THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

Civil Action No. 2016-CP-40-03478
Appellate Case No. 2017-000561

RECEIVED
JAN 12 2018
SC Court of Appeals

Cricket Store 17, LLC d/b/a Taboo,.....Appellant,

v.

City of Columbia Board of Zoning Appeals,.....Respondent.

And

City of Columbia Zoning Administrator,.....Counterclaimant,

v.

Cricket Store 17, LLC d/b/a Taboo,.....Counterdefendant.

REPLY IN SUPPORT OF CITY'S MOTION TO DISMISS

Taboo has only itself to blame for utterly failing to present a proper Record on Appeal. Because of Taboo's repeated failure to address the deficiencies in its Record and attempt to blame the City for the same, this Court should dismiss the appeal under Rule 260(a), SCACR. Alternatively, the Court should strike and supplement portions of the Record consistent with the City's motion.

As previously noted, this Court can dismiss an appeal "[w]henever it appears that an appellant ... has failed to comply with the requirements" of the South Carolina Rules of Appellate Procedure. Rule 260(a), SCACR. This includes procedural rules, such as failing to

"timely serve a notice of appeal under Rule 203" and "failing to file an initial brief and designation of matter under Rule 208(a)(4)." *State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). This also includes failing "to serve and file a record on appeal ... under Rule[] 210 .... Furthermore, the burden is on the appellant to provide the appellate court with an adequate record for review." *Id.* An adequate record for review must contain only matter that was before the court below and that was designated by one of the parties. Rule 210(c), (g), (h). Rule 210(c) also requires the record to be organized in a specific order by the type of document that was filed in the court below..

Here, the Record on Appeal is deficient for a host of reasons. Taboo has injected numerous items not designated or not entered below—or both. Taboo has also excluded an item designated by the City. And Taboo has continued its earlier formatting error: it has a misnumbered table of contents.[1] After Taboo sent the City a draft Record on November 2, 2017, the City gave Taboo clear, specific notice of the deficiencies and instructions on how to correct them. Taboo has instead continued in error and now blames the City for its own fault.

Moreover, Taboo has generated unnecessary confusion because it has not presented documents in the Record as they were presented to the trial court, pursuant to Rule 210(c), SCACR. Instead, Taboo divides up every single component of the BZA Records, even though they were presented *in toto* as Bates-numbered Exhibits A and B to the City's Answer and Counterclaim. The City also notified Taboo of this deficiency on October 25. (Ex. 1.) Per Rule

[1] For example, "Exhibit A to City's Answer & Counterclaim" can be found on pages 150-250 of the Record, and "Exhibit B to City's Answer & Counterclaim" is found at pages 251-286. Looking at the Table of Contents, one would conclude that these materials were found on pages 150 through 354. (Pages 319-354 are an unnecessary duplication of Exhibit B to City's Answer & Counterclaim.) Another example is the "City's Reply to plaintiff's objections to admission *pro hac vice*" which is found starting on page 395 rather than page 375. Pages 43 through 107 are also duplicates of materials found in "Exhibit A to City's Answer & Counterclaim."

210(c), Taboo should have put the BZA Records together and only under the "Exhibits" portion of its Record.

Taboo also asserts that "the deficiencies [with the Record] are minor inconveniences, and the indisputable fact is that [everything] designated by the City is contained in the Record." (Taboo's Return at 6.) Both statements are false. Including materials in the Record that were not designated and that were not presented to the lower court or tribunal is not a trivial error. In fact, their inclusion is a clear violation of the appellate rules. New material would unnecessarily expand litigation and distract this Court from the main issues on appeal. Similarly, leaving out items designated by the City will unfairly prejudice the City in defending the trial court's holding.

At this late juncture, and after prior efforts to get Appellant to conform to the Rules, fixing the Record will unduly and prejudicially delay this matter. In light of Taboo's repeated failures and its shameless attempts to blame the City for its failures, this appeal should be dismissed. Alternatively, the City requests that certain materials be stricken and that the record be supplemented as set forth in the City's motion. The Court should not condone Taboo's incompetence and erroneous finger-pointing. Taboo's failure to prepare an adequate Record on Appeal has already cost the City undue time and money, and generating an adequate Record will no doubt cost even more.

A. Taboo cannot seriously claim that the Record deficiencies are the City's fault when the City provided detailed feedback to Taboo's draft Record and has otherwise complied with all applicable rules.

