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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

RECEIVED
APR 20 2016
SC Court of Appeals

John Doe,

Appellant,

v.

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

Record on Appeal

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

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Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-0775

John Doe

Board of Zoning Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss, filed on 3/9/15, is GRANTED; Formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2060

Judge Code

4/8/15

Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

vs.

Board of Zoning Appeals (BZA) and Town
Of Sullivan's Island (S.I.),
S.I. Zoning Administrator, and
S.I. Building Dept., Individually
and-In Official Capacity,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-0775

**ORDER GRANTING
MOTION TO DISMISS**

FILED
2015 APR 29 PM 11:49
JULIE J. ARMSTRONG
CLERK OF COURT

On April 7, 2015, this matter came before the Court on Defendants/Respondents' Motion to Dismiss John Doe Plaintiff/Appellant's ("Plaintiff/Appellant" or "John Doe") Notice of Appeal and Request for Pre-Litigation Mediation ("Notice of Appeal"). Plaintiff/Appellant was not present at the hearing. The Court confirmed with the Non-Jury Docket Coordinator that Plaintiff/Appellant was sent notice of the hearing at the address listed for J. Doe on the Notice of Appeal, 2061 Middle Street. S.I., SC 29482-0187. G. Trenholm Walker, Esq. and John P. Linton, Jr., Esq. represent Defendants/Respondents and were present at the hearing.

After reviewing the pleadings, motion, and memorandum that have been filed, the Court grants Defendants/Respondents' Motion to Dismiss because the Notice of Appeal does not comply with the statutory requirements regarding appeals from a board of zoning appeals. Additionally, based upon the Notice of Appeal, Plaintiff/Appellant lacks standing to bring this appeal.

On February 9, 2015, John Doe filed a Notice of Appeal purporting to appeal a decision of the BZA and request pre-litigation mediation of that appeal. The Notice of Appeal stated, in total, as follows:

Pursuant to South Carolina statutory and case law, plaintiff respectfully requests permission to proceed under the current caption anonymously as John Doe regarding the BZA appeal of Permit Number 2014-2899 for 1607 Poe Avenue, Sullivans Island (SI), SC. In accordance with South Carolina Code, Section 6-29-825, notice of appeal and request for pre-litigation mediation is hereby timely filed.

The Notice of Appeal was signed as J. Doe and gave the address "2061 Middle St. S.I., SC 29482-0187." In response to this Notice of Appeal, Defendants/Respondents filed this Motion to Dismiss.

I.

Plaintiff/Appellant purports to appeal an order from the Town of Sullivan's Island Board of Zoning Appeals ("BZA") by filing a notice of appeal and request for mediation. South Carolina Code section 6-29-820(B) allows a property owner whose land is the subject of a decision of the board of appeals to initiate an appeal in two alternative methods: (1) by filing a petition with the circuit court setting forth the reasons that the decision is contrary to law, or (2) by filing, within thirty days of the mailing of the board of zoning appeals decision, "a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825." S.C. CODE § 6-29-820(B)(1)-(2). (double emphasis added). Notably, the second method of initiating an appeal—filing a notice of appeal accompanied by a request for litigation mediation—is only available to the owner of the land that is the subject of the zoning board of appeals decision. Id.

Here, the Notice of Appeal does not include any information as to the identity of the Plaintiff/Appellant except an address, which is not the address that was the subject of the BZA

appeal referenced in the Notice of Appeal. Therefore, Plaintiff/Appellant's Notice of Appeal is hereby dismissed, because Plaintiff/Appellant's Notice of Appeal is ineffective because it attempts to utilize the process that the statute only permits the owner of the land that is the subject of the zoning board of appeals decision to utilize.

II.

One does not have to be an owner of the property that is the subject of an appeal in order to appeal a ruling. The statute provides that 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, within thirty days of the mailing of the decision of the board, "filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law." S.C. CODE § 6-29-820(A). Compliance with the statutory requirement of filing a petition setting forth the reason(s) why the decision is contrary to law is significant because it is this action, required by statute, that preserves an appellant's issues for appeal. See Newton v. Zoning Bd. of Appeals for Beaufort County, 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011) (holding that "the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires.").

Here, Plaintiff/Appellant has not filed any petition with the Notice of Appeal. To the extent Plaintiff/Appellant seeks to appeal the BZA decision as a person having a substantial interest in the decision, no issues have been preserved or raised for appeal, and the Notice of Appeal fails to comply with the statutory requirements. Therefore, for this further and alternative reason, the Notice of Appeal is hereby dismissed.

III.

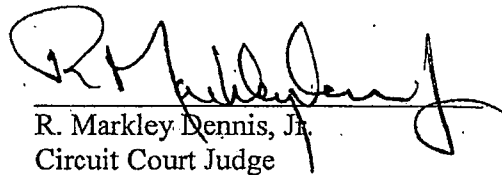
Pursuant to South Carolina Code sections 6-29-820(A) and (B) the following persons have standing to appeal a decision of a board of zoning appeals: (1) A person who may have a substantial interest in any decision of the board of appeals; (2) an officer or agent of the appropriate governing authority; and (3) a property owner whose land is the subject of a decision of the board of appeals. See S.C. Code §§ 6-29-820(A)-(B). Here, based upon the Notice of Appeal, Plaintiff/Appellant falls into none of these categories. The only information about John Doe included in the Notice of Appeal is that they purport to have a post office box on Sullivan's Island, but this is insufficient for the statutory standing needed to maintain this appeal. See e.g., Bevivino v. Town of Mt. Pleasant Bd. of Zoning Appeals, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013) (noting that 6-29-820 contains the requirements for statutory standing to maintain an appeal).

CONCLUSION

Therefore, for the reasons explained above, Defendants/Respondents' Motion to Dismiss is hereby be **GRANTED**.

AND IT IS SO ORDERED.

April ²⁹, 2015
Charleston, S.C.


R. Markley Dennis, Jr.
Circuit Court Judge

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-0775

John Doe

Board of Zoning Appeals, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Court's Form 4 Order, filed on 4/10, and the Formal Order, filed 4/30, granting the Defendant's Motion to Dismiss are BOTH RESCINDED; This case is to be reopened for rehearing of this motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note:** Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2060
Judge Code

5/4/15
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-0775

John Doe

Board of Zoning Appeals, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defense's Motion to Dismiss, filed on 3/09/15, is GRANTED—formal order to follow; Thus Plaintiff's Motion, filed on 5/07/15, is moot.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2060

Judge Code

9/8/15

Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

vs.

Board of Zoning Appeals (BZA) and Town
Of Sullivan's Island (S.I.),
S.I. Zoning Administrator, and
S.I. Building Dept., Individually
and In Official Capacity,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-0775

**ORDER GRANTING
MOTION TO DISMISS**

FILED
2015 SEP 23 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

On September 2, 2015, this matter came before the Court on Defendants/Respondents' Motion to Dismiss John Doe Plaintiff/Appellant's ("Plaintiff/Appellant" or "John Doe") Notice of Appeal and Request for Pre-Litigation Mediation and on Plaintiff/Appellant's Rule 59(e) Motions.

Cynthia Holmes appeared at the hearing as a *pro se* Litigant. John P. Linton, Jr., Esq. represents Defendants/Respondents and also appeared at the hearing.

After reviewing the pleadings, motion, and memorandum that have been filed, and considering the arguments at the hearing, the Court finds that Plaintiff/Appellant's Rule 59(e) Motions are moot. Plaintiff/Appellant's Rule 59(e) Motions, filed on May 7, 2015 and June 19, 2015, seek reconsideration of the Court's Form 4 Order filed on April 10, 2015 and Formal Order filed on April 30, 2015, dismissing Plaintiff/Appellant's appeal. By Form 4 Order filed May 6, 2015, both of those orders were rescinded and Defendants/Appellants' Motion to Dismiss reopened for rehearing of that motion. Therefore, Plaintiff/Appellant's Rule 59(e) Motions are

rmog/1

moot. Additionally, for the reasons explained below, the Court grants Defendants/Respondents Motion to Dismiss.

On February 9, 2015, John Doe filed the Notice of Appeal and Request for Pre-Litigation Mediation purporting to appeal a decision of the BZA and request pre-litigation mediation of that appeal. The Notice of Appeal and Request for Pre-Litigation Mediation states, in total, as follows:

Pursuant to South Carolina statutory and case law, plaintiff respectfully requests permission to proceed under the current caption anonymously as John Doe regarding the BZA appeal of Permit Number 2014-2899 for 1607 Poe Avenue, Sullivans Island (SI), SC. In accordance with South Carolina Code, Section 6-29-825, notice of appeal and request for pre-litigation mediation is hereby timely filed.

