THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South Carolina,

Respondent,

v.

Dan Ward,

Appellant.

RETURN TO APPELLANT'S SECOND PETITION FOR WRIT OF SUPERSEDEAS

STATEMENT OF THE CASE

Respondent brought this action against Appellant pursuant to the Uniform Declaratory Judgment Act (S.C. Code Section 15-53-10 et seq.) asking the Trial Court to declare Appellant subject to the Respondent's Building Codes, Business License, and Zoning Ordinances. Respondent also asked the Court for Injunctive Relief in order to effectuate any determinations the Court made as a part of its declaration of the rights and obligations of the parties.

At the conclusion of the discovery process, Respondent moved for Summary Judgment on its Declaratory Judgment causes of action and its prayer for Injunctive Relief. After oral arguments and the submission of written briefs, the Trial Court issued an Order, dated May 29, 2013, granting

Summary Judgment to Respondent.

Appellant then filed a Motion to Alter or Amend pursuant to SCRCP 59(e). After the submission of written materials by both parties, the Trial Court issued its Order, dated July 12, 2013, correcting its previous order in one respect, but reaffirming declaratory and injunctive relief.

Appellant then moved for the Trial Court's Supersedeas of its own Order, which was subsequently denied.

Appellant filed a Notice of Intent to Appeal to this Court, followed by a Petition for Writ of Supersedeas, asking this Court to supersede the Trial Court's Order granting injunctive relief. This Court issued its Order, dated August 21, 2013, denying Supersedeas. Subsequently, Respondent moved for a Rule to Show Cause before the Trial Court for the enforcement of its May 29th Order granting Summary Judgment. The Trial Court granted Respondent the relief requested, and by Order dated October 3, 2013, required Appellant to comply with its original Order within thirty days. Appellant's counsel moved to be relieved, and both the Trial Court and this Court granted relief, and Appellant is now proceeding *pro se*.

Appellant has now refiled its previous Petition for Writ of Supersedeas, and is asking this Court to consider same.

Respondent requests that the Court dismiss the Petition, as the Court has previously denied Supersedeas in its August 21, 2013 Order. However, in the resubmitted Petition, Appellant again fails to articulate any proper grounds in its Petition for the issuance of such a Writ, and so Respondent asks that the Petition be denied.

Appellant has failed to perfect its appeal by the filing of the trial transcript, designation of matter, or initial brief as was requested by this Court on more than one occasion. Accordingly, Respondent also moves for a dismissal of this appeal pursuant Rule 260, SCACR.

In addition to the documents submitted as a part of Appellant's Petition, this Return is supported by the following additional documents, which are attached hereto and incorporated herein by reference:

1. Plaintiff's Memorandum in Support of Motion for Summary Judgment
2. Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend
3. Affidavit of John Wade
4. Deposition Transcript of Dan Ward (excerpts)

STANDARDS OF REVIEW

Rule 241(c)(3), SCACR, provides that "[i]n determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot."

Rule 260, SCACR, provides in part that "[w]henever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court . . . . An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court."

ARGUMENT

Resubmitted Petition for Writ of Supersedeas

In support of its Petition for a Writ of Supersedeas, Appellant posits four arguments. Only one of these arguments purports to address the standard of review provided in Rule 241. The other three arguments, one regarding the constitutionality of the Respondent's position and two about the balancing of the relative harm and convenience of both parties, were argued extensively before the Trial Court but are not relevant to this Court's determination on whether or not to issue a Writ.

As for the sole argument that Appellant offers that is relevant to the Rule, it is inconsistent with both the specific position Appellant argued below, and with the theory offered within the Petition itself.

Appellant's position throughout this case has and continues to be that the qualifying aspect of his nonconforming use within the Town limits is the *temporary* storage of houses. He unsuccessfully argued this position below, and he argued it again in his Petition by stating ". . . the very nature of the nonconforming use [in this case]. . . is to temporarily store houses for sale or transit." In other words, Appellant's theory of the case is that, whether or not houses are currently stored on his property, his nonconforming status continues undisturbed. If he is correct in this analysis, then the temporary removal of the structures during the pendency of this appeal will not impact his rights at all, much less render them moot or deprive this court of jurisdiction.

One of the central issues of this case is whether or not Appellant's theory is correct or instead, whether state statute controls. S.C. Code of Laws Section 6-29-730 provides, in part, that:

> "The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance. . ."

Respondent has just such a termination provision within its Zoning Ordinance, but Respondent's position as to the application of this provision is based on the fact that all three parcels of land at issue in the instant case were vacant at the time the present dispute arose between the parties (Exhibit 3, Affidavit of Wade). This fact, which is central to the Respondent's argument, is admitted by the Appellant (Exhibit 4, Ward Deposition, Pgs 49:19- 50:25).

