

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

James M. Tennant,

Petitioner

JAN 4 - 2013

vs.

S.C. Supreme Court

Board of Zoning Appeals for the City of Georgetown,

Respondent.

PETITION FOR WRIT OF CERTIORARI
OF
SC Ct. App. Unpublished Opinion No. 2012-UP-462, Filed July 25, 2012

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

APPENDIX – VOLUME 1
CONTAINS RECORD ON APPEAL

JAMES M. TENNANT
1204 SAVILLE ST.
GEORGETOWN, SC 29440
843 527-4485

Petitioner *Pro Se*

January 4, 2013

ELISE FREEMAN CROSBY
405 DOZIER ST.
GEORGETOWN SC 29440

Attorney for Respondent

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- 6 – Letter from Sabrina Morris to Marty Tennant of January 7, 2009 (decision of the Board of Zoning Appeals/Enforcement)
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City of Georgetown
Building and Planning Department
120 N. Fraser Street
843-545-4010 (Voice) 843-545-4009 (Fax)
www.cogsc.com

Hand Delivered

August 12, 2008

Paige Sawyer
416 Highmarket Street
Georgetown, SC 29440

Re: 416 Highmarket Street - Sign
TMS#05-0030-124-00-00

Mr. Swayer,

As we discussed previously, a complaint was made July 3, 2008 alleging a violation of the City of Georgetown's ordinance at 416 Highmarket Street.

I have researched the complaint, namely that the fence-mounted sign at the above-referenced location is not allowed under the current sign ordinance and previous ordinance. Based on my investigation, I have concluded that the sign is non-compliant with Article X, Section 1006 j. Prohibited Signs, which states in relevant part: *signs of any material...shall not be... attached to...fences...*

It is my understanding that you do not have a permit for the fence sign and therefore it will need to be removed. The current ordinance does allow for wall signs as defined in Article X, Section 1012 B. for home occupations.

Thank you for your cooperation.

Regards,

Handwritten signature of Jamie Davis in cursive script.
Jamie Davis
Zoning Administrator

C: Sabrina Morris, Director of Development
Stephen Stack, Building Official



120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 545-4009

City of Georgetown Building & Planning Department

September 8, 2008

Mr. Paige Sawyer
416 Highmarket Street
Georgetown, SC 29440

Re: 416 Highmarket Street – Sign Violation

Mr. Sawyer:

On August 12, 2008 you received notification of a sign violation at the above referenced property. To date the sign has not been removed. It is staffs understanding that you are in disagreement with the interpretation of the former Zoning Administrators and current staff's decision regarding the sign being placed on the fence. You do not consider the gate part of the fence.

You have the right to appeal staffs decision to the Zoning Board of Appeals. I have enclosed an application for your review. Please be aware if you are requesting the board review the decision you must submit your application within 30 days of receipt of this letter. If an application is not submitted for appeal within the 30 day requirement, the sign must be removed.

As explained previously, you may apply for a home based business sign to be located on the wall of the home. This sign shall not be no more than 2 sq. ft. and be approved by the Architectural Review Board prior to installation.

If you should have any questions regarding the above information please contact our office.

Thank you in advance for your cooperation.

Sincerely,

Sabrina Morris
Director of Development

Enclosures – Application for the Board of Zoning Appeals



120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 545-4009

City of Georgetown
Building & Planning Department

October 3, 2008

Mr. Paige Sawyer
416 Highmarket Street
Georgetown, SC 29440

Re: 416 Highmarket Street – Existing sign

Mr. Sawyer:

City staff has reviewed the tape of the sign workshop held on January 31, 2008. After listening to the pertinent information on the tape it was evident that staff did indeed state the existing home based business signs existing prior to the adoption of the new ordinance would be grandfathered. Therefore we will not be continuing enforcement on the sign located at your residence and home based business.

Please consider this the decision of the Zoning Administrator, from which appeal may be taken to the Board of Zoning Appeals within 30 days.

If you should have any questions regarding the above information please contact our office.

Sincerely,

Stephen Stack
Deputy Director of Development

Cc: Marty Tennant

Ex 9



City of Georgetown
Building and Planning Department
TELEPHONE (843) 545-4010

January 7, 2009

CERTIFIED MAIL
Mr. Marty Tennant
1204 Saville Street
Georgetown, SC 29440

Re: Decision of the Board of Zoning Appeals/Enforcement

Dear Applicant:

Please consider this official notification of the decisions the Board of Zoning Appeals made during their December 3, 2008 meeting. As you are aware, the board heard three separate appeals and ruled on all during the meeting.

1. 914 Highmarket Street - The Winan's vehicle sign

The Board overruled the Zoning Administrators decision regarding the vehicle signs located on the front and rear of the vehicle stating they did not meet the requirements of Article 10, Section 1009, § (s) of the City of Georgetown Zoning Ordinance. The board, after consideration of the evidence and arguments presented voted that the signs were directional signs and were in violation of the Zoning Ordinance.

Staff has since written the Winans and informed them of the board's decision and requested the signs be removed.

2. 416 Highmarket Street - Paige Sawyer's Home Based Business sign

The board upheld staff's decision regarding this sign noting Section 1022 of the City of Georgetown Zoning Ordinance. *No action has been taken by staff in regards to this sign.*



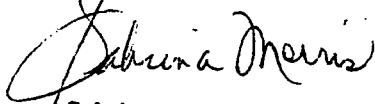
3. 205 & 210 N. Fraser Street – Parish Motors flags

The board overruled the Zoning Administrators decision regarding the flags stating the flags were in violation of the City of Georgetown Zoning Ordinance Section 1009 (e).

Staff is presenting an amendment to the Planning Commission and City Council regarding Governmental Flags. Enforcement will begin after the decision of Council.

If you should have any further questions regarding the above please notify our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sabrina Morris".

Sabrina Morris
Director of Development

cc: Stephen Stack, Deputy Director of Development
Andrew Brewington, Chair of Board of Zoning Appeals

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF GEORGETOWN) CASE NUMBER: 2009-CP-22-196

James M. Tenant,)
)
 Petitioner/Appellant,)
)
 vs.)
)
 Board of Zoning Appeals for)
 the City of Georgetown,)
)
 Respondent.)
)

ORDER OF DISMISSAL

ALMA Y. WHITE
 CLERK OF COURT

2009 MAY 27 P 4:30 9

FILED
 GEORGETOWN COUNTY, S.C.

HEARING DATE.....May 21, 2009
 PRESIDING JUDGE.....Benjamin H. Culbertson
 ATTORNEY FOR PETITIONER/APPELLANT.....Pro Se
 ATTORNEY FOR RESPONDENT.....Elise F. Crosby
 COURT REPORTER.....Grace Hurley

This case is an appeal to the circuit court from a decision of the Board of Zoning Appeals for the city of Georgetown, S.C. ("respondent"). The respondent affirmed a finding by the city's Deputy Director of Development that the owner of a sign located within the city limits was exempt from conformity with the city's sign ordinance because of a "Nonconforming Sign" exemption in the ordinance. The owner of the sign is not a party to this action. The petitioner/appellant is a private citizen residing within the city limits.¹

¹ The petitioner/appellant admits that he is pursuing this appeal, in part, because he has been charged in the past with violation of the city sign ordinance and the owner of the sign in question in this case is a member of city council.

MHC

Under the City Zoning Ordinance, an exemption to the ordinance is provided for nonconforming signs which are defined as:

Any sign lawfully existing with a valid permit on the effective date of any ordinance or amendment thereto, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance.

The city's Deputy Director of Development found that the sign at issue in this case was a nonconforming sign as defined under the city sign ordinance and, therefore, exempt from compliance under the ordinance. The respondent affirmed that decision.

The petitioner/appellant argues that the owner of the sign in question never had a valid permit for his sign and, therefore, the sign does not meet the definition of a nonconforming sign under the exemption. The respondent argues that the sign in question was erected around 1979. However, the respondent's permitting records only date back to 1993. Therefore, the respondent contends that it cannot dispute the lawful existence of the sign on the effective date of the present ordinance which renders the sign nonconforming. Further, respondent argues that this appeal should be dismissed because the petitioner/appellant did not name the sign owner as a party to this action and has never served the owner with the pleadings.

In an appeal to the circuit court from a decision of a city's zoning board, the findings of fact by the board must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. Code of Laws of South Carolina 1976 §6-29-840(A) . In reviewing questions presented on appeal from a city board, the court must determine only whether the decision of the board is correct as a matter of law. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 642 S.E.2d 565 (2007) . Based upon the respondent's factual findings in the case at hand, the respondent's decision that the sign in question is exempt from compliance with the city's sign ordinance is correct as a matter of law.

This court further concludes that this appeal should be dismissed due to the failure of the petitioner/appellant to name the sign owner as a party to this action. Under South Carolina law, a person who may have a substantial interest in any decision of the board of appeals may appeal from a decision of the board to the circuit court by filing with the clerk of the court a petition in writing within thirty days after the decision of the board is mailed. *Friends of McLeod, Inc. v. City of Charleston*, 376 S.C. 610, 658 S.E.2d 544 (S.C.App.2008). Timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at any time by either party or *sua sponte* by the appellate court. *Friends of McLeod v. City of Charleston, ibid.* In the case at hand, the sign owner

MC

is a necessary party to these proceedings and, as such, should have been named as a party to this appeal and served with the pleadings. Since the petitioner/appellant failed to include and serve a necessary party to this appeal within thirty days of notice of the zoning board's decision, this court is without jurisdiction and, therefore, must dismiss this appeal as a matter of law. See *Friends of McLeod v. City of Charleston, ibid.*

This court also questions whether the petitioner/appellant has standing to pursue this action. What the petitioner/appellant is attempting to do is enforce a city ordinance that he perceives to have been violated, even though he is not an adjoining property owner or otherwise affected by the alleged violation. A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (S.C.App.2000), citing *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985). Standing is "a personal stake in the subject matter of a lawsuit." *Sloan v. School District of Greenville County, ibid*, citing *Newman v. Richland County Hist. Preserv. Com'n*, 325 S.C. 79, 82, 480 S.E.2d 72, 74 (1997) and *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. It is not sufficient that he has merely a general interest common to all members of the

public. *Florence Morning News, Inc. v. Building Comm'n*, 265 S.C. 389, 218 S.E.2d 881 (1975), quoting *Ex parte Levitt*, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493 (1937).

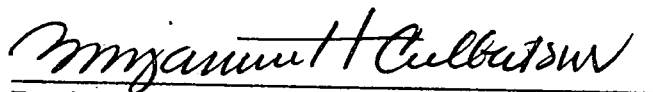
In the case at hand, the petitioner/appellant is a member of the public who feels that the owner of the sign in question has violated the city's sign ordinance. Enforcement of the city's sign ordinance is a legislative action authorized to the city and/or its agencies, not individual citizens. Therefore, as a matter of law, the petitioner/appellant lacks standing to bring this action.

NOW, THEREFORE, based upon the above conclusions of law, it is hereby

ORDERED, that the decision of the Board of Zoning Appeals for the City of Georgetown, SC, in this case is affirmed; it is further

ORDERED, that this appeal be, and the same is, dismissed with prejudice.

AND IT IS SO ORDERED.


Benjamin H. Culbertson
Presiding Judge

May 27, 2009
Georgetown, SC



ROA p. 13

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

P. O. Box 421270 (zip code 29442)
129 Screven St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

June 9, 2009

James M. Tennant
1204 Saville Street
Georgetown, South Carolina 29440

Elise F. Crosby, Esquire
Crosby Law Firm, LLC
405 Dozier Street
Georgetown, South Carolina 29440

RE: *James M. Tennant v. Board of Zoning Appeals for the City of Georgetown*
Case Number: 2009-CP-22-196

Dear Mr. Tennant and Ms. Crosby:

Pursuant to Rule 59(f), SCRCP, I will decide the plaintiff's Motion to Reconsider in the above referenced case without oral arguments. As the moving party, Mr. Tennant shall submit a brief in support of his motion within 14 days of the date of this letter. Ms. Crosby may submit a responsive brief on behalf of her client within 28 days of the date of this letter.

With kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
pc: Georgetown County Clerk of Court

e Crosby

From: Culbertson, Benjamin H. [bculbertson@sccourts.org]
Sent: Friday, June 19, 2009 8:37 AM
To: marty@lowtech.us; Elise Crosby
Subject: RE: Letter from Alma White - Case 2009-CP-22-196

Mr. Tennant,

The transcript contained in the Clerk of Court file is sufficient. Therefore, your motion for continuance to file a brief is denied.

Thank you.

Benjamin H. Culbertson
P.O. Box 421270 (zip code 29442)
129 Screven St. (zip code 29440)
Georgetown, South Carolina
(843) 545-3030

From: martytennant@gmail.com [mailto:martytennant@gmail.com] On Behalf Of Marty Tennant
Sent: Thursday, June 18, 2009 3:52 PM
To: Culbertson, Benjamin H.; Elise Crosby
Subject: Letter from Alma White - Case 2009-CP-22-196

Dear Judge Culbertson,

I have attached a copy of a letter I received today from Alma White, Clerk of Court.

Ms. White has responsibility under S.C. law to request the certified copy of the proceedings held before the board of zoning appeals. This was not done prior to the hearing you held on this case.

She has just today fulfilled this responsibility. I take issue with her characterization that the record before you is now complete, as it is not and cannot be complete until it is certified by the Secretary of the Georgetown Board of Zoning Appeals.

Accordingly, I am seeking to extend the due date of my brief which was specified in your letter of June 9, 2009.

I request that after a copy of the full certified record is made available to me, that I be given seven days after receipt to file my brief.

Please acknowledge receipt of this email and this request, and please let me know if this revised briefing schedule will be acceptable to you.

Respectfully submitted,

James M. Tennant

6/19/2009

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

ROA p. 15

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-22-196

James M. Tennant
PLAINTIFF(S)

Board of Zoning Appeals
for the City of Georgetown
DEFENDANT(S)

FILED
GEORGETOWN COUNTY, S.C.
2009 AUG 10 AM 11:26
ALMA Y. WHITE
CLERK OF COURT

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.*
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP-(Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

*These issues were decided on briefs of the parties without oral arguments.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Petitioner/Appellant's Motion to Alter or Amend, to Rehear or to Recuse and Grant New Trial is denied.
Petitioner/Appellant's Motion to Compel or to Remand for Rehearing is denied.

Dated at Georgetown, South Carolina, this 7th day of August, 2009.

Benjamin H. Culbertson
Benjamin H. Culbertson
PRESIDING JUDGE

This judgment was entered on the 10th day of August, 2009, and a copy mailed first class this 10th day of August, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Pro Se
ATTORNEY(S) FOR THE PLAINTIFF(S)

Elise F. Crosby
ATTORNEY(S) FOR THE DEFENDANT(S)
Barry Small, Deputy
CLERK OF COURT

Received by James M. Tennant 8-11-09

Ex 1



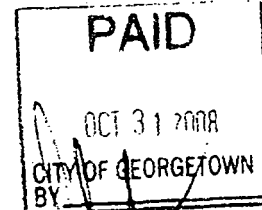
City of Georgetown
Building and Planning Department
Complaint Form

Date and Time July 3rd 2008 11:33am
Contact name Marty Tennant
Phone Number 527-4485
Address of Issue Hghmarket St
Paige Sawyer Photography

Building Issues _____
Zoning Issues X - Illegal sign on fence
Overgrown lot or related issues _____
Trash/Litter _____
Bulk Items _____
Other _____

Assign To and Date Jamie 7-3
Reporting issues _____

Person making Report Marty Tennant



Application for the Zoning Board of Appeals

1. Name of Applicant: MARTY TENNANT
2. Site Address: 416 Highmarket St. 205 + 210
3. Reason for Appeal: N. Fraser St. 914 Highmarket St.
 - a. ☒ A Decision of the Zoning Administrator which the appellant believes to be contrary to the meaning of the Zoning Ordinance. *I also believe*
 - b. A request to vary: *these decisions are contrary to the facts and the law. Some are not formal determinations and fall into a grey area.*
 - () a yard requirement
 - () a lot width requirement
 - () a lot area requirement
 - () other requirements (list section of the Ordinance _____)
 - c. A request for relief from requirements contained in the City of Georgetown Subdivision requirements.
 - d. A request for relief from the requirements contained in the Georgetown Flood Prevention Ordinance.
4. Describe those things which you feel justify the action requested. The burden of proof lies with the appellant to show that he or she qualifies for a variance. There are four (4) factors which must be addressed for request 3-b and 3-c. You may attach additional sheets if the space provided is not adequate.

Please see attached. I reserve
the right to supplement my
filing with additional information.

5. List the name and address of all surrounding property owners: ?

6. List the property tax map number (TMS) for the property in question

?

7. This application must be accompanied by the following items:

- a site plan drawn to scale illustrating all property lines, existing structures, proposed structures and any other relevant site information.
- **The filing fees are as follows:**
 - Appeal of the Zoning Administrators interpretation/decisions \$300.00
 - Variance Request \$150.00
 - All other appeals made to the Zoning Board of Appeals \$150.00

I hereby depose and say that all of the statements contained herein are true and that I possess the authority to act in this matter.

[Signature]
 Signature of Appellant or authorized Agent

1204 Saville St
 Mailing Address

843 527-4485
 Telephone Number

10/31/08
 Date

OFFICE USE ONLY

Date Fee Paid: _____

Date Notice Was Advertised in Newspaper: _____

Summary of Action By the Board: _____

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
COURT OF COMMON PLEAS
C/A #09-CP-22-00194

JAMES M. TENNANT

PETITIONER

-VS-

BOARD OF ZONING APPEALS
FOR THE CITY OF GEORGETOWN

RESPONDENT

FILED
GEORGETOWN COUNTY, S.C.
2009 FEB -5 PM 4:32
ALMA Y. WHITE
CLERK OF COURT

NOTICE OF APPEAL AND PETITION

Petitioner, JAMES M. TENNANT, hereby appeals the Decision of the BOARD OF ZONING APPEALS FOR THE CITY OF GEORGETOWN dated January 7, 2009, pursuant to S.C. Code Ann. 1976 Section 6-29-820.

STATEMENT OF APPEAL

This case was brought before the City of Georgetown Board of Zoning Appeals by the appeal of James M. Tennant (also known as Marty Tennant), asking for a reversal of the decision of Stephen Stack, Deputy Director of Development, granting grandfathered status to a sign owned by Mr. Paige Sawyer pursuant to the City of Georgetown sign ordinances. The Director of Development, Sabrina Morris, opposed the appeal. The matter was heard by the Board of Zoning Appeals on December 3, 2008. On January 7, 2009, the decision of the Board was provided in writing to the Petitioner by the Director of Development. Petitioner has not yet received a formal Order of the Board of Zoning Appeals. The letter of January 7, 2009 stated in pertinent part:

"416 Highmarket Street – Paige Sawyer's Home Based Business sign
The board upheld staff's decision regarding this sign noting Section 1022 of the
City of Georgetown Zoning Ordinance."

GROUND FOR APPEAL

The Board of Zoning Appeals decision was contrary to law for the following reasons:

1. The owner of the sign in question, Mr. Paige Sawyer, who is also a sitting elected Councilmember of the City of Georgetown, has never applied for or held a valid permit for the sign.
2. Additionally, Mr. Sawyer has never applied for and received a variance from the City of Georgetown Board of Zoning Appeals allowing him to have signage beyond that allowed in City ordinance for home based businesses. Also, Mr. Sawyer never obtained permission from the City Architectural Review Board for the sign in question, as is required under City ordinances, by virtue of the sign being located in the Historic District.
3. Mr. Sawyer was originally advised by Jamie Davis, Zoning Administrator, that since he did not have a sign permit and since his sign was attached to a fence, it was a prohibited sign and not allowed under City ordinance, and therefore must be removed.
4. Mr. Sawyer argued that his sign was on a gate, which he said was not a fence. He also did not file an appeal of the Zoning Administrator's determination requiring him to remove the sign within the 30 day period of time required for appeals.
5. After the 30 day period of time for appeals passed, the Deputy Director of Development issued another decision to Mr. Sawyer, based on statements made by staff during a sign ordinance workshop, that "existing home based business

signs existing prior to the adoption of the new ordinance would be grandfathered”.

6. The City Sign Ordinance grandfathers nonconforming signs in Section 1022.

Nonconforming signs are defined in Section 1001.u, cited below.

Nonconforming Sign: Any sign lawfully existing with a valid permit on the effective date of any ordinance, or amendment thereto, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance. (emphasis added)

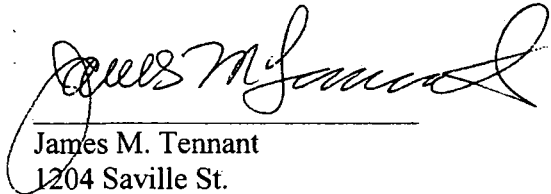
7. The home based business sign located at 416 Highmarket St. never qualified for grandfathered status due to the fact that it never lawfully existed with a valid permit at the time of the effective date of the Ordinance.
8. The grandfathered status of a home based business sign is not based upon informal pronouncements of City Staff during a workshop to discuss new sign regulations.
9. The grandfathered status of a home based business is based upon a thorough review of facts and law.
10. The City Zoning Administrator declared Mr. Sawyers home based business sign prohibited prior to the City Deputy Director of Development declaring it grandfathered.
11. Nothing was or has been done by Mr. Sawyer to make his existing home based business sign legal, by obtaining a valid permit or by obtaining a variance from the Board of Zoning Appeals or approval from the Architectural Review Board.

12. Mr. Sawyer has abused his position of power as a sitting Councilmember by obtaining special treatment not allowed under law to ordinary citizens as a result of his behind the scenes manipulation of the ordinance enforcement process within the City of Georgetown.
13. During their hearing on this matter, the Board of Zoning Appeals never applied the law outlined above to the existing home based occupation sign for Mr. Sawyer. Instead, they took the word of the Director of Development, Sabrina Morris, that her pronouncement during a sign workshop that the sign was grandfathered was a valid determination of fact and law.
14. The Petitioner, Mr. Tennant, had previously been found guilty of not having a valid permit for a home based business sign that was approved under a variance issued by the Board of Zoning Appeals.
15. As a result of this guilty verdict, Mr. Tennant was fined \$1,062, given a criminal record, and was detained, booked and fingerprinted at the Georgetown County Detention Center.
16. Mr. Tennant later filed a federal equal protection lawsuit in U.S. District Court in Charleston, claiming that similarly situated sign owners in the City of Georgetown were given special treatment and that the City was guilty of selective enforcement of the law.
17. Mr. Tennant's federal lawsuit was settled out of court with \$7,500.00 being paid to Mr. Tennant by the City.

18. The City of Georgetown continues to this day to give special treatment to certain politically favored individuals and businesses and continues to selectively enforce City ordinances.

19. The City of Georgetown Planning and Zoning Department, under the guidance of Sabrina Morris and Stephen Stack, has established a shameful record showing a willful and blatant disregard for facts and law by virtue of having numerous controversial decisions overturned by the Board of Zoning Appeals and this Circuit Court.

Wherefore, Petitioner requests the Court issue an Order reversing the City Board of Zoning Appeals decision to uphold the grandfathering sign in question.