The Notice of Appeal and Request for Pre-Litigation Mediation was signed as J. Doe and gave the address "2061 Middle St. S.I., SC 29482-0187." In response to this Notice of Appeal and Request for Pre-Litigation Mediation, Defendants/Respondents filed this Motion to Dismiss.

Plaintiff/Appellant purports to appeal an order from the Town of Sullivan's Island Board of Zoning Appeals ("BZA") by filing a notice of appeal and request for mediation. South Carolina Code section 6-29-820(B) allows a property owner whose land is the subject of a decision of the board of appeals to initiate an appeal in two alternative methods by filing, within thirty days of the mailing of the board of zoning appeals decision, "a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825." S.C. CODE § 6-29-820(B)(2). Notably, this method of initiating an appeal—filing a notice of appeal accompanied by a request for litigation mediation—is only available to the owner of the land that is the subject of the zoning board of appeals decision. Id. The language of the statute is clear and unambiguous that only the owner of the land that is the subject of a

RMD 8/2

zoning board of appeals decision may appeal using the method provided for by S.C. CODE § 6-29-820(B)(2).

Here, the Notice of Appeal and Request for Pre-Litigation Mediation does not include any information as to the identity of the Plaintiff/Appellant except an address, which is not the address that was the subject of the BZA appeal referenced in the Notice of Appeal and Request for Pre-Litigation Mediation. Therefore, the Notice of Appeal and Request for Pre-Litigation Mediation is insufficient to satisfy the statutory requirement in S.C. CODE § 6-29-820(B)(2) for initiating an appeal of a decision of a board of zoning appeals decision by filing a notice of appeal accompanied by a request for litigation mediation. Additionally, it is worth noting that Plaintiff/Appellant confirmed at the hearing that she, the *pro se* litigant, is not the owner of the property that was the subject of the BZA decision. Therefore, based on the clear unambiguous language of the statute, the appeal is dismissed. See e.g. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (stating the general rule that “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”).

Plaintiff/Appellant argued at the hearing that her appeal should not be dismissed because she is the owner of a particular piece of property that, while not the subject of the BZA’s decision, is allegedly affected by the BZA’s decision. The Court rejects this argument because the process of appealing a BZA decision by filing a notice of appeal and requesting mediation—the process invoked by the Notice of Appeal and Request for Pre-Litigation Mediation—is only

RMA/3

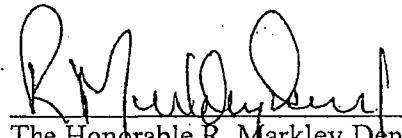
available to the owner of the land that is the subject of the zoning board of appeals decision, which Plaintiff/Appellant has confirmed she is not.¹

CONCLUSION

Therefore, for the reasons explained above, Plaintiff/Appellant's Rule 59(e) Motions are found to be **MOOT** and Defendants/Respondents' Motion to Dismiss is hereby be **GRANTED**.

AND IT IS SO ORDERED.

September 17, 2015
Charleston, S.C.


The Honorable R. Markley Dennis, Jr.
Circuit Court Judge

¹ The Court notes that a person who may have a substantial interest in any decision of a board of appeals by a BZA decision, as Plaintiff/Appellant asserts she is, may appeal from a decision of a board of zoning appeals to the circuit court by, within thirty days of the mailing of the decision of the board, "filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law." S.C. CODE § 6-29-820(A). Here, Plaintiff/Appellant has not filed any petition with the Notice of Appeal and Request for Pre-Litigation Mediation. To the extent Plaintiff/Appellant seeks to appeal the BZA decision as a person having a substantial interest in the decision, no issues have been preserved or raised for appeal and the Notice of Appeal and Request for Pre-Litigation Mediation fails to comply with the statutory requirement that the appellant timely file a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.

STATE OF SOUTH CAROLINA

COUNTY OF CHAS.

JOHN DOE

Plaintiff(s)

vs.

BZA et al

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-775

(Please Print)

Submitted By: J. Doe 2061 Middle St.

Address: PO Box 187

5411. Isd., SC 29482-0187

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>-NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement
Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☒ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Foreign Subpoenas (650)
☐ Motion to Quash Subpoena
in Out-of-County Action
(660) | | |

Submitting Party Signature: [Signature]

Date: 2/2/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

PRATT-THOMAS | WALKERATTORNEYS AT LAW
PROFESSIONAL ASSOCIATION16 CHARLOTTE STREET
CHARLESTON, SC 29403PO DRAWER 22247
CHARLESTON, SC 29413-2247PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

JOHN P. LINTON, JR.
Email: jpl@p-tw.com
Direct: (843) 727-2252

June 25, 2015

Dr. Cynthia Holmes
Post Office Box 187
2061 Middle Street
Sullivan's Island, SC 29482-0187

Dear Dr. Holmes:

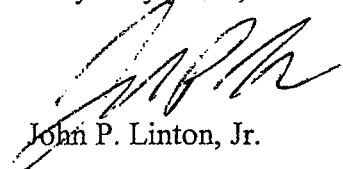
I am in receipt of your two letters to Larry Dodds, Town Attorney for the Town of Sullivan's Island, indicating that you are requesting mediation with respect to the BZA appeal involving permit # 2014-2899. Our firm is currently handling an appeal to the Charleston County Circuit Court which is related to permit # 2014-2899. That appeal was filed by J. Doe and is Civil Action Number 2015-CP-10-0775. That being the case, Mr. Dodds asked that we respond to your letter concerning the same BZA decision.

The BZA held a hearing on the appeal of permit # 2014-2899 on April 10, 2014 and issued a Final Order on May 8, 2014 (mailed May 9, 2014). In response to your request, the BZA held a rehearing on September 11, 2014 and issued a Final Order on the rehearing on January 8, 2015 (mailed January 12, 2015).

Your request for mediation of this matter does not meet the requirements of the applicable South Carolina statute. Under South Carolina Code Section 6-29-820(B), the property owner whose land is the subject of a decision of the board of appeals may appeal a decision of the board of zoning appeal by filing, within thirty days of the mailing of the board of zoning appeals decision, a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina code section 6-29-825.

Your letter requests do not comply with the above statute in several ways. For example, it is not timely, it is not filed with court as a notice of appeal accompanied by a request for mediation, and it does not appear to be requested by the owner of the property that was the subject of the BZA. According to the Charleston County records, James P. Walsh, not Dr. Cynthia Holmes, is the owner of the property that was the subject of the permit and BZA (1607 Poe Ave, Sullivan's Island, South Carolina). Therefore, because your requests are not proper under the applicable statute, the Town will not be providing tentative dates and mediators as you request in your letters to Mr. Dodds.

Very truly yours,


John P. Linton, Jr.

JPL/cam

15

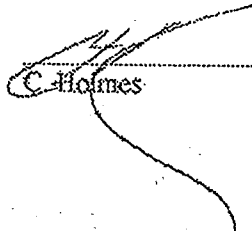
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

- 1) This affidavit is submitted in support of the attached Rule 59(e), SCRCPP, Motion, and I am the plaintiff.
- 2) As owner of the land that is the subject of a decision of the board of appeals, I have statutory standing to appeal. S.C. Code § 6-29-820.
- 3) The attached copy of correspondence dated April 27, 2015, documents there was no required notice in Case No. 2015-CP-10-0775, *Doe v. BZA et al.* Moreover, it establishes that, on or before April 27, 2015, defendants knew or should have known they failed to provide the required notice to the other side. Defendants failed to timely disclose this material fact, thereby wrongfully inducing this Honorable Court to rely on their misrepresentations.
- 4) I received no required notice and no actual notice and was prejudiced thereby.
- 5) Defendants wrongfully induced this Honorable Court to rely on their misrepresentations and to sign ex parte order. On or before April 27, 2015, defendants failed to timely disclose the material fact that they failed their duty to provide required notice. Due in whole or in part to defendants' lack of diligence, ex parte order was signed. It has come to our attention that defendants made misrepresentations and/or material omissions to the Charleston County Clerk of Court as well.
- 6) It is fair to say that defendants would want notice. In what has become business as usual for defendants' counsel, they failed their professional responsibilities to this Honorable Court, to the Charleston County Clerk of Court, to their client, and to the other side. Defendants' motion should be dismissed/stricken.

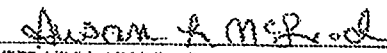
FURTHER THE AFFIANT SAITH NOT.


C. Holmes

Subscribed and sworn to before me,

Notary Public, this 30th day

of June, 2015.


NOTARY PUBLIC

My commission expires: 02/26/17



April 27, 2015

PO Box 187

The enclosed mail was addressed to John Doe at the Post Office address. However, Pratt-Thomas, Walker, Attorneys At Law instructed me to place these letters into PO box 187.

