THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson. Jr., Circuit Court Judge

On Certiorari to the Court of Appeals of South Carolina

Opinion No: 5419 (S. C. Ct. App. filed June 29, 2016)
(791 S.E.2d 305)

Arkay, LLC and Robert R. Knoth, its member.....Petitioners,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, Andrew Pinckney Inn and Michael A. Molony.....Respondents.

BRIEF OF PETITIONERS

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DID THE COURT OF APPEALS DISREGARD RULES OF STATUTORY CONSTRUCTION, THEREBY RENDERING THE TERM "BUILDING" IN THE ORDINANCE TO BE MEANINGLESS?

STATEMENT OF THE CASE

Arkay, LLC is a single member limited liability company that holds title to 45 Pinckney Street in the City of Charleston. Robert R. Knoth is its single member. Mr. Knoth seeks to relocate his horse tour carriage business and stable to 45 Pinckney Street.

To operate in the City of Charleston a stable must obtain special exception approval from the City Board of Zoning Appeals. On March 18, 2013 Mr. Knoth applied for a special exception use. The application was heard before the Board of Zoning Appeals on April 16, 2013, and was denied.

Because the only issue in the Special Exception application dealt with a 100 foot distance requirement between the stable and the nearest Residential Zone District, Arkay made application on April 22, 2013 to the City Board of Zoning Appeals for a variance, arguing that the distance differential was *de minimis.* (6.5 feet short of a 100 foot requirement, or 6.5%) The Board of Zoning Appeals denied the variance.

The Board of Zoning Appeals issued its formal orders on both the special exception application and the variance application on June 4, 2013.

Arkay filed its Petition and Appeal from the special exception order with the Court of Common Pleas on July 1, 2013. It filed its Petition and Appeal from the variance order on July 3, 2013.

Both appeals came to be heard before the Honorable J. C. Nicholson, Jr., Circuit Judge, on April 11, 2014. On June 25, 2014, Judge Nicholson filed his corrected Order on Appeal reversing the

denial Order of the Board of Zoning Appeals on the application for special exception, and finding, *inter alia,* that because the Order of the Board of Zoning Appeals denying the special exception use must be reversed, it was not necessary that he rule on the variance appeal.

Respondents filed their Notice of Appeal to the Court of Appeals by letter dated July 3, 2013. In Opinion Number 5419 filed June 29, 2016, and reported at 418 S.S. 86, 791 S.E.2d 305, the Court of Appeals reversed the judgment of the circuit court.

Petitioners filed their Petition for a Writ of Certiorari in this Court on November 28, 2016, which was granted by Order of this Court filed April 19, 2018.

STATEMENT OF FACTS

Robert R. Knoth has been in the horse carriage tour business in Charleston for 28 years, currently operating under the name "Carolina Polo and Carriage Company". It is his family's only livelihood. When he lost his lease at a former location at 19 Hayne Street, which adjoins the property here at issue immediately to the rear, he found the opportunity to buy 45 Pinckney Street for the purpose of relocating his stable. Coincidentally, Mr. Knoth had begun his carriage business at 45 Pinckney Street 24 years previously, from 1990 to 1996. In the intervening years, however, the City of Charleston had adopted zoning and tourism ordinances that are implicated in this case. (R.pp.77-80, paragraphs 2, 5, 10, 16, and 17. Vol I) Title to 45 Pinkney Street is held in the name of the Petitioner Arkay, LLC.

The City of Charleston Zoning Ordinance enacted in the mid-1990's permits horse stables as a "special exception use". A "special exception" is "a departure from a general provision of this chapter which, by the expressed terms of such provision, may be permitted by the Board of Zoning

Appeals upon application only after the board finds the existence of facts and circumstances detailed in such provision." (R.p. 236 Vol I)

The Applicable Ordinance. Section 54-206(p) of the City Code of Ordinances (R.p. 41, Vol. I), provides that horse tour carriage stables are permitted in a general business district or an urban commercial district as a Special Exception Use, provided that certain special exception criteria are met. Section 54-206(p) provides as follows:

"Stables shall be permitted within the GB and UC district as an exception where the Board (of Zoning Appeals), after review, finds that:

1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
3. The stable complies with all city, county and state regulations for stables.
4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in a public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted."