James M. Tennant
1204 Saville St.
Georgetown, SC 29440
(843) 527-4485
Petitioner Pro Se

February 5, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO.: 2009-CP-22-00196
James M. Tennant,	)	
Petitioner/Appellant	)	<u>Respondent's Return to Petition on Appeal</u>
vs.	)	
City of Georgetown Board of Zoning Appeals,	)	
Respondent	)	
IN RE 416 Highmarket Street	)	

Respondent makes its return to Appellant's Petition on Appeal, as follows:

1. This matter came before the City of Georgetown Board of Zoning Appeals ("BZA" or "Board") December 3, 2008, upon James M. Tennant's October 31, 2008 appeal of the Deputy Director of Development's decision regarding a business sign mounted at 416 Highmarket Street, "Paige Sawyer Photography."
2. The Board reviewed the following material in connection with the appeal:
 - a. Appellant's July 3, 2008 Complaint Form (Ex. 1);
 - b. July 17, 2008 email FOIA request from Marty Tennant to city staff (EX. 2-a);
 - c. July 17, 2008 email from Zoning Administrator to Director of Development (Ex 2-b);
 - d. July 28, 2008 email from Marty Tennant to city staff and internal email of city staff (Ex. 2-c);
 - e. August 12, 2008 notice of violation letter from city staff to Paige Sawyer (Ex. 3);
 - f. September 8, 2008 enforcement notice letter from city staff to Paige Sawyer (Ex. 4);
 - g. audiotaped portion of January 31, 2008 council meeting (cited at Tr. 34:5- 36:10);
 - h. October 3, 2008 discontinuance of enforcement letter from city staff to Paige Sawyer (Ex. 5)
 - i. Appellant's October 31, 2008 Application on appeal to BZA (Ex. 6)
 - j. § 1022 "nonconforming signs," City of Georgetown Zoning Ordinance (Ex. 10-c)

3. Appellant was present at the Board's December 3, 2008 meeting and presented his appeal. The Board also heard from Sabrina Morris, Director of Development. The Board voted unanimously to uphold staff's decision. (See Ex. 7, meeting minutes, and Ex. 8, transcript of portion of hearing, attached and incorporated by reference¹.)
4. On January 7, 2009, Appellant was given written notice of the Board's decision (Ex. 9.)
5. On February 11, 2009, Respondent was served with the instant Petition.

The final decision of the Board

6. Petitioner avers he has "not yet received a formal Order of the Board of Zoning Appeals..." (Petition at p.1).

The above-referenced testimonial is the only reference in the Petition to an "order," and the Board submits that arguments not raised to this court are waived. However, to the extent this Court may entertain oral argument on the sufficiency of the Board's decision, the Board incorporates its minutes (Ex. 7), a transcript of its proceedings (Ex. 8), and its official notification of the decision of the Board of Zoning Appeals, sent via certified mail to Petitioner by city staff (Ex. 9), as required by statute.²

The January 7, 2009 letter to Mr. Tennant addressed the three appeals Mr. Tennant argued at the Board's December meeting, all of which involved third parties' property. The letter states: "As you are aware, the board...ruled on [the appeal] during the meeting... The Board upheld staff's decision regarding this sign noting Section 1022 of the city of Georgetown Zoning Ordinance."

As this court is no doubt aware, our appellate courts have spoken to the requirements of S.C. Code §6-29-800(f) as those requirements relate to the practical realities for boards of zoning appeals.

Most recently, the Court of Appeals heard virtually the same issue in Austin v. Board of Zoning Appeals, 362 S.C. 29 (Ct. App 2004), where a municipality's deputy planning director notified the appellant in writing of the board's decision after the meeting. "It is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions. For example, in Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 S.C. 480 (Ct. App. 2000), this court upheld a circuit court finding that a transcript of a zoning board hearing constituted a sufficient final written decision. On the question of whether the transcript alone could satisfy the statutory requirement...the court opined that "[g]enerally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the

¹ Entire transcription of Petitioner's three appeals to be filed simultaneously. Tr. 31-45 attached as Exhibit 8 for filing and service

² 6-29-800(f): *final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.*

decision is supported by the facts of the case." *Id.* at 494; cf. Massey v. City of Greenville Board of Zoning Appeals, 341 S.C. 193 (Ct. App. 2000) (considering use of transcript but rejecting in part because it was virtually indecipherable.) In the present case, the evidence considered by the board is clearly laid out in the transcript of the hearing. Reading this transcript together with the [letter], therefore, provides sufficient basis for a reviewing court to determine whether the decision was supported by the facts of the case."

The Petition on Appeal

7. Respondent admits the owner of the property on which the sign is displayed is a member of City Council.
8. Petitioner avers "Mr. Paige Sawyer...has never applied for or held a valid permit for the sign." (Petition at 1). This was not a finding of fact made by the Board. The Board did, however, have uncontested evidence that the sign was erected some time around 1979 and the city's permit records only go back to 1993. (see Ex. 2-b). Thus, the city can neither prove nor disprove the existence of a permit.³

"A landowner acquires a vested right to continue a nonconforming use already in existence at the time of a zoning ordinance absent a showing the continuance of the use constitutes a detriment to the public health, safety, or welfare." Daniels v. City of Goose Creek, 314, S.C. 494 (Ct. App. 1993.) "The burden of proving a nonconforming use is on the party claiming a prior nonconforming use." Whaley v. Dorchester County Zoning Board of Appeals, 337 S.C. 568 (S.C. 1999) (citing 101A C.J.S. *Zoning and Land Planning* §154.)

9. Petitioner also avers "Mr. Sawyer never applied for and received a variance from the...[BZA] beyond that allowed... Also, Mr. Sawyer never obtained permission from the City Architectural Review Board for the sign in question." (Petition at 2.) Petitioner had argued "He [Mr. Sawyer] told me he had gotten a variance. Okay? This is personal conversation, not hearsay... he told me that he had gotten a variance for this sign but he couldn't find it. Well, you know, I have a variance, and I held on to mine." (Ex. 8, Tr. 39:20-25, 40:1) Again, the Board made no findings of fact on these issues 4.

"The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." § 6-29-840(A), S.C. Code of Laws, as amended.

10. Regarding Petitioner's recitation of the factual history in this case, Respondent craves reference to Exhibits 2-b through 5, attached, and reserves objection to the relevance and admissibility of hearsay assertions on appeal.
11. Respondent admits previously permitted nonconforming signs are grandfathered under the city's 2008 sign ordinance. (See Petition at 6 and Ex. 10-a, 10-b, 10-c). Respondent denies the sign could not be

³ The city did not imply there ever was such a permit; it is simply an unknown.

⁴ On or about February 26, 2009, the city located applications for both a Certificate of Appropriateness from the Architectural Review Board and a sign permit for 416 Highmarket Street.

grandfathered "due to the fact that it never lawfully existed with a valid permit..." (Petition at 7). (See Ex. 8, Tr. 40:8-15 and Ex. 10-c.) Respondent is without sufficient information to admit or deny whether the sign ever had a valid permit.

12. Respondent denies Petitioner's opinion of the facts is relevant on appeal, asserts this Board was charged with making its own findings of fact and conclusions of law, and objects to Petitioner's attempt to relitigate his argument. (see Petition, 8-9)

In fact, this Board is an independent review board, and it reviewed city staff's decision at Petitioner's request. He is now "attempting to relitigate the merits of [the Board's] decision. This is not proper. Even assuming they are guilty of factual and legal errors, this would not constitute an abuse of their powers..." Batten v. Howell, 300 S.C. 545 (Ct. App. 1990.)

13. Respondent denies the home-based sign at 416 Highmarket Street is "illegal" (see Petition at 11.) This was not a finding of fact made by the Board. (see Ex. 8, Tr.)
14. Respondent is without sufficient information to admit or deny Petitioner's assertion "Mr. Sawyer has abused his position of power as a sitting Councilmember by obtaining special treatment...as a result of his behind the scenes manipulation of the ordinance enforcement process within the City of Georgetown" (Petition at 12) or his assertion "[t]he city of Georgetown continues to this day to give special treatment to certain politically favored individuals and businesses..." (Petition at 18). First, these were not findings of fact made by the Board. Second, such argument is neither relevant to nor ripe for this Court's review of the Board's decision. This Board heard Petitioner's argument about Petitioner's opinion of Mr. Sawyer and city staff at its hearing on Petitioner's original appeal, and this Board voted unanimously to uphold staff's enforcement decision. (See Exs 7 and 8, Tr.)
15. Respondent denies it "took the word of the Director of Development...that her pronouncement during a sign workshop that the sign was grandfathered was a valid determination of fact and law." (Petition at 13.) The board asserts that it alone is charged with making such determinations and it did so. (Ex. 8 Tr. 44:10-13)
16. Respondent is without sufficient information to admit or deny Petitioner's assertions in his petition at 14-17, but admits Petitioner stated these things in his presentation to the Board.⁵ Respondent objects to the relevance of related argument on appeal.
17. Respondent cannot admit or deny the correctness of Petitioner's opinion about city staff ("The...Department...has established a shameful record showing a willful and blatant disregard for facts and law..." Petition at 19), and objects to the relevance of related argument on appeal.

⁵ While the Board had no evidence of this other than what Petitioner stated in his argument to the Board, Counsel for the Board on appeal is the City Attorney, and counsel is aware of the veracity of Petitioner's assertions, with the exception of the timing of the variance to which he refers, and the implication that the global settlement in his *pro se* federal claim(s) resolved any issue of fact or law in his favor.

Standard of Review

18. S.C. Code § 6-29-849 "prescribes the standard of review a circuit court should apply when considering an appeal from a local zoning board. In pertinent part, the statute provides: "the findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury ...", therefore this court should affirm factual findings by a board of zoning appeals if they are not arbitrary and clearly erroneous in view of the evidence in the record." Sea Island Parkway Coalition v. Beaufort County Board of Adjustments and Appeals, 321 S.C. 548 (1996.)

Our state Supreme Court has spoken clearly in its guidance to circuit courts: "The factual findings of the Board *must be affirmed by the circuit court if they are supported by any evidence* and not influenced by an error of law." (emphasis added) Heilker v. Zoning Board of Appeals for the City of Beaufort, 346 S.C. 401 (2001)

The Board's decision

19. Acts of government agents acting within the scope of their authority can give rise to estoppel against the government. See, e.g., Daniels v. City of Goose Creek, 314 S.C. 494 (Ct. App. 2003).

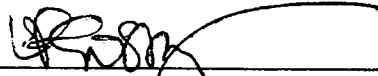
The city presented evidence and testimony to the Board regarding estoppel of enforcement. "He asked about the sign at that time (during long ago construction of an addition) and was told he could indeed place the sign on the fence or the gate and a permit was not needed." (Ex. 8, Tr. at 32:6-11). "...And because of the fact that it has been there so long, obviously, we could not get in touch with the inspector that told him he could put it there in the first place...because of the fact that the sign has been in place for over 20-some years and the owner was assured by Staff on tape that the sign was indeed grandfathered that it should be allowed to remain." Tr. 36:11-19)

The Board heard that, in its September 2008 review of the audiotape of a January 31, 2008 city council meeting regarding the zoning change found at §1022 of the then-proposed new sign ordinance, staff discovered Councilmember Paige Sawyer, owner of the business sign in question, had asked specifically about grandfathering. He asked: "Will this apply to existing businesses?" Director of Development Sabrina Morris replied "No, they're grandfathered" (Ex. 8, Tr. 34:5-10 and - 34:9).

20. The concept of grandfathering is a mixed question of fact and law, argued by both Petitioner and staff and debated by the Board. The Board reviewed the ordinance at § 1022 where it speaks to nonconforming signs. Board member Clark specifically read the partial ordinance into the record and noted "It does not say anything about previous ordinances." (Ex. 8, Tr. at 40:2-12) At one point, Board member Henson says: "Well, it sounds like this one was legitimately grandfathered." (Ex. 8 Tr. 37:17-18).

The Board's findings of fact and conclusions of law are found in the motion and its passage "in favor of the Zoning Administrator's decision *based on the argument of grandfathering. ...[I]t's a legitimate application of it*" (emphasis added). The motion passed 6-0. (Ex. 8 Tr. 44:10-25, 45:1-2.)

21. Respondent submits that its decision was supported by the evidence and not contrary to law. Therefore, its decision should be affirmed.



Elise F. Crosby (#7077)
City Attorney
Attorney for Respondent

CROSBY LAW FIRM, LLC
405 Dozier Street
Georgetown, S.C. 29440
Telephone (843) 546-3103
Facsimile (843) 546-0747
Email: ecrosby@crosbyfirm.com

Georgetown, S.C.

March 11, 2009

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

James M. Tennant,

Petitioner/Appellant,

-vs-

Board of Zoning Appeals for
The City of Georgetown,

Respondent

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP 22-196

RULE 59 MOTION TO ALTER
OR AMEND, TO REHEAR OR TO
RECUSE AND GRANT NEW TRIAL

FILED
GEORGETOWN COUNTY, S.C.
2009 JUN -90 PM 11:43
ALMA WHITE
CLERK OF COURT

Pursuant to SCRCP 59(b) and (e), James M. Tennant, ("Petitioner/Appellant"), files this motion within 10 days after receipt of written notice of the entry of the order, which was received via U.S. Mail on May 30, 2009.¹

The "Order of Dismissal" perpetuates the erroneous decisions of the Board of Zoning Appeals ("Respondent"). Just as the Respondent Board never applied the facts and the law to come to a proper decision, this Court likewise ignores the facts and the law, and a grossly flawed order results.

1. Did the facts before the Court and the Respondent Board clearly show the sign to be illegal and not eligible for grandfathering?

Any determination by the City of Georgetown that an existing sign is illegal forecloses its ability to be considered grandfathered or non-conforming under the existing sign

¹ It should be noted that only the first page of the "Order of Dismissal" was received on May 30, 2009, along with Form 4. Wanda Cribb in the Clerks office later provided a complete five page order which was received by the Petitioner/Appellant on June 2, 2009. Out of an abundance of caution, the May 30, 2009 date is being used for the computation of time.

ordinance. The record shows there were three different determinations or submissions of factual evidence of illegality regarding the sign in question. None of these determinations and facts was considered by the Respondent Board or this Court in their findings of fact and decisions of law. These determinations were, 1) absence of a permit, 2) located on a fence instead of on the wall of the building, and 3) absence of a variance issued by the Board of Zoning appeal for a home based occupation sign not on a building.

SC Code Section 6-29-840 states, in pertinent part, "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." It also states, "In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." The Court never determined whether or not the facts before the Board were correctly applied to the law in question.

The evidence before the Respondent Board and this Court was very clear in regard to the absence of a permit for the sign. See *Board Transcript, page 43, lines 1-3*.

Exhibit 3 (a letter from Jamie Davis, Zoning Administrator), which was also before the Court and the Respondent Board, stated that "It is my understanding that you do not have a permit for the fence sign and therefore it will need to be removed". Additionally, the evidence before the Respondent Board and this Court showed clearly that the fence or gate mounted sign was clearly illegal. See *Exhibit 3*. This letter and its application to the law were never mentioned in the Order of the Court.

The transcript of the hearing before the Board of Zoning Appeals also included first hand evidence from another legal proceeding provided by the Petitioner/Appellant that the sign owner had no variance for the sign issued by the same Board. See *Board Transcript*, pg. 39, lines 14-25. These facts were likewise ignored by the Court in determining the application of the law.

The absence of a permit, being on a fence and not having a variance makes the sign illegal and therefore not eligible for grandfathering and being designated as non-conforming. It was also clear that two letters had been written to the sign owner, confirming the illegality of the sign, and pointing to the need to file a variance request with the Respondent Board if the sign were to remain. See *Exhibits 3 and 4*. No variance request was ever issued by the sign owner. These facts were also ignored by the Court in determining the application of the law.

The Order of the Court simply points to the agreed upon lack of a permit (which it glosses over and turns into an undeserved positive that was never stated as fact or as a finding by the Respondent Board), but ignores the other illegal aspects of the sign in question. The Court seems to bend over backwards and removes the burden of proof of a valid permit from the Respondent, by stating that:

“the respondent contends that it cannot dispute the lawful existence of the sign on the effective date of the present ordinance which renders the sign nonconforming”. See *Order*, pg. 2, para. 3.

Essentially, "nonconforming use" and "vested right" refer to the same concept---a use of property which existed lawfully before the enactment of a zoning ordinance may continue afterwards even though the use does not comply with the zoning restriction. See 83 Am.Jur.2d *Zoning and Planning* § 624 (1992). (emphasis added)

This statement by the Court ignores the facts before it that the City Zoning Administrator and the City Director of Development told the sign owner that the sign was illegal for lack of permit and location reasons. See *Exhibits 3 and 4*. The Petitioner/Appellant brought all these facts to the attention of the Court, yet the court does not reference these facts in its Order, or clumsily attempts to turn them into a positive. This is most troubling, and indicates to the Petitioner/Appellant that the Judge's impartiality might reasonably be questioned because his factual findings are not supported by the record.

2. Does the Petitioner/Appellant have standing under the "public importance" exception?

Our Courts have long recognized the "public importance" exception to the general standing requirements. "[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007) (citation omitted); see also *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (holding standing existed to challenge an alleged *ultra vires* act of issuing tax-exempt hospital bonds because the act affected profound public interests: public health and public welfare).

In cases which fall within the ambit of important public interest, standing will be conferred "without requiring the plaintiff to show he has an interest greater than other potential plaintiffs." *Davis*, 372 S.C. at 500, 642 S.E.2d at 741 (citations omitted).

In this case, the Petitioner/Appellant has claimed *ultra vires* acts and public corruption. In his Petition, paragraph 12, Petitioner/Appellant claimed that the sign owner "has abused his position of power as a sitting Councilmember by obtaining special treatment not allowed under law to ordinary citizens as a result of his behind the scenes manipulation of the ordinance enforcement process within the City of Georgetown". Similar allegations were made during the hearing before the Court.

These allegations alone, and the facts that surround this case, elevates Petitioner/Appellant's standing to that anticipated by the "public importance" exception. This case has been mentioned multiple times in the local newspaper and on the Petitioner/Appellant's website, The Citizens' Report (www.citizensreport.com) as a potential example of public corruption. This case needs to be decided in the favor of the Petitioner/Appellant since it is the utmost public importance that the laws of the City of Georgetown be followed by all, that the law be evenly and fairly enforced, that powerful elected officials not be able to circumvent the enforcement of the law against them, and for the reason that future guidance will be given to our Zoning Boards of Appeals and to Boards of all types over the State.

**3. Was the sign owner a necessary party to the Petitioner/Appellants
Petition?**

The Court concluded that "this appeal should be dismissed due to the failure of the petitioner/appellant to name the sign owner as a party to this action". See *Order of Dismissal*, page 3, para. 2. The Court relies upon *Friends of McLeod, Inc. v. City of Charleston*, 376 S.C. 610, 658 S.E.2d 544 (S.C.App.2008).

Reliance on this case by the Court is misplaced and inapplicable as it does not, in any manner, apply to the facts involving the current controversy.

The *Friends of McLeod, Inc. v. City of Charleston* case turns on the fact that an appeal to the circuit court from a local zoning board of appeals decision failed to name the party that originally brought the variance request before the zoning board of appeals.

In the instant case, the sign owner was not a party to any original actions brought before the Respondent Board by him. The Petitioner/Appellant was not challenging any variance or special exception given to the sign owner. In contrast to the cited case, the sign owner never did apply for any variance or special exception and was never before the Respondent Board, even though he was told to do so by the City Director of Development. See *Exhibit 4*. In the instant case, it would have been improper for the sign owner to be a party to this action, based on the facts and the law.

The South Carolina Supreme Court decision in *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 295 S.C. 67, 69 367 S.E.2d 160, 161 (1988) was the basis for the decision in *Friends of McLeod* case that was cited by the Court in its "Order of Dismissal".

The sole question in the *Spanish Wells* case was "whether a permittee is a necessary party to an action to revoke a development permit". *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 295 S.C. 68

In the instant case, the sign owner was never a permittee before the Respondent Board and the Petitioner/Appellant was not attempting to revoke his development permit, therefore he was not a necessary party to the instant case. In reality, the fact that the sign owner was not a permittee to either a variance or a sign permit is one of the core issues before the court, as this lack of permittee status is what renders the sign owners sign illegal in the first place.

In citing the *Spanish Wells* case, the Court is grasping at straws without acknowledging the facts or the law. Once again, the lack of impartiality and bias against the Petitioner/Appellant is evident due to a failure to apply the readily available facts in this case to the actual meaning of South Carolina case law. "[A] judge's impartiality might reasonably be questioned when his factual findings are not supported by the record". See *Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856 (1993)

4. Other Issues

I object to the limited characterization of the Court that the "petitioner/appellant admits that he is pursuing this appeal, in part, because he has been charged in the past with violation of the city sign ordinance and the owner of the sign in question in this case

is a member of the city council". See *Order of Dismissal, fn1*. Petitioner/Appellant brought this case because of evidence showing gross disparity of treatment by the City illegally favoring Mr. Sawyer, a sitting city council member. Also, Petitioner/Appellant has alleged public corruption and *ultra vires* acts in that Mr. Sawyer illegally used his political power to stop enforcement actions against him. See *Petitioner/Appellants Petition*, para. 12.

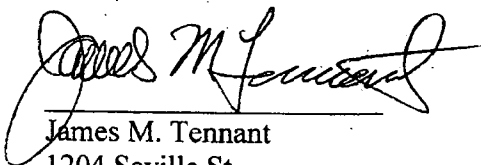
I object to the Court refusing to allow my motion, made in open court, to defer the hearing until the record on appeal was made complete. As stated during the beginning of the hearing, I was not provided the full transcript of the hearing and my material statements made before the Zoning Board of Appeals, by counsel for the Respondent Board. This was never denied by counsel in open court. The Court, when reminded of this motion near the end of the hearing, denied it, stating that the Court didn't need any additions to the record in order to make a decision. Petitioner/Appellant estimates that 29 pages were missing from the record.

It is not for the benefit only of the court to have a full and complete record, but also for the Petitioner/Appellant, particularly if this case is required to be appealed to a higher court. Additionally, the full record is required in order for the Petitioner/Appellant to present a full case to this Court. The full record was not allowed, but should have been. The proceeding should have been stayed and the full record should have been ordered by the Court before the hearing was held.

For all the foregoing reasons, Petitioner/Appellant moves this court to correct the mistakes made in the "Order of Dismissal" by ordering the following:

1. Alter or amend the judgment by applying the real facts and law to this case and overturning the decision of the Respondent Board, or
2. Rehear the case after the Court orders the record to be made complete, or
3. Withdraw the "Order of Dismissal", recuse himself from further involvement with the case, and order a new trial before a new judge.

Respectfully submitted on June 9, 2009.

A handwritten signature in cursive script, appearing to read "James M. Tennant", written over a horizontal line.

James M. Tennant
1204 Saville St.
Georgetown, SC 29440
(843) 527-4485
Pro Se Petitioner/Appellant

**STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN**

James M. Tennant,

Petitioner/Appellant,

-VS-

Board of Zoning Appeals for The City of Georgetown,

Respondent

**COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP 22-196'**

**BRIEF ON RULE 59 MOTION TO
ALTER OR AMEND, TO REHEAR
OR TO RECUSE AND GRANT
NEW TRIAL**

FILED
GEORGETOWN COUNTY, S.C.
JUN 23 PM 4:07
CLERK OF COURT
ALMA Y. WHITE
REHEARD
TION TO

Pursuant to the scheduling order of the Court dated June 9, 2009, Petitioner/Appellant submits this Brief supporting his Rule 59 Motion to Alter or Amend, to Rehear or to Recuse and Grant New Trial.

Highly significant events that materially affect evidence that should have been before the City of Georgetown Board of Zoning Appeals have arisen in the last several weeks. These events include the following:

1. The admission by Clerk of Court Alma White that no request for a certified copy of the evidence before the Board of Zoning Appeals was issued by her according to law, until 133 days after S.C. Code Section 6-29-830(A) required it to be issued. See Exhibit 1 attached to "Motion to Compel or to Remand for Rehearing". The Court never had the certified

record before it on May 21, 2009 and still does not have a complete certified record of the evidence before the Board at this time.

