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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2021-000139
Case No. 2020-CP-07-0112

Eric Greenway, as Agent for Beaufort County.....Appellant,

v.

Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark
Place, LLC.....Respondents.

RECORD ON APPEAL

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August 6, 2021
Beaufort, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL DISTRICT
COUNTY OF BEAUFORT	)	CASE No.: 2020-CP-07-00112
ERIC GREENWAY, as agent for	)	
Beaufort County,	)	
	)	
Appellant,	)	
	)	
vs.	)	ORDER DENYING AND DISMISSING
	)	APPEAL
	)	
BEAUFORT COUNTY ZONING	)	
BOARD OF APPEALS, ROBERT	)	
SAMPLE, JR., and BALLPARK	)	
PLACE, LLC,	)	
	)	
Respondents.	)	
	)	

This matter was before the Court on 6 August 2020. This is an appeal from a decision of the Beaufort County Zoning Board of Appeals (“Board”) which reversed the interpretation by Eric Greenway, AICP, the Director of the Beaufort County Department of Community Development, in which he determined that the legal non-conforming status of certain real property owned by Ballpark Place, LLC for use as a Manufactured Home Community had been abandoned. The Board found that the legal non-conforming status for use as a Manufactured Home Community was not abandoned and such use continues to be a legal non-conforming use of the property. Jurisdiction for this appeal is set forth in Section 6-29-820, et. seq., Code of Laws of South Carolina, 1976, as amended.

FACT/PROCEDURAL BACKGROUND

Respondent Ballpark Place, LLC, is the owner of real property located in Beaufort County, South Carolina, bearing the PIN Nos. R300 016 000 183B 0000 (“183B”) and R300 016 000 0360 0000 (“360”). Ball Park Road Mobile Home Park, composed of 183B and 360 (“Park”), is managed

by Robert Sample, Jr. and is located on St. Helena Island, abutting Ballpark Road. Together, both parcels encompass approximately 4.29 acres of land. The parcels were planned for and presently contain nine improved sites intended for the placement of manufactured homes. Currently, the parcels have access to utility services for water, sewer, and electricity.

Ballpark Place, LLC, purchased the Park on May 30, 2019, intending to continue the Park's use as a Manufactured Home Community pursuant to its legal non-conforming, or "grandfather", use. Prior to Ballpark Place, LLC's ownership, the Park was owned by CSB Property Management II, LLC, ("CSB") from October 29, 2010, until May 30 2019. During the time of the CSB's ownership of the Park, several of the nine pads were leased to manufactured homeowners, eventually dwindling to one leasee.

Prior to 2014, the Park was zoned Rural, with one of the permitted uses being a Manufacture Home Community, defined under Section 106-1098, Code of Ordinances for Beaufort County, Zoning and Development Standard, Supp. No. 24 ("Old Code"), in pertinent part, as follows:

Manufactured Home Community - A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights. Subdivision of land as a single-family detached, single-family cluster, family compound, planned community or small single-family affordable land use and intended for fee-simple sale of lots for manufactured homes does not constitute it being defined under this use.

Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014).

In 2014, the Beaufort County Council adopted and implemented the Community Development Code, ("CDC") which changed the zoning of the Park to T2R, eliminating the Rural zoning and the limited Manufactured Home Community use.

Upon the purchase of the Park, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes. During his preparations of the Park, Mr. Sample verified that utilities were still connected, such as sewer available to each site through functioning septic systems, and water available to each site via a well in the Park. Mr. Sample also verified that electrical utilities were available to each site and functioning, and that the stands required to place new manufactured home were functional or repairable. All sites were available for lease for home sites, with one site continually being leased by Mr. Pope.

On 24 September 2019, Mr. Greenway informed Mr. Sample that the legal non-conforming use of the Park as a Manufactured Home Community had been previously abandoned for more than a year and, and such use was no longer available for the Park.

Mr. Sample appealed Mr. Greenway's administrative decision to the Board, which held a hearing on the matter on 21 November 2019. During their presentation to the Board, Mr. Sample and his counsel presented evidence of the continuous, uninterrupted use of the Park as a Manufactured Home Community, including a plat showing the individual manufactured home sites, tax records regarding the Park, communications with utilities providers, rent rolls, and testimony of Mr. Sample describing the continuing utility service to the sites, the condition of the sites for lease, and the presence of a long-term resident who currently leased one of the sites. After hearing the evidence and testimony presented, the Board issued its ruling overturning Mr. Greenway's decision, and made the following factual findings:

1. The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
2. There was no interruption in the legal, pre-existing, non-conforming use.
- 3.

STANDARD OF REVIEW

The Court of Appeals of South Carolina clearly set forth the standard of review in zoning appeals. *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282 (Ct.App.2011). "Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision 'is arbitrary, capricious, has no reasonable relation to a lawful purpose, or in the [zoning] board has abused its discretion.'" *Id.* at 116, 719 S.E.2d at 284 (quoting *Rest. Row Assocs. V. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (quoting *Cnty. Of Richland v. Simpkins*, 348 S.C. 64, 668, 560 S.E.2d 902, 904 (Ct.App.202)). "The factual findings of the Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law." *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995). "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." SC Code Section 6-29-840. "[T]he factual findings of the jury will not be disturbed unless a review of the record discloses that there is **no evidence** which reasonably supports the jury's findings." *Vulcan Materials Co. v. Greenville County Bd. Of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (quoting *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) (emphasis added)).

In *Rest. Row Assocs. v. Horry Cnty*, the Supreme Court of South Carolina clearly stated the standard of review in zoning appeals:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its

decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)

(quotation marks omitted).

ANALYSIS

The parties agreed during the hearing before the Board that there was no question as to the establishment of the legal nonconforming use of the Park as a Manufactured Home Community prior to the adoption of the current zoning of the property as T2R in 2014. Therefore, the sole issue in this appeal is whether the Board's decision regarding the alleged abandonment of the legal nonconforming use of the Park was arbitrary, capricious, and without supporting evidence as to whether the Manufactured Home Community use was abandoned.

The Beaufort County CDC lists seven criteria to be considered when determining whether abandonment of a particular use has occurred:

1. If Steps have been taken by the property owner to resume the non-conforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the non-conforming use have been removed;
4. If signs advertising the non-conforming use have been removed;
5. If business licenses for the non-conforming use have expired or not been renewed;
6. If activities generally associated with the non-conforming use are no longer observed on the property; and
7. Other action which, in the opinion of the Director, demonstrate an intention of the part of the owner to abandon the non-conforming use.

The Board received evidence showing the Park continued to meet the requirements of Section 106-1098 of the Old Code. The evidence presented to the Board included a plat showing

the locations of the "pads," rent rolls showing the continued leasing of one of the nine sites to Mr. Pope, the admission by Mr. Greenway that Mr. Pope resides on the site, communications from SCE&G as to the current and prior electrical status, and testimony from Mr. Sample that the sites had water and sewer services available. When asked how many sites were not in suitable repair for usage, Mr. Sample indicated the only issue with the sites was the condition of the "stands" for the placement of incoming homes, which could be easily repaired. Additionally, real property Printout of Tax Records from the Beaufort County Assessor's Office indicated the Park was described as a manufactured housing site and denoted the existence of individual address corresponding to individual sites. The evidence presented to and elicited by the Board clearly addressed the seven criteria. The first criteria, "[i]f steps have been taken by the property owner to resume the nonconforming use" immediately assumes the non-conforming use was ceased. However, the evidence presented to the Board clearly indicates that the Park continued to operate and address any repair issues. The second criteria, "[i]f utility services such as water, gas, and electricity to the property have been disconnected" was addressed through the email from SC&G stating the status of electric hook-ups to the sites, and Mr. Sample's testimony that each of the sites had currently operating water supplies provided by an onsite well system, and sewer was provided to each site via functioning septic systems. Criteria three was also addressed in the evidence presented for criteria two. The functioning water, sewer, and electrical services were still available at the site. Admittedly, there were some repairs to be made; nonetheless, Mr. Pope's site continues to function, and other sites are available for home placement. As to criteria six, "[i]f activities generally associated with the non-conforming use are no longer observed on the property," there was evidence of the continued existence of utility hook-ups, Mr. Pope's home, property tax records, and other visible evidence of the continued Manufactured Home Community use. The Board

properly considered the evidence presented to them and correctly found the legal, non-conforming use as a Manufactured Home Community had not been abandoned.

CONCLUSION

This Court finds that there was sufficient evidence in the record of this appeal to support the decision of the Board, that the legal nonconforming Manufactured Home Community use of the Park was not abandoned and continues to be a legal non-conforming use of the Park, and the decision of the Board is correct as a matter of law. The Court finds that the Board's decision was neither arbitrary nor capricious, and that the Board did not abuse its discretion in reversing Mr. Greenway's decision. It is therefore ordered that the Appellant's appeal is denied, and this action is dismissed with prejudice.

AND IT IS SO ORDERED!

Marvin H. Dukes III
MASTER IN EQUITY

Beaufort, South Carolina
August _____, 2020



Beaufort Common Pleas

Case Caption: Eric Greenway VS Zoning Board Of Appeals Beaufort County ,
defendant, et al

Case Number: 2020CP0700112

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-10-06 14:41:46 page 8 of 8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-07-00112

Eric Greenway

Zoning Board of Appeals, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me on Eric Greenway's Motion for Reconsideration; filed October 16th, 2020. After review of the file I hereby deny the motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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	N/A	\$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.

	3069	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 Benjamin T. Coppage

 Thomas C. Taylor

 Bradley Allan Mitchell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Eric Greenway VS Zoning Board Of Appeals Beaufort County ,
defendant, et al

Case Number: 2020CP0700112

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-01-26 14:37:55 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ERIC GREENWAY, as agent for Beaufort
County,

Appellant,

vs.

BEAUFORT COUNTY ZONING
BOARD OF APPEALS, ROBERT
SAMPLE, JR., and BALLPARK PLACE,
LLC,

Respondents.

IN THE COURT OF COMMON PLEAS

CIVIL CASE NO.: 2020-CP-07-_____

**PETITION FOR APPEAL FROM
THE BEAUFORT COUNTY
ZONING BOARD OF APPEALS**

COMES NOW, the Appellant, Eric Greenway as agent for Beaufort County, pursuant to S.C. Code Ann. § 6-29-820(A), and herewith files this Petition for Appeal of the Decision of the Beaufort County Zoning Board of Appeals (hereinafter “ZBOA”) dated November 22, 2019, executed December 19, 2019, and mailed December 26, 2019, a copy of which is included herewith as Exhibit A.

PARTIES

The Appellant, Eric Greenway (hereinafter “Greenway”), is an agent of Beaufort County (hereinafter the “County”), a political subdivision of the State of South Carolina and the appropriate governing authority to make this appeal. Greenway is the Director of the Beaufort County Department of Community Development (hereinafter “DCD”). As the Director of the DCD, Greenway’s powers and duties include reviewing and making decisions on applications for zoning permits.¹

¹ Community Development Code of Beaufort County, § 7.5.60A.3.a.(1)

The ZBOA is the local board of zoning appeals charged with the duties as outlined in S.C. Code Ann. § 6-29-780, *et seq.* and the Community Development Code of Beaufort County (hereinafter “CDC”) § 7.5.30.

Respondent Robert Sample, Jr. (hereinafter “Sample”) and Ballpark Place, LLC submitted an appeal to the ZBOA on or about October 24, 2019 appealing the Decision of Greenway, the Community Development Director of Beaufort County, concerning real property owned by Ballpark Place, LLC and located on Saint Helena Island, Beaufort County, South Carolina. The ZBOA granted Sample’s request for appeal in the above-referenced written decision.

HISTORY OF THE PROPERTY

This matter concerns two parcels of real property located on Saint Helena Island, South Carolina. The first parcel (hereinafter “Parcel A”) bears tax map reference number R300-016-000-183B-0000 and is inclusive of the addresses 79, 81, 83, 87, and 89 Ball Park Road. The second parcel (hereinafter “Parcel B”) tax map reference number R300-016-000-0360-0000 and is inclusive of the addresses 93, 95, 99, and 101 Ball Park Road.²

It appears that, at one time, there were multiple mobile homes located on the Parcels.³ There has been, and continues to be, a single continuously occupied mobile home located at 89 Ball Park Road.⁴ However, since at least July of 2013, there have either been no mobile homes or vacant mobile homes at each of the other addresses on the Parcels. I.e., for at least six years, there has only been one occupied mobile home on the Parcels.⁵

² Ex. B, Title to Real Estate dated May 30, 2019

³ Ex. C, Rent Rolls, Handwritten Statement of Harold Ruhler, Parks Moss Email, 1996 Plat

⁴ Ex. D, Rent Checks from Michael W. Pope

⁵ Ex. B and *See* Beaufort County GIS Aerial Photographs of the Parcels

From November 16, 2010 until May 30, 2019, both Parcels were owned by CSB Property Management II, LLC. CSB Property Management II, LLC conveyed the parcels to Ballpark Place, LLC on May 30, 2019. Upon information and belief, Sample is the holder of the entirety of the membership interest in Ballpark Place, LLC.⁶ Sample wished to use the Parcels as a mobile home park.⁷ To effect that wish, Sample had contractors and representatives of local utilities visit the parcels to identify the underlying infrastructure.⁸ However, he made no repairs or other upgrades to the property.⁹

APPLICABLE ORDINANCES

A. Manufactured Home Communities

The Beaufort County zoning and planning ordinances are codified in the CDC. The CDC was adopted by the County Council of Beaufort County on December 8, 2014.¹⁰ The CDC's predecessor ordinances were codified in the Code of Ordinances for Beaufort County in Chapter 106, Zoning and Development Standards (hereinafter the "Old Code").¹¹ Under the Old Code, a Manufactured Home Community was defined, in pertinent part, as "[a] parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights."¹² Manufactured Home Communities were permitted for limited use under the Old Code in areas zoned Rural.¹³ The Parcels were zoned Rural under the Old Code.