The Geography of the Location is Relevant. Pinckney Street in the City of Charleston lies on an east-west axis, intersecting with East Bay Street to the East and with Meeting Street to the West. Paralleling Pinckney Street to the South are Hayne Street, North Market Street, South Market Street, and Cumberland Street. To the North, Hasell Street runs parallel to Pinckney Street. (R.p. 449, Vol. I)

The area comprising Pinckney Street on the north, Cumberland Street on the south, East Bay Street on the East, and Meeting Street on the west is known generally, as well as in other legislative contexts, as the "Market Street District".

The Property: The property at 45 Pinckney Street consists of a large, warehouse type building (a former automobile garage), that measures 37.5 feet wide and 69.5 feet deep. The buildings' walls are constructed to the zero lot line, so that the building and the lot contain the same dimensions. (R.p. 381; pp 375-376, 383; Vol. I)

The nearest residential zone district to 45 Pinkney Street is to the north, and is defined by the irregular rear lot lines of the properties fronting on Hasell Street. The rear (south) lot lines of the Hasell Street properties, and the front (north) lot line of 45 Pinckney Street are not parallel, so that the lines diverge away from each other as they are extended from west to east. The result is that the northwest corner of 45 Pinckney Street is somewhat closer to the residential zone district than the northeast corner. (R.p. 112, Vol. I).

The surveyed distance from the northwest corner of 45 Pinckney Street to the residential zone district—and therefore the closest distance—is 93.5 feet. (R.p. 112, Vol. I).

To efficiently operate a tour carriage business requires stable capacity for six horses, each horse contained within a stall measuring approximately sixty-six square feet (approximately six feet by eleven feet). The total square footage of the building at 45 Pinckney Street is 2,606 square

feet, thus providing far more space than is necessary for the stabling of six horses. (R.p. 110, pp 97-98, Vol. I).

Like any other business operation, the operation of a tour carriage business requires office space for staff personnel, with desks, file cabinets, telephones, computers, and spaces for files, books and records. Additionally, space for waiting customers is preferred.

At its former Hayne Street address, far smaller than 45 Pinckney Street, the offices of Carolina Polo were housed in an attic area. At 45 Pinckney Street, however, the space is sufficiently large to house a stable area with stalls for six horses; and in addition there is adequate space for offices, a waiting area for customers, restrooms for employees and customers, and an additional space for office use, which may be either related or unrelated to the horse tour carriage business. (R.p. 110, pp 97-98, Vol. I).

Petitioners made application to the City of Charleston Board of Zoning Appeals for the Special Exception Use of 45 Pinkney Street as a stable. In its application, Petitioners configured the property so that the front eleven feet of the building on Pinckney Street is used as office space, together with a common easement for access to the rear of the building. The next 14 feet consists of a customer waiting area and restrooms for customers and employees. The rearmost space, 44 feet in depth and 37.6 feet wide, containing 1,650 square feet, is the stable area where six horse stalls are to be situated. (R.p. 381, Vol. I; "Plot Plan").

To assure the City and the public that the spaces within 45 Pinckney Street are dedicated to the separation of uses as proposed in its application, Petitioner Arkay proposes to create a horizontal property regime, most importantly restricting the front 25.5 feet of the property against use as a stable for the housing and keeping of animals.

Because it is set back from the front of Pinckney Street a distance of 25.5 feet, the stable at 45 Pinckney Street, consisting of six stalls, is therefore 119 feet distant from the residential zone district. It is Petitioners' position in this case that the stable, the place where the horses are kept, meets the 100-foot separation required between residential zone district and stable.