2. The discovery by the Plaintiff/Appellant, just one day ago, that material evidence sought on a timely basis on October 8, 2008, pursuant to the S.C. Freedom of Information Act, was withheld or not provided by the City of Georgetown to the Plaintiff/Appellant. These documents should and could have been submitted by the Petitioner/Appellant to the Board of Zoning Appeals for their December 3, 2008 hearing on the Petitioner/Appellant's appeal to the Board on the Paige Sawyer sign, if they had been provided on a timely basis. These documents should and could have also have been before the Court on May 21, 2009 during the hearing on the instant appeal. Included in this collection of documents is a letter from Mr. Paige Sawyer to the City of Georgetown where Mr. Sawyers admits he never had a permit for the sign in question. See Exhibit 1, paragraph 3, Letter to Sabrina Morris from Paige Sawyer, September 18, 2008. The documents contained in Exhibit 1, which are attached to this Brief, were obtained June 22, 2009, pursuant to the S.C. Freedom of Information Act, from the City of Georgetown Building and Planning Department after a review for privileged material. See Exhibit 2, email to Petitioner/Appellant from Elise Crosby. Documents that should have been, but were not provided by the City to the Petitioner/Appellant prior to the December 3, 2008 meeting of the Board of Zoning Appeals are marked with a "star" on the upper right corner, and total twenty-three pages).

3. Evidence showing that counsel for the Respondent Board has improperly and illegally substituted herself as the defacto Secretary to the Board of Zoning Appeals and has purposefully eliminated material evidence from the certified record of evidence.
4. Evidence showing that counsel for the Respondent Board expected Mr. Sawyer to be the party appealing the decision of the Zoning Administrator, rather than the Petitioner/Appellant, and evidence showing that the counsel for the Respondent Board believed the sign in question to be illegal, not classified as non-conforming and not eligible for grandfathering. When seen in the context of allegations of *ultra vires* acts and public corruption, it appears that counsel for the Respondent Board is now engaged in a cover-up of these alleged illegal acts. See Exhibit 1, September 24, 2008 letter to Sabrina Morris from Elise Crosby, Re: Sign enforcement, Paige Sawyer Photography.

When these events and newly discovered documents are taken as a whole, in context of the proceedings and filings already before the Court, including the "Motion to Compel or to Remand for Rehearing" it is clear that the certified record is insufficient for review by this Court and that it is appropriate to remand the matter back to the Zoning Board of Appeals for rehearing, as requested in the Plaintiff/Appellant's "Motion to Compel or to Remand for Rehearing", dated June 23, 2009.

Newly Discovered Evidence Issues

After advising City Attorney Elise Crosby on June 22, 2009 that the certified record was not complete, Ms. Crosby advised the Petitioner/Appellant to issue a S.C. Freedom of Information Act request to obtain copies of the documents that were not included in the record. Petitioner/Appellant issued an emergency FOIA request to the City, which was confirmed by Ms. Crosby via email, and was provided with thirty pages of documents, twenty-three of which had never been provided to him earlier pursuant to the S.C. Freedom of Information Act, but which should have been. See Affidavit of James M. Tennant, attached, and Exhibit 2 email to James M. Tennant from Elise Crosby, June 22, 2009.

Errors Made by the Court

The "Order of Dismissal" perpetuates the erroneous decisions of the Board of Zoning Appeals ("Respondent"). Just as the Respondent Board never applied the facts and the law to come to a proper decision, this Court likewise ignores the facts and the law, and a grossly flawed order results.

- 1. Did the facts before the Court and the Respondent Board clearly show the sign to be illegal and not eligible for grandfathering?**

Any determination by the City of Georgetown that an existing sign is illegal forecloses its ability to be considered grandfathered or non-conforming under the existing sign

ordinance. The record shows there were three different determinations or submissions of factual evidence of illegality regarding the sign in question. None of these determinations and facts was considered by the Respondent Board or this Court in their findings of fact and decisions of law. These determinations were, 1) absence of a permit, 2) located on a fence instead of on the wall of the building, and 3) absence of a variance issued by the Board of Zoning appeal for a home based occupation sign not on a building.

SC Code Section 6-29-840 states, in pertinent part, "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." It also states, "In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." The Court never determined whether or not the facts before the Board were correctly applied to the law in question.

The evidence before the Respondent Board and this Court was very clear in regard to the absence of a permit for the sign. See *Board Transcript, page 43, lines 1-3*.

Exhibit 3 (a letter from Jamie Davis, Zoning Administrator), which was also before the Court and the Respondent Board, stated that "It is my understanding that you do not have a permit for the fence sign and therefore it will need to be removed". Additionally, the evidence before the Respondent Board and this Court showed clearly that the fence or gate mounted sign was clearly illegal. See *Exhibit 3*. This letter and its application to the law were never mentioned in the Order of the Court.

The transcript of the hearing before the Board of Zoning Appeals also included first hand evidence from another legal proceeding provided by the Petitioner/Appellant that the sign owner had no variance for the sign issued by the same Board. See *Board Transcript*, pg. 39, lines 14-25. These facts were likewise ignored by the Court in determining the application of the law.

The absence of a permit, being on a fence and not having a variance makes the sign illegal and therefore not eligible for grandfathering and being designated as non-conforming. It was also clear that two letters had been written to the sign owner, confirming the illegality of the sign, and pointing to the need to file a variance request with the Respondent Board if the sign were to remain. See *Exhibits 3 and 4*. No variance request was ever issued by the sign owner. These facts were also ignored by the Court in determining the application of the law.

The Order of the Court simply points to the agreed upon lack of a permit (which it glosses over and turns into an undeserved positive that was never stated as fact or as a finding by the Respondent Board), but ignores the other illegal aspects of the sign in question. The Court seems to bend over backwards and removes the burden of proof of a valid permit from the Respondent, by stating that:

“the respondent contends that it cannot dispute the lawful existence of the sign on the effective date of the present ordinance which renders the sign nonconforming”. See *Order*, pg. 2, para. 3.

Essentially, "nonconforming use" and "vested right" refer to the same concept---a use of property which existed lawfully before the enactment of a zoning ordinance may continue afterwards even though the use does not comply with the zoning restriction. See 83 Am.Jur.2d *Zoning and Planning* § 624 (1992). (emphasis added)

This statement by the Court ignores the facts before it that the City Zoning Administrator and the City Director of Development told the sign owner that the sign was illegal for lack of permit and location reasons. See *Exhibits 3 and 4*. The Petitioner/Appellant brought all these facts to the attention of the Court, yet the court does not reference these facts in its Order, or clumsily attempts to turn them into a positive. This is most troubling, and indicates to the Petitioner/Appellant that the Judge's impartiality might reasonably be questioned because his factual findings are not supported by the record.

2. Does the Petitioner/Appellant have standing under the "public importance" exception?

Our Courts have long recognized the "public importance" exception to the general standing requirements. "[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007) (citation omitted); see also *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (holding standing existed to challenge an alleged *ultra vires* act of issuing tax-exempt hospital bonds because the act affected profound public interests: public health and public welfare).

In cases which fall within the ambit of important public interest, standing will be conferred "without requiring the plaintiff to show he has an interest greater than other potential plaintiffs." *Davis*, 372 S.C. at 500, 642 S.E.2d at 741 (citations omitted).

In this case, the Petitioner/Appellant has claimed *ultra vires* acts and public corruption. In his Petition, paragraph 12, Petitioner/Appellant claimed that the sign owner "has abused his position of power as a sitting Councilmember by obtaining special treatment not allowed under law to ordinary citizens as a result of his behind the scenes manipulation of the ordinance enforcement process within the City of Georgetown". Similar allegations were made during the hearing before the Court.

These allegations alone, and the facts that surround this case, elevates Petitioner/Appellant's standing to that anticipated by the "public importance" exception. This case has been mentioned multiple times in the local newspaper and on the Petitioner/Appellant's website, The Citizens' Report (www.citizensreport.com) as a potential example of public corruption. This case needs to be decided in the favor of the Petitioner/Appellant since it is the utmost public importance that the laws of the City of Georgetown be followed by all, that the law be evenly and fairly enforced, that powerful elected officials not be able to circumvent the enforcement of the law against them, and for the reason that future guidance will be given to our Zoning Boards of Appeals and to Boards of all types over the State.

**3. Was the sign owner a necessary party to the Petitioner/Appellants
Petition?**

The Court concluded that "this appeal should be dismissed due to the failure of the petitioner/appellant to name the sign owner as a party to this action". See *Order of Dismissal*, page 3, para. 2. The Court relies upon *Friends of McLeod, Inc. v. City of Charleston*, 376 S.C. 610, 658 S.E.2d 544 (S.C.App.2008).

Reliance on this case by the Court is misplaced and inapplicable as it does not, in any manner, apply to the facts involving the current controversy.

The *Friends of McLeod, Inc. v. City of Charleston* case turns on the fact that an appeal to the circuit court from a local zoning board of appeals decision failed to name the party that originally brought the variance request before the zoning board of appeals.

In the instant case, the sign owner was not a party to any original actions brought before the Respondent Board by him. The Petitioner/Appellant was not challenging any variance or special exception given to the sign owner. In contrast to the cited case, the sign owner never did apply for any variance or special exception and was never before the Respondent Board, even though he was told to do so by the City Director of Development. See *Exhibit 4*. In the instant case, it would have been improper for the sign owner to be a party to this action, based on the facts and the law.

The South Carolina Supreme Court decision in *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 295 S.C. 67, 69 367 S.E.2d 160, 161 (1988) was the basis for the decision in *Friends of McLeod* case that was cited by the Court in its "Order of Dismissal".

The sole question in the *Spanish Wells* case was “whether a permittee is a necessary party to an action to revoke a development permit”. *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 295 S.C. 68

In the instant case, the sign owner was never a permittee before the Respondent Board and the Petitioner/Appellant was not attempting to revoke his development permit, therefore he was not a necessary party to the instant case. In reality, the fact that the sign owner was not a permittee to either a variance or a sign permit is one of the core issues before the court, as this lack of permittee status is what renders the sign owners sign illegal in the first place.

In citing the *Spanish Wells* case, the Court is grasping at straws without acknowledging the facts or the law. Once again, the lack of impartiality and bias against the Petitioner/Appellant is evident due to a failure to apply the readily available facts in this case to the actual meaning of South Carolina case law. “[A] judge's impartiality might reasonably be questioned when his factual findings are not supported by the record”. See *Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856 (1993)

4. Other Issues

Estoppel and laches arguments are not applicable in this case. If raised, they would have to be raised by Mr. Sawyer as part of an appeal, and not by the Petitioner/Appellant.

I object to the limited characterization of the Court that the “petitioner/appellant admits that he is pursuing this appeal, in part, because he has been charged in the past with violation of the city sign ordinance and the owner of the sign in question in this case is a member of the city council”. See *Order of Dismissal, fn1*. Petitioner/Appellant brought this case because of evidence showing gross disparity of treatment by the City illegally favoring Mr. Sawyer, a sitting city council member. Also, Petitioner/Appellant has alleged public corruption and *ultra vires* acts in that Mr. Sawyer illegally used his political power to stop enforcement actions against him. See *Petitioner/Appellants Petition*, para. 12.

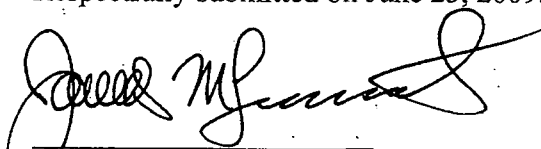
I object to the Court refusing to allow my motion, made in open court, to defer the hearing until the record on appeal was made complete. As shown herein and in the “Motion to Compel or to Remand for Rehearing”, the record is insufficient for review and should be remanded back to the Board of Zoning Appeals.

It is not for the benefit only of the court to have a full and complete record, but also for the Petitioner/Appellant, particularly if this case is required to be appealed to a higher court. Additionally, the full record is required in order for the Petitioner/Appellant to present a full case to this Court. The full record was not allowed, but should have been. The proceeding should have been stayed and the full record should have been ordered by the Court before the hearing was held.

For all the foregoing reasons, Petitioner/Appellant moves this court to correct the mistakes made in the “Order of Dismissal” by ordering the following:

1. Alter or amend the judgment by applying the real facts and law to this case and overturning the decision of the Respondent Board, or
2. Rehear the case after the Court orders the record to be made complete, or
3. Withdraw the "Order of Dismissal", recuse himself from further involvement with the case, and order a new trial before a new judge, or
4. Grant the "Motion to Compel or to Remand for Rehearing".

Respectfully submitted on June 23, 2009.

A handwritten signature in black ink, appearing to read "James M. Tennant", written over a horizontal line.

James M. Tennant
1204 Saville St.
Georgetown, SC 29440
(843) 527-4485
Pro Se Petitioner/Appellant

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

James M. Tennant,

Petitioner/Appellant,

-VS-

Board of Zoning Appeals for The City of Georgetown,

Respondent

**COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP 22-196**

**MOTION TO COMPEL
OR TO REMAND FOR
REHEARING**

GEORGETOWN
GEORGETOWN COURT
2009 JUN 23 PM 4:46:05
ALMA Y WHITE
CLETA OF COURT
(), name 1.

Pursuant to SCRCF Rule 7(b) and SC Code Section 6-29-840(A), James M. Tennant, ("Petitioner/Appellant"), files this motion to compel the Secretary of the City of Georgetown Board of Zoning Appeals to fulfill her duties under SC Code Section 6-29-830(A), or in the alternative, for this Court to determine that the certified record is insufficient for review and to remand the matter back to the Zoning Board of Appeals.

The Petitioner/Appellant advised the Court on May 21, 2009, that the record from the Board of Zoning Appeals was not complete, and verbally moved for the Court to defer the hearing of the appeal until the record was complete. The Petitioner/Appellant reminded the Court again of this motion in open court at the end of the hearing, with a court reporter present. The motion was orally denied by the Court at the end of the hearing.

On June 18, 2009, the Clerk of Court for Georgetown County, Ms. Alma White, belatedly complied with S.C. Law that controls this case, by requesting a certified copy

of the proceedings held before the board of zoning appeals. The Petitioner/Appellant gave Ms. White verbal notice, in her office on June 15, 2009, of her failure to comply with S.C. law. In that meeting, the Petitioner/Appellant advised her of her failure and duty to act under SC Code 6-29-830(A), giving concrete evidence to support the lack of a complete certified record that is required in law, as the Petitioner/Appellant complained to the Court on May 21, 2009 during the initial hearing on this matter.¹ See Exhibit 1, Letter from Alma White to Debra Grant, dated June 18, 2009.

The Secretary to the Board of Zoning Appeals, Ms. Debra Grant, in an affidavit dated June 22, 2009, and in a letter and certificate of authenticity dated June 19, 2009, did not provide, as is required under SC Code 6-29-830(A), "a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions". See Exhibits 2a, 2b and 2c, Letter from Debra Grant to Alma White, Clerk of Court, Certificate of Authenticity and Affidavit of Debra Grant.

The affidavit and certificate of authenticity from Ms. Grant did not include any of the letters, emails and newspaper clippings that constituted the full scope of evidence heard before the board. Many of these documents have been referenced as evidence in this case before the court by both parties, but have not been certified. Ms. Grant only certified that the "Transcript of Audiotape of Board of Zoning Appeals Meeting, 3 December 2008, Georgetown, South Carolina" of Court Reporter Glenda K. McCormick was a true and correct copy. This does not constitute a record sufficient for the Court.

¹ Petitioner/Appellant filed his "Notice of Appeal and Petition" on February 5, 2009. This means that the Clerks notice to the Secretary of the Board was issued 133 days after the law required it. The incomplete certification of the proceedings held before the board was issued 105 days after it was required under law.

This transcript of the audiotapes was apparently placed into the official folder for this case by the Respondent's Attorney, Elise Crosby, on March 11, 2009, at the same time she filed her "Respondent's Return to Petition on Appeal". This is not according to law, as the Secretary to the Zoning Board of Appeals is the only person capable of producing to the Clerk of Court "a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions". SC Code 6-29-830(A).

The evidence now before the Court shows that the Respondent's attorney, Ms. Crosby, has improperly and illegally hijacked the procedures required to be followed under the law in this case that insure a complete record is made available to the Court.

Ms. Crosby has illegally assumed the role of the Secretary to the Board of Zoning Appeals and illegally substituted her self-serving and illegal opinion on what constitutes "the evidence heard before the board". It is obvious that the actual Secretary to the Board is now nothing more than a puppet of Ms. Crosby, signing documents placed before her by opposing counsel Crosby without the independent exercise of her authority and responsibility under the law as Secretary to the Board of Zoning Appeals.

Petitioner/Appellant claims that Ms. Crosby's illegal actions are intentional and an underhanded and unethical effort to restrict his ability to fully prosecute this case

before the Court using the full evidence that was before the Board of Zoning Appeals.² Finding herself caught acting in this illegal manner, Ms. Crosby now refuses to admit to the Petitioner/Appellant that the record is not complete in verbal conversations held on June 22, 2009, on the phone and in person. She now insists that the audiotape transcript is the only record required.

Not content to illegally place herself in a role not given to her under the law, Ms. Crosby apparently wants to have her cake and eat it too when she filed her "Respondent's Return to Petition on Appeal", dated March 11, 2009. In her "Return", she insists that because she (and not the Board Secretary) provided uncertified copies of the Board's minutes (Exhibit 7) and a letter from the City of Georgetown Building and Planning Department (Exhibit 9), that this now constitutes a "sufficient basis for a reviewing court to determine whether the decision was supported by the facts of the case". See: "Respondent's Return to Petition on Appeal", page 3, paragraph 1.

Ms. Crosby is more than willing to reference uncertified documents that were before the Zoning Board of Appeals, but apparently doesn't want these same documents to be included in the certified evidence of the case from the Board Secretary, which is required for a reviewing Court to determine if the facts before the board support the conclusions made.

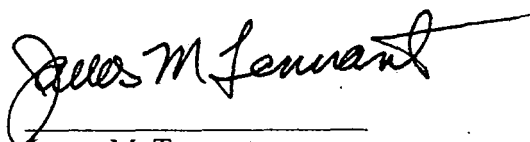
² Not only is the full certified record of evidence not before the Court, but as the Petitioner/Appellant discovered on June 22, 2009, the City of Georgetown withheld information sought by the Petitioner/Appellant pursuant to the SC Freedom of Information Act which was material to the Petitioner/Appellant's appeal to the Board of Zoning Appeals. This information includes a letter from Mr. Paige Sawyer admitting that he never possessed a valid permit for his sign. For more details on this newly discovered evidence, see the Petitioner/Appellant's "Brief on Rule 59 Motion to Alter or Amend, to Rehear or to Recuse and Grand New Trial", filed at the same time as this instant Motion.

Until the Secretary of the Board of Zoning Appeals independently, and without coercion or prompting from Ms. Crosby, submits the full scope of evidence before the board that constituted the actual evidence considered by the Board and referenced by the parties in this case, this case rests on critically flawed evidentiary and procedural grounds.

The Court does not have before it "a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions", as required under S.C. Code 6-29-830. It should issue an order compelling the Secretary of the Board of Zoning Appeals to independently produce a certified copy of the proceedings and the full evidence heard before the board.

In the alternative, the Court should determine that the certified record is insufficient for review, pursuant to SC Code Section 6-29-840(A), and should remand the matter back to the Zoning Board of Appeals for rehearing.

Respectfully submitted on June 23, 2009.



James M. Tennant
1204 Saville St.
Georgetown, SC 29440
(843) 527-4485
Pro Se Petitioner/Appellant

Alma Y. White
Georgetown County Clerk of Court



Exhibit 1
P.O. Drawer 421270 ■ 715 Prince Street
Georgetown, SC 29442

June 18, 2009

Ms. Debra Grant, Secretary
City of Georgetown Board of Zoning Appeals
120 North Fraser Street
Georgetown, South Carolina 29440

Dear Ms. Grant:

South Carolina state statute, 6-29-830 (A) Notice of Appeal, was brought to the attention of the Clerk of Court Tuesday by Mr. Marty Tennant. Mr. Tennant represents himself in a lawsuit against the City of Georgetown. Although the city attorney, Elise Crosby, filed a response with the court and included the transcript of the board's hearing in which the city attorney shared the same with Mr. Tennant, South Carolina Court Administration recommends that the Clerk of Court makes a request of the transcript just the same based on the language of the statute.

6-29-830 Notice of Appeal; transcript, supersedeas

- A) Upon the filing of the appeal, the clerk of the circuit court shall give immediate notice of it to the secretary of the board and within thirty days from the time of the notice the board shall file with the clerk a certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before it, if any, and the decision of the board including its findings of fact and conclusions

Please immediately submit to the Clerk of Court's office a certified copy of the proceedings held before the board of appeals, including a transcript of the evidence, if any, and the decision of the board including its findings of the fact and conclusions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alma White".

Alma White
Clerk of Court

Cc: Mr. Marty Tennant



*City of Georgetown
120 North Fraser Street
Georgetown SC 29440*

June 19, 2009

Clerk of Court
129 Screven Street
Georgetown, SC 29440
ATTN: Alma White

Ms. White enclosed please find for filing in response to your June 18, 2009 request for a certified copy of the Affidavit pertaining to the Court case of Mr. James M. Tennant vs. City of Georgetown Board of Zoning Appeals.

Respectfully Yours,

Debra L. Grant

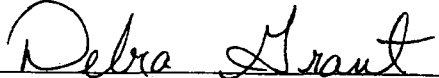
Debra L. Grant

Cc: James M. Tennant
Elise F. Crosby

CERTIFICATE OF AUTHENTICITY *nunc pro tunc*

I am an employee of the City of Georgetown Building and Planning Department, and I serve as secretary to the Board of Zoning Appeals. I have reviewed the transcript of the record filed March 11, 2009 in the Clerk's office in file 2009-CP-22-196. I hereby certify that it is a true and correct copy of the following:

Transcript of the December 3, 2008 City of Georgetown Board of Zoning Appeals hearing on all (3) of the appeals filed by James M. Tennant.


Debra Grant, Secretary to the Board

Georgetown, South Carolina
July 19, 2009

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

James M. Tennant,

Petitioner/Appellant

vs.

City of Georgetown Board of Zoning Appeals,

Respondent

IN RE 416 Highmarket Street

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-22-00196

Exhibit 2c

Affidavit of Debra Grant

PERSONALLY APPEARED BEFORE ME, Debra Grant, who being duly sworn under oath, deposes and states as follows:

1. I was present for the City of Georgetown Board of Zoning Appeals' December 3, 2008 meeting and audiotaped the entire meeting.
2. Upon being served with Mr. Tennant's appeal on one of the three matters he brought to the Board on that date, I listened to and copied the entire tapes of the December 3, 2008 meeting.
3. I provided copies of the tapes to court reporter Glenda McCormick for transcription, cued to where all three matters Mr. Tennant appealed began, not just the Paige Sawyer Photography matter.
4. I reviewed the transcript with the original tapes. I personally penciled speaker name changes the court reporter had gotten wrong on the original transcript at pages 4, 5, 26, 31, and 43.
5. The transcript, with my penciled changes, was filed with the Clerk of Court March 11, 2009.
6. On June 19, 2009, I reviewed the Clerk's file. The transcript filed by the Board is the original, as amended by me prior to filing, and is an accurate and complete record of the Board's hearing on all three of Mr. Tennant's December 3, 2008 appeals.