Throughout the balance of the Petition, Appellants uses hyperbolic language such as "government run afoul" and "clash of cultures," which only serves to mask the issues in this relatively straightforward land use and business license case. While the Court need not go further in

its analysis than the standard set out in Rule 241, and Appellant's failure to meet the burden of same, Respondent would like to address the other, irrelevant, arguments that Appellant presents in its Petition, so that the Court will not be operating under any misunderstandings.

In the "Factual Background" portion of its Petition, Appellant asserts that he is exempt from the business license requirement because of the operation of S.C. Code Section 58-23-620, which provides that "[n]o city, town, or county shall impose a ***license fee or license tax*** on the holder of a certificate E" license. [emphasis added]" As was conceded before the Trial Court, Respondent cannot charge Ward a *fee* or *tax*, but nothing in this statute exempts Appellant from the other requirements of the Town's business license ordinance. (See Singh v. City of Greenville, 2012-UP-227 (SC Ct. App. 2012).

Appellant next asserts that he is in a "catch 22" position because of the Trial Court's Order. In so arguing, Appellant has apparently determined that he would be denied the proper certificates of zoning compliance, building permits, and business licenses by the Town without having properly applied for such authorizations. Instead Appellant denies that he should be required to obtain these authorizations at all, and should be allowed to operate his business within the municipal limits without any such regulation from the Town.

Appellant is again seeking extraordinary relief from this Court when he has repeatedly failed to entertain his regular administrative remedies. Failure to exhaust administrative remedies generally acts as a bar to relief as a matter of a judicial policy. Hyde v. S.C. Dep't of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994). Appellant could have appealed for a variance from the Town's zoning ordinance. He did not. He could have appealed his stop work order. He did not. He could have appealed his business license issue. He chose not to do so. Instead, Appellant has chosen to take an obstinate stance, all the while ignoring the routine administrative avenues available to him.

Appellant also contends that he will suffer irreparable harm and the Town will suffer no harm by the suspension of the Trial Court's injunction. As referenced above, neither of these arguments are in any way relevant to the Rule 241 factors, but Respondent would point out that Appellant admits he is the very business of moving houses, and has numerous other locations to store such structures (Exhibit 4, Ward Deposition, Pg 13:6-18). For Respondent, however, every day of continued noncompliance with its ordinance works violence on the Town of Six Mile's statutory authority to regulate businesses within its municipal limits.

Failure to Prosecute Appeal

Appellant filed its Notice of Appeal on July 26, 2013. On August 22, 2013, This Court wrote to Appellant's counsel, requesting a transcript as required by Rule 207, SCACR. Respondent is informed and believes that this transcript has never been filed with the Court.

In addition, Appellant has been notified by the Court on multiple occasions of deficiencies in Appellant's filings and/or failure to file documents within the time frame established by the relevant provisions of SCACR. In fact, despite the passage of nearly a full calendar year from its Notice of Appeal, Appellant has never filed an Initial Brief and Designation of Matter with this Court. Instead, Appellant has merely resubmitted a Petition that was briefed and ruled on by this Court many months ago.

Accordingly, Respondent asks that this appeal be dismissed under Rule 260, SCACR for failure to prosecute the purported appeal.

For the foregoing reasons, Respondent requests that Appellant's Petition be denied, and the Trial Judge's injunction remain in effect, and that this Appeal be dismissed.

Respectfully submitted,

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July 16, 2014

Other Counsel of Record:
Appellant, *pro se*

1. Plaintiff's Memorandum in Support of Motion for Summary Judgment

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action 2011-CP-39-1108
COUNTY OF PICKENS	)	
Town of Six Mile, South Carolina,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	PLAINTIFF'S MEMORANDUM
Dan Ward	)	IN SUPPORT OF MOTION
	)	FOR SUMMARY JUDGMENT
Defendant.	)	
	)	

Plaintiff Town of Six Mile, South Carolina, by and through its undersigned counsel, respectfully submits the following memorandum in support of its motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Based on the following facts and discussion of the underlying law, Plaintiff's motion should be granted.

OVERVIEW OF ARGUMENT

1. Plaintiff, Town of Six Mile (Town), is a political subdivision of the State of South Carolina established and empowered by S.C. Code Sections 5-1-10, et. seq. and 5-7-30.
2. Defendant, Dan Ward ("Ward"), is an individual operating a business or businesses within the municipal limits of the Town of Six Mile.
3. Pursuant to its statutory grant of powers, the Town established a Business License Ordinance (attached hereto as Exhibit A), and a Zoning Ordinance (relevant section of which are attached hereto as Exhibit B) which provides for, among other requirements, building permits and certificates of zoning compliance.
4. Ward refuses to apply for a building permit, business license, or certificate of zoning compliance for his business and/or property.
5. The Court should, under the Uniform Declaratory Judgments Act (S.C. Code Section 15-53-10 et seq.) direct Ward to comply with the Town's ordinances, and should also enjoin Ward from operating his business within the Town until such time as he has properly licensed and permitted his business and/or property.

