASS  
062S0008355898  
29483

\$1.19 0