FURTHER THE AFFIANT SAYETH NOT.

Debra Grant
Debra Grant, Secretary to the Board

Sworn to before me this 22nd day
of June, 2009.

Ann Ulster Merriam
Notary Public for South Carolina
My Commission Expires: 09-01-10

**STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN**

**COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP 22-196**

James M. Tennant,

Petitioner/Appellant,

-VS-

Board of Zoning Appeals for The City of Georgetown,

Respondent

**AFFIDAVIT OF
JAMES M. TENNANT**

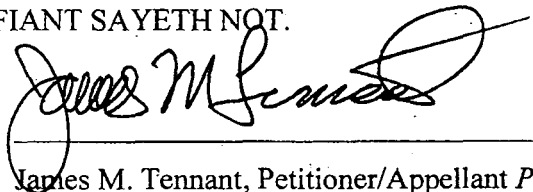
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GEORGETOWN COUNTY, S.C.
2009 JUN 23 PM 4:07
TALMA Y. WHITE
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, James M. Tennant, who being duly sworn under oath, deposes and states as follows:

1. On July 17, 2008, I issued to the City of Georgetown a S.C. Freedom of Information Act request for documents relating to the sign for Paige Sawyer Photography.
2. On August 12, 2008, I received copies of documents from the City responsive to my request of July 17, 2008.
3. On October 8, 2008, I issued to the City of Georgetown a S.C. Freedom of Information Act request for documents relating to the sign for Paige Sawyer Photography that I had not received pursuant to my earlier request.
4. On October 29, 2008, I received a copy of one document from the City responsive to my request of October 29, 2008.
5. On June 22, 2009, I issued to the City of Georgetown an emergency S.C. FOIA request for all documents relating to the sign for Paige Sawyer Photography.
6. On June 22, 2009, I received approximately 30 pages of documents responsive to my request, 23 of which were dated prior to October 29, 2008. These 23 pages should have been provided in response to my October 8, 2008 S.C. FOIA request.

7. The 23 pages that I believe were withheld from the October 29, 2008 response from the City were and are materially significant to my pending case captioned above and to the December 3, 2008 appeal I filed regarding the Paige Sawyer sign with the City of Georgetown Board of Zoning Appeals.
8. The lack of these documents has put me in a situation where I have not been able to properly place material evidence before the Board of Zoning Appeals and before this Court hearing the instant case captioned above.
9. I believe the lack of these documents has created a situation where the record before the Court is insufficient for review.
10. I believe my ability to prosecute the instant Appeal has been compromised by the failure of the City of Georgetown to timely provide the material I needed for the Appeal before the Board and before this Court.
11. In order to remedy this situation, I believe a new hearing before the Board of Zoning Appeals should be ordered to insure that the full record and facts are before the Board so that a proper decision can be made.

FURTHER THE AFFIANT SAYETH NOT.



James M. Tennant, Petitioner/Appellant *Pro Se*

Sworn before me this 23 day of
June, 2009


Notary Public for South Carolina

My Commission Expires: June 04, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

James M. Tennant,)

Petitioner/Appellant)

vs.)

City of Georgetown Board of Zoning Appeals,)

Respondent)

IN RE 416 Highmarket Street)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-22-00196

Brief of Respondent

Responsive to Appellant's Motion to Reconsider

FILED
GEORGETOWN COUNTY, S.C.
2009 JUL -2 PM 1:47
ALMA Y. WHITE
CLERK OF COURT

NOW COMES Respondent City of Georgetown Board of Zoning Appeals, by and through its undersigned counsel, and responds to Appellant's Motion to Reconsider this Court's Order of Dismissal.

This Court dismissed Mr. Tennant's appeal for three reasons: (1) the Board of Zoning Appeals' decision was upheld on the merits, (2) Appellant failed to name a necessary party, and (3) Appellant lacked standing to bring the action. Although each could stand alone to support dismissal, Appellant takes issue with all three.

For the factual history in this matter, Respondent craves reference to its Return and Exhibits of all the material reviewed by the Board, along with the Record on Appeal, all filed March 11, 2009 in this case.¹

I. The Court correctly upheld the Board of Zoning Appeals' decision on the merits

The court correctly applied the standard of review for a zoning board appeal. The court found the Board's "decision that the sign in question is exempt from compliance with the city's sign ordinance is correct as a matter of law." (Order at 3). S.C. Code § 6-29-849 prescribes the standard of review a circuit court should apply, providing: "the findings of fact by the board of appeals must be treated in the same manner as a

¹ The Board secretary certified the record *nunc pro tunc*, and her certification and accompanying affidavit

finding of fact by a jury ...", and must be affirmed "if they are not arbitrary and clearly erroneous in view of the evidence in the record." Sea Island Parkway Coalition v. Beaufort County Board of Adjustments and Appeals, 321 S.C. 548 (1996.) "Factual findings of the Board must be affirmed by the circuit court if they are supported by any evidence and not influenced by an error of law." Heilker v. Zoning Board of Appeals for the City of Beaufort, 346 S.C. 401 (2001)

The proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court. Walsh v. Woods, 371 S.C. (Ct. App. 2006.) In his Brief on his Rule 59 Motion, Appellant cites three issues he claims were not considered by the Board or this Court: (1) the absence of a permit, (2) that the sign was located on a fence, and (3) the absence of a variance.

The first two issues--the permit issue and the fence issue--are part and parcel of the Board's determination that the sign was grandfathered. For if a sign is nonconforming but grandfathered, it matters not in which particular it is nonconforming. The Board took testimony on both issues, and this Court had the testimony and heard Mr. Tennant's argument on appeal. On the permit issue, the Court heard from both parties, including that the city could not dispute the lawful existence of the sign at the time the ordinance was adopted (Return at ¶ 8.) However, "the burden of proving a nonconforming use is on the party claiming a prior nonconforming use." Whaley v. Dorchester County Zoning Board of Appeals, 337 S.C. 568 (S.C. 1999.) On the fence issue, Appellant argued the point, and the city told the Board "you can't have a sign on a fence" under the current ordinance (Tr. 32:13-14.) That the placement of the sign made it noncompliant with the current ordinance was undisputed. Ultimately, the Board found the Zoning Administrator did not err in determining the sign was grandfathered under the facts presented.

that the filed record was the original, were filed June 22, 2009, at the request of the Clerk of Court.

Appellant's third complaint, that there is an "absence of a variance," is not relevant to either the Board's or this Court's review. The Administrator's decision, upheld unanimously by the Board of Zoning Appeals, makes any need for variance unripe.

The Board's decision was neither arbitrary nor clearly erroneous in view of the evidence in the record. The court properly found the Board's decision "that the sign in question is exempt from compliance with the city's sign ordinance is correct as a matter of law." (Order at 3).

There is no basis for this Court to alter or amend its judgment, therefore, Appellant's use of Rule 59(e) is misplaced and the Board respectfully requests the Order of this Court stand.

II. The Court properly concluded the sign owner was a necessary party

There is no basis for this Court to alter its judgment regarding Appellant's failure to name a necessary party. This Court concluded Mr. Tennant's appeal failed jurisdictionally because of his failure to name and serve the sign owner about whose sign he was complaining. Clearly, a sign owner has a "substantial interest" in a Zoning Board decision about his own sign. The Court cited Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610 (S.C. App. 2008) for the proposition that the naming and service of a necessary party is jurisdictional and cannot be waived. Appellant states "the sign owner was not a party to any original actions brought before the Respondent Board by him [sic]" (Appellant's Brief at 9.) Rather than supporting his argument, this point is further evidence that Appellant's challenge and appeal was improper *ab initio*.

Finally, by citing more law about who is a necessary party (See Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment of Town of Hilton Head, 295 S.C. 67 (1988)², Appellant attempts to distinguish the necessary party rule from the instant case by arguing "[Mr. Sawyer] was never a permittee." (Appellant's brief

² The Supreme Court addressed the Court of Appeals' error on this very issue, so the rule is clear. See Spanish Wells Property Owners Association, Inc. v. Board of Adjustment, Opinion No. 86--MO-060 (S. C. Ct. App. 1986)

at 10.)³ Again, the burden to prove he was not a permittee was the Appellant's. This was simply never a fact found by the Board.

III. **The Court correctly found Appellant lacked standing**

This Court questioned whether Appellant had standing to bring the action or appeal on the sign and concluded he did not (Order at 4-5.)

Only a person with a "substantial interest" in a decision of the Board of Zoning Appeals may appeal. S.C. Code § 6-7-750. It has been held that owners of property adjacent to and in the near vicinity of subject property were "persons with a substantial interest" and had standing to appeal. Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment of Town of Hilton Head, 292 S.C. 542 (Ct. App 1987). Appellant never claimed to own property anywhere near this sign. The Board appreciates this Court's finding regarding standing and its citing a series of cases outlining the well-established law on this issue, particularly its finding that "enforcement of the city's sign ordinance is a legislative action authorized to the city and/or its agencies, not individual citizens." (Order at 5.)

Finally, Mr. Tennant argues a "public importance" exception, citing his own website and media reports about his actions. (Appellant's Brief at 8.)⁴ The Board objects to the introduction of new evidence on appeal. As is apparent from the transcript of the Board's public meeting, other than Mr. Tennant, there was no, or zero, public objection to the sign and the Board's conclusion was unanimous.

³ Appellant argues this Court is "grasping at straws" in citing *Spanish Wells*. (Appellant's Brief at 10). Appellant cited that case.

⁴ This argument is ironic in light of Appellant's "objection" (Brief at 11) to the Court's statement in a footnote regarding Appellant's stated reasons for the appeal, since Appellant argued same to both the Board and Court, and his personal website cited in his brief relates his personal beliefs such as: "I personally consider Paige Sawyer to be the town tyrant and "Paige and his buddies at city hall are all corrupt in my opinion." (emphasis added.)

IV. The record on appeal was complete and no new trial is warranted

Appellant argues "I object to the Court refusing to allow my motion...to defer the hearing until the record on appeal was made complete...the record is insufficient for review and should be remanded back to the Board." (*Id.* at 11.) He also argues for the court to "recuse himself from further involvement in this case and order a new trial..." (*Id.* at 12.) First, Rule 59 is not the correct mechanism to request a remand to supplement the record with new evidence, and the Board objects to Appellant's attempt to do so. However, to the extent the Court may entertain this argument, the entire record before the Board was filed March 11, 2009.

The entire transcript was filed. Also filed was the Board's Return, served on Appellant, which attached ten exhibits. It was never disputed that Exhibits 1-6 were evidence presented to the Board.⁵ Appellant knew or should have known he could present evidence to the Board himself. At oral argument and again in his Rule 59 Brief, Appellant complained "I was not provided the full transcript of the hearing and my material statements made before the board..." (Rule 59 Motion at 8.) When he was served with the Board's Return, he got the Exhibits to the Board's Return, which included pages 31-45 of the Transcript. As undersigned counsel pointed out to him in court, the entirety of all three of his appeals (including on two unrelated sign/flag issues he raised) (Transcript 1-45) had been transcribed and filed simultaneously, as also explained for Appellant's benefit in footnote 1 of the Return (Return at 2.) The record was, in fact, complete and sufficient for review. The Board did not copy an extra entire transcript for Appellant at taxpayer expense, but rather filed the larger Transcript to complete the record for the parties and the court, as required. The Board submits that perhaps Appellant's *pro se* representation has prejudiced him in this matter, but it would be fundamentally unfair and improper for his failure to prepare and review the Clerk's file to serve as the basis for a remand.

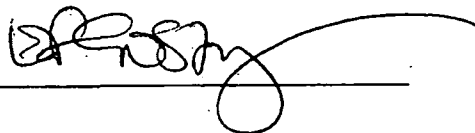
⁵ Exhibits to Return applicable to Appeal but not in Board packets: 7-minutes, 8-portion of the transcript covering the Sawyer sign, 9-notice letter of Board's decision, 10-applicable city code.

V. Appellant has not laid any foundation for his argument the Court should recuse itself

Appellant erroneously uses Rule 59 for his "motion" that this Court recuse itself from hearing his Rule 59 motion. This is improper, Appellant has laid no foundation for this motion, and Respondent respectfully requests that this Court, if inclined to rule on this request, deny it.

For the reasons stated above, Respondent Board of Zoning Appeals respectfully requests that this Court deny Appellant's Rule 59 motion for new trial or to alter or amend its Order.

Respectfully submitted,



Elise F. Crosby (#7077)
Attorney for Respondent

CROSBY LAW FIRM, LLC
405 Dozier Street
Georgetown, S.C. 29440
Telephone (843) 546-3103
Facsimile (843) 546-0747
Email: ecrosby@crosbyfirm.com

Georgetown, S.C.

July 3, 2009

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-196

James M. Tennant,

Appellant,

v.

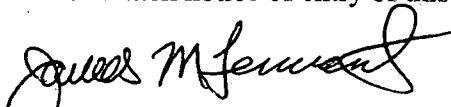
Board of Zoning Appeals for
the City of Georgetown,

Respondent.

NOTICE OF APPEAL

James M. Tennant appeals the order of the Honorable Benjamin H. Culbertson dated August 10, 2009. Appellant received written notice of entry of this order on August 11, 2009.

September 9, 2009



James M. Tennant
1204 Saville St.
Georgetown, South Carolina 29440
(843) 527-4485
Appellant *Pro Se*

Other Counsel of Record:
Elise F. Crosby
405 Dozier St.
Georgetown, South Carolina 29440
Attorney for Respondent
(843) 546-3103

MINUTES
Board of Zoning and Appeals
December 3, 2008

MEMBERS PRESENT: Andrew Brewington, James Dozier, Joe Henson, Linda Evans, Willie Washington, and Chris Clark

MEMBERS ABSENT: None

OTHERS PRESENT: Sabrina Morris-City Staff, Debra Grant-City Staff, and Elise Crosby-City Attorney

MINUTES: November 5, 2008 approved with no corrections. Motion made for approval by Ms. Evans and seconded by Mr. Washington.

Joseph Phillips request a variance from the strict interpretation of Article VIII of the City of Georgetown Zoning Ordinance in regards to side yard setbacks for a proposed garage to be added to the property located at 1201 Prince Street. The request is to allow for the proposed garage to encroach 4' into the side yard requirement of 8'. Sabrina Morris-City Staff stated that this request was brought before the board on last month, and the board asked them to reconsider the existing storage building. The contractor spoke with the owners and they are going to remove the existing wooden structure and they will meet the rear yard setback but would not meet the side yard setback, so they are asking to encroach 4 ft. into the side yard setback of 8 ft. Mr. Pat Condon (Contractor) presented his plans for a new garage. **A motion was made by Mr. Henson to approve as presented and seconded by Mr. Washington. The vote was carried 6 to 0 by roll call vote.**

Robert & Melissa Timmerman request a variance from the strict interpretation of Article VIII of the City of Georgetown Zoning ordinance specifically the front yard setback requirement of 25'. The applicant requests a variance to extend the porch and be allowed to encroach 9' into the front setback. Sabrina Morris-City Staff stated that the house is a very unusual structure; they did get a variance in the past one for the lot size and one for the side yard variance. They feel the porch that exists is too dwarfed for the residence. **A motion was made by Ms. Evans to approve and seconded by Mr. Dozier. The vote was approved unanimously by roll call vote. The vote was modified by Mr. Clark to add a walkway and the porch should remain open to air and light, seconded by Ms. Evans. The vote was carried 6 to 0 and approved by roll call vote.**

Robert Patterson, agent for Minnie Sumpter, Heirs request a variance from the strict interpretation of Article VIII of the City of Georgetown Zoning ordinance specifically the side yard setbacks requirement of 8 ft. The applicant requests a variance to add and addition to the rear of the existing structure and encroach 7' on the south side of the property and 5' into the north side of the property. Sabrina Morris-City Staff states that the property is a non-conforming lot of records. The two properties on either side are

owned by Ms. Mary Cottman. Mr. Patterson stated that Ms. Cottman is returning to the area and would like to enlarge the home for living space. **A motion was made by Mr. Henson to approve, seconded by Ms. Evans. The vote was carried 4 to 2. (Mr. Clark and Mr. Dozier denied).**

APPEALS

Marty Tennant has requested an appeal of the decision of the Deputy Director of Development regarding the following items (1) 914 Highmarket Street regarding vehicle sign (2) 205 & 210 N. Fraser Street regarding Flags (3) 416 Highmarket Street regarding home based business sign. Sabrina Morris-City Staff stated that Mr. Stack the Deputy Director of Development is not present, Ms. Morris gave the presentation for the items being appealed. The Winnans had the option to put a wall sign that meets the requirements and they did not go forward with that option, states Ms. Morris. Mr. Marty Tennant gave a presentation on his appeal of the sign located on **914 Highmarket Street**. Ms. Elise Crosby-City Attorney addressed the City Staff position, at the time of this decision there was not a Zoning Administrator, so the Deputy Director of Development (Steve Stack) handled the case. **A motion was made to deny the decision of the Deputy Director, because the sign is a directional sign, this motion was made by Mr. Clark and seconded by Mr. Dozier. The vote was not carried 5 to 1 by roll call vote. (Mr. Brewington/against)**

Mr. Paige Sawyer gate sign at 416 Highmarket Sign, Sabrina Morris-City Staff stated that this sign is grandfathered in by the new sign ordinance. **A motion was made by Mr. Henson to approve the decision of the Deputy Director, seconded by Ms. Evans. The vote was carried 6 to 0 by roll call vote.**

205 & 210 N. Fraser Street (Flags), Sabrina Morris-City Staff stated the decision made by the Zoning Administrator (Jamie Davis) that more than three (3) Governmental Flags are allowed on one parcel. **A motion was made by Mr. Clark to disagree with the Zoning Administrator, and seconded by Mr. Dozier. The vote was carried 6 to 0 by roll call vote.**

AJOURNMENT: With there being no further business the meeting was adjourned.

Respectfully Submitted,

Debra Grant
Janet Grant
Recording Secretary

Ex 8

**TRANSCRIPT OF AUDIOTAPE OF
BOARD OF ZONING AND APPEALS MEETING
3 DECEMBER 2008
GEORGETOWN, SOUTH CAROLINA**

GLEND K. MCCORMICK
COURT REPORTER & NOTARY PUBLIC
6665 WISTERIA DRIVE MYRTLE BEACH, SC 29588
843-215-3475

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(This transcribed portion begins at
tape counter 282 of Tape One, Side A.)

- - - - -

MS. MORRIS: And actually the appeal tonight is from Mr. Marty Tennant. He's actually requested an appeal from the decision of the Deputy Director of Development regarding three properties, 914 Highmarket Street, vehicle sign; 916 Highmarket Street regarding home-based business signs; 205 and 210 North Fraser Street regarding flags.

Unfortunately, Mr. Stack is not here, so I do hope that I can get through this. I mean I certainly have had several conversations with Mr. Stack, so I will certainly present it and if you have any questions that I can't answer, you may request a --

MR. CLARK: May I ask a question?

MS. MORRIS: Uh-huh.

MR. CLARK: Mr. Chairman, is that okay? Are these three separate cases with three separate fees and applications?

MS. MORRIS: There are -- actually, we talked about that earlier. They are -- it should have been three separate applications because it's three separate addresses. We did not speak to Mr. Tennant and he was not made aware that there was three applications when he

ROA p. 73

1 applied, so we did accept this and it will not be -- take
2 place again. There should have been three separate
3 applications and three separate fees.

4 MR. CLARK: Thank you.

5 MR. BREWINGTON: Good question.

6 MS. MORRIS: If we could -- we'll start with
7 914 Highmarket Street if that's okay.

8 MR. BREWINGTON: Okay. You start wherever you
9 feel comfortable. We'll follow along.

10 MS. MORRIS: Okay. Miss Carol -- Miss Carol
11 Winnan's vehicle sign is being appealed. Staff received
12 a complaint from Mr. Tennant and did an on-site
13 inspection of the vehicle signs. There's actually one in
14 front and one in rear. You have all these pictures in
15 your packet.

16 After Mr. Stack reviewed the complaint and the
17 ordinance, he had determined that the sign was allowed
18 under the new sign ordinance, Article 10, Section 10-09,
19 signs exempt from application of this ordinance. And you
20 do have a copy of that.

21 He stated that, one, it is a sign that is
22 attached to the vehicle. It does not prohibit the
23 vehicle to be driven. The vehicle is driven every day.
24 It is not parked there -- it is parked there every day
25 because they live there, but they do move it every day.

ROA p. 74

1 So it's not inactive exceeding five working days. If it
2 was, obviously, we would certainly notify them and tell
3 them it was in violation.

4 Mr. Stack felt like it met all of the
5 requirements of this code and actually notified Mr.
6 Tennant as well as Mr. Winnan.

7 And again, you have these. We tried to put
8 all the signs on here. Some were sideways, some wouldn't
9 go at all, but the sign that you see here on the rear is
10 also on the front of the vehicle. This is a parking
11 place that is legal. He has current license tags on the
12 car -- on the truck, and that's why it was determined
13 that it is a legal sign.

14 Mr. Henson ~~MR. DOZIER~~: But any place he moves it to
15 gives the public the wrong information.

16 MS. MORRIS: That's correct.

17 MR. CLARK: They're magnetic, though.

18 MS. MORRIS: They are magnetic, so he can take
19 them off.

20 Mr. Henson ~~MR. DOZIER~~: Oh, are they magnetic?

21 MS. MORRIS: Yes, uh-huh. Yeah. They're not
22 painted on. They're magnetic.

23 Mr. Henson ~~MR. DOZIER~~: Well, I know, but it looked to me
24 like they were bolted on --

25 Mr. Dozier ~~MAN'S VOICE~~: Not on the front end.

ROA p. 75

1 Mr. Henson ~~MR. DOZIER~~: Because it's on the radiator or
2 something.

3 Mr. Dozier ~~MAN'S VOICE~~: It's hanging.

4 MS. MORRIS: Well, this one's magnetic. I'm
5 not sure what these fronts made of.

6 Mr. Dozier ~~MAN'S VOICE~~: But do they take it off?

7 MR. DOZIER: One thing -- I got a question.
8 It says in this ordinance, actively used in the daily
9 function of a business to which the sign relates. My
10 question is how does a pick-up truck relate to the daily
11 function of a clock repair business?

12 MR. BREWINGTON: They do deliver --

13 MS. MORRIS: Well, they could -- exactly,
14 uh-huh.

15 MR. BREWINGTON: Because they fixed my
16 grandfather clock and they had to come and pick it up, so
17 I -- I didn't look outside to see what they drove, but
18 they do make house calls.

19 MR. CLARK: My only question is about the
20 arrow. Does that -- there's a directional arrow on it.
21 Does that in any way modify what kind of sign this is?
22 Does it become --

23 MS. MORRIS: He has classified it as a vehicle
24 sign as it's listed here. You could certainly list it as
25 a directional, and directionals have to be on premise.

ROA p. 76

1 MR. HENSON: There's an arrow on the front and
2 the back of the truck right now.

3 MR. BREWINGTON: I think the problem is, as
4 Chris just said, is it a directional sign? That means
5 does it -- when they move the truck, are those signs
6 removed? That's the way I understand it. And if they
7 are not, then we've got a problem because they're
8 supposed to be on property.

9 MR. DOZIER: Well, when you -- when you
10 reading these sign ordinances -- and I don't have a
11 whole -- I don't believe anybody here does have a --

12 MS. MORRIS: The entire ordinance, unh-huh, I
13 don't think so.

14 MR. DOZIER: So you look at one part of the
15 ordinance, it says one thing, and another parts it says
16 others, so you could find it -- you know, it's how you
17 interpret it, each ordinance. There's a lot of them in
18 there. But my question is is if this sign's legal and we
19 say yes, anybody else in the city can park a vehicle in
20 front of their house and put a sign in front of it and
21 it's going to be legal.