If you have any questions or concerns, please call the attorney's office.

Sincerely,

A handwritten signature in cursive script that reads "Margie L. Seabrook".

Margie L. Seabrook
Postmaster
2061 Middle St.
Sullivans Island, SC 29482



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

[Charleston County Home Page](#) [Clerk of Court Home Page](#) [Magistrates Court](#) [SC Judicial Home Page](#) [Search Tips](#)

Case Details

John Doe VS Board of Zoning Appeals , defendant, et al

Case Number:	2015CP1000775	Court Agency:	Common Pleas	Filed Date:	02/09/2015
Case Type:	Common Pleas	Case Sub Type:	Zoning Board 970	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	04/10/2015	Disposition Judge:	Dennis, R. Markley Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
 Board of Zoning Appeals					Defendant		02/09/2015
BZA					Defendant		02/10/2015
 Doe, John					Plaintiff Pro Se		04/30/2015
 Doe, John					Plaintiff		04/14/2015
 Linton, John Phillips Jr.					Defendant Attorney		03/09/2015
SI					Defendant		02/10/2015
 SI Building Dept					Defendant		02/10/2015
 SI Zoning Administrator					Defendant		02/10/2015
 Sullivan's Island Town of					Defendant		03/09/2015

FILED
2015 MAR -9 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Notice of Motion and Motion to Dismiss by first class mail to the below-listed party on March 5, 2015.

John Doe, pro-se
2061 Middle Street
Sullivans Island, SC 29482-0187

By: Chris Morrow
Chris Morrow
Paralegal to John P. Linton, Jr.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
John Doe,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 15-CP-10-0775
	)	
Board of Zoning Appeals,	)	
	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 7, 2015, before The Honorable R. Markley Dennis, Jr., in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

John P. Linton, Esq.

Treholm Walker, Esq.

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

John Doe v Board of Zoning Appeals
Case No. 15-CP-10-0775
Hearing of April 17, 2015
Before The Honorable R. Markley Dennis, Jr.

2

1 THE COURT: Doe versus Board of
2 Zoning Appeals. Y'all are back? Is this
3 Sullivans Island?

4 MR. LINTON: Yes, Your Honor.

5 THE COURT: Okay. Who is ----

6 MR. WALKER: Jane Doe d/b/a (sic)
7 John Doe does not appear to be here.

8 THE COURT: Have they proceeded
9 always as "Doe", "the Does"?

10 MR. LINTON: Yes, Your Honor. All
11 they've filed is a Notice of Appeal as John
12 Doe, and we've filed a Motion to dismiss that
13 appeal.

14 THE COURT: Did they have an
15 address where the Does live?

16 MR. LINTON: Yes.

17 THE COURT: Now we know the Does.
18 They were sent notice of that, Miss Caroline?

19 CAROLINE LEONARD: Your Honor, notice
20 was sent to 2061 Middle Street on Sullivans
21 Island, South Carolina.

22 THE COURT: Is that the address
23 that you have?

24 MR. LINTON: Your Honor, it is. I
25 believe -- was the zip code on there? 29482-

John Doe v Board of Zoning Appeals
Case No. 15-CP-10-0775
Hearing of April 17, 2015
Before The Honorable R. Markley Dennis, Jr.

3

1 187?

2 CAROLINE LEONARD: That's correct.

3 MR. LINTON: That's the same.

4 THE COURT: Very well.

5 MR. WALKER: And that is the
6 subject property, too.

7 THE COURT: Okay. Then --

8 MR. LINTON: Your Honor, it is not
9 the subject property. We believe that's the
10 United States Post Office on Sullivans
11 Island.

12 THE COURT: You briefed it?

13 MR. LINTON: Yes, Your Honor.

14 THE COURT: Your Motion is
15 granted. Thank you, sir. If you (Mr.
16 Linton) want to prepare an Order, I will be
17 happy to sign it. A Motion to Dismiss is
18 what you're asking for?

19 MR. LINTON: Yes, Your Honor.
20 We've briefed it. We have not filed the
21 brief but ---

22 THE COURT: File the brief. For
23 the record, I am relying on your position
24 stated in the brief -- and the fact that they
25 are not here, but primarily the position

John Doe v Board of Zoning Appeals
Case No. 15-CP-10-0775
Hearing of April 17, 2015
Before The Honorable R. Markley Dennis, Jr.

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1 stated in your brief, which I have seen.

2 (HEARING CONCLUDED)

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John Doe v Board of Zoning Appeals

Case No. 15-CP-10-0775

Hearing of April 17, 2015

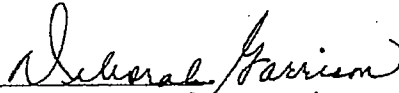
Before The Honorable R. Markley Dennis, Jr.

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF CHARLESTON)
4
5

6 I, the undersigned Deborah Garrison, Circuit
7 Court Reporter for the 9th Judicial Circuit, hereby
8 certify that the foregoing is a complete and
9 accurate transcript of the hearing held in the
10 within action heard on April 7, 2015, before The
11 Honorable R. Markley Dennis, Jr.;

12 I further certify that I am neither kin nor
13 counsel to any of the parties and have no interest
14 in the outcome of this action.

15
16
17
18 
19 Deborah Garrison
20
21
22

23 Charleston, South Carolina
24 September 1, 2015

of the Charleston County Circuit Court's Public Index website specifying the proper address. Rule 5, SCRCF. Defendants failed and/or refused to employ the proper address, which did in fact deprive the other side of notice. The plaintiff did not receive timely notice and the plaintiff is prejudiced thereby. The attached copy of the postmaster's letter dated April 27, 2015, confirms there was no timely notice. Materially, as per the correspondence dated April 27, 2015, defendants' actions in contacting the postmaster with the correct address only after denial of any meaningful opportunity to respond is consistent with defendants' bad faith and/or the appearance of impropriety. Defendants have apparently misled the Court. Defendants' attempt to gain unfair advantage and to deprive the other side of due process is, at best, unflattering.

As documented in the attached correspondence dated April 27, 2015, defendants knew the other side had not received notice and failed to disclose this material fact to the Court, thereby wrongfully inducing this Honorable Court to act on defendants' false representations and/or material omissions. Defendants' actions establish the fact that defendants knew plaintiff had not received notice and defendants thereby engaged in impermissible ex parte communications. Rule 5, SCRCF, is the specific rule with statutory authority requiring defendants to copy the other side, which defendants violated. From *Burgess v. Stern*, South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which

affect them. Id.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: "A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter." While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety.

This issue was discussed succinctly in the case of *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition is not against "prejudicial" ex parte communications, but against ex parte communications. *Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

From another case, the Court cautioned: "We note the Bench and Bar were cautioned to strictly observe the Canons governing judicial and attorney conduct with regard to ex parte contacts as they relate to maintaining the appearance of propriety and to comply with both the **letter and the spirit** of Opinion No. 2-1988 of the Advisory Committee on Standards of Judicial Conduct in *Burgess v. Stern*, 311 S.C. 326, 428 S.E.2d 880 (1993)." *Jennings, Matter of*, 468 S.E.2d 869, 321 S.C. 440, fn. 4 (S.C., 1996). In sum, defendants made misrepresentations and/or material omissions and, thereby, perpetrated fraud upon the court when they knew and failed to disclose the fact that the other side had no timely notice of the proposed order or other documents. Plaintiff expressly objects to defendants' ex parte contacts and is prejudiced thereby. Defendants' motion should be dismissed.

Further, the order is reversible based on error of law and material fact, including but not limited to, the case of *Wells Fargo Bank, NA, v. Smith*, 398 S.C. 487, 730 S.E.2d

328 (S.C. App., 2012), which provides as follows: "A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 549–50, 186 S.E.2d 523, 526 (1972). . . . One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor. Ordinarily a court may not grant relief beyond the limits or scope of such notice. *Ford v. Calhoun*, 53 S.C. 106, 30 S.E.2d 830; *Coogler v. California Ins. Co.*, 192 S.C. 54, 5 S.E.2d 459; *Wildhagen v. Ayers*, 225 S.C. 384, 82 S.E.2d 609." In the instant case, no statutory notice was given, no notice was sent to the proper address as posted on the Charleston County Clerk of Court's website (see attached), and no timely notice was received.

Moreover, the statute, S.C. Code § 6–29–820(B), provides as follows:

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

- (1) as provided in subsection (A); or
- (2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825. S.C. Code § 6–29–820(B).