⁶ Ex. E, Email from Sample to Greenway dated July 24, 2019

⁷ *Id.*

⁸ Ex. F, ZBOA Hearing Minutes for November 21, 2019

⁹ *Id.*

¹⁰ See Beaufort County Ordinance 2014 / 36

¹¹ Code of Ordinances for Beaufort County, Ch. 106

¹² Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014)

¹³ *Id.*

B. Nonconformities

With the adoption of the CDC, the Parcels were zoned T2 Rural (hereinafter “T2R”).¹⁴ Manufactured Home Communities are not a permitted use in T2R zones.¹⁵ Site features established before the adoption of the CDC which do not conform to the CDC’s terms and requirements, but which were properly permitted and legally established at the time of their establishment, are known as Legal Nonconformities under the CDC.¹⁶

“If a nonconforming use is abandoned for a period of one year or longer, it shall not be reestablished and shall only be replaced with a conforming use.”¹⁷ The burden of establishing that a nonconformity lawfully exists is the responsibility of the owner of the land on which the nonconformity is located.¹⁸ The Director of the DCD is charged with determining whether a legal nonconforming use has been abandoned for a period of one year or longer.¹⁹ In determining whether the use has been abandoned for more than one year, the Director must consider “all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;

¹⁴ See Beaufort County Zoning Map

¹⁵ CDC §3.1.60

¹⁶ CDC § 10.1.140

¹⁷ CDC § 8.2.40(A)

¹⁸ CDC § 8.1.30

¹⁹ CDC § 8.2.40(B)

5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.”²⁰

C. Appeals from Interpretations

The ZBOA is authorized to serve as the appellate body for decisions on interpretations of all provisions of the CDC.²¹ A public hearing before the ZBOA follows an application for appeal.²² Appeals of an administrative agent are solely based on the materials available to the agent rendering the initial decision and advisory bodies prior to the decision and the ZBOA cannot consider new or altered plans.²³ The ZBOA must base its decision solely on the record of the appeal, as supplemented by arguments presented at the public hearing.²⁴ The CDC limits the ZBOA’s determinations in an appeal to the following:

- a. The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
- b. The decision-maker made the decision based on a standard not contained in this Development Code or other appropriate County ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Development Code was applied. (This Development Code does not allow administrative decision-makers to consider or create standards not officially adopted); or

²⁰ CDC § 8.2.40(B)

²¹ CDC § 7.3.70.B.1.e.

²² CDC § 7.3.70.C.

²³ CDC § 7.3.70.C.5.

²⁴ CDC § 7.3.70.C.6.(a)

- c. The decision-maker made an error in applying a standard or measuring a standard.²⁵

PROCEDURAL HISTORY

In July and August of 2019, Sample sent emails to Greenway, in Greenways capacity as director of the DCD, informing Greenway that he, Sample, intended to operate the Parcels as a mobile home park.²⁶ In his first email to Greenway, Sample acknowledged that his predecessor in title to the Parcels divested itself of all but one of the mobile homes on the Parcels.²⁷ In a responsive email dated August 14, 2019, Greenway stated that he had reviewed historical aerial photographs of the Parcels and saw no verifiable evidence that multiple homes had been located on the property for use as residences.²⁸ Also in that email, Greenway informed Sample that actual proof of the Parcels' use as a mobile home park was necessary.

Sample responded to Greenway's email and admitted that the most recent aerial photographs of the Parcels on which multiple homes could be seen were from 2012.²⁹ He went on to explain that his predecessor in title began to divest itself of the other mobile homes in 2010.³⁰ On August 26, 2019, Sample emailed copies of rent rolls for the lots on the Parcels which confirmed that there had been only one mobile home rented on the parcels since 2012.³¹ Sample never provided any evidence that more than one mobile home had been rented on the Parcels after 2011.

²⁵ CDC § 7.3.70.D.1.c.

²⁶ Ex. E

²⁷ *Id.*

²⁸ Ex. G, Email from Greenway to Sample dated August 14, 2019

²⁹ Ex. H, Email from Sample to Greenway dated August 15, 2019

³⁰ *Id.*

³¹ Ex. I, Email from Sample to Greenway dated August 26, 2019

On September 24, 2019, Greenway sent Sample an email which stated, in part, that “insufficient evidence exists . . . in order to establish this property as a legal non-conforming mobile home park.”³² The email quoted CDC § 8.2.40 in its entirety.

On October 24, 2019 Sample filed an Application for Appeals with the DCD. That Application stated that Sample was appealing Greenway’s determination that “the legal nonconforming use of a mobile home park had been abandoned for a period of one year or longer.” The Application for Appeals and the narrative attached to it claimed that the parcels had formerly been recognized by Beaufort County as a mobile home park and that the use of the Parcels as a mobile home park was never abandoned. Sample stated that the determination by Greenway was in error because it was arbitrary and capricious and was contrary to the explicit provisions of the CDC. Sample asserted that Greenway ignored the language of the CDC and applied a “non-existence (*sic*) ‘burden of proof’ to [Sample’s request].”

Sample’s appeal was heard by the ZBOA on November 21, 2019. The participants in the hearing, in addition to the ZBOA members, were Sample; Greenway; Sample’s counsel, Thomas C. Taylor (hereinafter “Taylor”); and the Beaufort County Zoning Administrator, Hillary Austin (hereinafter “Austin”). It appears that, during the hearing, the ZBOA was provided the following items in support of Sample’s appeal:

1. Rent Rolls for the Parcels for 2009, 2010, 2011, 2012, and 2013;
2. A handwritten statement from Harold Ruhrer;
3. An email from Parks Moss of SCANA to Sample;
4. A plat of a portion of the property which was prepared in 1996;

³² Ex. J, Email from Greenway to Sample dated September 24, 2019

5. Checks written issued by Michael W. Pope for his rental of Lot 89; and
6. Google Earth images of the property.

At the outset of the hearing, Taylor argued that the Parcels' use as a mobile home park was a legal nonconforming use and that the nonconforming use had not been abandoned.³³ Austin accurately stated that, under the Old Code, the definition of a Manufactured Home Community was "a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals."³⁴

The rent rolls for the Parcels, rent checks from Michael W. Pope, the statement prepared by Mr. Ruhner, and aerial photographs of the Parcels revealed that there had only been one mobile home and one resident on the Parcels since at least 2013. This fact was acknowledged by the ZBOA.³⁵ The ZBOA questioned whether Mr. Pope's uninterrupted residence on the Parcels established continued use of the property as a Manufactured Home Community.³⁶ Greenway reminded the ZBOA that the standard for the Parcels' legal nonconforming use as a Manufactured Home Community under the Old Code was the presence of three manufactured homes on the property.³⁷

The ZBOA then asked Greenway if the Parcels were a parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings.³⁸ Greenway stated that there was no of evidence of the same.³⁹ The ZBOA then asked Greenway if the Parcels still met the definition of a Manufactured Home Community

³³ Ex. F, p. 2

³⁴ *Id.* at p. 4

³⁵ Ex. F

³⁶ *Id.* at p. 5

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at p. 6

as defined by the Zoning and Development Standards. Greenway stated that there was no evidence that they did.⁴⁰

The ZBOA then moved (1) to overturn the determination that the pre-existing legal nonconforming use was abandoned for more than one year and (2) decide that the Parcels would remain as an existing legal nonconforming use for a mobile home park. The motion was seconded and approved.⁴¹

The ZBOA issued a written decision that was executed on December 19, 2019 and mailed on December 26, 2019. The decision stated that Sample's appeal was granted and was "based on the following findings:

- 1) The property continued to have pads available for rent and thus met the requirement of the former statute of the use of the property.
- 2) There was no interruption in the legal, pre-existing, non-conforming use."⁴²

ARGUMENT

It appears that the parties hereto are in agreement concerning the facts relating the use of the Parcels. There is consensus that (1) the Parcels were once used as a legally permitted Manufactured Home Community; (2) since 2012, there has only been one mobile home present and rented on the Parcels; and (3) in order for the use of the Parcels as a Manufactured Home Community, as that term is defined by Sec. 106-1098 of the Old Code, to continue as a legal nonconformity, that use cannot have been abandoned for a period of one year or longer.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Ex. A

The decision of the ZBOA is contrary to law in that the use of the Parcels as a Manufactured Home Community was abandoned for more than one year. The Director of the DCD has the authority to determine if a legal nonconforming use has been abandoned⁴³ while the landowner bears the burden of establishing that the nonconforming use lawfully exists.⁴⁴

Since Manufactured Home Communities are not a permitted use in T2R zones, Ballpark Place, LLC had the burden of establishing that the use of the Parcels as a Manufactured Home Community, as that term was defined by the Old Code, had not been abandoned. To establish the same, Ballpark Place, LLC would have to show that, without having been abandoned for a year or longer, (1) the Parcels were planned and improved for the placement of three or more manufactured homes for residential use **and** (2) more than one site on the Parcels was leased to individuals.⁴⁵ Neither of these were established by Ballpark Place, LLC or Sample.

First, the evidence is clear that the Parcels have not been improved for the placement of three or more manufactured homes for several years. The best evidence that Sample was able to provide on this point was a list showing the beginning and end dates for electric service for each of the home sites on the Parcels.⁴⁶ The list showed continuous and ongoing electric service for two sites: 79 Ball Park and 89 Ball Park. Electric service for another site, 101 Ball Park, ended in May 2016 – three years prior to the conveyance

⁴³ CDC § 8.2.40.B.

⁴⁴ CDC § 8.1.30.

⁴⁵ Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014)

⁴⁶ Ex. I

of the Parcels to Ballpark Place, LLC. Service for all of the other sites was ended in 2011 or earlier.⁴⁷

Greenway asked Sample to provide records from other utility providers for the sites on the Parcels, but Sample failed to do so.⁴⁸ No other evidence was provided to contradict the clear fact that the Parcels' improvement for the placement of three or more manufactured homes had been abandoned for at least three years. As such, Greenway could reach no other conclusion than that the use had been abandoned.

Second, the evidence is clear that, since 2012, only one site on the Parcels has been leased. The rent rolls submitted by Sample supports this and Sample does not argue this fact. As such, it is overwhelmingly clear that Ballpark Place, LLC failed to meet its burden of establishing the legality of the nonconformity. The Parcels use as a Manufactured Home Community was abandoned several years ago.

The ZBOA's findings that "(1) the property continued to have pads available for rent and thus met the requirement of the former statute of the use of the property and (2) there was no interruption in the legal, pre-existing, non-conforming use" are not based in fact or supported by the evidence. There was no evidence presented to Greenway or the ZBOA concerning the presence of pads which were in condition to be rented. In fact, the only reference to pads has been Sample's counsel's statement during the hearing that Sample "has begun to repair the pads for the replacement homes."⁴⁹ So, the only information before the ZBOA concerning pads was Sample's concession that they were in

⁴⁷ *Id.*

⁴⁸ See email from Greenway to Sample dated August 14, 2019

⁴⁹ Ex. F, p. 2

disrepair. Neither Ballpark Place, LLC nor Sample have provided any evidence that pads have been continually available for rent.

Moreover, the ZBOA misstated the standard for Manufactured Home Communities under the Old Code in its decision. That section does not require that the property have pads “available for rent” but, instead, requires that more than one site actually be leased.⁵⁰ As such, even if there had been unrented sites available for rent, the standard would not have been met.

It is assumed that the terms “interruption” as used in the ZBOA’s decision and “abandonment” as used in CDC §8.2.40 are interchangeable and bear the same meaning. On that assumption, the ZBOA’s finding that there was no abandonment of the legal, pre-existing, non-conforming use is clear error. The reasoning supporting this conclusion is detailed above and does not bear repeating.

CONCLUSION

The Appellant respectfully requests that his appeal be granted and the decision of the ZBOA overturned on the grounds that (1) the ZBOA’s findings were not supported by and were contrary to the evidence in the record and (2) the ZBOA misapplied the standard for the use that constituted a Manufactured Home Community under the Old Code. Therefore, Sample’s/Ballpark Place, LLC’s appeal should have been denied and Greenway’s interpretation upheld. In the alternative, the Appellant respectfully requests the court grant the appeal and remand the matter back to the ZBOA with the admonitions that (1) the ZBOA must base its decision solely on the record of Sample’s appeal, as supplemented by arguments presented at the public hearing⁵¹ and (2) the Parcels may only

⁵⁰ Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014)

⁵¹ As required by CDC § 7.3.70.C.6.(a)

be used as a Manufactured Home Community if Sample/Ballpark Place, LLC can show that there was no abandonment for a year or longer of (a) the Parcels' improvement for the placement of three or more manufactured homes and (b) more than one site on the Parcels being leased to individuals.⁵²

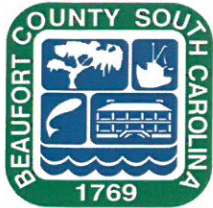
Respectfully Submitted January 20, 2020.

Coppage Law Firm, LLC

By: s/Benjamin T. Coppage
Benjamin T. Coppage
Attorney for the Appellant
SC Bar No.: 100055
Post Office Box 2473
Beaufort, South Carolina 29901
843-379-9601
ben@coppagelawfirm.com

⁵² As required by CDC § 8.2.40 and Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014)

Exhibit A



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

November 22, 2019

Mr. Robert Sample, Jr.
P.O. Box 2238
Beaufort, SC 29901

Law Office of Thomas C. Taylor, LLC
P.O. Box 5550
Hilton Head Isl., SC 29938

Re: ZBOA – Robert Sample Jr. – Ball Park Road Mobile Home Park (Administrative Interpretation Appeal)
Article 8, Division 2.40 of the Community Development Code
79, 81, 83, 87, 89, 93, 95 & 101 Ball Park Rd., St. Helena Island
District 300, Tax Map 016, Sub Map 000, Parcel 0360
District 300, Tax Map 016, Sub Map 000, Parcel 183B

Dear Sirs,

On Thursday, November 21, 2019, the Zoning Board of Appeals completed its review of your request for an Appeal of an Administrative Interpretation from Article 8, Division 2.40 of the Beaufort County Community Development Code. The Zoning Board of Appeals (6 members for, 0 members against, 1 member absent, 0 vacancy) granted your request for an Appeal of an Administrative Interpretation and voted to overturn the decision of Beaufort County Staff.