22 MR. CLARK: In a valid parking space.

23 MS. MORRIS: If it's a valid parking space,
24 and it does like this. You are correct.

25 MR. DOZIER: -- in the street in the city's

1 now that says --

2 MS. MORRIS: Well, not everywhere.

3 MR. CLARK: No, they're not.

4 MR. DOZIER: Anybody in front of any house in
5 town is a valid parking space.

6 MS. MORRIS: No, there are some -- actually on
7 Prince Street at one side you can park, the other side
8 you can't, so there are areas in town that you cannot
9 park legally, and if this park -- if this truck was
10 parked in one of those, they'd -- they would be illegal
11 and they'd get a ticket from the City police.

12 MR. DOZIER: Well, let me ask you this. Now,
13 this is just a -- wouldn't it be better to let them put
14 the sign on the --

15 MR. BREWINGTON: The pole they had out front?

16 MR. DOZIER: -- the sign they had other than a
17 truck sitting --

18 MS. MORRIS: Well, now, let me explain that to
19 you as well. They did have a -- everyone knows they had
20 a sign that was there forever, but the sign was illegal
21 because it was in the public right-of-way. We did talk
22 to the Winnans and ask -- and actually they were on the
23 agenda to come to you and ask for a wall sign or a sign
24 would be allowed for a variance to go in the -- on their
25 property, but they withheld -- they pulled it and have

ROA p. 78

1 not brought it back.

2 MR. DOZIER: They have a wall sign now; right?

3 MS. MORRIS: No, they do not.

4 MR. DOZIER: They don't have a sign on the
5 house?

6 MS. MORRIS: Unh-huh.

7 MR. DOZIER: Oh, yeah.

8 MS. EVANS: Mailbox.

9 MS. MORRIS: No. They have a mailbox but they
10 do not have a sign.

11 MS. EVANS: I think they took it down, didn't
12 they?

13 MS. MORRIS: They did

14 MS. EVANS: Or it fell down.

15 MR. HENSON: Did you see it today?

16 MR. DOZIER: I thought I saw --

17 MS. MORRIS: They actually took the sign that
18 was out, free-standing, and they leaned it on the house.
19 We got a complaint and we wrote them a letter because you
20 can't -- it should not be visible, and they moved it.
21 Now, they have a mailbox with the name on it, but that's
22 it.

23 MR. DOZIER: I'm just thinking that if you
24 allow this -- I mean I'm not -- but then every house in
25 town that's got a legal place to park a vehicle, you're

ROA p. 79

1 opening -- I mean I think -- I think it's skirting it to
2 a point. I think you're leaving it open to, hey,
3 everybody can have a vehicle sitting in front of their
4 house with a sign on it with an arrow on it saying,
5 hey --

6 MS. MORRIS: I know that the arrow that is
7 the --

8 MR. DOZIER: I clean houses, I do carpentry
9 work, whatever you --

10 MR. HENSON: They can put a sign in their
11 yard, can't they, for a home business?

12 MS. MORRIS: Actually, this is a home-based
13 business. You have to have the -- the new ordinance says
14 that you have to have the home-based business sign on the
15 wall of the structure, and it can be two square feet.

16 MR. CLARK: But doesn't it say that they're
17 exempt in 109M, name and address plates?

18 MS. MORRIS: Yeah, they can have a name and
19 address.

20 MR. CLARK: But in name and address plates, it
21 lists the legal name of a business or operation.

22 MS. MORRIS: That is -- and we actually had
23 that brought up before and we actually got legal advice
24 and you're correct. If they put it on their house and
25 they have their address, the name of their business, and

ROA p. 80

1 it meets the square footage, they can do it.

2 MR. CLARK: Where does it state it has to be
3 on the house?

4 MS. MORRIS: I'm going by the home-based
5 business rule. If you'll go to home-based business
6 section, it tells you there, that any home-based business
7 has to -- it's a home-based business, so it would have to
8 meet those requirements.

9 MR. HENSON: I tell you, this business of --

10 MS. MORRIS: But they would be exempt.

11 MR. HENSON: -- of parking a vehicle in your
12 parking space and having directional arrows on it, if
13 that happened a lot, it would be more clutter than I'd
14 want to see.

15 MS. MORRIS: Mr. Tennant is here.

16 MR. DOZIER: One thing, I don't think -- I
17 don't have a complete set of the sign regulations in the
18 book that I have.

19 MR. HENSON: I'll give you mine.

20 (Laughter.)

21 MR. DOZIER: What I'm saying is, you know, I
22 might -- (unintelligible) -- which is better. I mean
23 we're not the ones that's doing the ordinances but, you
24 know --

25 MS. MORRIS: Well, again, now, this is --

ROA p. 81

1 we -- Mr. Tennant is appealing the Deputy Director's
2 decision. If you feel that it's incorrect, you can
3 reverse it, which means this would have to go and then we
4 could talk to them again about getting a home-based
5 business sign.

6 MR. DOZIER: But it would -- the home-based
7 business sign according -- I don't know. Would it be in
8 violation of the City ordinance?

9 MS. MORRIS: The home-based business sign
10 would be on their structure and meet those criterias that
11 Mr. Clark just read. It would be exempt. They wouldn't
12 even have to get a permit.

13 MS. EVANS: They just didn't want to do that
14 to start with?

15 MS. MORRIS: They were concerned about
16 visibility. The size of the sign that would be allowed,
17 it would be pretty hard to see. We also -- Miss Davis,
18 before she left, the Zoning Administrator, she had
19 advised them to come in front of the Board and ask --
20 because of the hardship, they felt that they couldn't see
21 the sign -- ask for free-standing, but that has not come
22 about.

23 MR. DOZIER: But according to this, she --
24 according to what she used as a reason to reject it was
25 an -- was an ordinance in there, and what does it say?

ROA p. 82

1 MS. MORRIS: To reject -- the free-standing
2 sign?

3 MR. DOZIER: That she said that they were in
4 violation.

5 MS. MORRIS: Of the free-standing sign? There
6 are several -- she did not -- they approved this.

7 MR. DOZIER: Who?

8 MS. MORRIS: The Deputy Director approved this
9 sign, Steve Stack.

10 MR. DOZIER: When they -- when she --

11 MS. MORRIS: She approved -- she had left
12 before this, this sign was placed. Let me look through
13 mine. Yeah, this is a -- June 4th, 2008, this is the
14 letter where she wrote saying all premise signs are
15 prohibited. That was in -- that was regarding the free-
16 standing sign on their property because it was in the
17 right-of-way.

18 MR. HENSON: That means between the sidewalk
19 and the street, doesn't it?

20 MS. MORRIS: Uh-huh.

21 MR. BREWINGTON: What we are -- what we are
22 determining is whether or not we agree with the Deputy
23 Director?

24 MS. MORRIS: If he erred in his determination.

25 MR. BREWINGTON: Yes.

1 MR. DOZIER: So if we vote against it, she --
2 they can come back and apply for the sign mounted on the
3 house.

4 MR. HENSON: They won't even have to get --

5 MS. MORRIS: They won't have to apply for
6 that. The only reason, if they met the guidelines for
7 the size, they could put it on the house. If they did
8 not or they had a hardship, they could come back in front
9 of the Board and ask for a free-standing sign as long as
10 it was on their property.

11 MR. DOZIER: And the ordinance for the sign
12 mounted on the house is what?

13 MS. MORRIS: Two square feet.

14 MR. HENSON: That's not two square feet.
15 That's four square feet.

16 MR. BREWINGTON: That's two by two.

17 MR. CLARK: No. It's aggregate gross surface
18 area of four square feet.

19 MS. MORRIS: But aggregate would be front and
20 back.

21 MR. CLARK: Front and back, okay.

22 MS. MORRIS: And in this case, they can't have
23 front and back. It would just be the front because it
24 would be on the wall.

25 MR. CLARK: So if it's on the wall, how is it

1 ever going to be aggregate?

2 MS. MORRIS: Where are you reading that? What
3 section is that? Is that the home-based business?

4 MR. CLARK: No. I can't find that.

5 MS. MORRIS: Okay. I can tell you exactly
6 where the home-based business is. Do you have the new
7 sign ordinance?

8 MR. CLARK: (Unintelligible word.) Yeah.

9 MS. MORRIS: Okay. The old sign ordinance
10 actually calls for one square foot.

11 MR. CLARK: Amended 2-21-08.

12 MR. BREWINGTON: Postage stamp.

13 MS. MORRIS: If you'll look at Section
14 10-12(b), home occupation sign shall be allowed as one
15 non-illuminated sign not to exceed two square feet in
16 gross surface area. Home occupation signs must be
17 mounted against the wall of the principal structure.
18 Such sign cannot be free-standing.

19 They do not qualify for temporary signage
20 described in 10-10, and you cannot have internal
21 illuminated. You see that, Chris?

22 MR. CLARK: Yes.

23 MR. HENSON: But they could apply for a permit
24 to get a free-standing sign on their property?

25 MS. MORRIS: If they came in and asked for a

1 free-standing sign on their property, they would be
2 advised -- we'd have to turn them down because they're
3 not allowed, but they would have to come in front of the
4 Board and have a hardship and prove their hardship in
5 front of the Board in order to get a free-standing sign.

6 MR. CLARK: So we're giving preference to
7 non-residential use in a residential district over home
8 occupations in the sign ordinance?

9 MS. MORRIS: Yes, that's correct. The listed
10 permitted uses in residential districts, which is R-4,
11 which are professional offices such as surveyors,
12 attorneys, and so forth, they can have a ten-square foot
13 sign in their yard.

14 And the reason is they did not -- we talked
15 about this. In fact, we have it on tape here. We are
16 going to play that later. But the reason is we --
17 normally in a home-based business, if you live there, you
18 don't want to look like a business, and with the
19 residential district, the signs for free-standing
20 commercial if you don't live there, so actually
21 commercial structure, we actually allowed for a wooden
22 frame sign that you see hanging like this so it will look
23 more in keeping with a residential district.

24 MR. BREWINGTON: Okay. Does anybody have any
25 more questions? In fact, do you want to come up and be

1 heard? All right.

2 MR. TENNANT: Yes, I would.

3 MR. BREWINGTON: Sir, state your name for the
4 record so she can hear it.

5 MR. TENNANT: Marty Tennant.

6 MR. BREWINGTON: All right. Do you solemnly
7 swear or affirm to tell the truth, the whole truth, and
8 nothing but the truth?

9 MR. TENNANT: Yes.

10 MR. BREWINGTON: All right. Go ahead.

11 MR. TENNANT: For those of y'all that don't
12 know me, I do live across the street from the hospital.
13 I have a computer repair business called The PC Doctor
14 and I have a valid variance that was given me. I don't
15 believe any of y'all were on the Board at the time that
16 the Board of Zoning and Appeals in 2004 gave me a
17 variance for the current sign that I have.

18 The sign was part of quite a long saga of
19 controversy for me, my family, and the City. I saw signs
20 that were located in the right-of-way in the immediate
21 vicinity. A sign for an existing commercial business
22 across the street for a pharmacy was in the right-of-way.
23 My sign was in the right-of-way. I -- at the time, I
24 didn't know that the right-of-way wasn't my property, but
25 I saw a lot of signs around me that were in the

1 right-of-way.

2 Anyway, I was told basically move my sign, and
3 I asked them to please put it in writing because I knew
4 that it was required to -- to give people written notice.
5 They never did. They came after me and they gave me an
6 ordinance summons.

7 I had to go to court, Municipal Court. I was
8 found guilty after two days. I was not able to tell the
9 jury that there were people in the immediate vicinity
10 that had signs just like mine that were blocking people's
11 vision, according to a police officer, and so I was
12 found -- I was found guilty. The judge did not allow me
13 to defend myself, in my opinion, properly.

14 I later brought a federal civil rights lawsuit
15 against the City of Georgetown over this sign situation
16 and I claimed a violation of my equal protection rights,
17 that other people in the immediate vicinity with similar
18 situations to mine had been treated totally different
19 from me, and they had been. They received written
20 notices. They were -- even the pharmacy guy during my
21 trial said that somebody called him over a weekend and
22 said, you better move your sign or it's going to be moved
23 for you come Monday.

24 I guess that's the way things are done in
25 Georgetown. I didn't have that -- that ability to get a

1 little tip-off.

2 But anyway, I was sent down to the booking. I
3 was booked. I had my picture made. I was fingerprinted.
4 I was put in an orange jumpsuit because I violated the
5 City sign ordinance. I paid \$1,062.

6 The City later settled my federal civil rights
7 lawsuit for \$7500 for me to go away, paltry sum compared
8 to what grief I went through with the City of Georgetown
9 over a simple little sign.

10 So ever since then I've been waiting for the
11 City to do the right thing with violations that I knew
12 about that existed at the time that I was cited and found
13 guilty. And so I waited for the new ordinance to come
14 out. I was patient. And I waited for the new people to
15 come in with Steve Thomas, Sabrina, and her crew.

16 And behind the scenes I've done some things
17 that maybe you're not aware of. There were some bench
18 signs in front of McDonald's on the corner there that
19 just cropped up all of a sudden, illegally, in my
20 opinion. I brought those to the attention of Steve
21 Thomas and Sabrina and, sure enough, those signs -- those
22 benches is what they were with signs affixed to them --
23 were removed. There was also one over in front of Thomas
24 Supply that was removed.

25 So I've been trying to not go after people but

1 to see that the laws in the City of Georgetown are
2 enforced properly. I don't want the laws to be used
3 against me the way -- against other people the way they
4 were used against me. I want an equal application of the
5 law. And these three situations that you have before you
6 are the three remaining in my mind that just don't sit
7 well with me, and let's address this one first.

8 First of all, I want to let you know that
9 there's a precedent for not allowing -- that the police
10 department has actually come after trucks parked along
11 the road with directional signs advertising a business,
12 and that's what they determined that they were,
13 apparently. If you remember, at the end of St. James
14 Street, right near Front, the store --

15 (End of side one of audiotape.)

16 -- patiently. I didn't go after these folks, but I
17 brought it to the attention of the City and, sure enough,
18 you'll see in your records here that -- that they were
19 told by Jamie Davis that the sign was in the right-of-
20 way -- and by the way, that's a violation of State law.
21 You can't put signs in right-of-way, unless you're a
22 government or a church. It's in the State law. Churches
23 can put signs in the right-of-way.

24 So as Sabrina mentioned, the Winnans
25 originally, after they took their sign down, they just

1 laid it up against the front of their house and, of
2 course, that was illegal, too, and they had to be told
3 to -- to remove that sign, the original sign that was
4 just leaning up there.

5 Then for the very first time that I can
6 remember, and I've lived in Georgetown since 1996, this
7 truck started appearing in front of the Winnans' house
8 with these signs advertising their business with the
9 arrows. Well, I'd never seen that -- those trucks
10 before, and they may use this truck in -- in the course
11 of their everyday business. I don't doubt that, although
12 I -- I'll be honest with you. I go by and I never see it
13 not there during the day, so I'm not sure where -- you
14 know, maybe they are using it occasionally, but it's
15 obvious that they put the truck there and the signs on
16 the front of and the back with the arrows because I guess
17 they didn't want to go through the process of getting a
18 variance to do what I was able to do, which was to get a
19 sign for my home-based business.

20 So this was the next step, and it's obvious
21 what they're doing. They're skirting the law. And, you
22 know, I sent an e-mail to Steve Thomas after I -- after I
23 saw this thing come up, and I said, is this legal?

24 Now, Sabrina says that the Deputy Director
25 made this determination. Well, actually, if you look in

1 your packet, there's an e-mail dated October the 2nd that
2 was from Sabrina to Steve Thomas, myself, Peggy Wayne,
3 Elise Crosby, and Steven Stack. To my knowledge, no copy
4 of this was ever sent to the Winnans, but it was Sabrina
5 who made the determination, apparently, and this was done
6 in an e-mail.

7 So I'm assuming that -- that she's the one who
8 made -- she says, in regards to the Winnans' sign on his
9 truck located in front of his residence on Highmarket
10 Street, it is Staff's interpretation that the truck is
11 not in violation of the City of Georgetown's zoning
12 ordinance and does meet the requirements set forth in
13 zoning ordinances under Article 10, Section 109,
14 sub-section S.

15 I don't think that this truck is actively
16 used. That's the language, that the truck, the vehicle
17 must be actively used in the daily function of the
18 business to what signs relate, such signs relate. It was
19 purposely pulled out -- I think prior to that, it was
20 mainly used to pull a -- a boat around, and I think they
21 probably still use it for that. But anyway, it's obvious
22 that this is done to skirt the law and to make them, I
23 guess, feel better that they had to take their other sign
24 down.

25 Now, there's this issue regarding

1 grandfathering that's been brought up, and this will --
2 this will come up again when we discuss Paige Sawyer's
3 sign. If in fact there's some kind of grandfathering
4 provision, well, why weren't the signs -- the Winnans
5 allowed to keep their old sign? Gee, why can't we just
6 trump State law and let them keep the old sign that they
7 had?

8 So that's an issue for you to consider. I
9 don't think that there's any grandfathering capability to
10 go back beyond what was already legal under the prior
11 ordinances, and I'll get into more detail on that. This
12 grandfathering issues needs to be looked at very
13 carefully.

14 So the question is really in my mind from an
15 ordinance standpoint, is this truck really, truly used in
16 the daily functioning of the business to which the sign
17 relates, the daily functioning? I think on that alone
18 you could probably say no.

19 So add that to the fact that there is a
20 precedent that was set when the police basically told
21 Stormy Seas to get rid of their truck with their sign
22 with the directional arrow at the end of St. James
23 Street, and it's obvious that this is an illegal sign
24 from my perspective, and I hope you -- you feel the same
25 way.

1 Any questions?

2 MR. BREWINGTON: Okay. Does anybody have any
3 questions for -- now -- yes, ma'am.

4 MS. CROSBY: Mr. Chairman, if I could be
5 recognized.

6 MR. BREWINGTON: You can be recognized. Would
7 you state your name for us, please.

8 MS. CROSBY: Elise Crosby.

9 MR. BREWINGTON: How are you doing?

10 MS. CROSBY: I am well. Thank you, Mr.
11 Chairman, and yourself?

12 MR. BREWINGTON: I'm good. Okay. Do you
13 solemnly swear or affirm to tell the truth, the whole
14 truth, and nothing but the truth?

15 MS. CROSBY: Yes, sir, I do.

16 MR. BREWINGTON: Thank you.

17 MS. CROSBY: I just wanted to address just a
18 couple of brief points on staff's position with regard to
19 this sign.

20 This is an appeal of the Zoning
21 Administrator's decision, but as I understand it, at this
22 point in time we didn't actually have a zoning
23 administrator, so it's the Deputy Director of
24 Development.

25 And the e-mail to which Mr. Tennant recently

1 referred of October 2nd was actually not a formal notice
2 of anything. It was responsive. It was responsive by
3 the City, and it's in your packet. It was responsive to
4 Mr. Tennant's series of e-mails to the Building and
5 Planning Department, and what that was was in response to
6 a complaint, which the City takes very seriously, and
7 obviously was trying to respond to a citizen's complaint
8 and say no, as a matter of fact, this is -- this is our
9 analysis of it and this is why it is compliant.

10 So I just wanted to point out that there
11 was -- the complaint was from Mr. Tennant, from a
12 citizen. It wasn't the Winnans that were applying for
13 any kind of permit or anything because under the zoning
14 ordinance or under the sign ordinance, as y'all can read
15 it, and it's for this body to interpret as whether or
16 not -- first it was the City's job to interpret it. Now,
17 because it's being appealed, the decision to not find a
18 violation has been appealed by Mr. Tennant, so
19 procedurally what this body needs to do is just review
20 the zoning decision as to whether or not there was a
21 violation, and the next step after that is clearly
22 Circuit Court.

23 One other thing I did want to just point
24 out -- it caught my ear -- Mr. Tennant referred to this
25 as obviously an attempt to skirt the law or something

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1 like that. I don't know whether it is or whether it
2 isn't, and there's no evidence to be taken by this Board
3 at this point in time, or there wasn't that I heard from
4 Mr. Tennant anything other than speculation or hearsay
5 that it's not used, and I don't know that you have any
6 evidence to the contrary. So the decision has been made
7 that it is compliant, so I'll just point out that I don't
8 think speculation would -- would be entirely appropriate
9 for this Board.

10 MR. BREWINGTON: Okay.

11 MR. HENSON: Let me ask a question here.
12 Maybe this is of Sabrina. Are the Winnans or their
13 representatives here tonight?

14 MS. MORRIS: No, they're not.

15 MR. HENSON: Were they told of this meeting?

16 MS. MORRIS: I can't answer that. I don't
17 know but --

18 MR. HENSON: Paige --

19 MS. MORRIS: They were not --

20 MR. HENSON: Paige and his wife are here.

21 MR. WINNAN: I received a letter.

22 MR. CLARK: The properties weren't posted?

23 MS. MORRIS: The properties were not posted.

24 This is not a variance.

25 MAN'S VOICE: This is an appeal.

1 MS. MORRIS: This is an appeal.

2 MR. DOZIER: But they know --

3 MS. MORRIS: But they -- I'm sure they know.

4 One, it was in the paper and, two, I can't answer whether
5 they were notified or not, but I will say Staff did not
6 feel like it was a violation so they were not notified.

7 MR. BREWINGTON: Does anybody have any other
8 questions of the City attorney? Thank you.

9 MS. CROSBY: Thank you, sir.

10 MR. BREWINGTON: Okay.

11 MR. DOZIER: Can I ask is there -- is the --
12 is it on the record that the City asked Seven Seas to
13 remove that truck where the sign was? I know the sign --
14 I know --

15 MS. MORRIS: Mr. Tennant said that was the
16 police department. I'm not familiar with that at all.

17 MR. HENSON: It sat there for, it seemed like,
18 maybe five or six weeks, but then it was gone.

19 MR. BREWINGTON: Okay. Does anyone have any
20 other questions? I am prepared to entertain a motion.

21 MR. DOZIER: First off, let's make it clear
22 what we are -- if we vote against this, they can go back
23 and apply to have a sign on the residence?

24 MR. BREWINGTON: If they want to.

25 Mr. Henson ~~MR. CLARK~~: They can just do that.

1 MR. DOZIER: They can do that without --

2 MS. MORRIS: As long as it meets the size
3 requirement, that's correct.

4 MR. BREWINGTON: If they come back to us, it's
5 going to be for a variance for the free-standing sign
6 that she's talking about on their property but to put one
7 up on the wall.

8 MS. MORRIS: And staff would request that you
9 be -- on your decision you be very specific, because
10 obviously magnetic signs are allowed on vehicles, so if
11 it's denied, would you -- the base of the arrow or --

12 MR. DOZIER: The sign on the front of the
13 vehicle is not magnetic.

14 MS. MORRIS: Right. But I -- well, and I
15 don't know about the front, but I'm -- if this is a
16 magnetic sign, they are allowed.

17 MR. DOZIER: And the one on the front is a
18 sign that's hooked to the grille of the truck.

19 MS. MORRIS: I guess what I'm saying, if
20 you -- if you deem that this sign is illegal, I'm
21 assuming it would be because of the directional sign -- I
22 mean directional arrow, and if that is the case, would
23 you state it?

24 MR. DOZIER: But if we -- what I'm saying is
25 if we vote that we are against it, they have -- they can

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1 put a sign on the wall of the house?