UNDISPUTED MATERIAL FACTS

Upon information and belief, and consistent with the parties' pleadings, depositions, and discovery responses, Plaintiff offers the following statements of facts which are understood to be undisputed:

1. Ward is the owner of two parcels of land, identified by Pickens County tax parcel numbers 4058-07-69-5660 ("Parcel A") and 4058-07-69-3858 ("Parcel B"). Both parcels are depicted in the attached Exhibit C.
2. Parcel A is, and has been at all time relevant to this matter, within the municipal boundaries of the Town.
3. Parcel B is located to the North and West of Parcel A, and is separated from Parcel A by the intersection of Belle Shoals Road and S.C. Highway 137.
4. The records of the Secretary of State, and meeting minutes of the Town indicated that the Town annexed certain property, depicted as "TOWN LIMITS 1965" in late 1965 under an annexation method authorized by state statute at that time.
5. Subsequent maps of the Town, specifically maps included as a part of the Town's 1977 Land Use Plan, show both Parcel A and Parcel B as within the municipal limits. These maps are attached hereto as Exhibit D.
6. For reasons unknown to either party, later maps of the Town show the Parcel B as not within the municipal limits, but there is no record of any reduction of the corporate limits ("de-annexation") to justify this omission.
7. Ward has, in the past, used Parcel A as a part of his house moving business by storing salvage structures prior to their sale and relocation elsewhere.
8. However, in the period of time leading up to October of 2009, both parcels were vacant, other than an old, unused, shed type structure located some distance off the road on the rectangular portion of Parcel B. That structure has not, to date, been used as a part of Ward's business
9. In October of 2009, Ward began constructing two metal storage sheds on the triangular portion of Parcel B. Pickens County issued a stop work order on these shed structures because Ward did not have a building permit.

10. John Wade, Mayor of the Town during 2009, discovered that Parcel B was located within the municipal boundaries, and took action to correct the Town's maps and tax records.
11. Based on Parcel B being located within the Town, the Town proceeded with the zoning process for the parcel.
12. After the zoning process had begun, and after he was on notice of the pending zoning, Ward moved salvaged buildings onto Parcel A and both segments of Parcel B.

DISCUSSION OF LAW

For the Town to have jurisdiction over Ward's property, it must be established that the Ward Parcels are within the municipal limits. In both his Answer and in his deposition, Ward agrees that Parcel A is inside the Town. The annexation map, and supporting documentation provided to the Town by the Secretary of State's Office, show the property surrounding the intersection of Belle Shoals and Highway 137 as clearly within the annexation boundary (see Exhibits 1-3 to the Affidavit of Rita Martin, Town Clerk). As referenced above, subsequent maps also show that the property to be within the Town boundaries.

The latest two zoning maps of the Town erroneously omit Parcel B from the municipal boundaries. However, these omissions are, without some evidence of formal action by the Town, insufficient to reduce the municipal limits under state law. S.C. Code Section 5-3-280 provides the method for reduction of municipal boundaries:

> Whenever a petition is presented to a city or town council signed by a majority of the resident freeholders of the municipality asking for a reduction of the corporate limits of the city or town, the council shall order an election after not less than ten days' public advertisement. This advertisement shall describe the territory that is proposed to be cut off. If a majority of the qualified electors vote at the election in favor of the release of the territory, the council must issue an ordinance declaring the territory no longer a portion of the municipality and must notify the Secretary of State of the new boundaries of the municipality.

There is no evidence of any such petition or election.

Similarly, state law provides a mechanism for challenges to annexations in S.C. Code 5-3-270, which states as follows:

When the limits of a municipality are ordered extended, no contest thereabout

> shall be allowed unless the person interested therein files, within sixty days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the extension, nor unless, within ninety days from the time the result has been published or declared an action is begun and the original summons and complaint filed with the clerk of court of the county in which the municipality is located.

There is no evidence of such a legal challenge.

In fact, even taking the evidence in a light most favorable to Defendant, Ward did not file a protest action against the extension of the municipal boundaries after being put on notice of Town's discovery of the correct boundary in 2009. As such, he should be barred from contesting the boundaries now by the operation of this statute of limitations.

The 1965 annexation by the Town was challenged in court previously. In *James A. Atkinson v. Town of Six Mile,* C.A. No: 2002-CP-39-1205, Judge G. Edward Welmaker was presented with a litigant who did not believe his property to be within the Six Mile town limits. Despite his property appearing within the 1965 annexation boundary map (the same map the Town relies on in the instant case) Atkinson maintained that the property was not in the Town.