The Board granted the request for the Appeal based on the following findings:

- 1) The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
- 2) There was no interruption in the legal, pre-existing, non-conforming use.

If you require additional information of the Zoning Board of Appeals relating to this matter, please contact Hillary Austin, Zoning & Development Administrator, at (843) 255-2173.

Sincerely,

Thomas Gasparini
Chairman, Zoning Board of Appeals

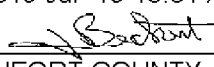
Beaufort, South Carolina

This 19th Day of December, 2019

Exhibit B

3/10
Gibbert
1070

RECORDED
2019 Jul -19 10:31 AM


BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3764 Pgs 2601-2603
FILE NUM 2019028565
06/03/2019 12:54:14 PM
REC'D BY rbins RCPT# 933756
RECORDING FEES \$10.00
County Tax \$66.00
State Tax \$156.00

ELECTRONICALLY FILED - 2020 Jan 20 5:16 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700112

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT **CSB PROPERTY MANAGEMENT II, LLC**, a South Carolina limited liability company (the "Grantor"), for and in consideration of the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00), to Grantor in hand paid at and before the sealing of these presents by **BALLPARK PLACE LLC** (the "Grantee"), address: PO Box 2238 Beaufort SC 29901, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, subject to the easements, restrictions, reservations and conditions set forth below, and by these Presents does grant, bargain, sell and release unto the Grantee, its successors heirs and assigns, forever, the following described property, to-wit:

R300 016 000 183B 0000

ALL those certain pieces, parcels or lots of land, situate, lying and being on St. Helena Island in Beaufort County, South Carolina, containing 2.176 acres of land, more or less, being a portion of Lots 17 and 18, Section 20 191E, and being more particularly shown as Parcels A and B on a plat of the property of David T. and Ann K. Hutcherson, prepared by Neils Christensen IV, dated November 8, 1990, and recorded on February 8, 1996, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 55 at Page 83.

AND

ALL those certain pieces, parcels or lots of land, situate, lying and being on St. Helena Island in Beaufort County, South Carolina, containing 1.609 acres of land, more or less, being a portion of Lots 15 and 16, Section 20 1S1E, all as more particularly shown on a plat of the property of David T. and Ann K. Hutcherson, prepared by Neils Christensen IV, dated November 8, 1990, and recorded on February 8, 1996, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 55 at Page 83.

ADD DMP Record 7/3/2019 08:46:46 AM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R300 016 000 183B 0000 00

CHANGE DMP Record 7/3/2019 08:47:07 AM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R300 016 000 0360 0000 00

192557

AND

R300 016 000 0360 000

ALL that certain piece, parcel or lot of land, situate, lying and being on St. Helena Island in Beaufort County, South Carolina, containing 0.50 acre of land, more or less, being a portion of Lots 17 and 18, Section 20 1S1E, according to the U.S. Direct Tax Commission Survey and described as follows: Commencing at the concrete monument on the eastern edge of S.C. Rd. 470, such point of beginning being the southernmost point of the property N/F of Lanier, as shown on the plat prepared by Neils Christensen, IV, dated November 8, 1990, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 55 at Page 83, and from said point of beginning in a northerly direction along the eastern edge of the right of way of S.C. Rd. 470 in an arc having a cord of 349.803 feet, more or less, to a concrete monument; thence south 87°15'12" east a distance of 150.476 feet, more or less, to a concrete monument; thence south 37°10'21" west for a distance of 411.095 feet, more or less, to the point of beginning.

SAID PROPERTY is conveyed subject to all applicable rights, obligations, easements, restrictions and reservations as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, but it is provided, however, that it is not the Grantor's intention hereby to extend to the premises conveyed any additional restrictions that do not already encumber the same.

This being the same property conveyed to the Grantor by deed from Marvin H. Dukes, III, Master in Equity, recorded on November 16, 2010 in Office of the Register of Deeds for Beaufort County, South Carolina, in Book 3010 at Page 1740.

This Deed was prepared by Fraser & Allen, LLC, Post Office Box 5098, Hilton Head Island, South Carolina 29938-5098, by J. Simon Fraser, Esquire.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

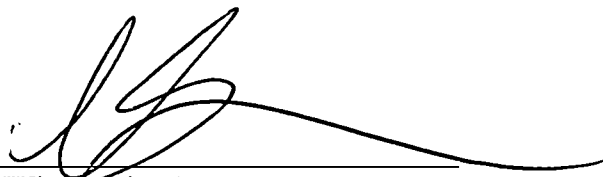
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the Grantee, its successors and assigns, forever.

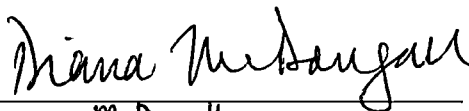
AND Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the Grantee, its successors and assigns, forever, against Grantor and Grantor's successors and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the undersigned Grantor has set Grantor's seal and has caused these presents to be executed as of the 30 day of May, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CSB PROPERTY MANAGEMENT, ^{II}LLC
By: CoastalStates Bank
Its Sole Member


(Witness signs)


Name: Diana McDougall
Title: President
(SEAL)


(Notary signs as witness)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 30 day of May, 2019, before me, the undersigned Notary Public of the State aforesaid, personally appeared the Officer named above for CoastalStates Bank, the Sole Member of Grantor, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

(SEAL)


(Notary public signs and affixes seal)
Print Name: William J. Simmons
Notary Public for South Carolina
My Commission Expires: Nov 28, 2022

Exhibit C

BALL PARK		RENT ROLL 2013														
Acc #	xxxxx 7924															
LOT #	TENANT	PHONE	RENT	DEP	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
MH 79	Vacant					unit is destroyed unrepairable										
MH 81	Vacant															
MH 83	Vacant					Needs major repairs										
MH 87	Vacant															
MH 89	Mike Pope	812-8633	500		500		1000	500		500	500					
MH 93	Vacant															
MH 95	Vacant															
Lot 99	Home Repoed															
MH 101	Vacant															
	Horton H958446 14x76															
	TOTAL POTENTIAL RENT		500													
	Rent Collected				500		1000	500								
	Deposits						1000									
	Total Deposits				500		1000									

BALL PARK

Acc # xxxxx **7924**

RENT ROLL

LOT #	TENANT	PHONE	RENT	DEP	JAN	FEB	MAR	APR
MH 79	Vacant					unit is destroyed unrepairable		
MH 81	Terry Daughty	575-1706	500		400	700	400	425
MH 83	Vacant					Needs major repairs		
MH 87	Vacant							
MH 89	Mike Pope	812-8633	500		500	500	500	500
MH 93	Vacant					Needs major repairs		
MH 95	John & A Pizarro		600		600	600	600	
Lot 99	Home Repoed				350	200	275	275
MH 101	Kwajalyn Lasese		525		525	300	525	
	Horton H958446 14x76							

TOTAL POTENTIAL RENT 2125

Rent Collected	2375	2300	2300	1200
-----------------------	-------------	-------------	-------------	-------------

Deposits	1975	1100	275	775
	400	500	1825	425
		700	200	

Total Deposits	2375	2300	2300	1200
-----------------------	-------------	-------------	-------------	-------------

2010

MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
-----	-----	-----	-----	-----	-----	-----	-----

	450	290					
500	500	500	500	500	500	500	
1050	200	600	600	600	600	600	
275	275	275	275				
300	350	525					
		440					
2125	1775	2630	1375	1100	1100	1100	
875	275	875	1375	1100	1100	600	
750	500	1025				500	
500	500	290					
	500	440					
2125	1775	2630	1375	1100	1100	1100	

BALL PARK			2009	RENT ROLL			12/14/09										
Acc #	xxxxx 7924																
LOT #	TENANT	PHONE	RENT	DEP	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
MH 79	Vacant					unit is destroyed unrepairable											
MH 81	Terry Daughty	575-1706	500		700	300	500	500	500	500	500	450	160	300	900	225	
MH 83	Vacant					Needs major repairs											
MH 87	Oliver Stanley	838-4304/5750479	550										550				
MH 89	Mike Pope	812-8633	500		500	500	500	500	500	500	500	500	500	500	500	500	
MH 93	Vacant					Needs major repairs											
MH 95	John & A Pizarro		600		600	600	600	600	600	600	600	600	600	600	600	500	
Lot 99	Steve & B Dietz	838-5696	275		275	275	275	275	275	275	275	275	275	275	275	275	
MH 101	Kwajalyn Lasesene	592-4124	525		575	575	550	575	575	575			500	525			
	Horton H958446 14x76																
	TOTAL POTENTIAL RENT		2950														
		Rent Collected			2650	2250	2425	2450	2450	2450	1875	1825	2585	2200	2275	1500	
		Deposits			575	875	875	850	2250	1050	1125	825	1585	1100	775	1500	
					1775	1275	1075	1600	200	1300	150	650	500	500	1500		
					300	100	500			100	600	50	500	600			
												300					
		Total Deposits			2650	2250	2450	2450	2450	2450	1875	1825	2585	2200	2275	1500	

Exhibit D

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

☒ Track your expenses... ☐ TAX-DEDUCTIBLE ITEM

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other

15 Aug. 2012

Sun Rentals & Development Inc.
 Five Hundred ⁰⁰/₁₀₀

89 Bell Park Rd. Aug 2012

BALANCE FORWARD	
THIS ITEM	500.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

☒ Track your expenses... ☐ TAX-DEDUCTIBLE ITEM

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other

12 Sept. 2012

Sun Rentals & Development Inc.
 Five Hundred ⁰⁰/₁₀₀

Rent 89 Bell Park Rd.

BALANCE FORWARD	
THIS ITEM	500.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

☒ Track your expenses... ☐ TAX-DEDUCTIBLE ITEM

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other

3 March 2013

Sun Rentals & Development Inc.
 Five Hundred ⁰⁰/₁₀₀

Rent 89 Bell Park

BALANCE FORWARD	
THIS ITEM	500.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX

☒ Track your expenses... ☐ Tax Deductible Item

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other

1591

~~2012~~ + 2012

Sun Rentals & Development Inc.

Five Hundred 00

89 BALL PARK RD

BALANCE FORWARD	
THIS ITEM	500.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX

☒ Track your expenses... ☐ Tax Deductible Item

☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other

1594

8 Nov 2012

Sun Rentals & Development Inc.

Five Hundred 00

89 BALL PARK RD. RENTALS

BALANCE FORWARD	
THIS ITEM	500.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920.

1647
67-181/532

9 Oct 2014
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two-Hundred 00

REGIONS

FOR LOT Rent #89 BALL PARK RD. Michael W. Pope

053201814 3495001844 01647

41

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1671
67-181/532

18 Nov 2014
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR Lot Rent 89 BALL PARK RD. Michael W. Pope

⑆053201814⑆ 3995001844⑆01671⑆

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1673
67-181/532

12 Dec 2014
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR 89 BALL PARK RD. Michael W. Pope

⑆053201814⑆ 3995001844⑆01673⑆

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1677
67-181/532

5 JAN 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR 89 BALL PARK RD. Lot Rent Michael W. Pope

⑆053201814⑆ 3995001844⑆01677⑆

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1679
67-181/532

5 Feb 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00

 **REGIONS**
FOR Hot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01679

Printed Name

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1682
67-181/532

17 March 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00

 **REGIONS**
FOR Hot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01682

Printed Name

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1684
67-181/532

15 April 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00

 **REGIONS**
FOR Hot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01684

Printed Name

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1688
67-181/532

13 MAY 2015
DATE

PAY TO THE ORDER OF Sun Rentals + Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀ DOLLARS

REGIONS
FOR Lot Rent 89 BALL PARK Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01688

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1690
67-181/532

8 June 2015
DATE

PAY TO THE ORDER OF Sun Rentals + Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀ DOLLARS

REGIONS
FOR Lot Rent 89 BALL PARK Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01690

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1692
67-181/532

12 July 2015
DATE

PAY TO THE ORDER OF Sun Rentals + Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀ DOLLARS

REGIONS
FOR Lot Rent #89 on 11 Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01692

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920		1694 67-181/532
DATE <u>13 Aug 2015</u>		
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc.</u> \$ <u>200.00</u>		
<u>Two Hundred 00</u>		DOLLARS
 REGIONS FOR <u>Lot Rent 89 Ball Park Rd.</u> <u>Michael W. Pope</u>		 Security Features Detailed on Back
⑆053201814⑆ 3995001844⑆01694		

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920		1652 67-181/532
DATE <u>11 Sept 2015</u>		
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc.</u> \$ <u>200.00</u>		
<u>Two Hundred 00</u>		DOLLARS
 REGIONS FOR <u>Lot Rent #89 Ball Park Rd.</u> <u>Michael W. Pope</u>		 Security Features Detailed on Back
⑆053201814⑆ 3995001844⑆01652		

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920		1654 67-181/532
DATE <u>15 Oct 2015</u>		
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc.</u> \$ <u>200.00</u>		
<u>Two Hundred 00</u>		DOLLARS
 REGIONS FOR <u>Lot Rent 89 Ball Park Rd.</u> <u>Michael W. Pope</u>		 Security Features Detailed on Back
⑆053201814⑆ 3995001844⑆01654		

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1655
67-181/532

7 Nov 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01655

Regions Bank

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1657
67-181/532

16 Dec 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01657

Regions Bank

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1660
67-181/532

18 Jan 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01660

Regions Bank

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1662
67-181/532

5 Feb. 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00
Two Hundred 00 DOLLARS

 **REGIONS**
FOR 1st Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01662

Harvest Checks

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1663
67-181/532

10 March 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00
Two Hundred 00 DOLLARS

 **REGIONS**
FOR 1st Rent #89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01663

Harvest Checks

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1666
67-181/532

8 Apr. 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00
Two Hundred 00 DOLLARS

 **REGIONS**
FOR 1st Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑈01666

Harvest Checks

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1667
67-181/532

5 May 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01667

MP

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1669
67-181/532

12 June 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01669

MP

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1791
67-181/532

16 July 2016
DATE

PAY TO THE ORDER OF Sun Rentals And Development Inc \$ 200.00

Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01791

MP

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1791
67-181/532

16 July 2016
DATE

PAY TO THE ORDER OF Sun Rentals and Development Inc \$ 200.00

Two Hundred ~~00~~ DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01791

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1798
67-181/532

12 April 2017
DATE

PAY TO THE ORDER OF SUN Rentals & Development Inc \$ 200.00

Two Hundred ~~00~~ DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01798

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1799
67-181/532

15 July 2017
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred ~~00~~ DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01799