2 MS. MORRIS: Yes, they can.

3 MR. DOZIER: Or they can ask for a variance
4 and put a sign in the yard --

5 MS. MORRIS: That's correct.

6 MR. DOZIER: -- and not on the right-of-way?

7 MS. MORRIS: That's correct.

8 MR. DOZIER: As long as the sign meets the
9 size requirement in the yard.

10 MS. MORRIS: That's correct.

11 MR. TENNANT: Can I make just one more
12 comment, please?

13 MR. BREWINGTON: Briefly, please.

14 MR. TENNANT: Yes, sir. I have a vehicle and
15 I have magnetic signs on mine. They don't have arrows
16 and I don't park it in the public right-of-way along the
17 street or along the street. You know, I guess the key
18 thing for me is that the arrow, I think, is just blatant,
19 and number two, the question is really is it used in the
20 daily functioning of the business? Daily, is it used on
21 a daily basis? That's the language. And actively, it
22 says actively used in the daily function of the business
23 to which such signs relate.

24 MR. BREWINGTON: Okay.

25 MR. TENNANT: So if they only had a sign with

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1 no arrow, well, that might be okay, but then the sign
2 would have to be affixed to a vehicle that was actively
3 used, and I don't believe it is.

4 MS. CROSBY: Mr. Chairman, I just -- I can't
5 hear that without briefly responding again, Mr. Chairman,
6 that the City found that it was actively used, that it
7 was compliant. This Board has heard no evidence to the
8 contrary.

9 MR. CLARK: Can we make a motion or --

10 MR. BREWINGTON: Yes, you can.

11 MR. CLARK: I'd like to make a motion that we
12 reject the Zoning Administrator's decision because the
13 sign illustrated to us is a directional signage.

14 MR. DOZIER: I second.

15 MR. BREWINGTON: Okay. It's been moved and
16 seconded. Can I have a roll call, please?

17 MR. HENSON: Before we vote on that one, could
18 we add something to that saying that the property owner
19 could expect to come back to us in the near future if --
20 if they wish to pursue other types of signs for their
21 property?

22 (Simultaneous voices.)

23 MS. MORRIS: We would let them know that
24 either way, Mr. Henson.

25 MR. HENSON: Okay.

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1 MS. MORRIS: Because we write them a letter.
2 If this is denied, we will give them those options, yes,
3 sir.

4 MR. BREWINGTON: The one thing that I will
5 allow is just clarification as to whether or not the
6 reasoning for the rejection of the Deputy Director's
7 ruling, if it's because of the directional arrows, then
8 we need -- then we need to say that.

9 MR. CLARK: I said it was directional
10 signage --

11 MR. BREWINGTON: Okay.

12 MR. CLARK: -- because of the arrow. Would
13 you like me to add that? I'm not saying that it's -- I
14 mean you got a sign on your truck. There's a lot of
15 people that have signs on their trucks. It's the arrow
16 that --

17 MR. BREWINGTON: Okay. We have a --

18 MS. GRANT: Ready for a roll call?

19 MR. BREWINGTON: Please.

20 MS. GRANT: Mr. Clark?

21 MR. CLARK: In favor.

22 MS. GRANT: Mr. Dozier?

23 MR. DOZIER: In favor.

24 MS. GRANT: Mr. Henson?

25 MR. HENSON: In favor.

1 MS. GRANT: Mr. Brewington?

2 MR. BREWINGTON: Against.

3 MS. GRANT: Miss Evans?

4 MS. EVANS: In favor.

5 MS. GRANT: Mr. Washington?

6 MR. WASHINGTON: In favor.

7 MR. BREWINGTON: Okay. Now, staff, I really
8 wish that we would have had these separated, but since
9 they're not -- because now we're going to be here going
10 through each and every one of them but, as I said, I wish
11 they would have been three separate.

12 MS. MORRIS: Applications?

13 MR. BREWINGTON: Yeah, three separate
14 applications, but like I said, it's a moot point now.
15 We'll go ahead.

16 MS. MORRIS: The next -- click it. And I
17 apologize. We cannot get that straight. It just
18 refuses.

19 (Simultaneous voices.)

20 ~~Mr. Dozier~~ ~~WOMAN'S VOICE:~~ That's typical.

21 MS. MORRIS: Yeah, what can go wrong will go
22 wrong.

23 The next is Mr. Paige Sawyer's photography
24 sign on his gate, or fence. This sign has been in
25 existence for -- it's my understanding for over 25 years.

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1 We did receive a complaint from Mr. Tennant. We followed
2 up August 12th. Jamie Davis wrote Mr. Sawyer a letter,
3 and we did attach that in yours, stating under the
4 current sign ordinance that a sign on a fence is not
5 allowed.

6 Mr. Sawyer came in and stated that when the
7 sign was placed on the fence, it was during a time of
8 addition being added to the rear of the property. He
9 asked about the sign at that time and was told he could
10 indeed place the sign on the fence or the gate and a
11 permit was not needed.

12 Mr. Sawyer stated that the sign was not
13 located on the fence but the gate. The ordinance says
14 you can't have a sign on the fence. He states it's on a
15 gate, and he was told during a workshop on the new sign
16 ordinance -- he had specifically asked about existing
17 home-based business signs and was told that they were
18 grandfathered under the new ordinance.

19 We did listen to the tape that Mr. Sawyer
20 referenced and indeed Staff did state existing home-based
21 business signs existing prior to the adoption of this new
22 ordinance would in fact be grandfathered. And Mr. Sawyer
23 could only go by or have reliance and assurance that his
24 sign was grandfathered because he was told by the
25 department that enforced the codes that his sign was

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1 indeed grandfathered.

2 Now, we do have the tape of this meeting
3 January 31st, and it is right where he asked and our
4 answer, so we'll be glad to play that for you, don't have
5 a problem with that.

6 MR. DOZIER: Who is having this meeting?

7 MS. MORRIS: It was the -- it was in January.
8 The City Council had it with Staff and the public when we
9 were reviewing the new sign ordinance, what we would
10 approve, what they had asked for changes on. He was
11 asking what we were going to enforce, what we were not
12 going to -- every one of the council members. It was not
13 just Mr. Sawyer, but in this particular instance, Mr.
14 Sawyer asked about the existing signs that were already
15 in place. And it won't take five minutes if you'll -- it
16 probably won't take two minutes if you'd like to hear it.

17 MR. DOZIER: When was this?

18 MS. MORRIS: January of this year.

19 MR. DOZIER: Well, let me ask you this. If
20 that's true, why did we go through the scenario with the
21 other sign?

22 MS. MORRIS: The other sign was -- Mr.
23 Sawyer's sign is on his property. The other sign was in
24 the public right-of-way. And if -- we did say that on
25 tape, and I'll be -- again, I want you to hear it. And

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1 if the Winnans' would be on their property, we would not
2 have enforced that as well. But I will play it. It's
3 right here. It won't take but a minute.

4 (Portion of audiotape)

5 MR. SAWYER: One more question. Now, will
6 this apply to existing businesses now?

7 MS. MORRIS: No. They're grandfathered.

8 MR. SAWYER: They're grandfathered. All
9 right. Thank you.

10 (End of portion of audiotape.)

11 MS. MORRIS: Now, I can rewind it if you --
12 little while and understand that it's a home-based
13 business. I will get that part.

14 (Portion of audiotape.)

15 MS. MORRIS: You may not want to
16 (unintelligible) on a post.

17 MAN'S VOICE: (Unintelligible) -- one to a
18 mailbox.

19 MS. MORRIS: You couldn't do that within this
20 ordinance.

21 MAN'S VOICE: You couldn't do that under this
22 ordinance.

23 MS. MORRIS: Actually, our current ordinance
24 says that it has to be mounted on the -- on the
25 structure.

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1 MR. SAWYER: Now, these home-occupation
2 businesses, are they a business that's just in a home or
3 one that is lived in also?

4 MS. MORRIS: It is lived in.

5 MR. SAWYER: Okay. All right. So the sign on
6 a home-occupation business where the business is used as
7 a residence also must be on the side of the building; it
8 cannot be in the yard? All right.

9 MS. MORRIS: Cannot be.

10 MR. SAWYER: All right. Let me ask you this:
11 What about businesses that operate in homes but not as a
12 residence?

13 MS. MORRIS: Then that's an actual business
14 and they can have a free-standing sign

15 MR. SAWYER: Okay. Thank you.

16 MAN'S VOICE: As Sabrina said, I think I
17 pointed this out, too, and years ago when I started in
18 North Myrtle Beach, it seemed like everybody had a home
19 occupation, had a business they operated out of their
20 house, and our concern was -- and we didn't allow signs
21 at all back then at that point.

22 Our concern was once you open the door and
23 everybody can do the same thing, you could literally have
24 neighborhood after neighborhood with -- and nothing wrong
25 with having a business in each house, but you would have

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1 the sign, and I guess certainly the wall sign perhaps is
2 more preferable than the yard sign in this case, but
3 that's the danger that you have when you open it up to
4 something like that.

5 MR. SAWYER: One more question. Now, will
6 this apply to existing businesses now?

7 MS. MORRIS: No, they're grandfathered.

8 MR. SAWYER: They're grandfathered. All
9 right. Thank you.

10 (End of audiotape portion.)

11 MS. MORRIS: And because of that and because
12 of the fact that it has been there so long, obviously, we
13 could not get in touch with the inspector that told him
14 he could put it there in the first place. I think he has
15 passed away. But Staff does feel that he was told to put
16 it out, and because of the fact that the sign has been in
17 place for over 20-some years and the owner was assured by
18 Staff on tape that the sign was indeed grandfathered that
19 it should be allowed to remain.

20 MR. DOZIER: When y'all answered that it was
21 grandfathered, what were you basing that answer on?

22 MS. MORRIS: Any --

23 MR. DOZIER: I mean does that end the --

24 MR. CLARK: Yeah.

25 MS. MORRIS: Yeah.

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1 MR. DOZIER: -- (unintelligible)? All right.

2 MR. BREWINGTON: Any other questions of Staff?

3 MR. CLARK: I have a question. Couldn't
4 Planning Commission do a text amendment and just modify
5 this one sentence to allow the sign? Has that not been
6 discussed since Council feels that it should be allowed?

7 MS. MORRIS: Well, the Council as a whole has
8 not told us it should or should not be allowed, but we
9 can certainly carry it to the Planning Commission and
10 have it reconsidered. It was told to Council and the
11 Planning Commission when we presented the ordinance as a
12 whole that there would certainly be some amendments
13 coming. I mean obviously when you have a brand-new sign
14 ordinance, there are a lot of changes that were made and
15 you see where there are some changes that should be made
16 even in the new one, so we can certainly do that.

17 MR. HENSON: Well, it sounds like this was
18 legitimately grandfathered.

19 MS. MORRIS: Staff feels like it was
20 legitimately grandfathered.

21 MR. HENSON: And if that's -- that's what we
22 got on this one, I -- I would move that we disagree with
23 Mr. Tennant on his position on this and support the
24 decision of the Building and Planning Department.

25 MR. TENNANT: Can I make a statement before

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1 you move on the -- to the motion?

2 MR. BREWINGTON: Yes, we'll -- I'll give you a
3 couple of minutes to --

4 MR. TENNANT: Can I wait for the missing
5 member to return to the room, please?

6 MR. BREWINGTON: We'll beat him up and tell
7 him. If you want to wait --

8 MR. TENNANT: I really prefer to have
9 everybody here, if you don't mind. I'm sure he's just --
10 give him a few minutes.

11 MR. BREWINGTON: Does anybody -- does anybody
12 sing, dance, or some soft-shoe or card tricks or
13 juggling?

14 MR. TENNANT: Let me address a couple of
15 things regarding grandfathering. Okay? Now, I'm no
16 attorney, but I have some experience with this issue
17 related to grandfathering. I've read the ordinance. You
18 can't grandfather something that was illegal prior to the
19 passage of the prior ordinance. I mean you'd keep going
20 back, back, back. It's not like some kind of
21 presidential pardon. Okay? That's -- that's not what
22 grandfathering is.

23 Now, I heard them say that if the Winnans had
24 had a sign instead of in the right-of-way and on their
25 property, then that would have been okay. Well, if

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1 somebody said that -- you know, that it was illegal
2 already to begin with, it should have been removed under
3 the prior ordinance.

4 And that's what we have here. We have a
5 situation where the person in charge, Jamie Davis,
6 researched the complaint and found that the ordinance
7 going way back to 1978, I believe it was, applied in this
8 case, not the new ordinance that was being enacted.
9 Okay?

10 Now, this is -- you know, I'm going to tell
11 you right now, this is a nice sign. You know, I don't
12 see any problem with this sign other than the fact that
13 Mr. Sawyer never complied with the law to begin with.
14 Now, when I was before the Municipal Court defending
15 myself, I subpoenaed Mr. Sawyer and I asked him to please
16 bring the documents that authorized him to have this sign
17 with him to court because I wanted to know how he got his
18 sign on his fence rather than on his building as the
19 requirement was unless you had a variance.

20 And he told me that he had gotten a variance.
21 Okay? This is personal conversation, not hearsay,
22 personal conversation with Mr. Sawyer in the course of a
23 legal proceeding here in the City of Georgetown. He told
24 me that he had gotten a variance for this sign but he
25 couldn't find it. Well, you know, I have a variance and

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1 I held on to mine.

2 MR. CLARK: Can we -- Sabrina, can we read
3 10-22, nonconforming signs for the record, just so that
4 we're all clear? I don't think it says what Mr. Tennant
5 is saying.

6 MR. TENNANT: What was that, what I said about
7 what?

8 MR. CLARK: 10-22, it says any sign that does
9 not meet the regulations herein in terms of size, height,
10 construction, quality or type as of the date of passage
11 of this ordinance, which was February of '08, shall
12 hereby be declared nonconforming.

13 It does not say anything about previous
14 ordinances. The one before this did, but this one does
15 not.

16 MS. MORRIS: This one does not, and the reason
17 we put that in there is not obviously -- we were not
18 thinking of Mr. Sawyer's sign, to be totally honest with
19 you. We were thinking of the monument signs that are now
20 required -- you can only allow for monument signs. You
21 saw that last month. The pylon signs that are existing
22 can remain until they're down or renovations and then
23 they should -- (inaudible). We did not want to give a
24 hardship to the existing signs that actually were there
25 prior to this ordinance, which was more stringent.

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1 MR. TENNANT: Let me mention one other thing,
2 if you would, please. The original notice that was given
3 to Mr. Sawyer was dated August the 12th. Okay? Now,
4 it's my understanding that within 30 days you're required
5 to file an appeal if you don't agree with the
6 interpretation of the Zoning Administrator, and on
7 September the 8th, Mr. Sawyer was reminded again in a
8 separate letter by Miss Morris that, you know, he
9 received this notice on August the 12th, so here she is
10 now backing up Miss Davis, and it said, you know, you're
11 in violation, and told him in paragraph two -- this is in
12 your -- in your book -- that you have the right to appeal
13 Staff's decision to the Zoning Board of Appeals.

14 And -- but what she did -- now, you know, I
15 don't know if this is normal procedure or not, but what
16 she did is she said, you must request the Board review
17 the decision, you must submit your application within 30
18 days of receipt of this letter. So she basically gave
19 him an extension to file, and I don't know that that's
20 appropriate.

21 And, you know, Mr. -- Mr. Sawyer was on notice
22 already that -- that his sign was a violation of prior
23 ordinance, and if he wanted to do the right thing, he
24 should have asked y'all to review, and if you denied,
25 then he should have asked for a variance. That is the

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1 proper procedure. Thank you.

2 MR. BREWINGTON: Okay. Thank you.

3 MR. DOZIER: Question, Sabrina, what were
4 y'all looking at when y'all wrote the letter to Paige
5 saying he was in violation?

6 MS. MORRIS: I will certainly address that,
7 and I'm glad you asked that. This actually came about --

8 MR. DOZIER: Jamie did it and you did it.

9 MS. MORRIS: Jamie wrote the letter, as she
10 was the Zoning Administrator, and it was her job to
11 interpret the ordinance. She went to a section that if
12 -- I wish I could find that. I think I have that letter.
13 She went to the section of the ordinance that says a
14 home-based business has to be on the wall. That's the
15 section she went to and that's the section she
16 interpreted.

17 I contacted Miss Crosby after she left because
18 Mr. Tennant was asking why nothing was done, what -- I
19 will be honest with you. I pulled her letter. We talked
20 about it. Miss Crosby said, send him a letter saying he
21 can appeal that decision.

22 Then I met with Mr. -- Mr. Sawyer. He brought
23 up the tape. We went back. I listened to the tape with
24 Mr. Stack. We went to the ordinance to a section that
25 was just read for the record, and in our interpretation

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1 because it's in the record, it doesn't say a permit was
2 issued, whatever. If you never have a permit, if it's
3 nonconforming, it is grandfathered by the new code.

4 MR. BREWINGTON: Okay. Y'all think we've
5 spent quite enough time on this one?

6 MAN'S VOICE: Indeed.

7 MR. BREWINGTON: I'm ready to entertain a
8 motion.

9 MR. TENNANT: Can I make one issue, please?
10 Are there any appointees of Mr. Sawyer on the Board here?
11 That's my only question.

12 *Ms. Evans* ~~WOMAN'S VOICE~~: I'm sorry. What did he say?

13 MAN'S VOICE: What was your issue?

14 MR. TENNANT: Did Mr. Sawyer appoint any of
15 the people on the Board?

16 WOMAN'S VOICE: Did he appoint any of them?

17 MR. TENNANT: Yeah.

18 MR. CLARK: I think the whole council -- the
19 entire council votes.

20 MR. TENNANT: Okay. I'm just curious as to
21 whether or not he recommended any of you. That's all I'm
22 asking.

23 MR. BREWINGTON: Okay.

24 MS. EVANS: Judge, motion?

25 MR. HENSON: Yeah, my motion --

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1 MS. EVANS: And I second his motion that we
2 uphold --

3 MR. BREWINGTON: Okay. I'll repeat it again.
4 The motion was that we -- we disagree with the
5 interpretation --

6 MR. HENSON: No, no. I just -- we're -- my
7 motion is against the complaint of --

8 MR. CLARK: You're in favor of the Zoning
9 Administrator's decision.

10 MR. HENSON: I'm in favor of the Zoning
11 Administrator's decision based on the argument of
12 grandfathering. I think it's a legitimate application of
13 it.

14 MR. BREWINGTON: Okay. It was -- it has been
15 moved and seconded. Could I get a roll call, please?

16 MS. GRANT: Mr. Clark?

17 MR. CLARK: In favor.

18 MS. GRANT: Mr. Dozier?

19 MR. DOZIER: In favor.

20 MS. GRANT: Mr. Henson?

21 MR. HENSON: In favor.

22 MS. GRANT: Mr. Brewington?

23 MR. BREWINGTON: In favor.

24 MS. GRANT: Miss Evans?

25 MS. EVANS: In favor.

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1 MS. GRANT: Mr. Washington?

2 MR. WASHINGTON: In favor.

3 (End of audiotape relevant to 416 Highmarket.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

2009-CP-22-00196

James M. Tennant,)

Plaintiff,)

Transcript of Record

vs.)

Board of Zoning Appeals,)

May 21, 2009

Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

Plaintiff appearing Pro Se

Elise F. Crosby, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, May 21, 2009.)

2 THE COURT: All right, this is case number 2009-CP-22-
3 196, James M. Tennant versus Board of Zoning Appeals for the
4 City of Georgetown. The matter is before the Court on an
5 appeal from the Board of Zoning Appeals for the City of
6 Georgetown. Present at the call of the case James M. Tennant
7 appearing pro se, Elise Crosby appearing as attorney for the
8 Respondent.

9 All right, Mr. Tennant, this is your appeal?

10 MR. TENNANT: Yes, Your Honor.

11 THE COURT: All right, I'll hear from you.

12 MR. TENNANT: Your Honor, I don't know if it would make
13 sense from a procedural standpoint at this point but I do have
14 a request for a motion for a deferral of this proceeding
15 because I believe that the record on appeal put together by
16 the City is totally incomplete, does not incorporate
17 particularly a transcript that is material to my appeal, has
18 not been included within the transcript produced by the City.
19 So, I'd like to throw that out at this time. I know you've
20 got a busy schedule, and if we could rule on that right away
21 we could maybe go ahead and get the record straight and then
22 hear this at another day.

23 THE COURT: All right.

24 MR. TENNANT: There's a reference made to the fact that
25 I made reference to comments made during the appeal process

1 before the Board of Zoning Appeals and the attorney for the
2 City has vouched for the veracity but the fact that it's not
3 all there materially affects my ability to prosecute the
4 case, sir.

5 THE COURT: Well, let me ask you, what decision did
6 they make that - are you appealing? What is the decision
7 you're appealing?

8 MR. TENNANT: They came to the erroneous conclusion that
9 a sign that did not exist at the time of a change of the
10 ordinance, did not exist legally at the time of the change, a
11 nonconforming sign that is in the record two different letters
12 from the City of Georgetown from two different individuals,
13 the zoning enforcement officer and her supervisor, that the
14 sign in question was, in fact, illegal based on going back to
15 1978 and there - what happened is that after these letters
16 were sent they came along, a different person came along,
17 Steven Stack for the City of Georgetown and said, "Oh, it's
18 okay. Don't worry about these previous letters." There was
19 a comment made by Sabrina Morris, the director of
20 development, during a workshop, you know, months earlier, in
21 January of last year that all home-based signs were
22 grandfathered.

23 THE COURT: Okay, all right, excuse me, I'm getting a
24 little confused here. You brought an action to have a sign
25 removed or ---

1 MR. TENNANT: Yes, Your Honor.

2 THE COURT: Okay, all right, so, you brought an
3 action for removal of a sign saying it was violating the City
4 ordinance.

5 MR. TENNANT: Yes, Your Honor, and the reason I did
6 that if I can take just a few moments. I was jailed by the
7 City of Georgetown for violation of their sign ordinances.
8 I was fined \$1062. I was taken to the detention center.
9 I later had to appeal this - well, actually, not appeal.
10 I challenged it as a, challenged improper violation of my
11 equal protection rights. I had to go to the City -
12 excuse me, Charleston in federal court and bring a case
13 and the City should have learned their lesson from that.
14 We settled that out of court. They paid me \$7500 to
15 make it go away but it was all about the sign
16 situation.

17 MS. CROSBY: Objection, Your Honor, to the
18 mischaracterization of that global settlement in that and some
19 other matters. There was never any determination of fault on
20 behalf of the City.

21 THE COURT: Okay.

22 MR. TENNANT: Well, we settled beforehand.

23 THE COURT: All right.

24 MR. TENNANT: But ever since then the City has
25 continued to allow people and in this case it's a sitting City

1 Council member Mr. Paige Sawyer to violate the law and
2 continue to violate the law, the same law that threw me in
3 jail, and for that reason, Your Honor, and the fact that I'm
4 running for the mayor of Georgetown also, I believe this is
5 wrong.

6 THE COURT: Okay.

7 MR. TENNANT: And this is one of the reasons why I am
8 running for the mayor.

9 THE COURT: But back, okay, but back to the issues of
10 this case, so, you brought an action to have Mr. Sawyer remove
11 a sign.

12 MR. TENNANT: For having - for the City to declare that
13 it was illegal and they did so.

14 THE COURT: I got you. Okay.

15 MR. TENNANT: They did so.

16 THE COURT: All right, they did so.

17 MR. TENNANT: Yes, sir, twice.

18 THE COURT: Okay, and so, what is you're
19 appealing?

20 MR. TENNANT: Well, after the person who wrote the
21 original letter, Jamie Davis, was removed from her job in some
22 manner or fashion because she also wrote a letter to Jeepy
23 Ford, Parrish Motors, asking him to remove his signs. The
24 City didn't like it. Mr. Sawyer didn't like it and that
25 pressure was brought and this is what I claim in my, in my

1 appeal, Your Honor, that this is totally wrong, that there
2 are people in this community who are being given special
3 treatment. Mr. Sawyer is one of them.