Case law confirms that the notice of appeal is proper because plaintiff's **adjacent** property is adversely affected. Defendants are well aware of this fact due to plaintiff's expert's testimony at the board meeting and due to evidence at the hearing in the form of a current land survey of the pertinent property as well as documentation of the flooding and standing water lapping against residential dwellings occurring as a direct and proximate result of wrongdoing and violation of the zoning ordinances. In *Spanish Wells*, the Court of Appeals held that owners of property adjacent to and in the near vicinity of a

development are persons with a substantial interest and, as a consequence, had standing to appeal. *Spanish Wells Property Owners Assn. v. Board of Adjustment*, 292 S.C. 542, 357 S.E.2d 487 (Ct.App.1987), reversed in part on other grounds, 295 S.C. 67, 367 S.E.2d 160 (1988). Defendants misconstrue *Bevivino* which supports plaintiff's position. The Court of Appeals found that Bevivino and the Lincolns had standing to pursue their appeal because of the close proximity of their homes to the tower site. *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863 (S.C. App., 2013).

With regard to *Newton*, defendants again misconstrue the case. *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (S.C. App. 2011). That statute, S.C. Code § 6-29-820(B), is designed to encourage **pre-litigation** mediation by **NOT** requiring the filing of a petition until and unless pre-litigation mediation is unsuccessful. In *Newton*, the Court made clear, "This procedure does not allow for issue identification, or even party identification, **prior to the filing of a petition** with the circuit court." *Id.*, p. 284 (emphasis supplied). Accordingly, the plaintiff has substantial interest and statutory standing and the plaintiff timely complied with S.C. Code § 6-29-820(B) notice of appeal and request for pre-litigation mediation.

Due process requires notice, meaningful opportunity to respond, and judicial review. It is fair to say that defendants themselves would want notice. For this reason alone as well as others, defendants' motion should be dismissed and the purpose of the statute in promoting **pre-litigation** mediation should be supported. S.C. Code § 6-29-820(B). These are matters of public importance affecting Sullivans Island, Charleston County, and our State as well as affecting precious coastal resources and water quality. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process

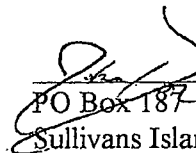
requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory and case law. This Motion will be supported by the pleadings, affidavits submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court alter or amend the order entered April 10, 2015, and dismiss defendants' motion based upon lack of notice, lack of jurisdiction, insufficiency of service, bad faith, fundamental fairness, and/or other just cause.

Respectfully submitted,

Dated May 2, 2015.


PO Box 187
Sullivans Island, SC 29482
843.883.3010



April 27, 2015

PO Box 187

The enclosed mail was addressed to John Doe at the Post Office address. However, Pratt-Thomas, Walker, Attorneys At Law instructed me to place these letters into PO box 187.

If you have any questions or concerns, please call the attorney's office.

Sincerely,

A handwritten signature in cursive script that reads "Margie L. Seabrook".

Margie L. Seabrook
Postmaster
2061 Middle St.
Sullivans Island, SC 29482



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
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John Doe VS Board of Zoning Appeals , defendant, et al

Case Number:	2015CP1000775	Court Agency:	Common Pleas	Filed Date:	02/09/2015
Case Type:	Common Pleas	Case Sub Type:	Zoning Board 970	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Dennis, R. Markley Jr.
Disposition:	Ended by Non Jury	Disposition Date:	04/10/2015		
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case/Parties](#) [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Board of Zoning Appeals					Defendant		02/09/2015
☒ BZA					Defendant		02/10/2015
☒ Doe, John					Plaintiff Pro Se		04/30/2015
☒ Doe, John					Plaintiff		04/14/2015
☒ Linton, John Phillips Jr.					Defendant Attorney		03/09/2015
☒ S I					Defendant		02/10/2015
☒ S I Building Dept					Defendant		02/10/2015
☒ S I Zoning Administrator					Defendant		02/10/2015
☒ Sullivans Island Town of					Defendant		03/09/2015

FILED
2015 MAR -9 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Notice of Motion and Motion to Dismiss by first class mail to the below-listed party on March 5, 2015:

John Doe, pro-se
2061 Middle Street
Sullivans Island, SC 29482-0187

By: Chris Morrow
Chris Morrow
Paralegal to John P. Linton, Jr.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 15-CP-10-0775

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) NOTICE OF MOTION

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2015 JUN 19 PM 12:01
JULIE J. ANASTROM, CLERK OF COURT

failed to provide the required notice to the other side. Defendants failed to timely disclose this material fact. The supervising attorney shamelessly attempts to exploit a junior associate's lineage, cache, and/or namesake. That supervising attorney had his junior associate sign off on documents wrongfully inducing this Honorable Court to rely on false representations and/or material omissions, perpetrating fraud upon the Court. Materially, as a matter of public record and consistent with the pattern and practice of wrongdoing, the same hyphenated firm had another junior associate with no personal knowledge of the lower court matter sign off on and induce the appellate court to rely on a **FALSE FEE AFFIDAVIT**, even after actual knowledge it was falsified. Chief Judge Few had to rescind that order as well. Copies available upon request.

Plaintiff received no required notice and no actual notice, and plaintiff is prejudiced thereby. Defendants wrongfully induced this Honorable Court to rely on their misrepresentations and to sign ex parte order. On or before April 27, 2015, defendants failed to timely disclose the material fact that they failed their duty to provide required notice. Due in whole or in part to defendants' lack of diligence, ex parte order was signed before the Court received defendants' correspondence dated and postmarked April 30, 2015. It is fair to say that defendants would want notice. Defendants failed their professional responsibilities to this Honorable Court and to the other side. Defendants' motion should be dismissed/stricken.

Specifically, defendants failed to provide statutorily required notice as documented by the attached copy of the Postmaster's letter. Moreover, defendants' certificate of service (copy attached) does not comply with the statutorily required address listed on the attached copy of the Charleston County Circuit Court's Public Index website specifying

the proper address. Rule 5, SCRCF. Defendants failed and/or refused to employ the proper address, which did in fact deprive the other side of notice. Materially, as per the correspondence dated April 27, 2015, defendants' actions in providing the postmaster with the correct address only **after** denial of any meaningful opportunity to respond is consistent with defendants' bad faith and/or the appearance of impropriety. Defendants have apparently misled the Court. Defendants' attempt to gain unfair advantage and to deprive the other side of due process is, at best, unflattering.

As documented in the attached correspondence dated April 27, 2015, defendants knew the other side had not received notice and failed to timely disclose this material fact to the Court, thereby wrongfully inducing this Honorable Court to act on defendants' false representations and/or material omissions. Defendants' actions establish that defendants knew plaintiff had not received notice and defendants thereby engaged in impermissible ex parte communications. Rule 5, SCRCF, is the specific rule with statutory authority requiring defendants to copy the other side, which defendants violated. From *Burgess v. Stern*, South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. Id.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: "A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter." While Canon 3(A)(4) guards against ex parte

indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. **This is why the prohibition is not against "prejudicial" ex parte communications, but against ex parte communications.** *Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992)(emphasis supplied).

From another case, the Court cautioned: "We note the Bench and Bar were cautioned to strictly observe the Canons governing judicial and attorney conduct with regard to ex parte contacts as they relate to maintaining the appearance of propriety and to comply with both the **letter and the spirit** of Opinion No. 2-1988 of the Advisory Committee on Standards of Judicial Conduct in *Burgess v. Stern*, 311 S.C. 326, 428 S.E.2d 880 (1993)." *Jennings, Matter of*, 468 S.E.2d 869, 321 S.C. 440, fn. 4 (S.C., 1996). In sum, defendants made misrepresentations and/or material omissions and, thereby, perpetrated fraud upon the court when they knew and failed to disclose the fact that the other side had no timely notice of the proposed order or other documents. Plaintiff expressly objects to defendants' ex parte contacts and is prejudiced thereby. Defendants' motion should be dismissed/stricken.

Further, the order is reversible based on error of law and material fact, including but not limited to, the case of *Wells Fargo Bank, NA, v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (S.C. App., 2012), which provides as follows: "A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v.*

Skinner, 257 S.C. 544, 549-50, 186 S.E.2d 523, 526 (1972)....One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor. Ordinarily a court may not grant relief beyond the limits or scope of such notice. *Ford v. Calhoun*, 53 S.C. 106, 30 S.E.2d 830; *Coogler v. California Ins. Co.*, 192 S.C. 54, 5 S.E.2d 459; *Wildhagen v. Ayers*, 225 S.C. 384, 82 S.E.2d 609." In the instant case, no statutory notice was given, no notice was sent to the proper address as posted on the Charleston County Clerk of Court's website (see attached), and no timely notice was received.

Moreover, the statute, S.C. Code § 6-29-820(B), provides as follows:

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

- (1) as provided in subsection (A); or
- (2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825. S.C. Code § 6-29-820(B).