While not binding on this Court, the analysis in that case is instructive on our similar facts. In the Court's written Order (attached hereto as Exhibit E), Judge Welmaker found that "the annexation was properly accomplished . . . the existing minutes of December, 1965, unquestionably confirm the annexation, referencing reduced electric rates with Duke Power Company, the installation of new street lights extending into the new annexation area; signing of a contract with Duke; and, a welcoming letter to each new person now within the corporate limits."

Judge Welmaker went on to state that "[w]hile Plaintiff, due to limited documentation now available in the town records, may sincerely believe the annexation was never legally accomplished, the Court finds to the contrary." Judge Welmaker also applied the statute of limitations analysis referenced above, to establish that Atkinson failed to timely object after notice, even though he learned of the annexation decades after it occurred.

In the instant case, Ward continues to dispute that much of Parcel B is within the town, although he has not offered any evidence of such other than the Town's admittedly erroneous recent maps, and assertions of unsubstantiated stories he allegedly heard. When asked in his deposition for any documentation of his assertions, he answered:

"Well, the only one that's – the only one that could have known anything would have been the guy that's in the grave since 1976 and I couldn't get him to talk."

Stated another way, Ward has no documentation that he is outside the municipal limits. He simply believes that his property is not in the Town. This belief, without any material facts to substantiate it, is insufficient to survive a motion for summary judgment. "When opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003).

Ward has failed to come forward with any facts, other than a blanket denial, that establish his property was not included in the 1965 annexation. He has failed to produce any evidence of a valid challenge to the 1965 annexation of his property. He has also failed to establish that any petition or election to de-annex the property ever occurred. All of the evidence presented by Ward is either inadmissible as hearsay and rumor, or, even if established, is not probative as to a valid statutory means of reducing the corporate limits of the Town.

With jurisdiction thus established, the Court can then turn to the evidence and law surrounding the specific causes of action made by the Town.

1. Ward is moving structure onto Parcel A and Parcel B without obtaining the proper permits.

In keeping with the powers granted to municipalities under S.C. Code of Laws Section 5-7-30 and elsewhere, the Town of Six Mile enacted a Zoning Ordinance on November 6, 2007. Section 801 of that ordinance provides that:

> "No building, sign, or other structure shall be erected, moved, added to, or structurally altered with a permit therefore, issued by the Pickens County [sic]. No building or sign permit shall be issued unless a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator to indicate that the proposed building or sign is in full compliance with the provisions of this Ordinance, unless a variance is granted as provided by this Ordinance."

Section 1200.61 further defines a "structure" as "anything constructed or erected, the use of which requires more or less permanent location on the ground. A "building" as defined in

1100.7, is a "structure."

In other words, the Town's ordinance requires an individual wishing to move a structure on or off a lot to first get a building permit and a certificate of zoning compliance.

In the instant case, it is uncontested that Ward is moving former dwellings and/or commercial buildings on to both Parcel A and Parcel B. It is also undisputed that he has failed to apply for either a building permit or a certificate of zoning compliance. He has argued previously that he is not required to get a building permit just to "set it for sale" on a lot. (see Ward Deposition, Page 53:22).

This assertion by Ward is not a material fact at issue, and is instead a legal conclusion that should be made by this Court. Since Ward has not produced any material facts to establish he is not moving structures into the Town (in fact he admits such activity throughout his deposition) summary judgment on the law is now warranted.

2. Ward is operating a business within the Town limits, and is doing so without obtaining a business license.

In keeping with the powers granted to municipalities under S.C. Code of Laws Section 5-7-30 and elsewhere, the Town of Six Mile enacted a Business License Ordinance, which provides, in part, that "[e]very person, firm, or corporation engaged or intending to engage in any business, trade profession . . . within the limits of the municipality except those business exempted by law, shall obtain and pay for a license."

Ward does not dispute that he is conducting business within the municipal limits. (see Ward Deposition Page 26:19 to Page 27:8). Instead he claims that he is exempt from the business license requirement because of the operation of S.C. Code Section 58-23-620, which provides that "[n]o city, town, or county shall impose a license fee or license tax on the holder of a certificate E" license." Provided that Ward can produce a valid certificate E license, it is conceded that the Town cannot charge him a fee or tax, but nothing in this statute exempts him from the other requirements of the Business License Ordinance.

Clearly the Town is not pursuing this matter for the minimal license fee, but instead asks the Court to find him subject to our ordinance so that the Town may exercise its statutory authority to regulate his business. The exercise by a municipality of its police power through the

decision to grant, deny, or condition a business license has been sanctioned by our Courts. (See most recently, *Singh v. City of Greenville*, 2012-UP-227 (SC Ct. App. 2012).