Throughout its motion, Taboo argues that the City has consistently excluded Taboo and its counsel from important matters, and that this refusal has unduly delayed the proceedings and ultimately caused many of these Record deficiencies. This could not be further from reality.

At every step, the City has provided necessary documents to the Board of Zoning Appeals

("BZA"), the trial court, and Taboo. Taboo argues that "the City has adopted a policy of exclusion that extends not only to the appellant, but also to its counsel." (Taboo's Mot. at 2 n.1.) But Taboo cannot support any of its bare assertions—either in this motion or elsewhere—or show *any* rule that the City has violated.

Moreover, the City has provided more than adequate feedback and followed the relevant rules to help Taboo prepare an accurate and adequate Record on Appeal. On October 5, 2017, the City timely provided its Designation of Matter which clearly set forth the items the City wanted to be in the Record. On October 25, the City highlighted a number of deficiencies Taboo's proposed contents for the Record. (Ex. 1.) On November 2, Taboo provided the City a "draft" of the Record on Appeal that contained voluminous errors and an unworkable table of contents. In particular, Taboo included many items that had not been designated, were not part of the record, or both. Taboo also partially or wholly excluded items that the City had designated. On November 12, the City objected and attempted to head off these issues before they reached this Court. (City's Mot. Ex. C.) The City gave clear and concise feedback in a detailed response that required the City to pore over every page of Taboo's draft Record.

Instead of fixing the Record, Taboo now shirks responsibility by claiming that it could not easily remedy the deficiencies because the City's counsel did not meet with Taboo's counsel in-person. But as Taboo recognizes, no rule requires the parties to meet to compile the record. (Taboo's Mot. at 3 n.1); *see also* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 405 (3d ed. 2016) (stating that the "purpose of the Designation is to streamline the process for compiling the appellate record"). And none of the City's corrections necessitated an in-person meeting; all Taboo had to do was delete certain portions and include other available documents (which were emailed by Respondent's counsel to Taboo's counsel). (*See* Ex. 2 attached hereto.)

Taboo also argues that the City caused it "unnecessary duplication" that could have been avoided by a personal meeting and that Taboo "did confuse some page numbers trying to decipher the City's opaque instructions." (Taboo's Return at 6.) But the page numbering of the draft Record was wrong *before* the City ever gave any feedback on it, and Taboo's own inflexibility and refusal to follow the Rules led to any increased cost or delay.

For these reasons, Taboo has only itself to blame for failing to present the Court with an adequate Record on Appeal. Its blame-shifting is baseless.

B. Appellant misstates basic facts to obscure and distract from Appellant's substantial and repeated failures in compiling the Record on Appeal.

The City explained eight material deficiencies in Appellant's Record on Appeal in its initial motion. (City's Mot. at 4-6.) In its Return, Taboo has no adequate response. It merely ignores the relevant fact—that the item was not in the record below, not designated, not included, or is otherwise deficient—or misstates the facts altogether. The City addresses each deficiency in turn.

1. The application for special exception was never presented to the trial court because it was not part of the record presented to the BZA below. (R. 35-42).

This item was simply never presented to the lower court or tribunal. Those adjudicatories decided, on Taboo's administrative appeal, that the Administrator was correct to not process the special exception application because the Zoning Ordinance prohibits special exceptions for sexually oriented businesses.

Appellants did present a blank cover page of the Application for Special Exception to the Board of Zoning Appeals. (R. 274 (from Ex. B to City's Ans. & Countercl. at 16-011-AA_0024).) But that is not the eight-page document at issue here.

Appellant also argues that it was "frozen out of the process." (Taboo Return at 2.) Both the assumption and the conclusion of that statement are wrong. First, Appellant was not wrongfully denied a meeting, as the City has explained at length. (Resp. Br. at 16-17.) Second, Taboo could

have easily proffered its special exception application before the BZA on or before the April 12, 2016 BZA hearing. As it stands, the special exception application was not part of the trial court's record. Thus, it is not part of the Record on Appeal.

2. The photographs from the September 2017 visit and related correspondence—although proving Taboo's unlawful behavior—are undesignated materials outside the trial court's record and thus improperly included in the Record on Appeal. (R. 287-318.)

Appellant argues that these materials should remain in the Record because they are part of Respondent's designations. This is patently false.