Case law confirms that the notice of appeal is proper because plaintiff's **adjacent** property is adversely affected. Defendants are well aware of this fact due to plaintiff's expert's testimony at the board meeting and due to evidence at the hearing in the form of a current land survey of the pertinent property as well as documentation of the flooding and standing water lapping against residential dwellings occurring as a direct and proximate result of wrongdoing and violation of the zoning ordinances. Further, the storm water runoff with contaminants collects and pools in rear enclosed areas where children and pets play and live. In *Spanish Wells*, the Court of Appeals held that owners of property adjacent to and in the near vicinity of a development are persons with a substantial interest

and, as a consequence, had standing to appeal. *Spanish Wells Property Owners Assn. v. Board of Adjustment*, 292 S.C. 542, 357 S.E.2d 487 (Ct.App.1987), reversed in part on other grounds, 295 S.C. 67, 367 S.E.2d 160 (1988). Defendants misconstrue *Bevivino* which supports plaintiff's position. The Court of Appeals found that Bevivino and the Lincolns had standing to pursue their appeal because of the close proximity of their homes to the tower site. *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863 (S.C. App., 2013).

Plaintiff craves reference to defendants' citation of *Newton*, which supports plaintiff's position. *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (S.C. App. 2011). That statute, S.C. Code § 6-29-820(B), is designed to encourage **pre-litigation** mediation by **NOT** requiring the filing of a petition until and unless pre-litigation mediation is unsuccessful. Good faith mediation has been requested. In *Newton*, the Court made clear, "This procedure does not allow for issue identification, or even party identification, **prior to the filing of a petition** with the circuit court." *Id.*, p. 284 (emphasis supplied). Accordingly, the plaintiff has substantial interest and statutory standing and the plaintiff timely complied with S.C. Code § 6-29-820(B) notice of appeal and request for pre-litigation mediation.

Due process requires notice, meaningful opportunity to respond, and judicial review. It is fair to say that defendants themselves would want notice. For this reason alone as well as others, defendants' motion should be dismissed/stricken and the purpose of the statute in promoting **pre-litigation** mediation should be supported. S.C. Code § 6-29-820. These are matters of public importance affecting Sullivans Island, Charleston County, and State and Federal regulations as well as affecting precious coastal resources

and water quality. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory, constitutional, and case law. This Motion is supported by affidavit(s) submitted in support of the motion and other evidence herein.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court alter or amend the order entered May 6, 2015, and dismiss/strike defendants' motion in furtherance of legislative intent and statutory authority promoting pre-litigation mediation and/or based upon lack of notice, lack of jurisdiction, insufficiency of service, bad faith, fundamental fairness, and/or other just cause.

Respectfully submitted,

Dated May 23, 2015.


PO Box 187
Sullivans Island, SC 29482
843.883.3010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

-vs-

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept.,
Individually and In Official
Capacity.

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 15-CP-10-0775

) NOTICE OF MOTION

) AND

) RULE 59(e), SCRCP, MOTION

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2015 OCT 21 PM 12:58

FILED

TO: Attorney for Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered September 23, 2015, and the order entered September 29, 2015. The orders err as a matter of law and material fact, including but not limited to, because there was notice only for the May 7, 2015, motion. All rights are raised, preserved, and not waived. Accordingly, the orders should be reversed, altered, and/or amended.

Defendants' wrongful ex parte motion was heard on April 7, 2015, transcript attached and the attached affidavit was timely served. We regret untrustworthy defendants' counsels' misrepresentations and/or material omissions. Sadly, the sordid events are a reflection on what the former Coastal Conservation League representatives, now defendants' counsel, are capable of when they think no one is looking.

Significantly and materially, jurisdiction can be raised at any time. We timely filed a notice of appeal and requested **Pre-litigation** mediation pursuant to legislative intent, statutory law, and case law. Consequently, there is no jurisdiction in the circuit court until and unless pre-litigation mediation is unsuccessful. The BZA has jurisdiction at the pre-litigation stage and has already determined that the plaintiff is "(a) property owner whose land is the subject of a decision of the board of appeals," including but not limited to, storm water runoff and contaminants which collect, pool, and stand in rear enclosed areas where children and pets play and live. S.C. Code 6-29-820. The BZA confirmed that the plaintiff is "(a) property owner whose land is the subject of a decision of the board of appeals," and, accordingly, held a hearing on the merits.

The statutory provision and petition referenced by the other side are inapplicable herein and apply to those who intervene after a hearing on the merits. In *Newton*, the Court made clear, "This procedure does not allow for issue identification, or even party identification, **prior to the filing of a petition** with the circuit court." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282, 284 (S.C. App. 2011) (emphasis supplied). See also S.C. Code Ann. § 6-29-1155(A) (Supp. 2010) ("If a **property owner** files a notice of appeal with a request for pre-litigation mediation, the request for mediation **must be granted.**") (emphasis supplied). When interpretation of a

statute is required, words must be given their plain and ordinary meaning. Case law rejects defendants' absurd interpretation. The statute provides "a property owner," not "the property owner." Defendants' untenable position is essentially that an Ohio limited liability corporation second home is exempt from Sullivan's Island zoning ordinances causing direct and proximate harm to longtime Lowcountry residents. It is fair to say that the State Legislature never intended to exempt an Ohio LLC from local zoning ordinances and South Carolina laws. Defendants' position is wrongful, if not absurd.

State and Federal constitutional mandates and legislative intent support mediation, even-handedness, and fairness. Moreover, additional relief is requested in the property owners' motion. This material fact and others were misapprehended or overlooked. The matter is not moot. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court alter or amend the orders entered September 23, 2015, and September 29, 2015.

Respectfully submitted,

Dated October 10, 2015.


PO Box 187
Sullivan's Island, SC 29482
843.883.3010

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

8



JOHN DOE
PO BOX 187
SULLIVANS ISLAND SC 29482-0187

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Order filed 4/10 & 4/30 are rescinded

CASE NO: 2015CP1000775

John Doe VS Board of Zoning Appeals, defendant, et al

This judgment was entered on the 06th day of May, 2015, and notice mailed first class on Monday, May 11, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

46

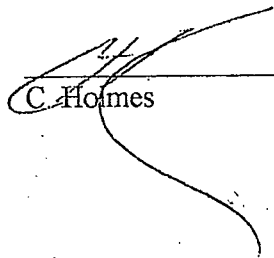
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

- 1) This affidavit is submitted in support of the attached Rule 59(e), SCRCF, Motion, and I am the plaintiff.
- 2) As owner of the land that is the subject of a decision of the board of appeals, I have statutory standing to appeal. S.C. Code § 6-29-820.
- 3) The attached copy of correspondence dated April 27, 2015, documents there was no required notice in Case No. 2015-CP-10-0775, *Doe v. BZA et al.* Moreover, it establishes that, on or before April 27, 2015, defendants knew or should have known they failed to provide the required notice to the other side. Defendants failed to timely disclose this material fact, thereby wrongfully inducing this Honorable Court to rely on their misrepresentations.
- 4) I received no required notice and no actual notice and was prejudiced thereby.
- 5) Defendants wrongfully induced this Honorable Court to rely on their misrepresentations and to sign ex parte order. On or before April 27, 2015, defendants failed to timely disclose the material fact that they failed their duty to provide required notice. Due in whole or in part to defendants' lack of diligence, ex parte order was signed. It has come to our attention that defendants made misrepresentations and/or material omissions to the Charleston County Clerk of Court as well.
- 6) It is fair to say that defendants would want notice. In what has become business as usual for defendants' counsel, they failed their professional responsibilities to this Honorable Court, to the Charleston County Clerk of Court, to their client, and to the other side. Defendants' motion should be dismissed/stricken.

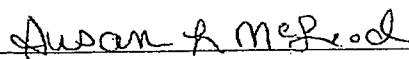
FURTHER THE AFFIANT SAITH NOT.


C. Holmes

Subscribed and sworn to before me,

Notary Public, this 30th day

of June, 2015.


NOTARY PUBLIC

My commission expires: 02/26/17



April 27, 2015

PO Box 187

The enclosed mail was addressed to John Doe at the Post Office address. However, Pratt-Thomas, Walker, Attorneys At Law instructed me to place these letters into PO box 187.

If you have any questions or concerns, please call the attorney's office.