4 THE COURT: But ---

5 MR. TENNANT: And so, I wound up having to appeal
6 another letter that was sent by Mr. Stack that said
7 that Mr. Sawyer's sign was grandfathered under the new
8 ordinance.

9 THE COURT: Okay.

10 MR. TENNANT: However, you cannot grandfather
11 something that did not lawfully exist with a valid permit
12 and there is evidence that there was no valid permit and
13 there's also evidence in the record that the sign existed
14 illegally on a fence as opposed to being on his wall, which
15 is all that's required, all that allowed, excuse me, you have
16 to have a wall-based sign for a home-based occupation unless
17 you have a variance. So, he was told all these
18 things, but later on because I don't know I guess undue
19 pressure was brought.

20 MS. CROSBY: Objection, Your Honor. Clearly this is an
21 appeal and the record stands. The record has been filed. I
22 do have a little bit of question with regard to his initial
23 motion that might clarify that but I guess he's proceeding on
24 with the arguments.

25 MR. TENNANT: Well ---

1 THE COURT: Okay, well, I think I've got a hold of
2 it, but I guess the point I'm trying to ask is, number one,
3 what is the ordinance that you're saying is being
4 violated?

5 MR. TENNANT: Yes, Your Honor, if you'll refer to
6 Exhibit 10 that's before you.

7 MS. CROSBY: Your Honor, I think he's referencing
8 the Board's return to appeal filed March 11th with 10
9 exhibits. I have just one copy. I guess that's in the
10 court file.

11 THE COURT: I don't see any exhibits in the file.

12 MS. CROSBY: Exhibits 1 through 10? Your Honor, may I
13 approach? This is ---

14 THE COURT: This is what I've got.

15 MS. CROSBY: We filed a fairly extensive and the full
16 record, we filed the full transcript.

17 THE COURT: Oh, there's a second file. Okay, let me
18 take a look at this then.

19 MR. TENNANT: Your Honor, I'm looking at the exhibit
20 number 10 and there is - there are copies of definition of
21 what is considered a nonconforming sign and then a reference
22 to Section 10-22 that covers nonconforming signs, and if I -
23 if you - if you're ready for me to address the ordinance
24 language I'll be glad to do so.

25 THE COURT: All right, go ahead.

1 MR. TENNANT: All right.

2 THE COURT: Well, first let me ask this, Ms.
3 Crosby.

4 MS. CROSBY: Yes, sir.

5 THE COURT: Are you - is it the Zoning Board's
6 position or decision that the sign does not violate the
7 ordinance or that it's grandfathered in?

8 MS. CROSBY: The Zoning Board's decision was that it is
9 grandfathered and that was their unanimous decision.

10 THE COURT: All right, all right, so, you don't have,
11 don't have to get into the violation or anything. Just, let
12 me just hear from you on whether or not they were right in
13 that it was grandfathered - I mean, they're arguing it was
14 grandfathered. You're arguing it was not.

15 MR. TENNANT: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. TENNANT: First of all that I'd like to bring to
18 your attention is the first page of Exhibit 10. It's
19 numbered 1001 and then Roman Number V. Do you see that
20 nonconforming sign, it's a definition of a nonconforming
21 sign?

22 THE COURT: Right.

23 MR. TENNANT: And just to read that it says, "A
24 nonconforming sign is any sign lawfully existing with a valid
25 permit on the effective date of any ordinance or amendment

1 thereto that renders such sign nonconforming because it does
2 not conform to all the standards and regulations of the
3 adopted or amended ordinance."

4 THE COURT: Okay.

5 MR. TENNANT: So, for the sign to be considered
6 nonconforming it must lawfully exist and there must be a
7 valid permit and, Your Honor, the record that was before
8 the Board of Zoning Appeals showed that there was no
9 permit. The director of planning and development for the
10 City of Georgetown in the transcript admits that there was
11 no permit and there were two letters before them, Your Honor,
12 that cited violation of law, written by the code enforcement
13 officer and by the same director of development that
14 admitted to the Board of Zoning Appeals that there was no
15 permit.

16 THE COURT: Well, let me ask you this, when the sign
17 was put up was permitting required?

18 MR. TENNANT: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. TENNANT: That's also addressed in the record.

21 THE COURT: Okay.

22 MR. TENNANT: So, if you take nonconforming sign, of
23 course, this is all related to grandfathering. You can change
24 the rules of what's allowed and you don't want to upset the
25 status quo. You want to - people that are currently in

1 compliance with the law to be able to continue that use but in
2 this case Mr. Sawyer's sign was clearly illegal. The City
3 said so twice. They admitted that it was illegal during the
4 proceeding, but because this - the City of Georgetown for some
5 reason, I don't know why. I guess it's because Mr. Sawyer is
6 a sitting City Council member, they decided that they were
7 just going to say, "Oh, no, this ordinance gives a blanket
8 grandfathering to all home-based signs," and that was simply
9 not the case, Your Honor, and if you look at the nonconforming
10 sign, the last page of that Exhibit, 10-22, it does
11 grandfather nonconforming signs as it should because
12 you don't want to penalize people that are in compliance
13 and now find themselves out of compliance because of the
14 new law but you've got to be legal. You've got to have a
15 permit and I'll be more than happy, Your Honor, to show you
16 the exhibits that show that it was illegal, that there was
17 no permit, the admission before the Board of Zoning Appeals
18 that it would, did not have a permit. So, it clearly was
19 not ---

20 MS. CROSBY: I object to that. That, that was not a
21 finding of fact by the Board.

22 THE COURT: All right.

23 MR. TENNANT: Well, the Board didn't make a lot of
24 findings of fact, I'll be honest with you.

25 THE COURT: Okay.

1 MR. TENNANT: They had one sentence and that was it, but
2 the facts that were before them, Your Honor, were that this
3 was not a legal sign and it did - should not have been given
4 the benefit of grandfathering.

5 THE COURT: Okay.

6 MR. TENNANT: That's the bottom line.

7 THE COURT: I understand what you're saying. All
8 right, Ms. Crosby, let me hear from you.

9 MS. CROSBY: Thank you, Your Honor, may it please the
10 Court. I guess I might initially address Mr. Tennant's and I
11 have a question for him with regard to the transcript. All
12 right, is your question as to whether the full transcript was
13 filed?

14 MR. TENNANT: The full transcript was definitely not
15 filed. As you recall, Ms. Crosby, I spoke initially in an
16 introductory manner.

17 MS. CROSBY: Mr. Tennant, I can address that. If you
18 would look at my return to your petition.

19 THE COURT: Well, I think we can move on because as I
20 understand Mr. Tennant's argument is basically your argument
21 is since Mr. Sawyer did not have a permit at the time he
22 erected the sign then it is not entitled to the grandfather
23 protection.

24 MR. TENNANT: They - well, it didn't have a permit at
25 the time that the ordinance was changed and did not - and was

1 not legal, was not on the place where it was assigned to be on
2 the side of his building, and Your Honor, there's two letters
3 that indicate that and there's, you know, I'll be glad to
4 reference the exhibit here. I think it's very instructive to
5 look at them.

6 THE COURT: Well, I mean, but as I understand if he -
7 when he erected the sign, if a - under your argument, when he
8 erected the sign if he had to have a permit and he got a
9 permit then he's entitled to keep it up because under the
10 grandfather clause he's entitled even though it's
11 nonconforming.

12 MR. TENNANT: Not under the specific facts of this
13 case, Your Honor, because the second part that he did not
14 comply with was the fact that he had a sign on a fence and
15 he was told that that was not allowed and his argument was
16 that his gate, he argued that it was on his gate, not on his
17 fence. Well, it was all part of the fence. He never
18 appealed. Let me tell you. This is the other part of the
19 whole thing. He had 30 days to appeal the decision of the
20 zoning administrator. He was the one who really should have
21 been before the Board of Zoning Appeals, okay, not me. He
22 should have been the one defending his argument about, you
23 know, "I can have a sign on a gate without it being part of my
24 fence," but he didn't do that, Your Honor. He never filed
25 within the 30 days.

1 THE COURT: Okay.

2 MR. TENNANT: So, there's a lot of wrinkles to this
3 case, but most important is that he - the two letters that
4 were issued by the zoning enforcement officer and by the
5 director of planning and zoning have never been rescinded,
6 Your Honor. They clearly show that ---

7 THE COURT: Well, I mean, you had a subsequent officer
8 come in and approve it as I understand from the return;
9 correct?

10 MR. TENNANT: And approved it under the - totally the
11 wrong reason and that was what the case was before the Board
12 of Zoning Appeals.

13 THE COURT: Okay.

14 MR. TENNANT: And Your Honor, if you would please look
15 at exhibit number three and exhibit number four. These are
16 letters from the building and planning department of the
17 City of Georgetown clearly stating to Mr. Sawyer that his
18 signs were illegal and ordering him, his sign was illegal
19 and ordering him to remove the sign. Mr. Sawyer never
20 appealed these letters of determination and the order from the
21 City.

22 THE COURT: But the question is is subsequent to these
23 letters he got a letter from the same authority, albeit a
24 different person, that says he does not have to remove the
25 sign.

1 MR. TENNANT: He did receive that and the rationale was
2 that he was grandfathered but he was truly not, Your
3 Honor.

4 THE COURT: Okay, all right.

5 MR. TENNANT: Never, ever can you be grandfathered if
6 you're not legal at the time of the change of the ordinance
7 and he was not.

8 THE COURT: Okay, I understand your argument. All
9 right, Ms. Crosby, let me hear from you.

10 MS. CROSBY: Thank you, Your Honor, may it please the
11 Court? I realize the Court wants me to address that argument
12 and I will do so. I have a brief sort of threshold motion.
13 It's jurisdictional to dismiss and I'd like to hand up
14 a case Friends of McLeod versus City of Charleston if I
15 may.

16 THE COURT: All right.

17 MS. CROSBY: This was a similar case, Your Honor,
18 which was an appeal of a board of zoning appeals' decision and
19 my information from review of the record is that Mr. Tennant
20 has not served Mr. Sawyer nor Paige Sawyer Photography with
21 notice of his appeal and he would be a necessary party under
22 the Court's decision in the McLeod case. In that case
23 actually and Your Honor may wish to consider this as well just
24 of note at the bottom of the first page, "In the interest of
25 judicial economy the Circuit Court ended up affirming the

1 board's decision on the merits anyway." So, they heard the
2 decision on the merits but I would just submit that having not
3 served Mr. Sawyer is improper, that's jurisdictional and this
4 appeal would be then untimely. I haven't seen any proof of
5 service and there's not one in the file is my information and
6 this appeal should be dismissed at this point for lack of
7 jurisdiction.

8 MR. TENNANT: Your Honor, I would move to be able to
9 amend my appeal in that case.

10 THE COURT: I'm sorry. Say that again.

11 MR. TENNANT: I would move, if this were to be held
12 by you that I would move to - for leave to amend my appeal,
13 please, sir, and re-file an amended appeal, out of time and if
14 need be because of my pro se status, but the merits in this
15 case, Your Honor, are clearly against the City of
16 Georgetown.

17 THE COURT: Okay, well, let me go ahead, Ms. Crosby,
18 I'm going to have to take - read this case a little bit later.
19 So, I'm going to take this under advisement, but I'll read it
20 a little bit later. Let me go ahead and hear you on the
21 other, on his other argument.

22 MS. CROSBY: Thank you, Your Honor. With regard to
23 the merits and I also have and just to get this on the record
24 a motion that Mr. Tennant is - doesn't have standing. He has
25 the statutory burden under 6-29-820 to show he has standing on

1 appeal. He doesn't live anywhere near this business and I
2 would submit to the Court that he does - he cannot show that
3 he has a substantial interest in whether the sign exists.
4 Now, for purposes of merit and I'm sorry to have taken time
5 with those matters but since they are important and might
6 warrant dismissal I think that's important to get those to the
7 Court.

8 Your Honor, with regard to grandfathering that is the
9 Board's unanimous decision that the sign was grandfathered.
10 The Board's return on appeal does have ten exhibits and it's
11 extensive. It goes through the whole thing. Mr. Tennant has
12 shown it includes e-mails from Mr. Tennant, which is how he
13 communicated with the City, and then the City communicated
14 back that we couldn't find a record of the permit. Well, that
15 is because the City's permit records go back to 1993. Our
16 information from Mr. Sawyer, whose photography business has
17 that sign, is that it was erected sometime around 1979. That
18 was the best guess and that was the evidence before the BZA.
19 The question is whether it was grandfathered and what this
20 really is is the Board of Zoning Appeals can grant
21 variances, number one, or number two, can hear appeals of
22 enforcement decisions by the City. So, I believe what Mr.
23 Tennant was trying to do is appeal the City's lack of
24 enforcement. So, there are a couple of questions there, one
25 of which is does the City have the right to not enforce

1 something under its, under estoppel or police powers or
2 anything else but with regard specifically to grandfathering
3 I'm going to start there.

4 There's no question that if he had a permit back in
5 1979 that it would be grandfathered by the 2008 sign
6 ordinance.

7 THE COURT: Right.

8 MS. CROSBY: He can't find one and the City can't find
9 one. There is no evidence, no evidence before the board
10 whether he has one or not. It is simply an unknown fact. It
11 is not as Mr. Tennant says established by the Board of Zoning
12 Appeals that he doesn't have one. We can't prove it or
13 disprove it and he's got the burden. The burden of proving
14 nonconforming use is on the party claiming it. That is the
15 Whaley case from 1999 cited in my memorandum. I don't have a
16 copy of that case, but it's Whaley versus Dorchester County
17 Zoning Board of Appeals. That's a Supreme Court case from
18 1999. So, the burden is very clear. It's Mr. Tennant's to
19 show if there - some proof that there wasn't a permit. There
20 isn't any question that he's at a disadvantage with that
21 burden if the Court finds he has standing as an interested
22 party and properly brought the case. There isn't any question
23 he's at a disadvantage to try to show this Court or the Board
24 of Zoning Appeals that Mr. Sawyer didn't have a permit for his
25 sign but the fact is he can't do it. He's not met that burden

1 and we can't say he hasn't gotten a sign permit, and in fact,
2 the testimony and evidence, and this was fairly lengthy. The
3 testimony and evidence before the Board of Zoning Appeals was
4 that Mr. Sawyer was actually told by a representative of the
5 City of Georgetown that he had the right to put up the sign.
6 I'm trying to find that in my memo. Right, "A City agent had
7 told him many years ago that he could put his sign there and
8 that no permit was needed."

9 Now, obviously, that raises a lot of other issues for the
10 City such as estoppel and failure to enforce and a myriad of
11 other things and this again that's 30 years ago. He was,
12 however, when this was brought to the City's attention, along
13 with the Winans Clock Menders sign on Highmarket Street, Mr.
14 Tennant appealed that issue as well as the Parrish Motor
15 Company flags all on the one notice of appeal and I think
16 that's exhibit number two or three. It's in there. Exhibit
17 number six, I'm sorry. He appealed all three of those and the
18 City reviewed it and not being able to find evidence that a
19 valid permit did issue, it doesn't meet the definition, the
20 express definition of nonconforming sign because as Mr.
21 Tennant pointed out the definition is a sign lawfully existing
22 with a valid permit is the definition of nonconforming sign.
23 However, and as board member Chris Clark pointed out and put
24 in the record when he explicitly requested that Section 10-22
25 be read into the Board's record under nonconforming signs

1 under sign ordinance it doesn't reference any previous
2 ordinance and the old one did and Mr. Clark, the Board of
3 Zoning Appeals is made up by citizens of the City of
4 Georgetown. Mr. Clark works for the Waccamaw Regional Council
5 of Governments. So, it's not that he's someone ignorant or as
6 Mr. Tennant says they're ignorant of the law and they failed
7 to follow the law. He explicitly did that, I submit to the
8 Court, because he knew that that was significant in that it
9 does not, this nonconforming sign in the 2008 ordinance
10 doesn't refer to any previous permit required at all and the
11 old one did. However, not being able to find a permit the
12 City notified Mr. Sawyer that the sign was nonconforming and
13 would have to come down. Subsequent to that when, I guess,
14 Mr. Sawyer was investigating whether he had a permit, whether,
15 you know, what he had in relation to putting up this sign, he
16 remembered that when City Council passed the sign ordinance he
17 specifically requested or asked the question of Sabrina Morris
18 who was then director of development, "Does this sign
19 ordinance grandfather existing signs," and I think
20 I have the exact language. Let me make sure I quote the
21 ---

22 MR. TENNANT: Your Honor, I believe he was inquiring
23 about the existing home-based business signs which was what he
24 had on his fence, not just existing signs.

25 MS. CROSBY: I don't want to misquote that at all.

1 Here we go, page 5 of my memo, number 19, about midway
2 down.

3 MR. TENNANT: I'm sorry, what page are we on,
4 please?

5 MS. CROSBY: Page 5.

6 MR. TENNANT: Page 5 of the transcript?

7 MS. CROSBY: No, of my return. The board heard at the
8 September 2008 review of the audiotape meeting what, it was
9 the January 31st, 2008, city council meeting regarding the
10 zoning change that was found at Section 10-22. "Staff
11 discovered when they played the audiotape that Council Member
12 Sawyer, who owns the sign, asked specifically about
13 grandfathering. His questions was, 'Will this apply to
14 existing businesses,' and on tape the director of development
15 replied at the City Council meeting, 'No, they're
16 grandfathered,'" and the sign ordinance went on to pass. So,
17 Mr. Sawyer's position was he had relied on the advice of the
18 City of Georgetown Planning Director in passing the ordinance
19 and that does make it a little bit different and that's really
20 hard for me to tease out in my head how it's different but it
21 is true, Mr. Tennant says something is different about Mr.
22 Sawyer. Well, there is something different. He actually
23 voted, he actually was a vote casting member and so was the
24 rest of council. Now, it didn't impact the vote as far as Mr.
25 Sawyer's vote goes, but we don't know, The City of Georgetown

1 certainly can't say what was in the other council members'
2 heads when they voted and it would be improper for us to
3 try and do that at this point. It is entirely reasonable,
4 I submit, for the City of Georgetown to exercise its police
5 power as it sees fit in failing to enforce something that we
6 clearly told City Council didn't apply as far as
7 grandfathering the sign, but it was appealed. So, that
8 could have gone either way. It was appealed. Mr. Tennant
9 appealed. I submit he's not a proper party to bring this
10 appeal but he did so. He brought it to the Board of Zoning
11 Appeals. They heard lengthy testimony. They went through
12 the ordinance. They, and if you'll review the return and
13 the transcript, you'll see kind of what they
14 discussed.

15 THE COURT: Let me ask you in that appeal to the
16 Board of Zoning Appeals ---

17 MS. CROSBY: Yes, sir.

18 THE COURT: --- was Mr. Sawyer a party to that
19 appeal?

20 MS. CROSBY: No, sir, he was not.

21 THE COURT: Okay, all right.

22 MS. CROSBY: Mr. Tennant had appealed the City's
23 failure to enforce and the ---

24 THE COURT: Was the issue raised about Mr. Sawyer not
25 being a party to that appeal? Was it raised before the Board

1 of Zoning Appeals?

2 MS. CROSBY: I don't believe it was. That would be
3 reflected in the transcript if it was.

4 THE COURT: All right.

5 MR. TENNANT: Your Honor, it does seem like she's
6 raising this kind of out of, you know, time.

7 THE COURT: Well, that's what I'm checking on. All
8 right.

9 MS. CROSBY: Similarly, in the McLeod case they raised
10 it to the circuit court, the failure of notice was raised for
11 the first time to the circuit court.

12 THE COURT: Yeah, but the only differences I'm seeing
13 in the McLeod case is that the American - in that one Board of
14 Zoning Appeals granted an exception to the American College of
15 Building Arts, Friends of McLeod, which would be the, I guess,
16 they call it friends. I guess that's the hospital appealed
17 that granting of an exception, special exception to College,
18 but did not make College a part of the appeal but College was
19 a part of the original - no, wait a minute. Let me see. I
20 might be misreading this. Oh, I take it back, they did -
21 okay.

22 MS. CROSBY: If I could direct your attention to
23 exhibit 5 is an October 3rd, 2008, letter.

24 THE COURT: Wait a minute, let me, let me look at
25 this.

1 MS. CROSBY: Okay.

2 THE COURT: Okay, so, you're right. They did raise
3 that on the circuit court. Okay, all right, I misread it.
4 You're right. All right, go ahead.

5 MS. CROSBY: Briefly on that point, exhibit number five
6 is a letter addressed to Mr. Sawyer because, of course, a
7 citizen complaint about something unrelated to the citizen,
8 while that letter was talking to Mr. Tennant, it was addressed
9 to Mr. Sawyer by the planning department.

10 THE COURT: Okay.

11 MS. CROSBY: That's exhibit 5. So, he was certainly a
12 party in the investigation of whether he had a violation
13 because he had, in fact, the notice that he did have a
14 violation.

15 THE COURT: All right.

16 MS. CROSBY: And then in the subsequent investigation
17 the City determined a couple of different things, one of which
18 was the director of development told him it would be
19 grandfathered.

20 THE COURT: All right, I think I've got a hold of it.
21 I'm going to take this under advisement. I need to review it.
22 Yes, sir.

23 MR. TENNANT: Your Honor, could I point out a few
24 additional things that I believe would help you in your
25 decision, please, sir?

1 THE COURT: All right.

2 MR. TENNANT: Your Honor, I think that the transcript is
3 particularly revealing and I'd like to have you please turn to
4 page 35 of the transcript and if you'll look on line five,
5 Your Honor, page 35, line 5.

6 THE COURT: All right.

7 MR. TENNANT: This is Mr. Sawyer being quoted during
8 this question-and-answer period that he participated in with
9 Ms. Morris and this is Mr. Sawyer on line 5, "Okay, all right,
10 so, the sign on a home occupation business where the business
11 is being used as a residence also must be on the side of the
12 building. It cannot be in the yard." All right ---

13 MS. CROSBY: Your Honor, I object to raising new
14 evidence on appeal.

15 MR. TENNANT: --- and Ms. Morris says, "Cannot be."

16 THE COURT: Wait a minute.

17 MR. TENNANT: Ms. Morris responded to Mr. Sawyer's
18 question.

19 THE COURT: All right, Mr. Tennant, there's been an
20 objection.

21 MR. TENNANT: I'm sorry.

22 THE COURT: You've got wait until she gets her
23 objection on the record.

24 MR. TENNANT: I'm sorry. I'm sorry, Your Honor.

25 MS. CROSBY: Your Honor, the circuit court is not

1 supposed to hear new evidence on appeal and that did not come
2 before the Board of Zoning Appeals. There's a lot of things
3 that I'd like to bring up but we're not entitled to
4 do so.

5 THE COURT: Yeah, all I can do is review what was
6 presented to the Board.

7 MR. TENNANT: This was before them.

8 THE COURT: All right.

9 MR. TENNANT: This was played by - for them. That's
10 why it's part of the transcript, Your Honor. They played the
11 tape from that meeting. So, this was before the Board of
12 Zoning Appeals. That's why it's before you today.