The City never designated these materials from September and October 2017 (R. 288-318) as record evidence because they were never part of record in the trial court, which rendered its decision seven months prior, on February 6, 2017. Moreover, the City's designation of record was filed on October 5, 2017, and the letter (properly) denying a general business license to Taboo, and the accompanying photographs, were not delivered to Taboo until October 24, 2017. (*See* Ex. 3, attached hereto). So they could not have been part of the City's designation, even if the City had wanted them to be, because they prove that Taboo continues to operate illegally even after the February 6, 2017 order.

The City *did* designate color photos from a January 28, 2016 visit that were submitted to the BZA, and thus were part of the BZA's record. (R. 161-166.) But the color photographs and letter generated several months later are obviously not properly part of the Record on Appeal.

3. The November 21, 2013 transcript excerpt (R. 384-386) was not attached to Taboo's objections to the *pro hac vice* application and it was never designated by either party.

Appellant states that this transcript was submitted as an exhibit to its September 1, 2016, "Objection to City's Motion for Admission *Pro Hac Vice*." (Taboo's Return at 3; R. 368-383.) That is flatly wrong.

The Court can verify this by checking the materials submitted to the circuit court by

Appellant on September 1, 2016 on the Richland County Public Index. *See Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (stating a court can take judicial notice of its own records and files). The transcript excerpt was never presented to the lower court or tribunal.

Nor was it ever designated. Taboo tries to muddy the water with correspondence on the draft Record on Appeal, but this correspondence post-dated Taboo's only designation of matter from August 4, 2017. Further, Taboo falsely claims that the transcript appears in its draft table of contents from October 25. (Taboo's Return Ex. A.) Finally, Respondent notified Taboo on November 12 that the transcript should not be included in the Record on Appeal. (City's Mot. Ex. C ("pp. 371-376 transcript and letters not presented to lower court or tribunal").)

Taboo also states that this excerpt is important because it contains "Mr. Bergthold's false statement to the Hearing Officer," but the excerpt does not contain any statements from Mr. Bergthold. Further, the City has already addressed this exact issue, (Resp. Br. at 20-23), and the trial court—having conducted two hearings addressing Taboo's objections to Mr. Bergthold's pro hac vice admission—rejected all of Taboo's arguments.

4. Likewise, Taboo never presented letters between Appellant's counsel and Clerk of Supreme Court to the trial court or designated them on appeal. (R. 387-389.)

Again, Appellant argues that these letters were part of Appellant's September 1, 2016, objection to the *pro hac vice* admission of Scott Bergthold. As explained above, this is simply incorrect. Moreover, these letters also were not designated by Appellant for inclusion in the Record on Appeal, and thus should be excluded.

5. Taboo admits that Respondent's Responses to Plaintiff's Requests to Admit were never part of the Record and were never designated. (R. 405-415.)

Appellant tries to minimize these critical admissions by claiming that the responses consist of evidence in the Record and that they were wrongly excluded below. But Taboo does not show, in the record, where the responses were proffered, let alone wrongly excluded. Moreover, these

arguments are irrelevant under Rule 210(c), SCACR, which prohibits any material not presented to the lower court or tribunal.

Finally, Taboo fixates about an "admission" concerning the meaning of S.C. Code Ann. § 6-29-800, which of course is a legal conclusion to which no response is required. The City has already refuted Taboo's legal contention on the merits. (Resp. Br. at 14-15.)

6. Professor Hubbard's article on zoning is irrelevant and was never part of the Record below. (R. 583-616.)

Taboo even admits that it did not present this article to the lower court or tribunal. Nor can it argue here that the article was wrongly excluded. Even though Taboo "came armed with multiple copies" for the April 12, 2016 BZA hearing (Taboo Return at 5), Taboo never proffered a copy to be included in the record before the Board of Zoning Appeals. Professor Hubbard and the rest of the BZA also roundly rejected Taboo's interpretation of S.C. Code Ann. § 6-29-800 and its reliance on Hubbard's article for that interpretation. (R. 489-490, Tr. 74:20-75:1.)

7. Taboo ignores its failure to include the City's designation of a letter confirming receipt of co-counsel's *pro hac vice* application.

In its Return, Taboo spills a great deal of ink addressing every other deficiency, but ignores this one. The City even notified Taboo of this deficiency well in advance of the filing date when it gave feedback to Taboo on its draft Record on Appeal. (City's Mot. Ex. C.) Taboo has no excuse for failing to include this item in the Record.

8. Taboo has no excuse for injecting an unsigned and undated application for administrative appeal that is not part of the trial court's record. (R. 115-116.)