As Ward does not dispute the material facts underlying this cause of action, and only disputes, incorrectly, the operation of the ordinance under state law, summary judgment is appropriate.

3. Ward is maintaining a use of his property in violation of the Town's Zoning Ordinance.

Ward asserts that he has a "grandfathered" right to use his property as a storage yard for his salvaged buildings. He is correct, insofar as the Town's Zoning Ordinance does provide for the continuation of existing, nonconforming uses. In viewing the evidence in a light most favorable to the nonmoving party, we must assume that Ward has used both Parcel A and Parcel B for his recycling business for a period of time longer than the existence of the Town's Zoning Ordinance.

However whether his nonconforming use was granted by verbal waiver from the prior zoning official, or admitted by a previous iteration of the Town's Council, his current use of the property has lost its "grandfathered" status. S.C. Code of Laws Section 6-29-730 provides, in part that:

> "The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance. . ."

In keeping with this statutory power, the Town established Section 707 of its Zoning Ordinance, which provides that:

> "Nonconforming buildings or uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. However, to avoid undue hardship, the lawful use of any building or land use at the time of the enactment of this Ordinance may be continued even though such use does not conform to the provisions of this Ordinance. However, in the event that any of the following shall occur, the nonconforming status shall terminate, and the parcel, building, structure, or land, shall only be used in full compliance with the requirements of this Ordinance for the zoning district in which the use is located, as well as any other town, county, state, or federal regulation, law, or statute."

The Ordinance goes on to list several changes that qualify as terminating the nonconformity. Listed as #3 in the Ordinance is "re-established, reoccupied, or replaced with the same or similar

building, or land use after physical removal or relocation from its specific site location."

In the instant case, Ward admits that both Parcel A and Parcel B were empty when he began constructing the metal storage sheds on Parcel B. (See Ward Deposition Page 50:21-25) As such, he admits that he had, at some time prior "replaced with same or similar building, or land use after physical removal or relocation." At whatever point he made these alteration to his nonconforming use, that nonconformity terminated by the operation of law, and he must then bring his subsequent use into full compliance with the Zoning Ordinance.

These facts are apparently undisputed, as such, summary judgment as to the operation of the law is appropriate.

4. The Town is entitled to an Order enjoining Ward from using his property in violation of the Town's ordinances.

As outlined above, there are no material issues of fact in dispute between the parties. Instead, we have a series of legal determinations that must be made in order for the parties to know their rights and responsibilities. As previously argued, summary judgment in the Town's favor is now appropriate. This manifestly constitutes the likelihood of success on the merits as required for injunctive relief.

As for the elements of irreparable harm and no adequate remedy at law, the Town would point to Ward's express assertion to leave the improperly placed structures on both parcels until his death (see newspaper article, attached as Exhibit F). Regardless of how the Court may rule on the Declaratory Judgment causes of action, Ward may decide to do nothing. As such, the Town offered the injunctive cause of action in order to mandate that Ward remove the structures unless and until he complied with all of the Town's ordinances on the parcels.

CONCLUSION

For the foregoing reasons, the Town of Six Mile respectfully requests that its motion for summary judgment be granted, that any opposing motion for summary judgment be denied, that the Court declare the legal rights, status, and responsibilities of the parties, declare the Defendant's property to be within the municipal limits of Six Mile, require Defendant to obtain the proper licenses and permits, and enjoin Defendant for operating his business in contravention

of the Town's laws and ordinances, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Liberty, South Carolina
April 15, 2013

2. Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action 2011-CP-39-1108
COUNTY OF PICKENS	)	
Town of Six Mile, South Carolina,	)	
Plaintiff,	)	
vs.	)	
	)	PLAINTIFF'S MEMORANDUM
Dan Ward	)	IN OPPOSITION TO MOTION
	)	TO ALTER OR AMEND ORDER
Defendant.	)	
	)	

Plaintiff Town of Six Mile, South Carolina, by and through its undersigned counsel, respectfully submits the following memorandum in opposition to Defendant's Motion to Alter or Amend Order pursuant to Rule 59(E) SCRCP. Based on the facts in the record and discussion of the underlying law, both as previously argued before the Court and as supplemented herein, Defendant's motion should be denied and he should immediately comply with the Court's Order of May 23, 2013.