Harland Clarke

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1800
67-181/532

9 Aug. 2017
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ~~00~~

DOLLARS

REGIONS
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01800

Michael W. Pope

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1802
67-181/532

3 Sept 2017
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ~~00~~

DOLLARS

REGIONS
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01802

Michael W. Pope

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1803
67-181/532

4 Oct 2017
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ~~00~~

DOLLARS

REGIONS
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01803

Michael W. Pope

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1804
67-181/532

28 NOV. 2017
DATE

PAY TO THE ORDER OF Sun Rentals & Development INC. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS** NOV.
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01804

Harland Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1805
67-181/532

3 Dec 2017
DATE

PAY TO THE ORDER OF Sun Rentals & Development INC. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS** Dec.
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01805

Harland Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1806
67-181/532

JAN. 15, 2018
DATE

PAY TO THE ORDER OF Sun Rentals & Development INC. \$ 200.00
Two Hundred 00/100 DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01806

Harland Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1807
67-181/532

15 Feb 2018
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two - Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01807

Handwritten Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1808
67-181/532

03-01-2018
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two - Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01808

Handwritten Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1809
67-181/532

15 April 2018
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two - Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01809

Handwritten Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1810
67-181/532

15 MAY 2018
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01810

Machine Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1811
67-181/532

15 June 2018
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01811

Machine Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1812
67-181/532

15 July 2018
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

⑆053201814⑆ 3995001844⑆01812

Machine Check

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1813
67-181/532

9 Aug. 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$200.00
Two-Hundred 00/100

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01813

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1815
67-181/532

12 Sept. 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$200.00
Two-Hundred 00/100

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01815

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1817
67-181/532

15 Oct. 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$200.00
Two-Hundred 00/100

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01817

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1818
67-181/532

5 Nov. 2018
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two-Hundred ⁰⁰/₁₀₀ DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01818

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1841
67-181/532

15 Feb. 2019
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two-Hundred ⁰⁰/₁₀₀ DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01841

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1866
67-181/532

15 March 2019
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two-Hundred ⁰⁰/₁₀₀ DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

⑆053201814⑆ 3995001844⑆01866

Harlan Clark

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1867

67-181/532

15 April 2019

DATE

PAY TO THE
ORDER OF

Sun Rentals + Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

Security
Features
Check us
out

REGIONS

FOR

Lot Rent 89 Ball Park Rd

Michael W. Pope

⑆053201814⑆ 3995001844⑈01867

Fidelity Clearing

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1842

67-181/532

13 MAY 2019

DATE

PAY TO THE
ORDER OF

Sun Rentals + Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

Security
Features
Check us
out

REGIONS

FOR

Lot Rent 89 Ball Park Rd

Michael W. Pope

⑆053201814⑆ 3995001844⑈01842

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1843

67-181/532

1 June 2019

DATE

PAY TO THE
ORDER OF

Sun Rentals + Development Inc. \$ 22.00
Twenty-Two ⁰⁰/₁₀₀

DOLLARS

Security
Features
Check us
out

REGIONS Electric Bill

FOR

Lot Rent 89 Ball Park Rd

Michael W. Pope

⑆053201814⑆ 3995001844⑈01843

Exhibit E

Subject: Ball Park Rd Mobile Home Park

Robert sample <robeshample@gmail.com>

Wed, Jul 24, 2019,
1:03 PM

to Greenway, Eric

Eric,

1. I am the owner of Ball Park Place LLC (79, 81, 83, 87,89, 93, 95, and 101) Ball Park Rd. I have begun renovating the property and intend to continue operation of it by filling the vacant sites with new modern homes.

2. For at least the last 20 years, this property has had in various degrees continuous operational water, electricity and septic utilities. The current tenant has been living on the property for at least two decades and have been using these utilities. Up until recently Dominion Power disconnected power to a few of sites for safety reasons (sites had power but no meter which presented a safety hazard).

3. Though a few need to be rebuilt and replaced, several electrical panels are still evident on site. And water lines (spickets), the well and operational pump is also evident. The septic tanks are still in the ground. Various telephone and cable lines are also present throughout. A charge has been placed on the underground lines and they are viable.

4. This park has been under constant management by a rental consultant company and rental income has been collected from the tenant. The last owner (a bank) divested itself of the other mobile homes on the property but deliberately left and have continuously rented the existing home in an effort to continue the operation of the mobile home park.

5. I am sensitive to the adjacent property owner's concern of privacy and safety, and am willing (within reason) to do what is necessary to alleviate these concerns.

6. The County's Assessors office and tax records indentify this property as a mobile home park.

7. Last, if needed I can provide affidavits from my tenant who's lived on the property for two decades and the former property management consultant if needed.

Robert
8434769639

Exhibit F



COUNTY COUNCIL OF BEAUFORT COUNTY Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, November 21, 2019, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Kevin Mack, Vice-Chairman
Mr. John Chemsak
Mr. Mark McGinnis
Mr. Cecil Mitchell, III
Mr. Chester Williams

MEMBERS ABSENT

Mr. Bernard Rivers

VACANCY

None

STAFF PRESENT

Mr. Eric Greenway, Community Development Director
Ms. Hillary Austin, Zoning Administrator
Mrs. Tamekia Judge, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE: Mr. Gasparini led those assembled with the Pledge of Allegiance.

REVIEW OF AGENDA:

The applicant requested to withdraw the application from the agenda.

Mr. Williams made a motion to amend the agenda removing items #7 and #8.

Mr. Mack seconded the motion.

MOTION: Mr. Williams made a motion to adopt the agenda with the change to remove items #7 and #8. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

REVIEW OF MINUTES:

MOTION: Mr. Williams made a motion to adopt the October 24, 2019 minutes as written. Mr. Mack seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, and Williams; ABSTAIN: Chemsak and Mitchell; ABSENT: Rivers; VACANCY: None).

NEW BUSINESS

NICOLE SCOTT, NEXSON PRUET – K & R DEVELOPMENT (APPEAL CONTINUANCE)

Mr. Williams and Mr. Gasparini recused themselves from the consideration of the application because they represent the neighboring property.

Mr. Mack, Vice-Chairman, chaired the meeting.

Mr. McGinnis made a motion to grant the continuance of the application, until the December 19, 2019 meeting.

Mr. Chemsak seconded the motion.

MOTION: Mr. McGinnis made a motion to grant the continuance of the application until the December 19, 2019 meeting. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, McGinnis and Mitchell; ABSTAIN: Gasparini and Williams; ABSENT: Rivers; VACANCY: None).

Mr. Gasparini, Chairman and Mr. Williams rejoined the meeting.

ROBERTS SAMPLE JR. – BALL PARK ROAD LLC (ADMINISTRATIVE INTERPRETATION – APPEAL)

Mr. Williams stated that he represented Mr. Sample in an unrelated matter, and does not have a conflict of interest for this application. Mr. Williams will not recuse himself from this matter. Mr. Williams also stated that he has a professional relationship with Mr. Taylor.

Mr. Gasparini stated that he works with Mr. Williams at his law firm and he has a professional relationship with Mr. Taylor. Mr. Gasparini stated that he does not have a conflict of interest with this application and he will not recuse himself.

Mr. Thomas Taylor stated, "This appeal is from an interpretation from Mr. Greenway as it relates to Mr. Robert Sample's application to be able to continue a previously authorized and fully recognized nonconforming use of a Mobile Home Park out on St. Helena. Mr. Sample acquired the Mobile Home Park in early 2019; that he began to do work on. It is very important and undisputed that at the time he bought it, there was one mobile home on it, which had a continuing long-standing rental. There was already electrical use utilities in service at the Mobile Home Park. I believe, that the County recognizes this year, on the tax record the continuing validity of a Mobile Home Park. That this is and was a legal nonconforming use up until the time that the County Staff took a look at it, and then went on to opine earlier this year that the rental checks and the other evidence that was there apparently did not suffice under Mr. Greenway's observation to prove that there was a continuing use there. My argument is that this was an improper shift in the burden of proof necessary. Mr. Greenway's determination, that it had been abandoned came about from his supposed review of the certain parameters that are set forth in the Code. We believe that the evaluation should not start at the point where a legal nonconformity in the CDC Section 8.1.20 is presumed to continue until such time as it is abandoned. The code is very clear that this is a nonconforming safe harbor. The code provides that it is the general policy of the County to allow such uses to continue to exist. Therefore it is presumed, in this Community under the code that a legal nonconforming use recognized by the County will continue until it is abandoned. If there comes a time when it is appropriate for Staff to take the position, that something has been abandoned, then the Code is very clear. The steps used to analyze by the Director, or to look and see if steps have been taken by the property owner to resume the nonconforming use, there is a clear delineation by County Council that there has to have been an abandonment prior. In order to have a resumption in nonconforming use there has to have been a determination that it has been abandoned. In this case, I believe the Staff will admit that there has never been a determination prior to this, that it has been abandoned. In fact, there is clearly a continuing use, there is continuing electrical utilities, and the taxes paid as a Mobile Home Park."

Mr. Williams stated, "I don't see a definition in the Code for a Mobile Home Park."

Ms. Austin stated, "It's a Manufactured Home Community."

Mr. Williams stated, "That's the term we should be using instead of a Mobile Home Park."

Mr. Gasparini asked Mr. Taylor, "What steps has Mr. Sample taken to reinstate the lot?"

Mr. Taylor replied, "Mr. Sample has taken numerous steps. He has begun to right the electrical boxes that were not right, he has repaired the septic tank systems that has been left in disrepair and he has begun to repair the pads for the replacement homes."

Mr. Gasparini asked Mr. Taylor, "Does he need permits to do any of that?"

Mr. Sample stated to the Board, "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. I had an electrical contractor come out to check the viability of the stands, I had No Cuts come out to identify the lines, I had SCE & G come out and I had Beaufort Jasper come out. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."

Mr. Mack asked Mr. Sample, "Did you make repairs to the septic tanks?"

Mr. Sample replied, "I haven't made any repairs, the septic tanks are pretty good; I was trying to identify where they were."

Mr. McGinnis asked Mr. Sample, "How many home sites do you have?"

Mr. Sample replied, "It is nine or ten."

Mr. McGinnis asked Mr. Sample, "How many of those nine or ten sites do you believe are not in suitable repair for usage?"

Mr. Sample replied, "The stands have to be repaired. When the previous owner removed the homes, they messed up the stands."

Mr. McGinnis asked Mr. Sample, "At any time during the past several years, has there been less than two home sites occupied?"

Mr. Sample replied, "To my knowledge, I think they have."

Mr. Taylor stated to the Board, "The nonconforming uses have not been removed. There was never any intention to abandon the use when the property went into foreclosure."

Mr. Gasparini asked Mr. Taylor, "The nonconforming got started under the old code did it not; not this code? What did the old code say about Mobile Home Parks?"

Ms. Austin replied, "It has always been anything more than one mobile home on a piece of property. You have to establish a Mobile Home Park because you can only have one house per parcel. I don't know when this mobile home park was established."

Mr. Gasparini asked Ms. Austin, "If you had a Mobile Home Park under the old code and you had five people and four of them moved and you still had one, there wasn't a requirement that you had to close the park because you didn't have two people?"

Ms. Austin replied, "There was never a requirement that you close it, but you don't let it go for more than a year. There was always that nonconforming issue that says if you close the nonconforming use for more than a year or you don't use it, then you lose the grandfathering."

Mr. Gasparini asked Ms. Austin, "As long as someone was renting a mobile home that's a continuing use, is it?"

Mr. Taylor stated, "There was no definition in the former code as to a Mobile Home Park."

Mr. Greenway stated, "That issue is irrelevant what the old code says, it is grandfathered under the current code. That is what establishes the nonconformity."

Mr. Gasparini asked, "It doesn't have to conform with the current code if it's grandfathered, correct?"

Mr. Greenway stated, "The current code is what establishes the standards for approving nonconformity."

Mr. Gasparini stated, "It was established some time under the former code, and my understanding of how something gets grandfathered is, as long as it continues to meet the former code it gets to be a nonconforming use. You can't change the code to put the use away."

10 minute Recess

Recess ended

Mr. Gasparini asked Mr. Williams, "In order to continue a nonconformance, you would have to meet the old rules not the new ones, is that right?"

Mr. Williams replied, "It is the change in the rules, assuming what was then the mobile home park was legally established at the time it was established, it is the change in the rule by the adoption of the new code that makes it nonconforming."

Ms. Austin read the code, "In the old code, Manufactured Home Community was allowed in the rural zoning district as a limited use. The definition for that is, a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals."

Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community that is there now would have been a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Taylor stated, "Was there a good faith analysis made by the Director as to whether or not there was an intention to abandon this and it should be allowed to continue as a legal nonconforming use."

Mr. Gasparini asked, "At some point the bank took over, how did that work?"

Mr. Sample replied, "The property managers was hired by the bank to manage the property."

Mr. Gasparini stated, "The bank had the property since 2014, and when did you buy it?"

Mr. Sample replied, "This year."

Mr. Greenway stated, "One of the key component to establishing a Mobile Home Park is the existence of manufactured homes in that park. This park has not operated as a Mobile Home Park for some period of time, in excess of a year. There has only been one mobile home on the property that was established by the power, receipts that I looked at, and the rent roll for that period of time, and I did not feel that I could in my power grandfather the Mobile Home Park. I wrote a determination denying his grandfathered use and I explained to him in my email that he had the right to appeal that decision to you all. It has not operated as a Mobile Home Park, in my opinion, and has not for several years. This is not a grandfathered Mobile Home Park in the eyes of the Staff."