Taboo again claims that it could not obtain a signed copy of the administrative appeal application because of the City's nefarious tactics. But the certified record provided to the circuit court, pursuant to S.C. Code Ann. § 6-29-830(A), includes a signed and dated Application for Administrative Appeal. This signed copy was included in the City's Answer and Counterclaim as

part of the BZA Record. Further, Taboo even included this signed copy in its own Record on Appeal. (R. 263-265.) Finally, Taboo's FOIA request was both unnecessary (because Taboo had the signed application already) and irrelevant to the February 6, 2017 order on appeal here.

Conclusion

For all these reasons, Taboo cannot argue that the deficiencies in the Record are minor inconveniences, or that their inclusion would do anything other than distract and delay this appeal, and cause the City to incur additional, unnecessary costs. The City thus respectfully asks this Court to strike Taboo's appeal. In the alternative, the Court should strike and supplement portions of the Record consistent with the City's motion.

Respectfully submitted,

Peter M. Balthazor, #68244
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Attorneys for City of Columbia
Board of Zoning Appeals and City of
Columbia Zoning Administrator

From: Thomas Goldstein <tgoldstein@COBBLAW.NET>
Sent: Thursday, October 26, 2017 4:07 PM
To: Pete Balthazor
Subject: RE: Record on Appeal

That's what I can't seem to explain with sufficient clarity. So, let's just go with your plan and I'm sending you a pdf of the PROPOSED Record on Appeal. Then you can look at it and say: Yes, No, or I Don't Care.

From: Pete Balthazor [mailto:peteb@rplfirm.com]
Sent: Thursday, October 26, 2017 4:05 PM
To: Thomas Goldstein <tgoldstein@COBBLAW.NET>
Cc: 'sbergthold@sdblawfirm.com' <sbergthold@sdblawfirm.com>
Subject: RE: Record on Appeal

I think it's real simple. My only request is that Exhibits A and B be included in their entirety because that is how they were provided in the record to the Circuit Court. If there are things that overlap, then I don't have a problem with them being omitted elsewhere. I am not aware of other overlaps.

Thanks, Pete

From: Thomas Goldstein [mailto:tgoldstein@COBBLAW.NET]
Sent: Thursday, October 26, 2017 3:52 PM
To: Pete Balthazor
Subject: RE: Record on Appeal

I hear you, but when the record is 600 pages because 400 pages are the same thing, then I think we're asking for trouble. So, I like your proposal of having a rough draft pdf. I can then OMIT some of my designations and insert in their place: "APPELLANT'S ATTACHMENT OMITTED AS BEING IDENTICAL TO PAGES ____-_____ OF RESPONDENT'S EXHIBIT A." Now if you're saying: "I want the Record on Appeal to be a lengthy and duplicative as possible," then say that, and we can move on. For example, in my application for Special Exception, I attached the City's study of the area. That is the same study you appended to your Answer as Exhibit A. Is it necessary to have the identical study in the Record on Appeal in two places? Many of our designations are like that.

In other words, suppose pages 100-175 of appellant's designation are same document as pages 300-375 of respondent's designation. Do you object to my admitting mine with a single-page notation that the attachment is the same document as appended to respondent's answer at pages 300-375 of the Record? In essence, your Exhibit A is almost identical with my application to the Board? Do all those identical pages have to be in there twice?

From: Pete Balthazor [mailto:peteb@rplfirm.com]
Sent: Thursday, October 26, 2017 3:35 PM
To: Thomas Goldstein <tgoldstein@COBBLAW.NET>
Cc: 'sbergthold@sdblawfirm.com' <sbergthold@sdblawfirm.com>
Subject: RE: Record on Appeal

City's Reply Supp MTD Ex. 1

Tommy:

Why are we going to do a joint designation? I never agreed to submit a joint designation. You make your designations, and I make mine. I have already stated our position on the inclusion of the items designated by the Respondent. We

cannot agree to removing pages from Exhibits A and B. These Exhibits consist of the entire record as presented to the Circuit Court and as required by S.C. Code Ann. § 6-29-830.

Thanks, Pete

From: Thomas Goldstein [mailto:tgoldstein@COBBLAW.NET]
Sent: Thursday, October 26, 2017 3:01 PM
To: Pete Balthazor
Subject: RE: Record on Appeal

I agree with you, but, as we lawyers like to say, in an abundance of caution, I'd rather have the pdf record on appeal in front of us and go through it together. (That's why I wanted to come to your office.) I'm 99% sure we're on the same page on designations, but I'm not 100%. I'd rather be 100%. (For example, I got the date wrong on one of the designations.)