OVERVIEW OF ARGUMENT

1. Defendant is correct in its Motion insofar as the Court's Order misstates the Defendant's principal place of business is within the municipal bounds of Six Mile. Plaintiff does not argue the principal place of business exception to S.C Code Section 56-3-620, but instead asserts that Mr. Ward is only exempt from paying a fee for a business license, not from the necessity of obtaining the license itself.
2. The balance of the Court's order is clear and unambiguous, and Defendant should immediately comply with the Court's directives by removing the offending structures and making application for the necessary licenses and permits if he wishes to conduct his business within the Town.
3. Defendant argues for a non-conforming use status on Parcel A, but admits to having removed all structures from that parcel previously. Removing the nonconforming buildings extinguishes his nonconforming status and/or vested right under the plain language of the Town's zoning ordinance.
4. Defendant incorrectly asserts that the Court's Order references safety violations without evidence in the record of any such violations. The record contains multiple

instances of such violations.

5. The Court used the correct evidentiary standard in ruling that the Defendant's property was within the boundaries of the Town.

6. The issues of the Town's jurisdiction over Parcel B and the Town's request for injunctive relief were clearly framed in the pleadings, motion, supporting memorandum, and oral arguments in this case.

7. Inasmuch as it appears that Defendant is exercising a misunderstanding of the Court's Order and the very nature of Declaratory and Injunctive Relief, the Plaintiff joins in Defendant's request for a Supplemental Order. Plaintiffs requests that any Supplemental Order specifically direct the Defendant to bring his property into compliance with the Town's zoning, building, and business regulations by first removing all structures currently on the property and then making subsequent application to the Town as may be required for any business use of the parcels.

DISCUSSION OF LAW

Class "E" Permit and Town Business License

Ward does not dispute that he is conducting business within the municipal limits. Instead he claims that he is exempt from the business license requirement because of the operation of S.C. Code Section 58-23-620, which provides that "[n]o city, town, or county shall impose a ***license fee or license tax*** on the holder of a certificate E" license. [emphasis added]"

As was conceded at the summary judgment hearing, the Town cannot charge Ward a fee or tax, but nothing in the statute exempts him from the other requirements of the Town's Business License Ordinance. Clearly the Town is not pursuing this matter for the minimal license fee, but instead asks the Court to find him subject to our ordinance so that the Town may exercise its statutory authority to regulate his business within the municipal limits. (See *Singh v. City of Greenville*, 2012-UP-227 (SC Ct. App. 2012).

As Ward does not dispute the material facts underlying this cause of action, and only erroneously argues the operation of the ordinance under state law, summary judgment was and is appropriate.

The Court's Order is Clear and Unambiguous

The Court's Order of May 23, 2013 sets forth three requests that were made by the

Plaintiff via its Motion: These are correctly stated by the Court as:

1. Whether or not the property at issue is within the Town limits,

2. Whether or not the Defendant is required to obtain business licenses and other permits,

3) Whether or not the Defendant should be enjoined from operating his business until he has obtained the above.

The Court found all three of Plaintiff's requests to be appropriate under the facts in the record and the applicable law, stating "this Court grants Plaintiffs' Motion for Summary Judgment, Motion for Declaratory Judgment, and Motion to Enjoin."

Defendant now claims that this Court's Order only requires him to submit a provisional business license application and that by doing so he is entitled to maintain the unsatisfactory status quo on the two parcels. This is a torturously narrow reading of the Court's Order, as the Town of Six Mile certainly would not enter into this litigation for a simple piece of paper. Instead, as was made clear by the Plaintiff's written memorandum and oral arguments before the Court, the entire gravamen of the action is to require the Defendant to **remove the offending structures from the parcels** unless and until he has met all the requirements of the Town's zoning, licensing, and permitting ordinances.

Nonconformity and/or Vested Rights

In its motion, Defendant seizes on the use of the word "variance" in the Court's Order to again argue that he has a vested right to use his property as a storage yard for his salvaged buildings. As was admitted by Plaintiff at the hearing, the Town's Zoning Ordinance does provide for the continuation of existing, nonconforming uses, and in viewing the evidence in a light most favorable to the Defendant, we must assume that Ward has used both Parcel A and Parcel B for his recycling business for a period of time longer than the existence of the Town's Zoning Ordinance.

However, whether his nonconforming use was granted by verbal waiver from the prior zoning official, or admitted by a previous iteration of the Town's Council, his current use of the property has lost its "grandfathered" or vested nonconforming status. S.C. Code of Laws Section 6-29-730 provides, in part that:

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> "The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance. . ."

In keeping with this statutory power, the Town established Section 707 of its Zoning Ordinance, which provides, in part that:

> . . . in the event that any of the following shall occur, the nonconforming status shall terminate, and the parcel, building, structure, or land, shall only be used in full compliance with the requirements of this Ordinance for the zoning district in which the use is located, as well as any other town, county, state, or federal regulation, law, or statute."

The Ordinance goes on to list several changes that qualify as terminating the nonconformity. Listed as #3 is "re-established, reoccupied, or replaced with the same or similar building, or land use after physical removal or relocation from its specific site location."