13 THE COURT: All right.

14 MS. CROSBY: If that's the transcript ---

15 MR. TENNANT: This is, this ---

16 MS. CROSBY: --- from the Board of Zoning Appeals then
17 that's correct.

18 MR. TENNANT: Yes, sir. Do you withdraw your
19 objection?

20 MS. CROSBY: They only played a portion of it.

21 THE COURT: Here, I'll address all that, Mr. Tennant.
22 I've got it. Thank you very much.

23 MR. TENNANT: Your Honor, there's one more thing I
24 think is really important.

25 THE COURT: All right.

1 MR. TENNANT: And I hate to belabor the point but I'm
2 going to mention this to you because it's incredibly
3 important, too. On page 42, line 22, this is Ms. Morris the
4 City Zoning, Planning and Zoning Director. She's talking
5 about at the very end of her presentation, "Then I met with
6 Mr. Sawyer." He brought up the tape that we were just
7 discussing. "We went back. I listened to the tape with Mr.
8 Stack." He's the one who issued the letter, the last letter.
9 "We went to the ordinance to a section that was just read for
10 the record and in our interpretation because it's in the
11 record it doesn't say a permit was issued," whatever. She's
12 admitting that no permit was issued. If you never have a
13 permit ---

14 MS. CROSBY: Object to that characterization.

15 MR. TENNANT: --- if it's nonconforming it is
16 grandfathered by the new code. That is totally at odds, Your
17 Honor, with the code. She admits that he has no permit. The
18 nonconforming definition says that you can't have a
19 nonconforming if you have no permit.

20 THE COURT: All right, I've got it. I'm going to
21 have to review the whole record. Since this is an appeal
22 ---

23 MR. TENNANT: Please.

24 THE COURT: --- I've got to look over
25 everything.

1 MR. TENNANT: Please, Your Honor.

2 THE COURT: That's why I'm going to have to take it
3 under advisement.

4 MR. TENNANT: Thank you.

5 MS. CROSBY: Thank you, Your Honor.

6 THE COURT: All right, thank you very much.

7 MR. TENNANT: And Your Honor, I do have that
8 outstanding motion for supplemental to bring the record up to
9 where it needs to be.

10 THE COURT: Okay, no, I think - I'm going to deny that
11 motion. I think I've got enough here for me to make my
12 decision. I'm going to take a look at it. If I think I need
13 more I'll let you know.

14 (Adjourned.)

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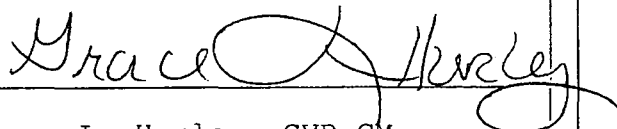
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25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of James M. Tennant versus Board of Zoning Appeals, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on May 21, 2009.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.


Grace L. Hurley, CVR-CM
Official Reporter

December 3, 2009.

Morris, Sabrina

ROA p. 145

From: Davis, Jamie
Sent: Tuesday, August 12, 2008 8:53 AM
To: Morris, Sabrina
Subject: RE: FOIA request

I do not know if it is grandfathered. I had ask for your direction in this email.

-----Original Message-----

From: Morris, Sabrina
Sent: Monday, August 11, 2008 5:25 PM
To: Davis, Jamie
Subject: RE: FOIA request

Please tell me how this is grandfathered. Did we find a copy of the sign permit?

Sabrina Morris
Director of Development
City of Georgetown, SC
Email: smorris@cogsc.com
120 North Fraser Street
Georgetown, SC 29440
Phone: 843.545.4010
Fax: 843.545.4009

-----Original Message-----

From: Davis, Jamie
Sent: Monday, August 11, 2008 4:21 PM
To: Morris, Sabrina
Subject: FW: FOIA request

-----Original Message-----

From: Davis, Jamie
Sent: Thursday, July 17, 2008 1:00 PM
To: Morris, Sabrina
Subject: RE: FOIA request

This is what I have research:

Paige Sawyer called me and stated to me it has been there since 1979. He does not have any permit record. Deb in Business License has stated their records go back to 1993. The 1978 ordinance stated that permit where required and that no signs were allowed on fence posts.

I have attached the draft letter I was working on - but I just got the old ordinances from you on 7-16-8. Please give me your view.

-----Original Message-----

From: Morris, Sabrina
Sent: Thursday, July 17, 2008 12:42 PM
To: Davis, Jamie
Subject: Fw: FOIA request

----- Original Message -----

From: Thomas, Steve
To: Morris, Sabrina
Cc: Howard, Cindi

Sent: Thu Jul 17 12:37:14 2008
Subject: FW: FOIA request

ROA p. 146

-----Original Message-----

From: martytennant@gmail.com [mailto:martytennant@gmail.com] On Behalf Of Marty Tennant
Sent: Thursday, July 17, 2008 9:40 AM
To: Thomas, Steve
Subject: FOIA request

Steve,

I need info from the City on all documents or communications related to Paige Sawyer's home based business sign located on his fence..

I have reason to believe Mr. Sawyer never received approval from the City for this sign. Please treat this as a formal FOIA request for these records.

Many thanks,

Marty Tennant



Morris, Sabrina

ROA p. 147

From: Morris, Sabrina
Sent: Tuesday, August 12, 2008 10:51 AM
To: Davis, Jamie
Subject: RE: Swayer

This is good. However I need to know what you told Mr. Sawyer.

Sabrina Morris

Director of Development

City of Georgetown, SC
Email: smorris@cogsc.com
120 North Fraser Street
Georgetown, SC 29440
Phone: 843.545.4010
Fax: 843.545.4009

From: Davis, Jamie
Sent: Tuesday, August 12, 2008 10:47 AM
To: Morris, Sabrina
Subject: Swayer

Mr. Sawyer called me regarding the complaint about his fence sign. He stated it has been there since 1979 and he did not have any permit record. He also indicated that he would have no problem with removing the sign if it were necessary.

Jamie Davis

Zoning Administrator

City of Georgetown, SC
Email: jdavis@cogsc.com

120 North Fraser Street
Georgetown, SC 29440
Phone: 843.545.4010
Fax: 843.545.4009

Tracking:

Recipient
Davis, Jamie

Read

Read: 8/12/2008 10:58 AM

Davis, Jamie

ROA p. 148

Ex2a-c

From: Davis, Jamie
Sent: Thursday, July 17, 2008 1:00 PM
To: Morris, Sabrina
Subject: RE: FOIA request



Tennant Complaint
7-3-8.doc (2...

This is what I have research:

Paige Sawyer called me and stated to me it has been there since 1979. He does not have any permit record. Deb in Business License has stated their records go back to 1993. The 1978 ordinance stated that permit where required and that no signs were allowed on fence posts.

I have attached the draft letter I was working on - but I just got the old ordinances from you on 7-16-8. Please give me your view.

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Sent: Thursday, July 17, 2008 12:42 PM
To: Davis, Jamie
Subject: Fw: FOIA request

----- Original Message -----

From: Thomas, Steve
To: Morris, Sabrina
Cc: Howard, Cindi
Sent: Thu Jul 17 12:37:14 2008
Subject: FW: FOIA request

----- Original Message -----

From: martytennant@gmail.com [mailto:martytennant@gmail.com] On Behalf Of Marty Tennant
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To: Thomas, Steve
Subject: FOIA request

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I have reason to believe Mr. Sawyer never received approval from the City for this sign. Please treat this as a formal FOIA request for these records.

Marty thanks,

Marty Tennant

Tracking:

Recipient
Morris, Sabrina

Read
Read: 7/17/2008 1:11 PM

Davis, Jamie

From: Morris, Sabrina
Sent: Monday, July 28, 2008 2:45 PM
To: Davis, Jamie
Subject: Re: formal complaint follow-up

Just foward it to Steve...

----- Original Message -----

From: Davis, Jamie
To: Morris, Sabrina
Sent: Mon Jul 28 14:35:44 2008
Subject: RE: formal complaint follow-up

I was told to forward this to Steve Thomas since they had a FOIA request for the same. Did you want me to respond directly to the complaint?

-----Original Message-----

From: Morris, Sabrina
Sent: Monday, July 28, 2008 1:54 PM
To: Davis, Jamie
Subject: Fw: formal complaint follow-up

----- Original Message -----

From: martytennant@gmail.com <martytennant@gmail.com>
To: Morris, Sabrina; Thomas, Steve
Sent: Mon Jul 28 13:17:58 2008
Subject: formal complaint follow-up

I'm following up on my formal complaint made regarding the sign Paige Sawyer has for his home based business.

I made this complaint in writing at the front desk of the B&P Dept. several weeks ago.

Thank you for putting the "service" in public service.

Marty Tennant
citizen

18 September 2008

Sabrina Morris
City of Georgetown
Director of Development
Georgetown, SC 29442

Sabrina,

Below is a history of our sign on our property at 416 Highmarket Street along with ten photographs.

- 1 1977 Bought residential property at 416 Highmarket Street.
- 2 1979 Neighboring property owners were notified by the city that I wanted to move my photography business to this location and add a camera room, work area, storage area and dark room to the back of our house. No one voiced any objections. At the time, Mr. Tom Sawyer was the department head for the Building and Planning Dept. and inspected the construction numerous times. When addition was nearly completed, I asked Mr. Sawyer about a sign and he said, "just place it out front."
- 3 Sometime in the early to mid eighties, we added a fence and two gates to the front yard of this property. I remember talking to Boyd Johnson about this who was with the city's Building and Planning Department. Again, no objections from neighbors or the city and the fence with

gates were approved. A smaller sign was made to fit on the gate and was moved to that location. At no time did Mr. Johnson or the city require me to apply for a permit. There have been no objections to this sign from the early to mid eighties until 2008 when a private citizen complained. Approximately 24-25 years.

4 Earlier this year (2008) in a workshop to discuss new sign proposals, I asked the question, if existing signs would be grandfathered, and was answered in the affirmative. The proposed new sign ordinance was later passed by city council.

5 On 12 August 2008, I was delivered a letter from the then Zoning Administrator, that my sign was in violation of the present sign ordinance. I quote her letter, "Article X, Section 1006 j. Prohibited signs, which states in part: *signs of any material...shall not be...attached to...fences...*"

6 On 13 August 2008, I delivered a response to the then Zoning Administrator, that my sign was actually attached to a gate and not a fence. Gates are not listed as a prohibited base for signs in the new ordinance.

7 On 8 September 2008, I was hand delivered a letter from the present Zoning Administrator stating that I disagreed with the decision of the former Zoning Administrator and current city staff. The letter also stated that I had the right to appeal their decision if I submitted an appeal application within 30 days of receipt of stated letter.

8 On 12 September 2008, I met with the Director of Development and Zoning Administrator to discuss the sign and present ordinance.

9 On 18 September 2008, I hand delivered this document with photographs of fences without gates and gates without fences to help clarify the distinction between a fence and a gate.

10 Fence: A barrier enclosing or bordering a field, yard, etc., usually made of posts and wire or wood, used to prevent entrance, confine a person or thing, or mark a boundary. *Webster's College Dictionary*.

11 Gate: A movable barrier, usually on hinges, closing an opening in a fence, wall, or other enclosure. *Webster's College Dictionary*.

I would appreciate a reply from Building and Planning on the interpretation of the city's ordinance regarding the referenced sign and verification that city staff verbally acknowledged that signs in their present locations would be grandfathered during discussion at a work shop meeting held earlier this year for the new proposed sign ordinance.

If I plan to appeal the August 12, 2008 decision made by city staff, I need to reply prior to October 8 and would appreciate a timely response from your department.

I thank you for your time and attention to this matter and look forward to hearing from you.

Sincerely,

Paige

Paige B. Sawyer, III



JOE M. CROSBY
EMAIL: jcroby@crosbyfirm.com

CROSBY LAW FIRM, LLC
405 DOZIER STREET
GEORGETOWN, SOUTH CAROLINA
TEL: (843) 546-3103 FAX: (843) 546-0747

★
ELISE F. CROSBY
EMAIL: ecrosby@crosbyfirm.com

September 24, 2008

ATTORNEY - CLIENT PRIVILEGED COMMUNICATION

To: Sabrina Morris, Director of Development
From: Elise F. Crosby
Re: Sign enforcement, Paige Sawyer Photography

FACTS

In 1978, the City of Georgetown enacted a sign ordinance, the relevant parts of which state that a sign for a home-based business shall not be erected without a permit, and that no signs shall be placed on fences. (Davis email, 7-17-08).

In 1979, Paige Sawyer opened a home-based photography business. It is unknown whether he erected a sign at this time. In the mid-eighties, he erected a fence and affixed a small sign to the gate that says "Paige Sawyer Photography" (the "Sawyer sign"). This sign was apparently erected without a permit. (Sawyer letter, 9-18-08).

This year, the city enacted a new sign ordinance. Prior to its being enacted by Council, Councilmember Sawyer inquired as to whether existing signs would be "grandfathered in" and was told they would be (Sawyer letter, 9-18-08).

On July 3, 2008, Zoning Administrator received a complaint that the Sawyer sign was in violation of the ordinance (Tennant complaint, 7-3-08). The city researched the permit for the Sawyer sign and did not find one. However, no permit records exist prior to 1993.

On August 12, 2008, the Zoning Administrator notified Mr. Sawyer that the Sawyer sign was non-compliant and would need to be removed (Davis letter, 8-12-08). The sign was not removed. On August 13, Sawyer objected to the Zoning Administrator that the sign was on a gate, not a fence. He did not file an appeal and did not remove the sign.

On September 8, 2008, Mr. Sawyer received a letter from the Director of Development, formally informing him again of the Zoning Administrator's decision and his right to appeal and the

process to do so. (Morris letter, 9-8-08). It is unknown whether this notice letter was properly served. It is known that Mr. Sawyer did receive the letter, because he met with the Director of Development on this matter on September 12, 2008. (Sawyer letter).

On September 18, 2008, Mr. Sawyer objected in writing to the Zoning Administrator's decision on the following: (1) the decision that the sign is noncompliant because it is on a fence (he argues it is on a gate); and (2) the sign should be grandfathered because Mr. Sawyer relied on the city's statement that all present nonconforming signs would be grandfathered and would not be in violation of the new ordinance. (Sawyer letter).

As of the date of this memo, Mr. Sawyer has not appealed to the BZA or removed the sign.

ANALYSIS

I. The Sawyer sign is in violation of the 1978 sign ordinance¹

The 1978 sign ordinance required a home-based business sign to be permitted. The Sawyer sign was erected in the 1980's. Because no sign permit was issued—and this was conceded by Mr. Sawyer—it was not in compliance with the 1978 ordinance, and therefore has been in violation since the time it was erected.²

The 1978 sign ordinance prohibited signs from being erected on fences. Because it was placed on a gate, it was probably also in violation for this reason. However, this does not necessarily matter, because no permit was sought or issued for it.

II. The sign is in violation of the new sign ordinance

As far as size and material, the Sawyer sign is in compliance with the City sign ordinance requirements for a home-based business, as well as for the Zoning District (Historic District / R-1). However, it is non-compliant because of its location. Sec. 1012(B) of the City of Georgetown sign ordinance states:

Home occupation signs shall be allowed as one (1) non-illuminated sign not to exceed two (2) square feet in gross surface area. *Home occupation signs must be mounted against the wall of the principal structure; such sign cannot be freestanding...* (emphasis added).

¹ There may be another provision of the 1978 ordinance that may impact this analysis, but I do not have the ordinance.

² The city would be in a tougher position if Sawyer maintained he had a valid city permit. The city has no proof either way, so if that were his argument, the city might be served by conceding the point. In that case, the sign would be "nonconforming" and grandfathered.



Therefore, the sign is noncompliant. The question then becomes, is there a provision to grandfather this sign? The grandfather provision in the sign ordinance is for "nonconforming signs." This provision is found at Sec. 1022 of the City sign ordinance:

Any sign that does not meet the regulations herein in terms of size, height, construction, quantity, or type; as of the date of passage of this Ordinance shall hereby be declared nonconforming. To avoid undue hardship, *any nonconforming signs associated with single tenant uses, and wall signs in multiple-tenant developments may remain in use until such time as they are voluntarily removed by the owner; damaged in excess of fifty percent (50%) of their current replacement cost by fire, storm, or other act of God; or if the business being advertised by the sign ceases operation.* Any of the above conditions shall cause the sign to lose its grandfathered status, and the sign owner shall be required to remove the sign within thirty (30) days... (emphasis added).

If the Sawyer sign is a nonconforming sign, it would appear that it could remain in use until damaged or removed.³ "A landowner acquires a vested right to continue a nonconforming use already in existence at the time of a zoning ordinance absent a showing the continuance of the use constitutes a detriment to the public health, safety, or welfare." *Whaley v. Dorchester County Zoning Board of Appeals*, 337 S.C. 568 (1999), citing *Daniels v. City of Goose Creek*, 314 S.C. 494, 431 S.E.2d 256 (Ct.App.1993).

But, the Sawyer sign is not a nonconforming sign. "Nonconforming sign" is defined in Sec. 1001(a) of the City sign ordinance:

Nonconforming Sign: Any sign lawfully existing with a valid permit on the effective date of any ordinance, or amendment thereto, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance.

The Sawyer sign was not in compliance even before the enactment of the new sign ordinance. "A use cannot be a nonconforming use if it was unlawful at the time of the amendment of the ordinance prohibiting the use." *Town of Sullivan's Island v. Byrum*, 306 S.C. 539, 413 S.E.2d 325 (Ct.App.1992); 101A C.J.S. *Zoning & Land Planning* § 164, p. 500 ("[a] use which was unlawful at the time the ordinance prohibiting such use was enacted is not ordinarily regarded as a nonconforming use."). Also, "a landowner has no right to insist that his property not be restricted by a zoning regulation absent a showing that he has, prior to the effective date of the regulation, established a nonconforming use."

³ In my opinion, it would have been accurate for city staff to have stated to Council the new sign ordinance had a grandfather provision for nonconforming signs.



Daniels, supra. The burden of proving a nonconforming use is on the party claiming a prior nonconforming use. (C.J.S., *supra*, @ § 154.)

III. The process to challenge the Zoning Administrator's decision is by appeal to the BZA

Mr. Sawyer is essentially asking the Zoning Administrator for a reconsideration of the decision. I see no basis to set aside that decision. It would certainly be appropriate to respond to Mr. Sawyer's request. However, the appeal must be to the Board of Zoning Appeals.

At the Board's hearing, or any subsequent appeal, "the burden of proving the invalidity of a zoning ordinance is on the party attacking it and it is incumbent on the attacking party to show the arbitrary and capricious character of the ordinance through clear and convincing evidence." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 489 S.E.2d 630 (1997).

IV. Defenses / Liability for the City

Mr. Sawyer may raise the equitable defense of laches. Laches refers to the fact that the city, in this case, did not enforce its ordinance for over twenty years, so Paige Sawyer Photography could have relied on that lack of enforcement as an acquiescence, and then estop the city from enforcement. There is no caselaw on laches in this context. It was raised in one of the cases mentioned above, but the court never got to that argument.

"Generally, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." *Byrum, supra*. The acts of government agents acting within the scope of their authority can give rise to estoppel against the government, but unauthorized conduct or statements do not. *Id.* The claiming party must prove:

- (1) lack of knowledge and the means of knowledge about the truth of the matter in question;
- (2) justifiable reliance on the government's conduct; and
- (3) a prejudicial change in position
no one from the City, or anyone else, assured him that the commercial zoning classification of his property would not change after he bought it. *Daniels, supra*.

In that case, the evidence of knowledge was more to that Plaintiff's benefit (he had checked the zoning map, which had a typographical error), and the prejudice was great to that Plaintiff (in the thousands of dollars.)



In my opinion, the city can justifiably exercise its judgment on this issue and its enforcement. In fact, the city is served by uniformity in zoning enforcement. This does not mean that Mr. Sawyer would not prevail at the BZA, nor does it mean he might not ultimately prevail in circuit court.

On the other hand, should the Zoning Administrator decide to reconsider her decision prior to appeal and allow the sign to remain, the city would need to have a basis for this decision. Otherwise, we could potentially be responsible for attorney's fees. If the city has a basis for its decision, I think a court would not be likely to award attorney's fees. In my opinion, the best route for the city to take would be for the BZA to render its decision. This gives an independent board the chance to review the decision and make findings. The non-prevailing party could always appeal to circuit court.

- v. **Nonconforming Sign:** Any sign lawfully existing with a valid permit on the effective date of any ordinance, or amendment thereto, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended ordinance.

1012

Signs permitted in Low Density Residential (R-1), Medium Density Residential (R-2 and R-3), High Density Residential (R-4 & R-5) and Medical Residential (MR)

- A. For all non-residential uses, excluding home occupations, permitted in residential districts, one (1) single, non-illuminated business identification sign (wall or freestanding) not exceeding a gross surface area of ten (10) square feet per sign face and an aggregate gross surface area of twenty (20) square feet for freestanding. Such signs shall not exceed eight (8) feet in height. Such signs shall be located a minimum of ten (10) feet from any adjoining property boundary and cannot interfere with the Vision Clearance as described in Section 404 of this ordinance – "Vision Clearance". Internally illuminated signs shall be prohibited within all residential zoning districts. Such signs shall be allowed to use decorative post signs as defined herein. All signs proposed for location within the boundaries of the Historical district shall conform in size, number and location to the regulations of the underlying zoning district, and to the requirements contained in the Board of Architectural Review Guidelines as determined by the Georgetown Board of Architectural Review.
- B. Home occupation signs shall be allowed as one (1) non-illuminated sign not to exceed two (2) square feet in gross surface area. Home occupation signs must be mounted against the wall of the principal structure; such sign cannot be freestanding. Home occupations shall not qualify for temporary signage as described in Section 1010 (F) of this ordinance. Internally illuminated signs shall be prohibited within all residential zoning districts. All signs proposed for location within the boundaries of the Historical district shall conform in size, number and location to the regulations of the underlying zoning district, and to the requirements contained in the Board of Architectural Review Guidelines as determined by the Georgetown Board of Architectural Review.

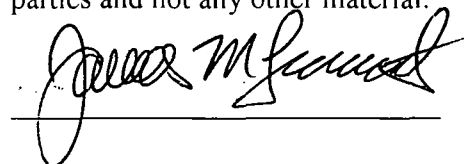
1022

Nonconforming Signs

Any sign that does not meet the regulations herein in terms of size, height, construction, quantity, or type; as of the date of passage of this Ordinance shall hereby be declared nonconforming. To avoid undue hardship, any nonconforming signs associated with single tenant uses, and wall signs in multiple-tenant developments may remain in use until such time as they are voluntarily removed by the owner; damaged in excess of fifty percent (50%) of their current replacement cost by fire, storm, or other act of God; or if the business being advertised by the sign ceases operation. Any of the above conditions shall cause the sign to lose its grandfathered status, and the sign owner shall be required to remove the sign within thirty (30) days. Failure to do so shall constitute authorization for the City to remove it and assess the full cost to the sign owner; in addition to any other penalties prescribed for violation of this Ordinance. Such signs shall not be expanded, even if the tenant does not change. For multiple-tenant developments, existing, nonconforming directory signs (regardless of construction) may remain in use until such time as fifty percent (50%) of the original tenants at the time of passage of this Ordinance change. At such time, the nonconforming directory signs shall be removed by the landowner, and may be replaced with a conforming monument style directory sign. Failure to do so shall constitute authorization for the City to remove it and assess the full cost to the sign owner; in addition to any other penalties prescribed for violation of this Ordinance. Such signs shall not be expanded, even if the tenant(s) does (do) not change.

CERTIFICATE OF APPELLANT

I certify that the Record on Appeal contains all material proposed to be included by both parties and not any other material.

A handwritten signature in black ink, appearing to read "James M. Tennant", is written over a horizontal line.

James M. Tennant – Appellant
1204 Saville St.
Georgetown, SC 29440
843 527-4485

Dated: February 25, 2011