Sincerely,

Margie L. Seabrook

Margie L. Seabrook

Postmaster

2061 Middle St.

Sullivan's Island, SC 29482



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

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Barroll, John

John Doe VS Board of Zoning Appeals, defendant, et al

Case Number:	2015CP1000775	Court Agency:	Common Pleas	Filed Date:	02/09/2015
Case Type:	Common Pleas	Case Sub Type:	Zoning Board 970	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	04/10/2015	Disposition Judge:	Dennis, R. Markley Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#) [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

Click the  icon to show associated parties:

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Board of Zoning Appeals					Defendant		02/09/2015
☒ BZA					Defendant		02/10/2015
☒ Doe, John					Plaintiff Pro Se		04/30/2015
☒ Doe, John					Plaintiff		04/14/2015
☒ Linton, John Phillips Jr.					Defendant Attorney		03/09/2015
☒ S I					Defendant		02/10/2015
☒ S I Building Dept					Defendant		02/10/2015
☒ S I Zoning Administrator					Defendant		02/10/2015
☒ Sullivans Island Town of					Defendant		03/09/2015

FILED
2015 MAR -9 PM 3:52
JULIE J. AGRESTI
CLERK OF COURT
BY _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Notice of Motion and Motion to Dismiss by first class mail to the below-listed party on March 5, 2015:

John Doe, pro-se
2061 Middle Street
Sullivan's Island, SC 29482-0187

By: Chris Morrow
Chris Morrow
Paralegal to John P. Linton, Jr.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS.
COUNTY OF CHARLESTON	)	
John Doe,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 15-CP-10-0775
	)	
Board of Zoning Appeals,	)	
	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 7, 2015, before The Honorable R. Markley Dennis, Jr., in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

John P. Linton, Esq.

Treholm Walker, Esq.

Deborah Garrison
 Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

John Doe v Board of Zoning Appeals
Case No. 15-CP-10-0775
Hearing of April 17, 2015
Before The Honorable R. Markley Dennis, Jr.

2

1 THE COURT: Doe versus Board of
2 Zoning Appeals. Y'all are back? Is this
3 Sullivans Island?

4 MR. LINTON: Yes, Your Honor.

5 THE COURT: Okay. Who is ---

6 MR. WALKER: Jane Doe d/b/a (sic)
7 John Doe does not appear to be here.

8 THE COURT: Have they proceeded
9 always as "Doe", "the Does"?

10 MR. LINTON: Yes, Your Honor. All
11 they've filed is a Notice of Appeal as John
12 Doe, and we've filed a Motion to dismiss that
13 appeal.

14 THE COURT: Did they have an
15 address where the Does live?

16 MR. LINTON: Yes.

17 THE COURT: Now we know the Does.
18 They were sent notice of that, Miss Caroline?

19 CAROLINE LEONARD: Your Honor, notice
20 was sent to 2061 Middle Street on Sullivans
21 Island, South Carolina.

22 THE COURT: Is that the address
23 that you have?

24 MR. LINTON: Your Honor, it is. I
25 believe -- was the zip code on there? 29482-

1 187?

2 CAROLINE LEONARD: That's correct.

3 MR. LINTON: That's the same.

4 THE COURT: Very well.

5 MR. WALKER: And that is the
6 subject property, too.

7 THE COURT: Okay. Then --

8 MR. LINTON: Your Honor, it is not
9 the subject property. We believe that's the
10 United States Post Office on Sullivans
11 Island.

12 THE COURT: You briefed it?

13 MR. LINTON: Yes, Your Honor.

14 THE COURT: Your Motion is
15 granted. Thank you, sir. If you (Mr.
16 Linton) want to prepare an Order, I will be
17 happy to sign it. A Motion to Dismiss is
18 what you're asking for?

19 MR. LINTON: Yes, Your Honor.
20 We've briefed it. We have not filed the
21 brief but --

22 THE COURT: File the brief. For
23 the record, I am relying on your position
24 stated in the brief -- and the fact that they
25 are not here, but primarily the position

John Doe v Board of Zoning Appeals

Case No. 15-CP-10-0775

Hearing of April 17, 2015

Before, The Honorable R. Markley Dennis, Jr.

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1 stated in your brief, which I have seen.

2 (HEARING CONCLUDED)

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John Doe v Board of Zoning Appeals

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Case No. 15-CP-10-0775

Hearing of April 17, 2015

Before The Honorable R. Markley Dennis, Jr.

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF CHARLESTON)
4
5

6 I, the undersigned Deborah Garrison, Circuit
7 Court Reporter for the 9th Judicial Circuit, hereby
8 certify that the foregoing is a complete and
9 accurate transcript of the hearing held in the
10 within action heard on April 7, 2015, before The
11 Honorable R. Markley Dennis, Jr.;

12 I further certify that I am neither kin nor
13 counsel to any of the parties and have no interest
14 in the outcome of this action.

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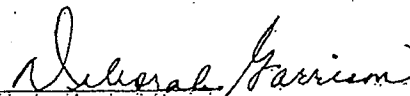
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21

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Deborah Garrison.

Charleston, South Carolina

September 1, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

vs.

Board of Zoning Appeals (BZA) and
Town Of Sullivan's Island (S.I.),
S.I. Zoning Administrator, and
S.I. Building Dept., Individually
and In Official Capacity,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-0775

NOTICE OF MOTION
AND MOTION TO DISMISS

FILED
2015 MAR -9 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JOHN DOE, PLAINTIFF:

You will please take notice that the undersigned, as attorneys for the Defendants Town of Sullivan's Island, the Town of Sullivan's Island Board of Zoning Appeals, the Town of Sullivan's Island Zoning Administrator and the Town of Sullivan's Island Building Department (collectively, "Defendants") will, ten (10) days after the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the presiding judge for the Court of Common Pleas, Charleston County at the Charleston County Courthouse, for an order pursuant to Rule 12(b)(1) & (6), SCRCP, dismissing the Notice of Appeal and Requests for Pre-Litigation Mediation on the following grounds:

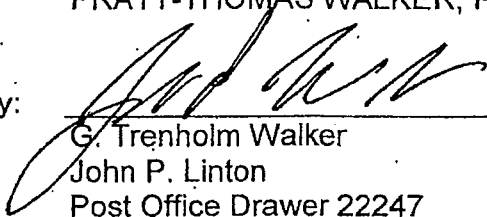
- (1) The appeal does not include a petition, as required by the statute, stating why the decision was incorrect as a matter of law. See S.C. Code Section 6-29-820.

(2) John Doe is not the property owner whose land is the subject of the decision of the board of appeals. Therefore, under the applicable statute, John Doe cannot properly appeal a decision of the board of zoning appeals by filing a notice of appeal and request for pre-litigation mediation. See S.C. Code Section 6-29-820 & 825.

(3) The John Doe Plaintiff lacks standing to appeal because only a person with a substantial interest in a decision of a board of appeals or an officer or agent of the appropriate governing authority has standing to appeal a decision of the board of zoning appeals to the circuit court

This motion will be based on the pleadings, exhibits thereto, and the applicable law.

PRATT-THOMAS WALKER, P.A.

By: 

G. Trenholm Walker
John P. Linton
Post Office Drawer 22247
Charleston, SC 29413-2247
Phone: 843.727.2208
gtw@p-tw.com
jpl@p-tw.com

ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

March 5, 2015

FILED
2015 MAR -9 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Notice of Motion and Motion to Dismiss by first class mail to the below-listed party on March 5th, 2015:

John Doe, pro-se
2061 Middle Street
Sullivans Island, SC 29482-0187

By: Chris Morrow
Chris Morrow
Paralegal to John P. Linton, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

vs.

Board of Zoning Appeals (BZA) and Town
Of Sullivan's Island (S.I.),
S.I. Zoning Administrator, and
S.I. Building Dept., Individually
and In Official Capacity,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-0775

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS**

FILED
2015 APR -7 PM 1:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

Defendants/Respondents respectfully submit this Memorandum of Law in Support of their Motion to Dismiss John Doe Plaintiff/Appellant's ("Plaintiff/Appellant") Notice of Appeal and Request for Pre-Litigation Mediation ("Notice of Appeal").

On February 9, 2015, John Doe filed a Notice of Appeal purporting to appeal a decision of the BZA and request pre-litigation mediation of that appeal. *See Ex. A.* The Notice of Appeal stated, in total, as follows:

Pursuant to South Carolina statutory and case law, plaintiff respectfully requests permission to proceed under the current caption anonymously as John Doe regarding the BZA appeal of Permit Number 2014-2899 for 1607 Poe Avenue, Sullivans Island (SI), SC. In accordance with South Carolina Code, Section 6-29-825, notice of appeal and request for pre-litigation mediation is hereby timely filed.

Ex. A. The Notice of Appeal was signed as J. Doe and gave the address "2061 Middle St. S.I., SC 29482-0187." **Ex. A.** In response to this Notice of Appeal, Defendants/Respondents filed this Motion to Dismiss. As explained herein, Plaintiff/Appellant's Notice of Appeal should be dismissed at the outset because it does not comply with the statutory requirements regarding

appeals from a boards of zoning appeals. Additionally, based upon the Notice of Appeal, Plaintiff/Appellant lacks standing to bring this appeal.