The Horizontal Property Regime was not perfected before filing the Special Exception Use application, to enable the City to impose such other and further conditions as it may deem appropriate, to be included with the special exception use approval, and to be included in the terms of the master deed of the horizontal property regime, to be recorded with the RMC Office.

On March 18, 2013 Petitioners made their formal application to the City of Charleston Board of Zoning Appeals-Zoning ("BZA") for a special exception use to locate their horse carriage tour stable at 45 Pinckney Street. (R.pp.365-371, Vol. I), and including the condominium subdivision of uses as discussed above. The single issue in dispute before the BZA was the distance requirement to a residential zone district. After staff investigation of the circumstances of the application, a hearing was held before the City Board of Zoning Appeals on April 16, 2014.

At hearing, the City of Charleston Zoning Administrator recommended approval of the special exception use application, concluding that all statutory criteria, including the distance requirement, were met. (R.pp. 268-277, Vol. I). As for the 100 foot distance requirement, the Administrator testified to the Board of Zoning Appeals:

> MR. BATCHELDER: "So the closest residentially zoned properties are these properties that I've highlighted in my presentation, and the zoning boundary is the – the line, the property line, the property line of those properties as shown on that plat. So you can see that from 45 Pinckney Street, the closest residential zoning district boundary is 93.5 feet to the north, and it is the zoning boundary dashed property line of 57 Hasell Street.

Now, the – wording of the ordinance in this particular instance refers to a use, a special exception use. On the table of permitted uses, a stable use is listed as a special exception use within the General Business zoning district.

And under this provision in the Special Exceptions Section 54-206 of the zoning ordinance, the wording refers to the stable, which I interpret to mean the use; and that means the use, the stable use, cannot be located within 100 feet of any residential zoned district.

Now the front of the building is within 100 feet of the residential zoned district; but as you'll see, the actual use that they are proposing to place in this building at the back of the building is the stable use and that that use would be some 25 feet from the front of the property to the south of Pinckney Street so that would thereby increase the distance between the actual use and the residential zoned district boundary and –and that distance would, then, exceed 100 feet."

(R.p. 270, line 12 to p. 271, line 14, Vol. I)

AND

"MR. ALTMAN: Mr. Batchelder, how do you – how do you get over number 1 on your list? What's the requirements?

MR. BATCHELDER: Well, again, if you look at the context of the – the requirement in this Section 54-206, it states that the stable is not located within 100 feet from any residential zoned district. And when I – when I read this, I read that to mean the "use", the stable "use," is not located within 100 feet of any residential zoned district.

There are other types of land uses that are identified in the same section of the zoning ordinance where the wording is such that it specifies that you measure from the building or from the property line. In this case there's no mention of a building or property line that – that is where you should take the measurement from.

So I think it's appropriate to measure it from the use; and if that use is not at the front of the building, then you don't have to measure from the front of the building.

> Could be that, for instance, if the – if the First Baptist gymnasium located a half a block away was renovated and turned into multiple commercial tenant spaces, which it could be because that is a commercially zoned property, and you place a stable in one of those spaces but then had offices and restaurants and shops and other tenant spaces, that you would measure from the space that was actually occupied by the stable use and not from the building.
>
> So I think it's appropriate to do that in this case, and you'll hear from the applicants more information about that as well.
>
> MR. ALTMAN: So the City is recommending approval?
>
> MR. BATCHELDER: Right."
>
> (R.p. 275, line 14 to p. 276, line 24, Vol. I)

Of the seven members of the Board of Zoning Appeals present, the minimum quorum of four was met at the April 16th hearing to consider Petitioner's application. By a vote of three to one, the Zoning Administrator's recommendation was overruled; Petitioner's application was denied. (R.p. 353, Vol. I).

On further expounding to the BZA about the physical circumstances, Petitioner showed that, because the northern boundary line of 45 Pinckney Street and the southern boundary line of the nearby residential district are not parallel, the closest distance between them is 93.5 feet. However, because the residential district line diverges away from parallel to the northern line of 45 Pinckney Street, approximately one-half of the façade of 45 Pinckney Street is, in fact, 100 feet or farther from the residential district line. (See Exhibit at R.p. 154, Vol. I).