Speaking of reply briefs, etc., here is my reply brief and my motion for ten-day extension. Do you want paper copies? I have them ready to go, but if you're just going to put them in the recycle bin (Support Clemson Forestry), I'll just keep them here. I'm happy to send both.

I think I have this Record correct, but the more I think about your pdf preview, the better I like it. I don't know if it will be ready today or not. Next time, let me come to your office so we could put all this together!

From: Pete Balthazor [mailto:peteb@rplfirm.com]
Sent: Thursday, October 26, 2017 2:50 PM
To: Thomas Goldstein <tgoldstein@COBBLAW.NET>
Subject: RE: Record on Appeal

Tommy:

I think we will have plenty of time to coordinate. The Record is not due until 30 days after service of the last brief.

In addition to Exhibits A and B as provided to you yesterday, please find attached the following items that should be included in the Record on Appeal:

City's designation items 6, 8-9, 11

6. Letter confirming PHV application
8. Verified PHV app
9. Order granting PHV, filed September 1, 2016
11. Order granting PHV, filed January 26, 2017

Also, a **file-stamped copy** of City's Reply to Plaintiff's Objections to PHV. Please include this version rather than any un-stamped copy.

Also, I am including a copy of the January 2, 2017, circuit court hearing transcript. You listed this on your initial designation but it is not listed in the proposed table of contents for the Record.

Please be advised that we require that Exhibits A & B be presented in the Record on Appeal in the same form as they were provided to you yesterday, i.e., they should be kept together and in order as unitary documents, and they should be presented in color.

I have noticed in the proposed Record on Appeal that you intend to include the "Video Recording of December 11, 2011 Special Meeting before City of Columbia Council." I do not recall that this video recording was presented to the lower

court or tribunal in this matter. Rule 210(c) states that the Record shall not include matter which was not presented to the lower court or tribunal. Please be advised that Respondent reserves its right to file an appropriate motion if this video evidence is designated to be included in the Record on Appeal.

Finally, I noticed that the proposed Record does not include Scott Bergthold's name on the cover page. As you know, the Court of Appeals required that Scott, as counsel for Respondent, be included.

Thank you.

Sincerely, Pete

Peter M. Balthazor
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Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
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Columbia, SC 29205
(o) 803.799.9993
(f) 803.239.1414

From: Thomas Goldstein [mailto:tgoldstein@COBBLAW.NET]
Sent: Thursday, October 26, 2017 1:36 PM
To: Pete Balthazor
Subject: Record on Appeal

I'm going to send you a pdf, but we need to set up a time to talk. I'm going to ask for a ten-day extension to file my final designation of contents of record on appeal so we can coordinate. The Record on Appeal is unnaturally large because we're putting the same things in, and I think the Court is going to be upset with us for having 500 pages, 400 of which are duplicates. I am open to suggestions. (In other words, your Exhibit A to your Answer is essentially my Application for Special Exception all over again.)

Tommy

From: Pete Balthazor <peteb@rplfirm.com>
Sent: Wednesday, October 25, 2017 6:27 PM
To: 'Thomas Goldstein'
Cc: Scott Bergthold
Subject: RE: Record on Appeal
Attachments: 16-010-aa-2016-cp-40-3478-BoZArecord_Bates.pdf; 16-011-aa-2016-cp-40-3478-BoZArecord_Bates.pdf

Tommy:

It does not appear that you have included items 6 – 9, and 11 from Respondent's Designation of Matter. We will provide those to you so they can be included in the Record.

Attached here please find Exhibits A and B from the Answer and Counterclaim.

Thank you.

Pete

From: Thomas Goldstein [mailto:tgoldstein@COBBLAW.NET]
Sent: Wednesday, October 25, 2017 6:11 PM
To: Pete Balthazor
Subject: Record on Appeal

Pete,

I think I can get you a pdf by tomorrow, but it looks like I'm missing some of your designations. On the other hand, I think some of your designations are the same as my designations but with a slightly different name. Would you look at the attached Table Of Contents and compare it against your Designation and see if I have everything? I know I'm missing Exhibits A and B attached to your Answer. (if you hadn't barred me from your office, we would have had this all straightened out. How can you live in Columbia and be so discriminatory against Gamecocks?)