Mr. Williams asked Mr. Greenway, "The primary basis for your determination was that there was not two or more manufactured homes on the property?"

Mr. Greenway replied, "That is correct."

Mr. Williams asked, "What zoning district is the property located in?"

Ms. Austin replied, "T2R."

Mr. Williams asked, "What's the residential density in that district?"

Ms. Austin replied, "One per three."

Mr. Mitchell asked Mr. Greenway, "When you established it, there is only one mobile home in that park, you did that through pictures?"

Mr. Greenway replied, "I did it through aerials and the rent roll."

Mr. Mitchell stated, "I just saw two open electric service accounts and I am trying to figure out how we know that there wasn't two mobile homes, up until six months ago."

Mr. Gasparini asked Mr. Greenway, "Is it undisputed that this gentleman, Mike Pope, has a mobile home out there and lives in it?"

Mr. Greenway replied, "Yes, there is a mobile home on the property and someone does reside there."

Mr. Gasparini stated, "The way I read the rent roll, there are nine spots and all of them are vacant except for Mr. Pope's. If I understand your argument, as soon as less than two of them are occupied then it can't be grandfathered any more, is that the way I understand your determination?"

Mr. Greenway stated, "That is correct. The zoning district allows based on the size of the property and without a subdivision on the property, it allows one dwelling on the property. There is one dwelling on the property right now in accordance with the zoning district."

Mr. McGinnis asked Mr. Greenway, "Is that for up to one year?"

Mr. Greenway replied, "Yes, that's correct."

Mr. Gasparini asked Mr. Greenway, "How do you stay grandfathered if you have to meet the new code anywhere?"

Mr. Greenway replied, "You stay grandfathered by maintaining the grandfathered use of the property."

Mr. Gasparini asked Mr. Greenway, "Doesn't Mr. Pope's dwelling establish that?"

Mr. Williams stated, "The old code required three manufactured homes on the property."

Mr. Gasparini stated, "It required it to establish the Mobile Home Park. As Mr. Mitchell suggested, if there is a period of time when you can't rent to people, do you lose your business?"

Mr. Greenway stated, "They haven't made necessary repairs or attempted to do so for many years. Our position as Staff is that the time frame for him to do that has expired because it has been more than one year that this grandfathered situation has expired, so now it's too late."

Mr. Gasparini asked, "So the County's position is that it expired before Mr. Sample ever got the property?"

Mr. McGinnis asked, "When was the last time there were other mobile homes out there even if they were unoccupied?"

Mr. Sample replied, "I am not sure."

Mr. Gasparini stated, "So we think this got established even before the old code was adopted."

Ms. Austin replied, "Yes."

Mr. McGinnis stated that there was no intent to abandon it, since the bank had hired a managing company to operate it even if they didn't have more than one."

Mr. Williams asked Mr. Greenway, "Is the tract that we are talking about a parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings?"

Mr. Greenway replied, "I can't say that, there is no evidence to that at this point."

Mr. Williams stated, "There is a recorded plat that shows seven mobile homes on it and we have agreed that it was a legal nonconformity upon the adoption of the new code. Mr. Williams asked, does the property still meet the old code definition of a Manufactured Home Community?"

Mr. Greenway stated, "I don't have any evidence proving that."

Mr. Mitchell made a motion to overturn the County's determination that the pre-existing legal nonconforming use was abandoned for more than one year.

McGinnis seconded the motion.

Mr. Chemsak asked, "How many lots would this be approved for?"

Mr. Gasparini stated, "The Board is not making a determination about how many homes are allowed there."

MOTION: Mr. Mitchell made a motion to overturn the determination made by the County, that the pre-existing legal nonconforming use was abandoned for more than one year. The property shall remain as an existing legal nonconforming use for a Mobile Home Park. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

ADJOURNMENT

MOTION: Mr. Williams made a motion to adjourn the meeting. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell, and Williams; ABSENT: Rivers; VACANCY: None).

The meeting adjourned at approximately 6:14 p.m.

Note: The video link of the November 21, 2019, Zoning Board of Appeals meeting is:
https://beaufort.granicus.com/player/clip/4592?view_id=15

Exhibit G

From: Greenway, Eric
Sent: Wednesday, August 14, 2019 9:26 AM
To: 'Robert sample' <robeshample@gmail.com>
Cc: Austin, Hillary <hillarya@bcgov.net>
Subject: RE: Ball Park Rd Mobile Home Park

Mr. Sample,

I appreciate the history of this property. As you and I discussed, I need actual proof that this property has been recently used as a mobile home park. I have reviewed the historical aerials and see no verifiable evidence that multiple homes have been located on this property for use as residences. See my comments in red below for additional records needed for me to complete my determination.

Eric G.

From: Robert sample <robeshample@gmail.com>
Sent: Wednesday, July 24, 2019 1:03 PM
To: Greenway, Eric <egreenway@bcgov.net>
Subject: Ball Park Rd Mobile Home Park

Eric,

1. I am the owner of Ball Park Place LLC (79, 81, 83, 87,89, 93, 95, and 101) Ball Park Rd. I have begun renovating the property and intend to continue operation of it by filling the vacant sites with new modern homes.
2. For at least the last 20 years, this property has had in various degrees continuous operational water, electricity and septic utilities. The current tenant has been living on the property for at least two decades and have been using these utilities. Up until recently Dominion Power disconnected power to a few of sites for safety reasons (sites had power but no meter which presented a safety hazard). **Please provide records from Dominion Energy verifying electrical service history for each address.**
3. Though a few need to be rebuilt and replaced, several electrical panels are still evident on site. And water lines (spickets), the well and operational pump is also evident. The septic tanks are still in the ground. Various telephone and cable lines are also present throughout. A charge has been placed on the underground lines and they are viable. **Please provide records from the appropriate utility verifying service history for each address.**
4. This park has been under constant management by a rental consultant company and rental income has been collected from the tenant. The last owner (a bank) divested itself of the other mobile homes on the property but deliberately left and have continuously rented the existing home in an effort to continue the operation of the mobile home park. **Please provide lease and payment records from the management company verifying the rental history for each address.**

5. I am sensitive to the adjacent property owner's concern of privacy and safety, and am willing (within reason) to do what is necessary to alleviate these concerns.

6. The County's Assessors office and tax records indentify this property as a mobile home park.

7. Last, if needed I can provide affidavits from my tenant who's lived on the property for two decades and the former property management consultant if needed.

Robert
8434769639

Exhibit H

Subject: Ball Park Rd Mobile Hm Park

Robert sample <robeshample@gmail.com>

Thu, Aug 15, 2019,
6:18 PM

to Greenway, Eric

Eric,

I think we need to back up for a second and think about how we got here.

We are here because the code enforcement officer has called me and told me that I dont have a mobile home park "because the property has been rezoned and because one trailer doesnt make a park".

Its my assertion regardless of what the current zoning is, the use as mobile home park HAS NEVER CEASED. And that the single mobile home on the property is currently rented and has been rented by the same tenant for over 10 years. And this rental activity is a continuation of the past mobile homes operation that the previous owners operated. Though divesting itself of the other homes on the property, the previous owners deliberately continued to operate and rent this unit through a management company up until the day i bought it.

If the zoning is changed on a property that was once zoned for selling cars and the car dealer goes from selling 50 cars a month to 1 car a month, that doesnt mean he doesnt have a car lot or in the car selling business. It doesnt mean his business has ceased. It just means business is slow or he has deliberately scaled back the business. In this case the previous owner foreclosed on the property, and chose the latter. They however made conscious effort to leave a single rental on the property so that the opeation would not cease.

If you are in agreement with this, i will gladly provide you affidavits from tenant (copies of cancelled rent payment checks and historical utility bills) and former management affidavit explaining rationale for leaving one unit on property. And electrical bill history (master water pump) to prove that operation has never CEASED!

Otherwise we are wasting our time and should proceed to next level. I know I have sent several emails but in this one I wanted to restate how we got here and what I believe per the CDC the main question is.

Respectfully

Robert

Exhibit I

Subject: Fwd: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

Robert sample <robeshample@gmail.com>

Mon, Aug 26, 2019, 4:07 PM

to Greenway, Eric

Eric,

Please see below thread for requested information about thwme Ballpark property. As you can see 79 and 89 have been active since 1994 to present. 89 is where the current trailer is and 79 would have to be where the pump that runs the park's well is. Mr Moss couldnt give me customer's personal info so he has provided the beginning and ending dates for service for the various account. Again the former property owner took possession of the in 2010 and began to divest itselfnof the homes on the property. I will forward what I have recieved as rent rolls in another email.

Thanks Robert

----- Forwarded message -----

From: MOSS, PARKS <henry.moss@scana.com> <mailto:henry.moss@scana.com> >

Date: Mon, Aug 26, 2019, 1:08 PM

Subject: RE: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

To: Robert sample <robeshample@gmail.com> <mailto:robeshample@gmail.com> >

Mr. Sample,

Per your question below regarding the electric services for the addresses you provided on Ball Park Road on Saint Helena Island, the following addresses had active electric accounts/service as follows:

79 Ball Park: May 2004---Present

81 Ball Park: Feb. 1994 to July 2011

83 Ball Park: Feb 1994 to July 2008

87 Ball Park: Feb. Feb 1996 to Nov 2010

89 Ball Park: July 1994 to Present

93 Ball Park: Dec 1997 to July 2008

95 Ball Park: April 1991 to Sept 2011

101 Ball Park: Dec 1991 to May 2016

If you have any questions, please let me know.

Regards,

Parks

Parks Moss
Senior Account and Project Manager
Customer Service Engineering
843-815-8808 (office)
843-540-1315 (mobile)

Exhibit J

Subject: RE: Ball Park Rd Mobile Home Park

Greenway, Eric <egreenway@bcgov.net>

Tue, Sep 24, 2019, 8:31 AM

to Robert sample, Austin, Hillary, Judge, Tamekia

Mr. Sample,

After a review of the electric service history, the rent roll spreadsheet, the historic aerials and the property tax records for the subject parcel I have determined that insufficient evidence exists, in accordance with the requirements of Section 8.2.40 (B) - Discontinuance of Use of the Beaufort County Community Development Code, in order to establish this property as a legal non-conforming mobile home park. The requirements of Section 8.2.40 are:

B. The Director shall have the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

If have any questions regarding this please feel free to let me know and please note that this is an official written determination and must be appealed within 30 days of receipt of this email.

Eric L. Greenway, AICP
Community Development Director
Beaufort County Council
Office: 843-255-2143
Mobile: 843-441-6129 (preferred)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
Eric Greenway, as agent for Beaufort County,	)	
Appellant	)	CA: 2020-CP-07-00112
v.	)	
BEAUFORT COUNTY, Zoning Board of Appeals, etal,	)	CERTIFICATION OF RECORD ON APPEAL
Respondent.	)	S.C. Code Ann. §6-29-830

2020 FEB 10 PM 2:43
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Pursuant to S.C. Code Ann. §6-29-830 (1976, as amended), the below itemized documents which include a copy of the transcript(s) of the hearing(s)/proceeding(s) and evidence heard by the Beaufort County Zoning Board of Appeals constitute the record of the proceedings held before the Beaufort County Zoning Board of Appeals in the above referenced matter, same being certified as the record on the appeal.

- | | |
|----------------------|--|
| 1. February 03, 2020 | Video CD of ZBOA Meeting – November 21, 2019. |
| 2. December 19, 2019 | Notice of Decision with mailing information. |
| 3. | Minutes. |
| 4. November 21, 2019 | Agenda |
| 5. November 21, 2019 | Excerpt from Zoning & Development Standards Ordinance – Table 106-1098 – Manufactured Home Community Definition. |
| 6. November 13, 2019 | Staff Recommendations. |
| 7. October 29, 2019 | Letter from Staff to Mr. Thomas Taylor – Date of Hearing. |
| 8. October 29, 2019 | Receipt of payment. |
| 9. October 29, 2019 | Printout of Tax Records. |
| 10. October 24, 2019 | ZBOA – Administrative Appeal Application with justification, and Exhibits from Mr. Thomas Taylor. |

11. September 24, 2019 Email from Mr. Eric Greenway to Mr. Robert Sample, -
Administrative Interpretation
12. August 26, 2019 Email from Mr. Robert Sample to Mr. Eric Greenway – Ball Park
Rent Rolls.
13. July 24, 2019 Email from Mr. Robert Sample to Mr. Eric Greenway – Ball Park
Road Mobile Home Park.

At Beaufort, South Carolina

By: 

This 10th day of February, 2020.

Hillary A. Austin
Beaufort County Zoning Administrator

Certificate of Filing:

This is certify that the undersigned has
This date filed with the Clerk of Court
For the County of Beaufort this
Transcript of the record on appeal in
The above entitled action.

This 10th day of February, 2020

By: 

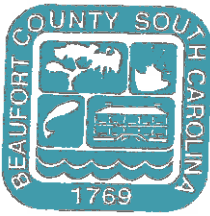
HILLARY A. Austin
Printed Name

2020 FEB 10 PM 2:43
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**Beaufort County Council
Zoning Board of Appeals
November 21, 2019**



2020-CP-07-0112



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

November 22, 2019

Mr. Robert Sample, Jr.
P.O. Box 2238
Beaufort, SC 29901

Law Office of Thomas C. Taylor, LLC
P.O. Box 5550
Hilton Head Isl., SC 29938

Re: ZBOA – Robert Sample Jr. – Ball Park Road Mobile Home Park (Administrative Interpretation Appeal)
Article 8, Division 2.40 of the Community Development Code
79, 81, 83, 87, 89, 93, 95 & 101 Ball Park Rd., St. Helena Island
District 300, Tax Map 016, Sub Map 000, Parcel 0360
District 300, Tax Map 016, Sub Map 000, Parcel 183B

Dear Sirs,

On Thursday, November 21, 2019, the Zoning Board of Appeals completed its review of your request for an Appeal of an Administrative Interpretation from Article 8, Division 2.40 of the Beaufort County Community Development Code. The Zoning Board of Appeals (6 members for, 0 members against, 1 member absent, 0 vacancy) granted your request for an Appeal of an Administrative Interpretation and voted to overturn the decision of Beaufort County Staff.