The Market Street District.

The City of Charleston drafted its zoning ordinance with respect to stables to accommodate and to regulate the housing of animals—primarily horses and mules—within a densely mixed-use and vibrant area of the City, an area referred to in the ordinances as the "Market Street District".

Within the densely built Market Street District, there is little space for single purpose structures. Former large warehouses have been subdivided and partitioned into multiple store front uses, restaurants, ice cream shops, hat shops t-shirt shops and apparel shops. The old City Market itself is an open stall, three blocks in length, at which vendors sell their wares, ranging from foods to jewelry to art objects to clothing and accessories. Within this principally pedestrian activity, horse tour carriages are circulating. (R.p. 449, Vol. I).

In the heart of this dense, vibrant activity is the horse tour carriage "Gate", at the northeast corner of North Market Street and Church Street. The Gate is the place at which horse tour carriages queue up to load passengers and to receive from city tourism employees their assignments to tour specific sections of the City. With only few exceptions all horse carriage tours depart from the Gate.

Building space is at a premium in the Market Street District. That a horse tour carriage stable would occupy a structure that also includes other business activities would certainly have been within the knowledge and contemplation of City Council when it enacted the legislation at issue in this case.

Because of the dense, urban environment in which a stable would be located within the Market Street District, the trial court concluded that City Council "...envisioned a physical circumstance such as is presented in this case, where the use of the property as a 'stable' is but one of several uses contained in a larger 'building'".

As for the specific ordinance, it is clear from its different usages in the ordinance that the term "stable" was intended by City Council to mean different things depending upon context, in Council's drafting of Section 54-206(p). (R.p. 41, Vol I):

Subsection (1) is at issue in this case. Petitioners contend that "stable" in that subsection means that area of a larger building where horses are kept, rather than the entire building in the case of a building with multiple uses. The Trial Court agreed. The City of Charleston Zoning Administrator agreed. However, the Board of Zoning Appeals and the Court of Appeals contend that the entire building, regardless of its size and regardless of other activities occurring there, is a stable. That is the ultimate question for decision by this Court.

In Subsection (2), however, City Council requires that the "...Tourism Commission has issued a Certificate of Appropriateness for the stable..." This reference to "stable" cannot refer to either a place where horses are kept, or to a barn, or to a "building". Rather, a "Certificate of Appropriateness" is a regulatory device issued by the Tourism Commission for the tour carriages that are drawn by the horses, as is provided in Section 29-208(c) of the Tourism Chapter of the city ordinances. (R.p. 51, Vol. I). So, "stable" in subsection (2) is used to describe a business activity of operating a horse tour carriage business, and more specifically a component of that business, the configuration of the business's tour carriages.

Subsection (3) of Section 54-206(p) requires that the "stable" must comply with all city, county and state regulations for stables. This provision probably does apply to both the physical thing that is a stable, as well as to the business activity of operating the carriage tour business, such as obtaining a city business license, complying with health regulations, etc.

Subsections (4), (5) and (6) of 54-206(p) do not use the term "stable", at all, but those subparagraphs are descriptive of how the activity of operating a tour carriage business must be conducted: the tacking of horses shall not impede traffic flow (4); provision must be made for the handling of refuse (5); a plan must be approved for the direction and diversion of drainage (6).

Nevertheless, those activities are included within the section entitled, and beginning, "Stables shall be permitted..." (Emphasis included in original.)

In drafting subsection (7) of Section 54-206(p) City Council utilized a singular term used nowhere else in the section, which Petitioners suggest is the defining paragraph that addresses the ultimate question before this court. Section 54-206(p)(7) provides: "Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted." (Emphasis added.)

The Circuit Court Order.