Tommy

City's Reply Supp MTD Ex. 2

We Are Columbia

1339 Main Street, P.O. Box 147, Columbia, SC 29217• Phone: 803-545-3345 • Fax: 803-988-8025

October 24, 2017

VIA HAND DELIVERY
Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Business License Application

Mr. White:

As you are aware, operation of a sexually oriented business at 4716 Devine Street has been unlawful since January 2, 2014. *See* City Code § 17-374(i). Taboo filed suit in federal court in late 2013 against the City Code provisions prohibiting such operation, but on March 31, 2015, the federal court granted the City summary judgment. The federal court denied Taboo's post-judgment motions on January 7, 2016, the federal appeals court affirmed the judgment on January 25, 2017, and the U.S. Supreme Court denied Taboo's petition on October 2, 2017.

When the Zoning Administrator found that Taboo was still operating unlawfully on January 28, 2016, Taboo appealed that determination to the Board of Zoning Appeals ("BOZA"). After a hearing, the BOZA affirmed that decision. In February 2017, the Richland County Court of Common Pleas affirmed the BOZA decision. Notwithstanding Taboo's repeated representations that it would not operate a sexually oriented business, Taboo has continued to unlawfully operate a sexual device shop at 4716 Devine Street for many months.

I am in receipt of Taboo's October 4, 2017 application for a general business license. For the following reasons, pursuant to § 11-44 of the City Code, the application is denied.

Section 11-44 provides, in relevant part, that an application shall be denied "when the application is incomplete or contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, or when the activity for which a license is sought is unlawful or constitutes a public nuisance."

In the application, Taboo's manager, Larry Boyer, described Taboo's business not as a sexually oriented business, but as a "general retail" business on the application. Mr. Boyer further certified,

City's Reply Supp MTD Ex. 3

among other things, that he "is aware of and understands the jurisdiction's requirements and codes," that "issuance of a business license is contingent upon compliance with all of the jurisdiction's requirements," and that "all information contained herein [in the application] is true and accurate."

But an inspection on October 5, 2017 revealed that Taboo is continuing to unlawfully operate a sexually oriented business, specifically a sexual device shop, at 4716 Devine Street. Pictures taken during that inspection are attached hereto. These are consistent with pictures taken during a September 29, 2017 inspection, which are also attached. Taboo's operation of a sexual device shop violates the following Columbia City Code sections: § 11-734(a) (requiring a license for sexually oriented businesses), § 17-374(b) (specifying zoning districts for sexually oriented businesses), and § 17-374(c) (governing the proximity of sexually oriented businesses to sensitive land uses).

Thus, Taboo's operation is unlawful. It also constitutes a public nuisance under City Code § 11-745(a). Additionally, because the application describes Taboo as a general retail business, rather than as the sexually oriented business that it is, the application contains a misrepresentation, a false or misleading statement, and evasion or suppression of a material fact.

Taboo's application is therefore denied.

Sincerely,

Nannette Guest, MBL
Senior Business License Inspector

Sidra Nelson
Business License Administrator

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

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City of Columbia Board of Zoning Appeals,.....Respondent.

And

City of Columbia Zoning Administrator,.....Counterclaimant,

v.

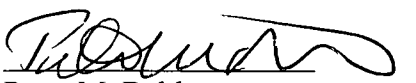
Cricket Store 17, LLC d/b/a Taboo,.....Counterdefendant.

PROOF OF SERVICE OF REPLY IN SUPPORT OF CITY'S MOTION TO DISMISS

I certify that on January 12, 2018, I have served all counsel in this action with a copy of the foregoing by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 711121
North Charleston, South Carolina 29415-1121
Attorneys for Cricket Store 17, LLC d/b/a Taboo

Dated: January 12, 2018



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Fax: 704.625.9430

January 12, 2018

RECEIVED
JAN 12 2018
SC Court of Appeals

VIA HAND-DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201s

Re: Cricket Store 17, LLC d/b/a Taboo v. City of Columbia Board of Zoning Appeals AND City of Columbia Zoning Administrator v. Cricket Store 17, LLC d/b/a Taboo
Civil Action No.: 2016-CP-40-03478
Appellate Case No.: 2017-000561
Our File No.: 5253.00114

Dear Ms. Kitchings:

Please find enclosed the original and six copies of the Reply in Support of City's Motion to Dismiss, with Proof of Service in the above-referenced matter. Please file the enclosed documents and return a filed copy with my runner.

Thank you for your kind assistance.

Sincerely,

Kimberly R. Bickford
Paralegal

/krb

Enclosures

Cc: Thomas R. Goldstein, Esquire