In the instant case, Ward admits that both Parcel A and Parcel B were empty when he began constructing the metal storage sheds on Parcel B. It follows that he has made alteration to his then-vested use by removing the vested right structures from the parcels. His nonconformity exception was then terminated by the operation of law. As such, he must bring his subsequent use into full compliance with the Zoning Ordinance.

Since these underlying facts are undisputed, summary judgment as to the applicable law was and is appropriate.

Standard of Review

Defendant asserts that the Court disregarded the applicable standard of review in considering Plaintiff's Motion for Summary Judgment. Defendant asserts that there was "at least a scintilla of evidence presented . . ." and that therefore the Court should deny summary judgment. It is unclear from Defendant's Motion just what this mere scintilla of evidence was, however.

Ward offered no documentation that he is outside the municipal limits. He simply believes that his property is not in the Town. This belief, without any material facts to substantiate it, is insufficient to survive a motion for summary judgment. "When opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003).

Defendant failed to come forward with any facts that establish his property was not

included in the 1965 annexation. He also failed to produce any evidence of a valid challenge to the 1965 annexation of his property. Furthermore, he failed to establish that any petition or election to de-annex the property ever occurred. All of the evidence that was presented by Ward (which was comprised of two admittedly erroneous Town zoning maps and his own unsubstantiated beliefs) is not probative as to a valid statutory means of reducing the corporate limits of the Town. As such, these allegations are not material to the present determination, as immaterial facts, even if clearly established, cannot serve to avoid summary judgment.

History of Safety Violations

Defendant erroneously asserts that the Court's Order is not supported by the facts insofar as it refers to safety regulations. Defendant claims that no such evidence was in the record before the Court. In fact, the record is replete with examples of the Defendant's violation of building codes (not obtaining a building permit for 4 different structures), zoning mandates (operating a business on two residential parcels), and business licensing requirements. All of these ordinances are grounded, at least in part, in the statutory police power granted to municipalities under Section 5-7-30 of the South Carolina Code of Laws. This police power clearly encompasses safety concerns.

Injunctive Relief

Defendant argues that the issue of whether or not Parcel B was within the municipal boundaries was not "fairly framed" in the Town's Motion. Defendant's assertion is without merit. The allegation that Parcel B is within the municipal limits was clearly and specifically set out in the Plaintiff's Complaint, and addressed in Defendant's Answer. In its written Motion for Summary Judgment, Plaintiff directly referenced the specific Cause of Action in the Complaint that addressed Parcel B, and the issue was argued for and against by both of the parties at the hearing before the Court. In fact, it is difficult to fathom how a litigant could come into Court to argue on the application of a Town's laws to a parcel of land and not be cognizant that the jurisdiction of the Town would be a prerequisite.

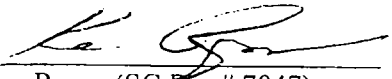
Similarly, Defendant argues that the issue of Injunctive Relief was not "fairly framed" in the Town's Motion. This assertion is also without merit. The allegations underlying the Plaintiff's request for injunctive relief were clearly and specifically set out in the Plaintiff's

Complaint, and addressed in Defendant's Answer. In its written Motion for Summary Judgment, Plaintiff specifically referenced the Cause of Action in the Complaint that requested Injunctive Relief, and the issue was argued for and against by both of the parties at the hearing before the Court.

CONCLUSION

For the foregoing reasons, the Town of Six Mile respectfully requests that Defendant's Motion to Alter or Amend be denied, that the Court issue a Supplemental Order specifically directing Defendant to bring his property into compliance with the Town's zoning, building, and business regulations, that such Order specify that Defendant must remove all structures currently on the property and only then make application to the Town for any business use of the parcels, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Liberty, South Carolina
June 11, 2013

3. Affidavit of John Wade

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action 2011-CP-39-1108
COUNTY OF PICKENS	)	
Town of Six Mile, South Carolina,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	AFFIDAVIT OF
Dan Ward	)	JOHN WADE
	)	
Defendant.	)	
	)	

PERSONALLY appeared before the undersigned, John Wade, of Six Mile, South Carolina, who first being sworn, states under oath as follows:

1. I served as the Mayor of the Town of Six Mile during the years of 2009 and 2010.
2. On or about August 5, 2009 I received a complaint about construction at the intersection of Highway 137 and Belle Shoals Road, the property of Dan Ward.
3. From our Town's map, it did not appear to me that much of Mr. Ward's property was inside the Town limits, but other individuals brought information to me that made me believe that his property was within the Town.
4. I contacted the Secretary of State's office, and was provided a copy of the 1965 annexation information in their records. These records confirmed that Mr. Ward's property was in the Town limits.
5. The Town had no record of any objection to the 1965 annexation, and no record of any petition, ordinance, or attempt to de-annex this property.
6. I wrote to Mr. Ward and explained that our records confirmed that his property was within the Town limits. I also wrote to the County to update their records, and began the process of having the property zoned under our zoning ordinance.
7. After I advising Mr. Ward by letter and in person of the upcoming zoning procedure for his property, but after our Town's Public Hearing and First Reading of the ordinance on the proposed zoning, Mr. Ward began moving old houses onto his property.
8. Mr. Dan Ward has not made an application to the Town for a building permit or certificate of zoning compliance.