In his order reversing the Board of Zoning Appeals (R.p. 4, Vol. I) the Circuit Judge discussed the use by City Council of the term, "building": "In discerning legislative intent, the Court must assume that City Council used the word "building" in subsection (7) advisedly. If it were the legislative intent that "stable" as used in 54-206(p) referred to a physical structure, rather than a "use" associated with a property, City Council would have stated in subsection (7) 'that stables are designed using appropriate ventilation...etc.' However, by using the word 'buildings', I conclude that City Council intended a differentiation, and envisioned a physical circumstance such as is presented in this case, where the use of the property as a 'stable' is but one of several uses in a 'building'." (Circuit Court Order at R.p. 11, Vol. I)

STANDARD OF REVIEW

This appeal presents a question of statutory construction. That is to say, what is the construction and the legislative intent of Section 54-206.p.1. of the City of Charleston Zoning Ordinance in its requirement that "The stable is not located within one hundred feet of any residential zone district"? The more specific question is whether the one hundred foot

measurement is to be taken from the building within which the stable is contained; or is it to be measured from the physical space "used" as a stable where, as here, that use is within a building containing other uses?

Issues involving the construction of an ordinance are reviewed under a broader standard of review than is applied to reviewing issues of fact. *Mikell vs. County of Charleston, 386 S.C. 153, 687 S.E.2d 326 (S.Ct. 2009).* Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance. The determination of legislative intent is a matter of law." *Mikell, supra,* citing *Charleston County Parks and Recreation Commission vs. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995); Eagle Container Co., LLC vs. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (S.Ct. 2008).*

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County PRC vs. Somers, supra; City of Columbia vs. Niagara Insurance Co., 249 S.C. 388, 154 S.E.2d 674 (1967).*

The determination of legislative intent is a matter of law. 73 Am.Jur.2d Statutes § 142 (1974); *Charleston County PRC vs. Somers, supra.*

It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. *Fairfield Ocean Ridge, Inc. vs. Town of Edisto Beach, 294 S.C. 475, 366 S.E.2d 15 (Ct.App. 1988).* An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *Spartanburg Co. D.S.S. v. Little,* 309 S.C. *122, 420* S.E.*2d 499 (1992).* In construing

ordinances, the terms used must be taken in their ordinary and popular meaning. *Citizens for Lee County v. Lee County, 308* S.C. *23, 416* S.E.*2d 641 (1992).*

ARGUMENT:

THE OPINION OF THE COURT OF APPEALS DOES NOT COMPORT WITH RULES OF STATUTORY CONSTRUCTION, AND RENDERS THE TERM "BUILDING" MEANINGLESS

It is a settled principle of statutory construction that a statute must be read so that no word, clause, sentence, provision or part should be rendered surplusage or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law. *CFRE, LLC vs. Greenville County Assessor, 395 S.C. 67, 716 SE2d 877 (S.Ct. 2011), Hembree vs. One-Thousand, Eight Hundred Forty-Seven Dollars, 404 S.C.241, 743 S.E.2d 864 (Ct.App. 2013).*

This Court has held that courts presume the legislature understood the meaning of the words that it used, and that it intended to use them. *82 CJS Statutes, Section 385; in accord, Hadden vs. South Carolina Tax Commission, 183 S.C. 38, 190 S.E.249 (1937),*("...it is clear that the legislature used the word 'individual' in the Act of 1933 advisedly, intending thereby to expressly eliminate from the terms thereof fiduciaries, partnerships, and corporations...") *Davenport vs. City of Rock Hill, 315 S.C. 114, 117, 432 S.E.2d 451, 453(1993),* ("...it is never supposed that a single word was inserted in the laws of this state without the intention of thereby conveying some meaning"); *State vs. Hercheck, 403 S.C.597, 743 S.E.2d 798 (S.Ct. 2013); Ravenel vs. Dekle, 265 S.C. 364, 218 S.E.2d 521 (S.Ct.)*("...it is never to be supposed that a single

word was inserted in the organic law of the state without the intention of conveying thereby some meaning.")