- I. **The Notice of Appeal should be dismissed because John Doe is not the property owner whose land is the subject of the decision of the board of appeals. Therefore, under the applicable statute, John Doe cannot appeal a decision of the board of zoning appeals by filing a notice of appeal and request for pre-litigation mediation.**

Plaintiff/Appellant purports to appeal a BZA by filing a notice of appeal and request for mediation. South Carolina Code section 6-29-820(B) allows the owner of the particular parcel to initiate an appeal (1) by filing a petition with the circuit court setting forth the reasons that the decision is contrary to law, or as an alternative method of appealing, (2) "*A property owner whose land is the subject of a decision of the board of appeals . . .*" may appeal a decision of the board of zoning appeal by filing, within thirty days of the mailing of the board of zoning appeals decision, "a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825." S.C. Code § 6-29-820(B)(1)-(2). (double emphasis added). As specifically noted by the statute, this process is only available to the owner of the land that is the subject of the zoning board of appeals decision.

Here, the Notice of Appeal does not include any information as to the identity of the Plaintiff/Appellant except an address¹ which is not the address that was the subject of the BZA appeal referenced in the Notice of Appeal. Therefore, Plaintiff/Appellant's Notice of Appeal should be dismissed because Plaintiff/Appellant's Notice of Appeal is ineffective to the extent it attempts to request mediation—the statute only permits the owner of the land that is the subject of the zoning board of appeals decision to appeal a ruling by filing a notice of appeal accompanied by a request for pre-litigation mediation.

¹ Upon information and belief, the address provided is the address of the United States Post Office on Sullivan's Island and the zip code indicates a particular Post Office Box.

II. The Notice of Appeal should be dismissed because the filing does not include a petition, as required by the statute, stating the reasons that the BZA decision was incorrect as a matter of law.

As noted above, one does not have to be an owner of the property that is the subject of an appeal in order to appeal a ruling. South Carolina Code provides that 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, within thirty days of the mailing of the decision of the board, "filing with the clerk of the court *a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.*" South Carolina Code § 6-29-820(A) (double emphasis added). Compliance with the statutory requirement of filing a petition setting for the reason(s) why the decision is contrary to law is significant because it is this action, required by statute, that preserves an appellant's issues for appeal. See Newton v. Zoning Bd. of Appeals for Beaufort County, 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011) (holding that "the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires.").

Here, Plaintiff/Appellant has not filed any petition with the Notice of Appeal. See Ex. A. Therefore, to the extent Plaintiff/Appellant seeks to appeal the BZA decision as a person having a substantial interest in the decision (as distinguished from an owner of the property that is subject to the appeal), to Notice of Appeal is ineffective, no issues have been preserved or raised for appeal, and the Notice of Appeal should be dismissed.

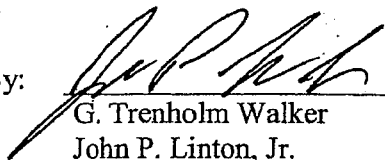
III. The John Doe Plaintiff/Appellant lacks standing to appeal because only a person with a substantial interest in a decision of a board of appeals, an officer or agent of the appropriate governing authority, or a property owner whose land is the subject of a decision of the board of appeals has standing to appeal a decision of the board of zoning appeals to the circuit court

Pursuant to S.C. Code sections 6-29-820(A) and (B) the following persons have standing to appeal a decision of a board of zoning appeals: (1) A person who may have a substantial interest in any decision of the board of appeals; (2) an officer or agent of the appropriate governing authority; and (3) a property owner whose land is the subject of a decision of the board of appeals. See S.C. Code §§ 6-29-820(A)-(B). Here, based upon the Notice of Appeal, Plaintiff/Appellant falls into none of these categories. Plaintiff/Appellant's decision to attempt to proceed anonymously and failure to provide any allegations of any facts about their position results an appeal of a decision by someone purporting to have a post office box on Sullivan's Island. The statute does not provide for such a person to maintain and appeal. See e.g., Bevivino v. Town of Mt. Pleasant Bd. of Zoning Appeals, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013) (noting that 6-29-820 contains the requirements for statutory standing to maintain an appeal). Therefore, the Notice of Appeal should be dismissed for the additional reason that Plaintiff/Appellant lacks standing to maintain this appeal.

CONCLUSION

For the reasons discussed above,

PRATT-THOMAS WALKER, P.A.

By: 

G. Trenholm Walker
John P. Linton, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
Phone: 843.727.2208

gtw@p-tw.com
jpl@p-tw.com

ATTORNEYS FOR
DEFENDANTS/RESPONDENTS.

Charleston South Carolina
April 7, 2015



STATE OF SOUTH CAROLINA

COUNTY OF CHAS.

JOHN DOE

Plaintiff(s)

vs.

BEA et al

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-775

(Please Print)

Submitted By:

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>-NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☒ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Foreign Subpoenas (650)
☐ Motion to Quash Subpoena in Out-of-County Action (660) | | |

Submitting Party Signature: [Signature]

Date: 2/9/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe,

Plaintiff,

-vs-

Board of Zoning Appeals (BZA) and
Town of Sullivan's Island (S.I.),
S.I. Zoning Administrator, and
S.I. Building Dept.,
Individually and In Official
Capacity.

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO.:

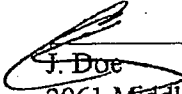
) 2015-CP-10-0775

) NOTICE OF APPEAL
) AND REQUEST FOR
) PRE-LITIGATION MEDIATION

FILED
2015 FEB -9 PM 12:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Pursuant to South Carolina statutory and case law, plaintiff respectfully requests permission to proceed under the current caption anonymously as John Doe regarding the BZA appeal of Permit Number 2014-2899 for 1607 Poe Avenue, Sullivan's Island (SI), SC. In accordance with South Carolina Code, Section 6-29-825, notice of appeal and request for pre-litigation mediation is hereby timely filed.

Dated Feb. 7, 2015.


J. Doe

2061 Middle St.
S.I., SC 29482-0187

2015-CP-10-0775

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing Memorandum of Law in Support of Motion to Dismiss by first class mail to the below-listed party on April 7, 2015:

John Doe, pro-se
2061 Middle Street
Sullivan's Island, SC 29482-0187

By: Chris Morrow
Chris Morrow
Paralegal to John P. Linton, Jr.

FILED
2015 APR -7 PM 1:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY J

State of South Carolina) In the Court of Common Pleas
County of Charleston) Ninth Judicial Circuit

John Doe,) Transcript of Record
Plaintiff,) 2015-CP-10-00775
Vs.)
Board of Zoning Appeals,)
et al.)
Defendants.)

September 2, 2015

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Presiding Judge

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

Cynthia Holmes, pro Se Litigant

John Phillips Linton, Esquire

Attorney for the Defendants

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

Plaintiff's Motion for Mediation and Defendant's
Motion to Dismiss.....3
Certificate of Reporter.....9

NO EXHIBITS WERE INTRODUCED

1 Wednesday, September 2, 2015

2 THE COURT: The next one is John Doe vs. Board of
3 Zoning Appeals. Morning.

4 MS. HOLMES: Cynthia Holmes.

5 THE COURT: Okay.

6 MR. LINTON: John Linton on behalf of the Town of

7 Sullivan's Island, the Defendants --

8 THE COURT: Very well.

9 MR. LINTON: -- and this is Joe Henderson, Town
10 Zoning Administrator.

11 THE COURT: Thank you. Okay. It's a motion by the
12 plaintiff and you are proceeding pro se, as I understand
13 it; is that correct?

14 MS. HOLMES: Yes, Your Honor.

15 THE COURT: Very well. And then there's a motion
16 to dismiss by the defendant.

17 MR. LINTON: Yes, Your Honor.

18 THE COURT: All right. You are moving to dismiss
19 the what?

20 MR. LINTON: The appeal, yes, sir.

21 THE COURT: Let's hear the plaintiff's motion and
22 then I'll hear yours. Okay?

23 Ms. Holmes, I'll be happy to hear from you.

24 MS. HOLMES: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. HOLMES: To be brief, our side is here to
2 request mediation. Thank you.

3 THE COURT: Okay. All right. Do you wish to
4 respond to that?

5 MR. LINTON: Your Honor, their motion -- the
6 plaintiff's motion to reconsider has to do with an order
7 that was entered on our motion to dismiss which has been
8 rescinded, so that motion is moot.