9. Mr. Dan Ward has not obtained a Town business license.
10. Mr. Dan Ward has not applied for a variance from our Town Board of Zoning Appeals.

J. Wade

John Wade

SWORN to before me this 11th
Day of April, 2013

Rita Martin

Notary Public for South Carolina
My Commission Expires: 5-18-19

51-81-5

4. Deposition Transcript of Dan Ward (excerpts)

couldn't do that because of it being in a residential area. So then they started talking on this side; putting it on this side. They've got a park down here and they was wanting a sidewalk, not to go to the park, but they was wanting it to go down here to Edens Ridge where there's a subdivision. They was wanting to run a sidewalk. The elementary school was up here and they was wanting to run a sidewalk down this side from this Edens Ridge so these little elementary kids could come up this sidewalk and cross this main road and go to the school. Now you know that. I mean that's the reason they give me and I said "No parent is going to let their little elementary kid that small go up that sidewalk." And I said "So if I give you that sidewalk right-of-way, it's going to do away with that lot C," 'cause it's not that big any way. And I said "That's commercial property and I'm not going to do that." So that was the whole --

Q. Can you tell me which building did they first give you -- what was the stop order about; which building?

A. It was these two little sheds right here.

Q. Okay, it was on the sheds?

A. Yes, sir.

Q. What was -- what else was on C when you started building the sheds?

A. It was nothing on C.
Q. Okay, so that house came in after that?
A. Yes, sir.
Q. What was on B when you started building the sheds?
A. Just that other little building out here, that John said in his deposition about it being an outhouse.
Q. That was the tree -- the tree office?
A. Yes.
Q. What about that other house?
A. It wasn't there.
Q. Okay. That's the one that came from behind your place?
A. Yes, sir.
Q. Okay. When you got the stop work order on the shed, what was on A?
A. Nothing.
Q. Okay.
A. I had just sold a building off of it --
Q. Okay.
A. -- that had been on there on -- it had been on there for about a little over two years.
Q. So the buildings that sit on A, B, and C now came in after -- tell me if I'm wrong; they came in after you started building the sheds?
A. No, they came -- they came in after I'd done built 'em, that's correct.

30 days or 60 days, he's ready to start construction. So the house don't mean nothing to him, so he wants it moved, you know.

Q. So you end up needing a place to put it?

A. Yes, sir; that's correct.

Q. How many different places do you have around to store these houses?

A. Well, it's me and two brothers that have different businesses. We've got about four different things. We do -- we've got places all over South Carolina.

Q. Oh, do you?

A. Yeah.

Q. Well, just -- I guess I could get you talking about that and we could talk all day.

A. Right.

Q. Let's talk about Pickens County; how many do you have in Pickens County?

A. I have one, two -- four places; four different places.

Q. Okay, does that include this one?

A. Yes.

Q. Or does that not include -- okay.

Tell me then, for this place and then the other places, once you get them up on the iron that you've described, what's the process of getting them moved to these other locations?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South Carolina,

Respondent,

v.

Dan Ward, Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the Respondent's **Return to Appellant's Petition** upon the Appellant on this 16th day of July, 2014, by depositing a copy of same for overnight commercial delivery, postage prepaid, and addressed as follows:

Dan Ward
281 Cedar Hill Road
Six Mile, SC 29682

Kenneth Roper

Liberty, South Carolina
July 16, 2014

ROPER LAW FIRM, LLC

18 South Commerce Street
Post Office Box 330
Liberty, South Carolina 29657
Telephone (864) 843-0004
Fax (864) 843-4555
www.roperlawfirm.com

Karen S. Roper

Kenneth S. Roper

July 16, 2014

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RE: Town of Six Mile, Respondent v. Dan Ward, Appellant
Apellate Case No. 2013-001628

Dear Ms. Kitchings,

Please find enclosed for filing an original and seven (7) copies of Respondent's Return to Appellant's Petition in the above-captioned matter, as well as our Certificate of Service. Please file the original and six of the copies, returning the extra copy to us in the envelope provided.

By copy of this letter along with all attachments, our Return is being served on the Appellant, Mr. Ward.

Please contact me if you have any questions regarding this matter.

Sincerely,

Ken Roper

w/enc.

Cc: Mr. Dan Ward