The Court of Appeals is in agreement with Petitioners that the intent of Charleston City Council by enacting section 54-206(p), was to separate the potentially obnoxious characteristics of keeping horses at least 100 feet distant from a residential zone district. Where Petitioners take exception with the Court of Appeals, and here appeal to this Court, is with respect to the more specific question: Where the keeping or "stabling" of horses is but one of several activities in a larger building, must the 100-foot distance be measured from the location where the horses are stabled or kept? Or must the measurement be taken from the exterior of the building?

The Opinion of the Court of Appeals Renders the Term, "Building", Meaningless

In the ordinance, Section 54-206.(p), City Council used the term "Building" in subsection (7) to require adequate ventilation; and it used the term Stable" in subsection (1) to denote the point from which the 100 foot measurement to a residential zone district must be taken.. The only proper conclusion to draw is that there was a reason for Council to use the different terms. However the Court of Appeals directly dismisses this distinction: "Additionally, we disagree with the circuit court's finding that the council made a relevant distinction between a stable and a building in Section 54-206(p)(7) because a stable already comes under the definition of a building in the Zoning Code." (791 S.E.2d 305, at discussion under headnote 5.)

Respectfully, the Court of Appeals' articulation that because a "Building" is defined as "a structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind..." [Section 54-120; (R.p. 220, Vol. I)], does not even begin to answer the question that is presented to this Court.

It must be concluded by this Court in interpreting the statute here at issue that City Council used the different terms for a reason. "It is never supposed that a single word was inserted in the laws of this state without the intention of thereby conveying some meaning". *Davenport vs. The City of Rock Hill, 315SC114, 117, 432 SE2d 451, 453 (1993).* It is not sufficient to merely conclude that because a "Stable" may already come under the definition of "Building", that the legislative intent is thereby resolved.

Rather, the question to be decided by this Court is, what was the reason that the City Council of Charleston used the separate terms, "Stable" in Section 54-206(p)(1) and "Building" in Section 54-206(p)(7). To conclude that it was because one may include the other renders one or the other meaningless, where the different terms are used in the same statutory section.

The 100 foot measurement from the "Stable" to "any residential zone district" (Sec. 54-206.(p); R.p. 41, Vol. I), although not expressed as a "setback" requirement, is at least similar to the concept of "setbacks" in zoning ordinances. Notably, the definition of "Building" in the Zoning Ordinance was drafted in contemplation of zoning setbacks. The complete text of the definition from Section 54-120 states as follows:

"Building. Any structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind, including appurtenances to buildings such as chimneys, stairs, and elevated stoops, porches, terraces and decks; except that assistive technology for accessibility including ramps and platform lifts shall not be defined as part of the building for the purpose of measuring setbacks and the lot occupancy of a building." (R.p. 220, Vol. I) (Emphasis added.)

City Council nevertheless did not provide that the 100 foot measurement be taken from the "Building", a defined term in the Zoning Ordinance from which by its own definition setback measurements may be taken. Instead it used the term "Stable".

This Court must conclude that City Council deliberately used the term, "Building", in describing the requirements for ventilation of stables. It must likewise conclude that City Council deliberately used the term, "Stable", in describing the point from which the 100 foot distance to any residential zone district must be measured.

The legislative intent of the 100 foot separation requirement of 54-106(p)(1) is clear: to separate the potentially obnoxious aspects of "keeping" animals at least that distance away from a residential zone district. To extrapolate from the language of the ordinance that the same 100 foot separation is required for ancillary business offices, customer waiting areas and rest rooms merely because they are in the same building is not supported by any grammatical analysis or by any construction of the City Code of Ordinances. If it had been the intent of City Council to so provide, Council would have written subsection (1) to provide that "The Building" must not be located within 100 feet of any residential zone district.