The Board granted the request for the Appeal based on the following findings:

- 1) The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
- 2) There was no interruption in the legal, pre-existing, non-conforming use.

If you require additional information of the Zoning Board of Appeals relating to this matter, please contact Hillary Austin, Zoning & Development Administrator, at (843) 255-2173.

Sincerely,

Thomas Gasparini
Chairman, Zoning Board of Appeals

Beaufort, South Carolina

This 19th Day of December, 2019

"Professionally we serve; Personally we care!"

7013 1710 0000 2883 0610

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Sent To
ROBERT Sample, Jr
Street, Apt. No., or PO Box No. **P.O. Box 2238**
City, State, ZIP+4 **Bt SC 29901**

PS Form 3800, August 2006 See Reverse for Instructions

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Total Postage & Fees	\$

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12/20

Sent To
THOMAS TAYLOR
Street, Apt. No., or PO Box No. **Post Office Box 5550**
City, State, ZIP+4 **H.I. SC 29938**

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

Mr. Robert Sample, Jr.
Post Office Box 2238
Beaufort, SC 29901

COMPLETE THIS SECTION ON DELIVERY

A. Signature **[Signature]** ☒ Agent ☐ Addressee

B. Received by (Printed Name) **MARIE R TATE** C. Date of Delivery **1/2/20**

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

7013 1710 0000 2883 0627

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Thomas C. Taylor
Law Offices of Thomas C Taylor, LLC
Post Office Box 5550
Hilton Head Island, SC 29938

COMPLETE THIS SECTION ON DELIVERY

A. Signature **[Signature]** ☐ Agent ☐ Addressee

B. Received by (Printed Name) **Tom Taylor** C. Date of Delivery **12-20-19**

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

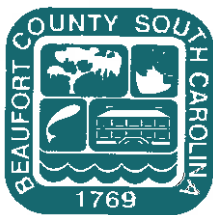
(Transfer from se)

7013 1710 0000 2883 0610

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, November 21, 2019, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Kevin Mack, Vice-Chairman
Mr. John Chemsak
Mr. Mark McGinnis
Mr. Cecil Mitchell, III
Mr. Chester Williams

MEMBERS ABSENT

Mr. Bernard Rivers

VACANCY

None

STAFF PRESENT

Mr. Eric Greenway, Community Development Director
Ms. Hillary Austin, Zoning Administrator
Mrs. Tamekia Judge, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE: Mr. Gasparini led those assembled with the Pledge of Allegiance.

REVIEW OF AGENDA:

The applicant requested to withdraw the application from the agenda.

Mr. Williams made a motion to amend the agenda removing items #7 and #8.

Mr. Mack seconded the motion.

MOTION: Mr. Williams made a motion to adopt the agenda with the change to remove items #7 and #8. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

REVIEW OF MINUTES:

MOTION: Mr. Williams made a motion to adopt the October 24, 2019 minutes as written. Mr. Mack seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, and Williams; ABSTAIN: Chemsak and Mitchell; ABSENT: Rivers; VACANCY: None).

NEW BUSINESS

NICOLE SCOTT, NEXSON PRUET – K & R DEVELOPMENT (APPEAL CONTINUANCE)

Mr. Williams and Mr. Gasparini recused themselves from the consideration of the application because they represent the neighboring property.

Mr. Mack, Vice-Chairman, chaired the meeting.

November 21, 2019, Zoning Board of Appeals
Page 1

"Professionally we serve; Personally we care!"

Mr. McGinnis made a motion to grant the continuance of the application, until the December 19, 2019 meeting.

Mr. Chemsak seconded the motion.

MOTION: Mr. McGinnis made a motion to grant the continuance of the application until the December 19, 2019 meeting. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, McGinnis and Mitchell; ABSTAIN: Gasparini and Williams; ABSENT: Rivers; VACANCY: None).

Mr. Gasparini, Chairman and Mr. Williams rejoined the meeting.

ROBERTS SAMPLE JR. – BALL PARK ROAD LLC (ADMINISTRATIVE INTERPRETATION – APPEAL)

Mr. Williams stated that he represented Mr. Sample in an unrelated matter, and does not have a conflict of interest for this application. Mr. Williams will not recuse himself from this matter. Mr. Williams also stated that he has a professional relationship with Mr. Taylor.

Mr. Gasparini stated that he works with Mr. Williams at his law firm and he has a professional relationship with Mr. Taylor. Mr. Gasparini stated that he does not have a conflict of interest with this application and he will not recuse himself.

Mr. Thomas Taylor stated, "This appeal is from an interpretation from Mr. Greenway as it relates to Mr. Robert Sample's application to be able to continue a previously authorized and fully recognized nonconforming use of a Mobile Home Park out on St. Helena. Mr. Sample acquired the Mobile Home Park in early 2019; that he began to do work on. It is very important and undisputed that at the time he bought it, there was one mobile home on it, which had a continuing long-standing rental. There was already electrical use utilities in service at the Mobile Home Park. I believe, that the County recognizes this year, on the tax record the continuing validity of a Mobile Home Park. That this is and was a legal nonconforming use up until the time that the County Staff took a look at it, and then went on to opine earlier this year that the rental checks and the other evidence that was there apparently did not suffice under Mr. Greenway's observation to prove that there was a continuing use there. My argument is that this was an improper shift in the burden of proof necessary. Mr. Greenway's determination, that it had been abandoned came about from his supposed review of the certain parameters that are set forth in the Code. We believe that the evaluation should not start at the point where a legal nonconformity in the CDC Section 8.1.20 is presumed to continue until such time as it is abandoned. The code is very clear that this is a nonconforming safe harbor. The code provides that it is the general policy of the County to allow such uses to continue to exist. Therefore it is presumed, in this Community under the code that a legal nonconforming use recognized by the County will continue until it is abandoned. If there comes a time when it is appropriate for Staff to take the position, that something has been abandoned, then the Code is very clear. The steps used to analyze by the Director, or to look and see if steps have been taken by the property owner to resume the nonconforming use, there is a clear delineation by County Council that there has to have been an abandonment prior. In order to have a resumption in nonconforming use there has to have been a determination that it has been abandoned. In this case, I believe the Staff will admit that there has never been a determination prior to this, that it has been abandoned. In fact, there is clearly a continuing use, there is continuing electrical utilities, and the taxes paid as a Mobile Home Park."

Mr. Williams stated, "I don't see a definition in the Code for a Mobile Home Park."

Ms. Austin stated, "It's a Manufactured Home Community."

Mr. Williams stated, "That's the term we should be using instead of a Mobile Home Park."

Mr. Gasparini asked Mr. Taylor, "What steps has Mr. Sample taken to reinstate the lot?"

Mr. Taylor replied, "Mr. Sample has taken numerous steps. He has begun to right the electrical boxes that were not right, he has repaired the septic tank systems that has been left in disrepair and he has begun to repair the pads for the replacement homes."

Mr. Gasparini asked Mr. Taylor, "Does he need permits to do any of that?"

Mr. Sample stated to the Board, "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. I had an electrical contractor come out to check the viability of the stands, I had No Cuts come out to identify the lines, I had SCE & G come out and I had Beaufort Jasper come out. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."

Mr. Mack asked Mr. Sample, "Did you make repairs to the septic tanks?"

Mr. Sample replied, "I haven't made any repairs, the septic tanks are pretty good; I was trying to identify where they were."

Mr. McGinnis asked Mr. Sample, "How many home sites do you have?"

Mr. Sample replied, "It is nine or ten."

Mr. McGinnis asked Mr. Sample, "How many of those nine or ten sites do you believe are not in suitable repair for usage?"

Mr. Sample replied, "The stands have to be repaired. When the previous owner removed the homes, they messed up the stands."

Mr. McGinnis asked Mr. Sample, "At any time during the past several years, has there been less than two home sites occupied?"

Mr. Sample replied, "To my knowledge, I think they have."

Mr. Taylor stated to the Board, "The nonconforming uses have not been removed. There was never any intention to abandon the use when the property went into foreclosure."

Mr. Gasparini asked Mr. Taylor, "The nonconforming got started under the old code did it not; not this code? What did the old code say about Mobile Home Parks?"

Ms. Austin replied, "It has always been anything more than one mobile home on a piece of property. You have to establish a Mobile Home Park because you can only have one house per parcel. I don't know when this mobile home park was established."

Mr. Gasparini asked Ms. Austin, "If you had a Mobile Home Park under the old code and you had five people and four of them moved and you still had one, there wasn't a requirement that you had to close the park because you didn't have two people?"

Ms. Austin replied, "There was never a requirement that you close it, but you don't let it go for more than a year. There was always that nonconforming issue that says if you close the nonconforming use for more than a year or you don't use it, then you lose the grandfathering."

Mr. Gasparini asked Ms. Austin, "As long as someone was renting a mobile home that's a continuing use, is it?"

Mr. Taylor stated, "There was no definition in the former code as to a Mobile Home Park."

Mr. Greenway stated, "That issue is irrelevant what the old code says, it is grandfathered under the current code. That is what establishes the nonconformity."

Mr. Gasparini asked, "It doesn't have to conform with the current code if it's grandfathered, correct?"

Mr. Greenway stated, "The current code is what establishes the standards for approving nonconformity."

Mr. Gasparini stated, "It was established some time under the former code, and my understanding of how something gets grandfathered is, as long as it continues to meet the former code it gets to be a nonconforming use. You can't change the code to put the use away."

10 minute Recess

Recess ended

Mr. Gasparini asked Mr. Williams, "In order to continue a nonconformance, you would have to meet the old rules not the new ones, is that right?"

Mr. Williams replied, "It is the change in the rules, assuming what was then the mobile home park was legally established at the time it was established, it is the change in the rule by the adoption of the new code that makes it nonconforming."

Ms. Austin read the code, "In the old code, Manufactured Home Community was allowed in the rural zoning district as a limited use. The definition for that is, a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals."

Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community that is there now would have been a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Taylor stated, "Was there a good faith analysis made by the Director as to whether or not there was an intention to abandon this and it should be allowed to continue as a legal nonconforming use."

Mr. Gasparini asked, "At some point the bank took over, how did that work?"

Mr. Sample replied, "The property managers was hired by the bank to manage the property."

Mr. Gasparini stated, "The bank had the property since 2014, and when did you buy it?"

Mr. Sample replied, "This year."

Mr. Greenway stated, "One of the key component to establishing a Mobile Home Park is the existence of manufactured homes in that park. This park has not operated as a Mobile Home Park for some period of time, in excess of a year. There has only been one mobile home on the property that was established by the power, receipts that I looked at, and the rent roll for that period of time, and I did not feel that I could in my power grandfather the Mobile Home Park. I wrote a determination denying his grandfathered use and I explained to him in my email that he had the right to appeal that decision to you all. It has not operated as a Mobile Home Park, in my opinion, and has not for several years. This is not a grandfathered Mobile Home Park in the eyes of the Staff."

Mr. Williams asked Mr. Greenway, "The primary basis for your determination was that there was not two or more manufactured homes on the property?"

Mr. Greenway replied, "That is correct."

Mr. Williams asked, "What zoning district is the property located in?"

Ms. Austin replied, "T2R."

Mr. Williams asked, "What's the residential density in that district?"

Ms. Austin replied, "One per three."

Mr. Mitchell asked Mr. Greenway, "When you established it, there is only one mobile home in that park, you did that through pictures?"

Mr. Greenway replied, "I did it through aerials and the rent roll."

Mr. Mitchell stated, "I just saw two open electric service accounts and I am trying to figure out how we know that there wasn't two mobile homes, up until six months ago."

Mr. Gasparini asked Mr. Greenway, "Is it undisputed that this gentleman, Mike Pope, has a mobile home out there and lives in it?"

Mr. Greenway replied, "Yes, there is a mobile home on the property and someone does reside there."

Mr. Gasparini stated, "The way I read the rent roll, there are nine spots and all of them are vacant except for Mr. Pope's. If I understand your argument, as soon as less than two of them are occupied then it can't be grandfathered any more, is that the way I understand your determination?"

Mr. Greenway stated, "That is correct. The zoning district allows based on the size of the property and without a subdivision on the property, it allows one dwelling on the property. There is one dwelling on the property right now in accordance with the zoning district."

Mr. McGinnis asked Mr. Greenway, "Is that for up to one year?"

Mr. Greenway replied, "Yes, that's correct."

Mr. Gasparini asked Mr. Greenway, "How do you stay grandfathered if you have to meet the new code anywhere?"

Mr. Greenway replied, "You stay grandfathered by maintaining the grandfathered use of the property."

Mr. Gasparini asked Mr. Greenway, "Doesn't Mr. Pope's dwelling establish that?"

Mr. Williams stated, "The old code required three manufactured homes on the property."

Mr. Gasparini stated, "It required it to establish the Mobile Home Park. As Mr. Mitchell suggested, if there is a period of time when you can't rent to people, do you lose your business?"

Mr. Greenway stated, "They haven't made necessary repairs or attempted to do so for many years. Our position as Staff is that the time frame for him to do that has expired because it has been more than one year that this grandfathered situation has expired, so now it's too late."

Mr. Gasparini asked, "So the County's position is that it expired before Mr. Sample ever got the property?"

Mr. McGinnis asked, "When was the last time there were other mobile homes out there even if they were unoccupied?"

Mr. Sample replied, "I am not sure."

Mr. Gasparini stated, "So we think this got established even before the old code was adopted."

Ms. Austin replied, "Yes."

Mr. McGinnis stated that there was no intent to abandon it, since the bank had hired a managing company to operate it even if they didn't have more than one."

Mr. Williams asked Mr. Greenway, "Is the tract that we are talking about a parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings?"