9 THE COURT: Okay. I'll be happy to hear from you
10 concerning the motion to dismiss the appeal, yes.

11 MR. LINTON: Your Honor, our motion to dismiss the
12 appeal is based on the Statute 6-29-820, which lays out
13 the statutory requirements to appeal before a zoning
14 appeal's decision. The statute allows a person to appeal
15 by filing a petition stating all the reasons that they
16 think that a board of zoning appeal's decision is
17 improper. The appeal in this case, Your Honor, is a
18 paragraph, essentially. It doesn't state any reasons
19 that the decision wasn't proper or an error of law and so
20 the appeal does not meet the statutory requirement.

21 The plaintiff appellant had said that they are
22 moving under the mediation statute which is
23 6-29-820(b)(2) and 6-29-825. That statute allows a party
24 who is the owner of the subject property that is the
25 subject of the decision of the Board to file a notice of

1 appeal requesting mediation.

2 Here the notice of appeal is for property located
3 at 1607 Poe Avenue on Sullivan's Island and the notice of
4 appeal does not state that the plaintiff is the owner of
5 that property. And, in fact, the plaintiff's motion to
6 reconsider that is moot now in that she states that she
7 is the owner of the adjacent property. So she doesn't
8 meet the requirements for the mediation statute.

9 THE COURT: All right. Okay.

10 All right. I'll be happy to hear from you.

11 MS. HOLMES: Thank you, Your Honor. The statutory
12 provision that he is referring to applies to folks who
13 are intervening after the hearing. If folks have been
14 heard at the hearing then they are allowed to file a
15 notice of appeal and request for mediation because the
16 issues have already been aired or heard in element. So
17 we would submit that his description of a decision that
18 affects the property in this case also affects adjacent
19 property owners. Thank you, Your Honor.

20 THE COURT: Yes, sir?

21 MR. LINTON: Your Honor, I have a copy of the
22 statute if you --

23 THE COURT: That's all right. Anything else?

24 MR. LINTON: No, Your Honor. The statute is clear.
25 It says a property owner whose land is the subject of the

1 decision may appeal by final notice of appeal --

2 THE COURT: Strictly construing the statute, which
3 I will be doing. I would -- yes, ma'am?

4 MS. HOLMES: If I may be allowed to submit a
5 memorandum on it.

6 THE COURT: No, because you can argue. I'm doing
7 it based on the law and based on the statute and I find
8 that the statute precludes you from filing an appeal.
9 You obviously are not representing the owner because you
10 can't, and you are here in your individual capacity and
11 you are not the property owner. And I find that the
12 property owner is the person that has to appeal it;
13 therefore, I dismiss the appeal.

14 If you'll prepare the appropriate order based on
15 that, for that reason.

16 MR. LINTON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. HOLMES: Your Honor, if I may. There is
19 apparently an affidavit that was filed. It's not part of
20 -- at least not appearing on the website, so I'd like to
21 submit that for --

22 THE COURT: You can file whatever you think is
23 needed to be filed. This case will go up if you decide
24 to appeal it based on the record. So thank you, ma'am,
25 and that includes everything in the file. Thank you.

1 MS. HOLMES: Your Honor, may I ask if you have seen
2 the affidavit?

3 THE COURT: I have the file right here. I don't
4 know whether I've seen the affidavit. You are not -- I
5 don't even need to see your affidavit. You are missing
6 my point. You, I don't believe, have standing to appeal.
7 That's basically what the statute says, so thank you.
8 You can argue that point.

9 MS. HOLMES: Thank you, Your Honor.

10 THE COURT: Thank you. So your affidavit is really
11 no consequence to me. You are not the property owner and
12 you can't -- you obviously are not -- I want to be sure.
13 You are not appearing and arguing the property owner's
14 interest in this, correct? Because you can't do that as
15 a pro se litigant. Correct?

16 MS. HOLMES: Your Honor, it's my understanding
17 that --

18 THE COURT: Ma'am, I'm asking you a question
19 because we have a situation here. You are appearing as
20 representing yourself. You are not the property owner of
21 this particular lot, correct?

22 MS. HOLMES: I am the property owner of property
23 that is affected by the decision --

24 THE COURT: I didn't ask you that, Ms. Holmes. You
25 have a propensity to not answer a specific question. I'm

1 asking you a specific question. I understand you own
2 adjacent property and you are claiming an interest by
3 owning the adjacent property and an interest in what's
4 done. I understand that. But you are not the property
5 owner of this particular lot, correct?

6 MS. HOLMES: I'm not the property owner of that lot
7 but I believe that the statute states that property --

8 THE COURT: Ma'am, you can argue that to the
9 Supreme Court. I understand it. I'm basing my ruling on
10 the fact that you are not the property owner. Thank you.

11 MS. HOLMES: Thank you, Your Honor.

12 THE COURT: Okay. I don't believe I can be any
13 more specific. Thank you.

14 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the
Ninth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had
and the evidence introduced in the hearing of the
captioned case in Circuit Court on the 2nd day of
September 2015.

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

September 11, 2015

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

77792

RECEIVED

NOV 05 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-10-0775

John Doe

Appellant,

v.

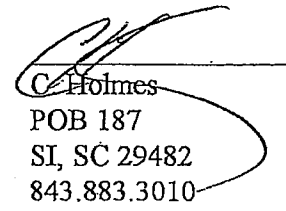
Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept.,
Individually and In Official
Capacity.

Respondents.

NOTICE OF APPEAL

The Appellant timely appeals the order of the Honorable R. Markley Dennis, Jr.,
entered September 23, 2015.

Dated October 23, 2015.


C. Holmes
POB 187
SI, SC 29482
843.883.3010

77

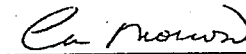
2015-cv-10-775

FILED
2015 SEP 30 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of Correspondence to The Honorable R. Markley Dennis, Jr. dated April 30, 2015 by first class mail to the below-listed party on September 28, 2015:

John Doe
P.O. Box 187
2061 Middle Street
Sullivan's Island, SC 29482-0187

By: 
Chris Morrow
Paralegal to John P. Linton, Jr.

PRATT-THOMAS | WALKER
ATTORNEYS AT LAW
PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403
PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238
WWW.P-TW.COM

JOHN B. LINTON, JR.
Email: jpl@p-tw.com
Direct: (843) 727-2252

April 30, 2015

Via Email: riddennis@sccourts.org
And United States Mail

The Honorable R. Markley Dennis
Post Office Box 1800
300B California Avenue
Moncks Corner, SC 29461-1800

RE: John Doe v. Board of Zoning Appeals (BZA), et al
C/A No.: 2015-CP-10-0775

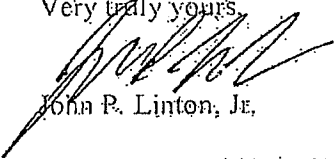
Dear Judge Dennis:

On April 7, 2015, the Court had a hearing on Defendants/Respondents' Motion to Dismiss this matter. No one appeared on behalf of Plaintiff/Appellant John Doe. The Court inquired with the clerk as to whether notice of the hearing was sent to Plaintiff/Appellant John Doe. The Clerk confirmed that notice was sent to the address on the Notice of Appeal and Request for Pre-Litigation Mediation. (John Doe, 2061 Middle Street, S.I., SC 29482-0187). Your Honor granted the motion, asked our office to prepare a formal order, and later entered a Form 4 order granting the motion.

On April 21, 2015, our office sent the Court and Plaintiff/Appellant John Doe a proposed order via U.S. Mail. Since sending that proposed order our office has been contacted by the U.S. Post Office on Sullivan's Island. The Post Office has informed us that the mail being sent to John Doe by both the clerk's office and our office has not been reaching any particular recipient or post office box. Our office confirmed the address on the Notice of Appeal and Request for Pre-Litigation Mediation. However, it appears additional information was included in the civil action cover sheet (J. Doe, 2061 Middle Street, P.O. Box 187, Sall. Isd., SC 29482-0187). Our office has requested that the mail from the Court and our office to John Doe at 2061 Middle Street, Sullivan's Island, SC be placed in PO Box 187.

I wanted to bring this to the Court's attention before any formal order was entered in that matter. I have also contacted the clerk's office to inform them that it appears John Doe may not have received notice of the hearing.

Very truly yours,

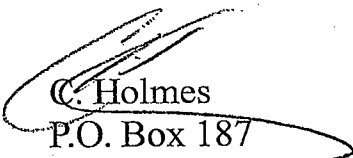

John B. Linton, Jr.

cc: John Doe [2061 Middle Street, P.O. Box 187, Sullivan's Island, SC 29482-0187].
Caroline Leonard

79

Certificate

The Appellant hereby certifies that the Record on Appeal includes matter designated to be included which complies with Rules 209 and 210, SCACR, and not any matter which is not relevant to the appeal.



C. Holmes

P.O. Box 187

Sullivan's Isd.,

SC 29482-0187

(843)883-3010

For Appellant