City Council did not so provide, however; and it must be presumed Council deliberately did not so provide. It must be inferred from that circumstance and Council's use of "Building" in subsection (7), requiring ventilation, that "Council envisioned a physical circumstance such as is presented in this case, where the use of the property as a 'stable' is but one of several uses contained in a larger building." This was the holding of the circuit court, supported by the dissent in the Court of Appeals.

To conclude otherwise is to ignore Council's deliberate use of "Building" in subsection (7), and to thereby render that term, particularly as juxtaposed with "Stable" in subsection (1), meaningless. This result cannot be sustained. *Davenport vs. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451,453 (1993) ("It is never to be supposed that a single word was inserted in the law of this State without the intent thereby of conveying some meaning.")

The Court of Appeals' *in pari materia* analysis is misplaced in this case; and it facilitates a construction that renders the term, "Building", meaningless.

City Ordinance Sections 29-201, *et seq*, (R.p. 241, Vol. I) (the "Tourism Code") regulates only the carriage tour industry. It does not regulate, nor does it purport to regulate, the ancillary business offices, customer waiting areas for tour carriage business operations, or customer or employee restroom facilities or their location.

In the Tourism Code "Stable" is defined as the "barn where animals are kept". (Section 29-201(b)(12). (R.p. 248, Vol. I); and "Stall" is defined as the "individual space within the barn where each animal is kept". (emphasis added) (Section 29-212(b)(13). (R.p. 248, Vol. I). Moreover, the definitions in the Tourism Code are expressly qualified: "Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings. (emphasis added) (Section 29-212(b) (R.p. 247, Vol. I). The definitions are therefore intended to apply to the Tourism Code sections, and even in those sections they are subject to reinterpretation if the context requires differently. This is the expressed intent of Charleston City Council. The definitions under Section 29-212 are fluid

The operative provisions of the Tourism Code provide, moreover, for "Stables and stalls" together, in the same subsection (i).[See Section 29-212(b)(i), at R.p. 251. ("(i) Stables and stalls (1) Stables shall be...")] "Stalls" therefore comprise the component parts that make up the whole, which is a "stable".

The qualification expressed in the definitions to the Tourism Code, that the definitions apply to "this section" and "except where the context clearly indicates otherwise", therefore, must mean what it says. Because the Tourism Code's "stable" consists of an assemblage of stalls; and because no definitional or operative provision of the Tourism Code provides for, nor contemplates

an assemblage of stalls in a building that includes other uses, the Tourism Code's definition of "stable" must be accepted in accordance with the express statement of legislative intent; that the definitions apply only to the Tourism Code's purposes, and not elsewhere.

Whereas the argument in the preceding paragraph may conflict with the interpretative concept of construing statutes *in pari materia*, accepting the expressed legislative qualification that the definitions apply only to the Tourism Code, facilitates the harmonization of the provisions of Zoning Ordinance.

The Zoning Ordinance – the only legislation at issue in this case - can thus be harmonized within its own terms and without resort to the mechanism of comparing it *in pari materia* with the Tourism Ordinance. Moreover, as pointed out by the dissent in the Court of Appeals, the subordinate rules of statutory construction, including *in pari materia*, are not applied where the meaning of a statute is clear and unambiguous, citing *Rabon vs. S.C. State Highway Department*, 285 S.C. 154,157, 187 S.E.2d 652,654 (1972).

In any event, even the Tourism Code's 29-212 definition is specific in describing the stable as a place where animals are kept. In the case of 45 Pinckney Street, areas of the building are set aside for customer waiting, for restrooms for customers and employees, and for business offices of the company, as well as a second office which may be totally unrelated to the company operation. It is clear that the Tourism Code's definition would not include those other activities, that are unrelated to "keeping" of animals. It is also clear that horses will not be "kept" in these ancillary areas.

Not only did the Court of Appeals disregard the Building/Stable distinction that rendered "Building" to be meaningless, but the Court made the further finding with respect to the offices, the customer waiting area, and the rest rooms of 45 Pinckney Street, singularly human spaces and

activities, that "This does not change the building's status as a barn. Moreover, we find these areas and rooms in the front portion of 45 Pinckney Street are commonly associated with horse stables". (791 S.E.2d 305, discussion under headnote 5.) (Emphasis added.)