Mr. Greenway replied, "I can't say that, there is no evidence to that at this point."

Mr. Williams stated, "There is a recorded plat that shows seven mobile homes on it and we have agreed that it was a legal nonconformity upon the adoption of the new code. Mr. Williams asked, does the property still meet the old code definition of a Manufactured Home Community?"

Mr. Greenway stated, "I don't have any evidence proving that."

Mr. Mitchell made a motion to overturn the County's determination that the pre-existing legal nonconforming use was abandoned for more than one year.

McGinnis seconded the motion.

Mr. Chemsak asked, "How many lots would this be approved for?"

Mr. Gasparini stated, "The Board is not making a determination about how many homes are allowed there."

MOTION: Mr. Mitchell made a motion to overturn the determination made by the County, that the pre-existing legal nonconforming use was abandoned for more than one year. The property shall remain as an existing legal nonconforming use for a Mobile Home Park. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

ADJOURNMENT

MOTION: Mr. Williams made a motion to adjourn the meeting. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell, and Williams; ABSENT: Rivers; VACANCY: None).

The meeting adjourned at approximately 6:14 p.m.

Note: The video link of the November 21, 2019, Zoning Board of Appeals meeting is:
https://beaufort.granicus.com/player/clip/4592?view_id=15



AGENDA
ZONING BOARD OF APPEALS
Thursday, November 21, 2019
5:00 p.m.

Council Chambers, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road
Beaufort, SC 29902

Contact: 843.255.2171

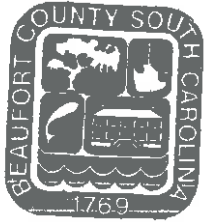
1. CALL TO ORDER – 5:00 P.M.
2. PLEDGE OF ALLEGIANCE
3. ADOPTION OF AGENDA
4. ADOPTION OF MINUTES (OCTOBER 24, 2019)
5. NICOLE SCOTT, NEXSEN PRUET REPRESENTATIVE FOR K & R DEVELOPMENT HAS AGREED TO BEAUFORT COUNTY'S REQUEST OF A ONE-TIME CONTINUANCE FOR THE REQUEST OF AN APPEAL OF AN ADMINISTRATIVE INTERPRETATION FOR OKATIE RV RESORT FOR A SEMI-DEVELOPED CAMPGROUND FROM ARTICLE 3 AND 4, DIVISIONS 3.2 AND DIVISION 4.1 OF THE COMMUNITY DEVELOPMENT CODE UNTIL DECEMBER 19, 2019. THE PROPERTY IDENTIFICATION NUMBER IS DISTRICT 600, TAX MAP 009, SUB MAP 000, PARCEL 0113. THE PROPERTY IS LOCATED ON GASTON PLANTATION RD., BLUFFTON. THE PROPERTY IS ZONED AS T2 RURAL (T2R).
6. LAW OFFICE OF THOMAS C. TAYLOR, LLC REPRESENTATIVE FOR ROBERT L. SAMPLE, JR. IS REQUESTING AN APPEAL OF AN ADMINISTRATIVE INTERPRETATION FOR BALL PARK ROAD MOBILE HOME PARK FROM ARTICLE 8, DIVISION 2.40 OF THE COMMUNITY DEVELOPMENT CODE. THE PROPERTY IDENTIFICATION NUMBER IS DISTRICT 300, TAX MAP 016, SUB MAP 000, PARCELS 0360 AND 183B. THE PROPERTY IS LOCATED ON BALL PARK RD., ST. HELENA ISLAND. THE PROPERTY IS ZONED AS T2 RURAL (T2R).
7. SOUTHERN CAROLINA BUILDERS, REPRESENTATIVE FOR RICHARD ZEIGLER IS REQUESTING A RIVER BUFFER SETBACK VARIANCE IN ORDER TO CONSTRUCT A ROOF OVER AN EXISTING DECK FROM ARTICLE 5, DIVISION 5.11.60, TABLE 5.11.60.A OF THE COMMUNITY DEVELOPMENT CODE. THE PROPERTY IDENTIFICATION NUMBER IS DISTRICT 100, TAX MAP 016, SUB MAP 00A, PARCEL 0021. THE PROPERTY IS LOCATED ON HARVEYS BEND, PORT ROYAL ISLAND. THE PROPERTY IS ZONED AS T2 RURAL NEIGHBORHOOD (T2RN).
8. (PUBLIC COMMENT – ZEIGLER RIVER BUFFER SETBACK VARIANCE)
9. OLD BUSINESS
10. NEW BUSINESS
11. ADJOURNMENT



ZONING AND DEVELOPMENT STANDARDS

§ 106-1098

Land Use	Priority Areas							Rural Areas			Additional Standards (See Section) Article XI	Use Definition
	U	S	CR	CS	RD	LI	IP	R	RR	RB	RC	
Traditional neighborhood development	L	L	N	N	N	N	N	N	N	N	N	A building that would otherwise be categorized as a single-family home, except for the fact that the number of unrelated individuals living in the unit does not qualify under the definition of family. The operation of a group home shall be self-operating and controlled by the residents in a family living environment, as opposed to an institutional environment, whereby operations are mainly controlled by a professional staff. If the unit would otherwise qualify as other types of dwelling units defined in this chapter, such as apartment or attached housing, then the use shall be treated as such. Not included are co-ops, nursing homes, other institutional residential and boardinghouse types of operations since these are institutional or commercial lodging uses.
Group home	Y	Y	N	N	N	N	N	Y	Y	Y	N	
Manufactured home community	L	L	N	N	N	N	N	L	N	N	N	A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights. Subdivision of land as a single-family detached, single-family cluster, family compound, planned community or small single-family affordable land use and intended for fee-simple sale of lots for manufactured homes does not constitute it being defined under this use. For purposes of this definition, a manufactured home is a residential dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards (FMHCS). This does not include recreational vehicles, travel trailers or motorized homes licensed for travel on highways, nor manufactured housing units designed and built to meet applicable requirements of the South Carolina Modular Buildings Construction Act.



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Community Development
Multi Government Center • 100 Ribaut Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
OFFICE (843) 255-2170
FAX (843) 255-9446

MEMORANDUM

TO: Members of the ZBOA
FROM: Beaufort County, Zoning and Development Administrator *HAA*
DATE: November 13, 2019
SUBJECT: Staff Recommendation – ZBOA Meeting – November 21, 2019

I. MR. RICHARD ZEIGLER – RIVER BUFFER VARIANCE
APPLICANT: RICHARD ZEIGLER

SUMMARY OF REQUEST:

The applicant is requesting a variance to construct a covered porch/patio within the River Buffer. Presently the existing home and deck meets the 50-foot buffer requirement. The proposed addition will extend within the river buffer an additional 8-feet.

ANALYSIS:

Table 5.11.60A requires all single-family homes and accessory uses to be set back 60-feet from the OCRM Critical Line. The Community Development Code allows for uses that are pervious, such as playgrounds, fire pits, outdoor furniture, pervious hardscapes and uncovered decks, pools, etc. to be set back 50 feet from the critical line

HISTORY OF THE PROJECT:

The property is located on Paulkie Island, and per the tax records was platted in 1951. The home was built in 1954 and a detached garage added to the property in 2009. The buffer at that time was 20-feet from the OCRM Critical Line. County Council implemented the River Buffer requirements for a 50-foot Buffer in 1997. The original owner knew of the 50-foot buffer when they applied for the garage permit. Per the submitted plat, the home met the 50-foot buffer requirement.

In order for a variance to be granted, the applicant shall ensure the following requirements are met:

There are extraordinary and exceptional conditions (such as topographical conditions, beachfront setback lines, narrowness, shallowness, or shape of the parcel of land) pertaining to the particular land or structure for which the Variance Permit is sought, that do not generally apply to other lands or structures in the vicinity; (Subsection 7.21.140.D.1.a.)

There are no extraordinary and exceptional conditions pertaining to the property. The applicant has existing deck that meets the 50-foot requirement. The open deck encroaches within the 60-foot setback and is allowed per the Code. This addition does

not pertains to the property. The property is large enough to accommodate the home and other accessory uses and meet the 50-foot buffer.

The extraordinary and exceptional conditions referred to in Subsection 7.2.140.D.1.a. above are not the result of the actions of the landowner;

There are no extraordinary and exceptional conditions pertaining to the land; the request for a variance is the result of the actions of the landowner.

Because of the extraordinary and exceptional conditions referred to in Subsection 7.2.140.D.1,a, above, the application of this Development Code to the land or structure for which the Variance Permit is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;

The application of the Development Code to the land or structure would not prohibit the use of the parcel for a single family home.

The Variance Permit would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated;

The granting of the Variance Permit would confer special privileges on this landowner. The applicant has not proven a hardship to warrant the covered deck encroaching within the river buffer.

The extent of the Variance Permit is the minimum necessary to allow a reasonable use of the land or structure;

The extent of the variance is more than the minimum necessary to allow a reasonable use of the land.

The Variance Permit is in harmony with the general purpose and intent of the Development Code and preserves its spirit;

The requested Variance Permit is not in harmony with the general purpose and intent of the Development Code.

The Variance Permit would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to land or improvements in the surrounding neighborhood, or otherwise be detrimental to the public welfare; and

The granting of the Variance Permit would adversely affect the health and safety of the general public and be a detriment to the public welfare.

Resources Regarding Critical Line Buffers, (p. 5-9)

The granting of the variance to encroach further into the river buffer is not consistent with the Comprehensive Plan.

RECOMMENDATION:

Staff recommends the request for the variance be **DISAPPROVED for the covered deck.** The applicant has not proven a hardship for the variance.

II. ROBERT SAMPLE APPEAL – MOBILE HOME PARK – BALL PARK ROAD APPLICANT: ROBERT SAMPLE

The applicant is appealing an interpretation made by the Community Development Director Eric Greenway to not grandfather a mobile home park, which has been abandoned/defunct since 2011. The property has had one mobile home; therefore causing the property to not being classified as a mobile home park. The applicant is appealing Mr. Greenway's written determination which is as follows:

After a review of the electric service history, the rent roll spreadsheet, the historic aerials and the property tax records for the subject parcel I have determined that insufficient evidence exists, in accordance with the requirements of Section 8.2.40 (B) - Discontinuance of Use of the Beaufort County Community Development Code, in order to establish this property as a legal non-conforming mobile home park. The requirements of Section 8.2.40 are:

B. The Director shall have the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

III. K & R DEVELOPMENT APPEAL – SEMI-DEVELOPMENT RV PARK – RURAL ZONING DISTRICT
APPLICANT: NICOLE SCOTT – AGENT FOR DEVELOPER

The applicant is appealing an interpretation made by the Community Development Director Eric Greenway to not permit a Semi-Development RV Park within the T2-Rural Zoning District. The applicant is appealing Mr. Greenway's written determination which is as follows:

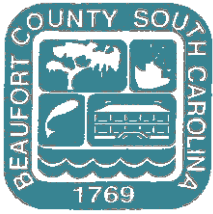
I have reviewed Section 4.1.190 of the CDC and have determined that the T2R zoning district is limited to the construction of a Primitive Campground as provided in Section 4.1.190 A. Therefore, all the requirements (see below) for a primitive campground must be satisfied as an additional condition to the issuance of conceptual plan approval.

4.1.190 - Recreation Facility: Campgrounds

Campgrounds shall comply with the following:

A. Primitive Campground. A campground accessible by walk-in, equestrian, motorized trail vehicles or vehicular traffic where basic facilities may be provided for the comfort and convenience of the campers. Primitive Campgrounds shall comply with the following:

1. **Length of Stay.** All campers are limited to a 14-day length of stay.
2. **Zones.** Primitive Campgrounds are allowed in the T1 Natural Preserve zone and all T2 Rural Zones.
3. **Buffers.** Any tent sites shall be located no less than 30 feet from any property line.
4. No RVs or camping trailers over 20 feet in length shall be allowed.
5. **Tree Requirement.** Existing trees shall be left on site, when practical. If there are no trees between campsites, at least two trees shall be planted between each campsite.
6. **Accessory Uses.** Facilities for the comfort and convenience of the camper may be provided such as bathing facilities, flushing toilets, grills, tables, fire pits, fire circles, and refuse collection.



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

October 29, 2019

Law Office of Thomas C. Taylor, LLC
c/o Robert Sample, Jr.
Post Office Box 5550
Hilton Head Isl., SC 29938

Re: ZBOA – Ball Park Road Mobile Home Park - Administrative Interpretation (Appeal)
Article 8, Division 2.40 of the Community Development Code
79, 81, 83, 87, 89, 93, 95 & 101 Ball Park Rd., St. Helena Island (per application)
District 300, Tax Map 016, Sub Map 000, Parcel 0360
District 300, Tax Map 016, Sub Map 000, Parcel 183B

To Whom It May Concern:

The submitted application packet for the referenced property has been reviewed by the Community Development Department. The project is scheduled for review on **Thursday, November 21, 2019** by the Zoning Board of Appeals, in the County Council Chambers at 5:00 P.M. at 100 Ribaut Rd., Beaufort SC.

If I may be of further assistance, please do not hesitate to contact me at 843-255-2171.

