

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from the Administrative Law Court

The Honorable Carolyn C. Matthews

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

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Dorchester County Assessor .....Appellant,

v.

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

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**FINAL REPLY BRIEF OF APPELLANT**

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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

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## 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. p. 144.

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 lightning strikes. R. pp. 84-85. 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. 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

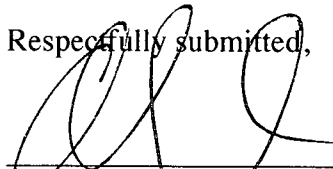
that he is a victim of government bureaucracy. The nature of these properties has clearly changed and they are no longer dedicated to agricultural land use.

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,



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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  
July 17, 2014.

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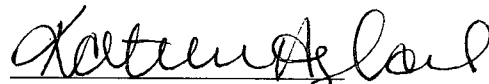
Middleton Place Equestrian Center, LLC .....Respondent.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Reply Brief complies with Rule 211(b)(1) and (2), SCACR.



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 RESPONDENT

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Summerville, South Carolina

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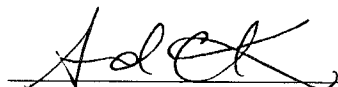
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**CERTIFICATE OF SERVICE**

I, E. Andersen Cook, an employee of Hart Hyland Shepherd, LLC, certify that I have served the following documents on the Respondents:

- Appellant's Final Brief;
- Final Reply Brief; and
- Record on Appeal, not including the two oversized exhibits filed separately, which are already in the possession of the Respondents;

by depositing a copy of each in the United States Mail, postage prepaid, on July 21, 2014, addressed to their attorney of record, Thomas Pritchard, 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 APPELLANT

Summerville, South Carolina  
July 21, 2014

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