There is simply no basis in the record of this case for the Court of Appeals to have "found" and concluded that customer waiting areas, restrooms, and business offices "are commonly associated with horse stables"; nor do Petitioners believe that any such usage is common or of common knowledge.

The Court of Appeals also suggests that Petitioner's interpretation leads to absurd results, because smoking would not be prohibited in Pinckney Street's customer waiting, loading and office spaces, or that fire inspections would not occur, or that horse excreta could accumulate in Mr. Knoth's office, or that Arkay would not be required to clean the sidewalks. (The latter, notably, not a part of Arkay's property.)

However, and respectfully, Petitioners suggest that this argument may be turned on its head. Because smoking is not allowed in stables, does that mean that Mr. Knoth may not allow smoking in his private, enclosed office of the same building? In the northeast corner of 45 Pinckney is a second office. (See R.p. 381, Vol. II; plot plan.) Are the occupants of that office prohibited from smoking? Does the ordinance require that the offices be free from horse excreta? Respectfully, these opposite and equally absurd results would follow the interpretation adopted by the Court of Appeals.

The operative activity of a stable is the keeping and housing of animals. Every aspect of the stabling of horses at 45 Pinckney Street will occur at a distance of 119 feet or greater from the residential district. It defies logic and common sense to conclude that the office uses of the same

building must be greater than 100 feet away. Certainly no horses will be "kept" in the offices or in the customer waiting area or restrooms.

That the animals pass through an easement area to enter and exit the building is no different from their coming and going through residential districts of the City every day. They will no more be "kept" or "housed" on the easement than on the streets. In each instance, they are merely passing by. The Circuit Court was correct in its conclusions about the relevance of the easement.

CONCLUSION

To include other uses such as office space, restrooms, or a customer waiting area as part of a stable---and requiring their separation from a residential district under a statute clearly enacted to separate obnoxious activities—merely because they are housed within the same physical structure is not supported by any grammatical analysis or by any construction of any provision of the Charleston City Code.

"Building" is a specifically defined term in the City Zoning Ordinance. Had City Council required the 100 foot measurement at issue in this case be taken from the "Building", Council's intent would have been clear. Council did not so provide, therefore its intent is equally clear: the measurement must be taken, not from the "Building" because that term was not used, but from the "Stable", the area where the horses are kept, from which potentially obnoxious characteristics might emanate.

That a "Building" may house animals is of no moment to the question presented in this case. The plain fact is that the terms "Stable" and "Building" are different and were used by City Council in the same section. By concluding that one comes under the definition of the other renders the term, and Council's deliberate decision to use the different terms, meaningless.

The construction applied by the Court of Appeals violates basic precepts of statutory construction, and it should be reversed.

Respectfully submitted,

Charleston, South Carolina
June 8, 2018

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson. Jr., Circuit Court Judge

On Certiorari to the Court of Appeals of South Carolina

Opinion No: 5419 (S. C. Ct. App. filed June 29, 2016)
(791 S.E.2d 305)

Arkay, LLC and Robert R.
Knoth, its member.....Petitioners,

v.

City of Charleston, City of
Charleston Board of Zoning
Appeals, Andrew Pinckney
Inn and Michael A. Molony.....Respondents.

PROOF OF SERVICE

I certify that I have served the Brief of Petitioners on Respondents by depositing a copy of same in the United States Mail, postage prepaid, on June 8, 2018, addressed to Respondents' attorneys of record:

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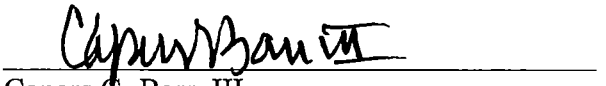

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Petitioners complies with Rule 211(b), SCACR.

June 8, 2018

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