Sincerely,

Tamekia Judge
Zoning Analyst III

Judge, Tamekia

From: Microsoft Outlook
To: Tom Taylor; Robert Sample
Sent: Tuesday, October 29, 2019 1:36 PM
Subject: Relayed: ZBOA: Administrative Interpretation Appeal (Ball Park Road Mobile Home Park)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Tom Taylor \(tom@thomastaylorlaw.com\)](mailto:tom@thomastaylorlaw.com)

[Robert Sample \(robeshample@gmail.com\)](mailto:robeshample@gmail.com)

Subject: ZBOA: Administrative Interpretation Appeal (Ball Park Road Mobile Home Park)



Beaufort County
Treasurer
100 Ribaut Road
Beaufort, SC 29902
(843) 255-2000
Welcome

005390-0004 Tisha A. 10/29/2019 01:59PM

PERMITS & INSPECTIONS

ZONING BOARD OF APPEALS

- REVIEW

2019 Item: 31848|ZBOA

Balance due: 0.00

Balance unpaid: 0.00 75.00

Payment Id: 51701

75.00

Subtotal 75.00

Total 75.00

CHECK 75.00

Check Number 3108

Change due 0.00

Paid by: LAW OFFICE OF THOMAS C TAYLOR

Thank you for your payment

CUSTOMER COPY

THOMSON REUTERS

AUMENTUM

 Lock Penalty Charges-Installment 1

PIN: **R300 016 000**
0360 0000 TAG: **300-ST HELENA ISLAND** Current owner: **BALLPARK PLACE LLC**
 AIN: **07599850** TIF: Ownership type: **Sole Ownership**
 Status: **Active** County: **07-Beaufort** Situs address: **101 BALL PARK RD**
 Geocode: Case: Description: **POR LOTS 15 16 17 18 SEC (...)**
 Rev acct: **0228098096** Pmt pln: Class: **MHVac UnplattedSite SeveredMH**
 Tax sale: ACH pln: Roll type: **Real**

Year/Bill **2019-5217818-A** | ***PROPERTY TAX BILL*** | **Print** | **Bill Detail** Total Due **10/29/2019**

Bill type: **Original Actual** Owner of record: **CSB PROPERTY MANAGEMENT II LLC** Bill 2019-5217818 Inst 1-January 15 **\$158.09**
 Bill dates: **October 15, 2019** **5 BOW CIR** Total Current **\$158.09**
 Amount: **HILTON HEAD ISLAND SC 29928** Delinquent **\$0.00**
 Paid date: Adv/Surplus **\$0.00**
 Receipt: Total Due **\$158.09**

Sequence no: 0

Paid by:

Decal no:

Description: **POR LOTS 15 16 17 18 SEC 20 1S1E PB66 P83**

Values/Exemptions

AppAcres **0.5000**
None Class **1.0000**
None 

Charge Summary

Detail

Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings
158.09	0.00	158.09	0.00	0.00

Appraised **12,800 USD**MHValue **0**UseAcres **0**HmstQualVal **0** MidAcres **0.5000**

THOMSON REUTERS

AUMENTUM

 Lock Penalty Charges-Installment 1
PIN: **R300 016 000**
0360 0000TAG: **300-ST HELENA**
ISLANDCurrent owner: **BALLPARK PLACE LLC**AIN: **07599850**

TIF:

Ownership
type: **Sole Ownership**Status: **Active**County: **07-Beaufort**Situs address: **101 BALL PARK RD**

Geocode:

Case:

Description: **POR LOTS 15 16 17 18 SEC (...)**Rev acct: **0228098096**

Pmt pln:

Class: **MHVac UnplattedSite SeveredMH**

Tax sale:

ACH pln:

Roll type: **Real**

Situs Addresses

Address	City	State	Postal code	Primary
99 BALL PARK RD		South Carolina	29920	
95 BALL PARK RD		South Carolina	29920	
93 BALL PARK RD		South Carolina	29920	
101 BALL PARK RD		South Carolina	29920	X

THOMSON REUTERS

AUMENTUM

 Lock Penalty Charges-Installment 1

PIN: **R300 016 000**
183B 0000 TAG: **300-ST HELENA**
ISLAND Current owner: **BALLPARK PLACE LLC**
 AIN: **00292551** TIF: Ownership type: **Sole Ownership**
 Status: **Active** County: **07-Beaufort** Situs address: **87 BALL PARK RD**
 Geocode: Case: Description: **POR LOTS 15 16 17 18 SEC (...)**
 Rev acct: **0228098097** Pmt pln: Class: **ComImp MobileHomePark**
 Tax sale: ACH pln: Roll type: **Real**

Year/Bill 2019-5152478-A

PROPERTY TAX BILL

Print

Bill Detail

Total Due

10/29/2019

Bill type: Original Actual

Owner of record:

Bill 2019-5152478

Bill dates: October 15, 2019
 CSB PROPERTY MANAGEMENT II LLC
 5 BOW CIR
 HILTON HEAD ISLAND SC 29928

 Inst 1-January \$1,403.28
 15

Amount:

Total Current \$1,403.28

Paid date:

Delinquent \$0.00

Receipt:

Adv/Surplus \$0.00

Sequence no: 0

Total Due \$1,403.28

Paid by:

Decal no:

Description: POR LOTS 15 16 17 18 SEC 20 1S1E PB55 P83 *SPLIT 6/83 3.57 AC 16/1...

Values/Exemptions

AppAcres 0.7300
NoneAppAcres 3.0600
NoneClass 1.0000
NoneClass 1.0000
NoneClass 1.0000
None

Charge Summary

Detail

Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings
1,403.28	0.00	1,403.28	0.00	0.00

THOMSON REUTERS

AUMENTUM



Lock Penalty Charges-Installment 1

PIN: **R300 016 000**
183B 0000

TAG: **300-ST HELENA ISLAND**

Current owner: **BALLPARK PLACE LLC**

AIN: **00292551**

TIF:

Ownership type: **Sole Ownership**

Status: **Active**

County: **07-Beaufort**

Situs address: **87 BALL PARK RD**

Geocode:

Case:

Description: **POR LOTS 15 16 17 18 SEC (...)**

Rev acct: **0228098097**

Pmt pln:

Class: **ComImp MobileHomePark**

Tax sale:

ACH pln:

Roll type: **Real**

Situs Addresses

Address	City	State	Postal code	Primary
89 BALL PARK RD		South Carolina	29920	
81 BALL PARK RD		South Carolina	29920	
83 BALL PARK RD		South Carolina	29920	
79 BALL PARK RD		South Carolina	29920	
87 BALL PARK RD		South Carolina	29920	X

RECEIVED

OCT 21 2019

Community
Development Dep

BEAUFORT COUNTY - ZONING BOARD OF APPEALS APPLICATION FOR APPEALS (Administrative Interpretations)

INSTRUCTIONS:

Please fill out this application form completely. Attach any pertinent materials that may help the board members to better understand your request, i.e. photos, maps, drawings, etc. Failure to follow these instructions may result in rejection of your application.

1. Applicant Name Robert L. Sample, Jr.
 Address: P.O. Box 2238, Beaufort, SC 29901
 Home Phone: _____ Work Phone: 843-476-9639
2. Property Location (If Applicable): Tax District # _____ Tax Map # _____ Tax Parcel # _____ Lot # _____
 Street Address: Ball Park Road (79, 81, 83, 87, 89, 93, 95, 101)
3. Ordinance Section from which appeal is requested:
 Community Development Code: Article 8 Division(s) 2.40 Tables(s) _____
4. Please state the nature of your appeal. (Attach additional sheets as needed):
Mr. Sample appeals the determination of Eric L. Greenway, AICP, via email of 9.24.19 in which Mr. Greenway determined that the legal nonconforming use of a mobile home park had been abandoned for a period of one year or longer.
5. Please state your interpretation, and how it differs from that of the Director: The nonconforming use as a mobile home park was never abandoned.
6. Date the interpretation was granted/received by applicant: Sept. 24, 2019

NOTE: THE BOARD MAY POSTPONE OR PROCEED TO DISPOSE OF THE MATTER ON THE AGENDA IN THE ABSENCE OF THE APPLICANT.

I hereby agree to abide by all conditions imposed by the County of Beaufort in the approval/disapproval of this appeal.

Thomas C. Taylor
 Signature of Applicant

Robert L. Sample, Jr.
 Printed Name of Applicant

Oct. 23, 2019
 Date

Thomas C. Taylor
 Attorney for
Robert L. Sample, Jr.

Law Office of
 Thomas C. Taylor, LLC.
 Post Office Box 5550
 Hilton Head Isl., SC 29938

ADMITTED TO THE UNITED STATES
SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA
AND GEORGIA

CERTIFIED CIRCUIT
COURT MEDIATOR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

TELEPHONE 843-785-5050
TELECOPIER 843-785-5030

www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS
P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

October 24, 2019

Via Hand-Delivery

Received 10-24-2019

Mr. Eric L. Greenway, AICP
Community Development Director
Beaufort County Administrative Office Building
100 Ribaut Road, First Floor, Room 115
Beaufort, SC 29901

**Re: Appeal by Robert L. Sample, Jr. of Determination e-mail regarding Ball Park
Road Mobile Home Park**

Dear Director Greenway:

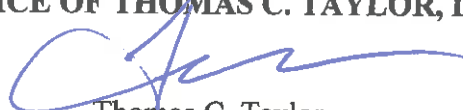
I represent Robert L. Sample, and I am pleased to attach hereto an appeal by Mr. Sample of your determination made September 24, 2019, that the Mobile Home Park had been abandoned.

Consistent with your published Procedures, I am attaching ten (10) copies of the following:

- a. The formal Appeal and attached Narrative;
- b. Exhibits 1, 2, 3 and 4; and,
- c. A check made payable to the Beaufort County Treasurer for \$75 as the filing fee.

I look forward to hearing from you as to when the appeal can be heard by the ZBOA. Please let me know if you have any questions. Thank you.

Cordially yours,
LAW OFFICE OF THOMAS C. TAYLOR, LLC.


Thomas C. Taylor

TCT/dpt
Enclosure(s)
cc: Robert L. Sample, Jr. via email

RECEIVED

OCT 24 2019

Community
Development Dept.

STATE OF SOUTH CAROLINA	)	BEFORE THE ZONING BOARD OF APPEALS
	)	OF BEAUFORT COUNTY, SOUTH CAROLINA
	)	APPLICATION FOR APPEAL
	)	NO. _____
COUNTY OF BEAUFORT	)	

ATTACHMENT 1

TO THE APPEAL APPLICATION OF

ROBERT L. SAMPLE, JR.

NARRATIVE

I. INTRODUCTION

This Attachment 1 is part of the Application for Appeal (this “Appeal”) filed by Robert L. Sample, Jr. and the Ball Park Place, LLC (the “Appellant”) in connection with a determination made by Eric L. Greenway, AICP, the Community Development Director of Beaufort County, South Carolina (the “County”) that the former County-recognized legal, nonconforming use of certain property (the “Property”) located on Ball Park Road on St. Helena as a Mobile Home Park, had been legally abandoned.

There is no dispute that the property was recognized by the County in past years as a legal nonconforming Mobile Home Park. See attached Tax Records, Exhibit 4. Some of the numerous mobile homes located on the property fell into disrepair in or around 2017-18, and the Appellant purchased the Mobile Home Park from a bank in May 2019, with the intention of renovating the Mobile Home Park and placing new trailers upon the land for rent.

The Mobile Home Park was never abandoned. The former owner deliberately left one long-term rented mobile home on the property for the exact purpose of protecting the continuation of the nonconforming use. However, for unknown reasons, in the late summer of 2019, Beaufort County Codes Enforcement advised Mr. Sample and Ball Park Place LLC, that the County no longer recognized the property as a legal nonconforming use. The Appellant then worked with Eric Greenway to provide the County with evidence of not only the continued rental of the one trailer rented by Mr. Pope, but the Appellant also provided the County with rent rolls from the previous property manager, data from SCE&G, and directed Mr. Greenway to aerial photos of the Property available on the County’s GIS website showing the continuous use.

II. BACKGROUND

As noted above, prior to Appellant's ownership of the Mobile Home Park, the County recognized the Property as a legal, nonconforming use. After Appellant purchased the Property and began renovations and plans for new mobile homes, the County interceded and questioned the continuing viability of the nonconforming use designation. In reply, Mr. Greenway was provided with copies of Mr. Pope's rental checks for his rented Mobile Home from 2012 through today. See Exhibits 1. In addition, Mr. Greenway was provided with copies of rent ledgers showing other renters in recent years. See Exhibit 2. In addition, Mr. Greenway was provided with copies of SCE&G documentation proving multiple continuing electric pads on the rental property. See Exhibit 3. And finally, Mr. Greenway was directed to aerial photos of the Property available on the County's GIS website, showing the continuing use of the Property through recent years as a Mobile Home Park.

III. ADMINISTRATIVE DETERMINATIONS

Beaufort County's Community Development Code vests in the Director the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. See Section 8.2.40, "Discontinuance of Use." In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to, the following:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and,
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

Section 8.2.40.

IV. THE AUTHORITY AND POWER OF THE ZBOA

Section 6-29-800(A)(1) of the Code of Laws of South Carolina (1976), as amended (the “SC Code”), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “State Enabling Act”), grants the ZBOA the power and duty to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the ordinance portions of the Community Development Code. When hearing and deciding appeals, the ZBOA may subpoena witnesses, and may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit,¹ and is authorized to make findings of fact and conclusions of law.²

On the local level, Community Development Code Section 7.3.70 provides that the ZBOA hears and decides appeals on interpretations of the Community Development Code (except for Zone District Map Boundaries).

V. APPEALS OF DETERMINATIONS

Section 6-29-800(B) of the SC Code, referring to the ZBOA, says that, “Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.”

Again on the local level, consistent with the State Enabling Act, Section 7.3.70 of the Community Development Code provides that an interpretation made by the Director or other administrative official pursuant to the CDC, may be appealed to the BZOA by an “aggrieved party.” In his email to the Appellant of September 24, 2019, Director Greenway advised that “this is an official written determination and must be appealed within 30 days of receipt of this email.” This Appeal has followed.

VI. THE DETERMINATION

The determination email (the “Determination”) of September 24, 2019 simply says: “After a review of the electric service history, the rent roll spreadsheet, the historic aerials and the property tax records for the subject parcel I have determined that insufficient evidence exists, in accordance with the requirements of Section 8.2.40(B) – Discontinuance of Use of the Beaufort County

¹ See SC Code Section 6-29-800(D).

² See SC Code Section 6-29-800(E).

Community Development Code, in order to establish this property as a legal non-conforming mobile home park.” Mr. Greenway then went on to quote the CDC Section 8.2.40(B).

The Appellant disagrees with the Determination and alleges that the Determination is incorrect, is in error, is arbitrary and capricious, and is contrary to the provisions of the State Enabling Act and the LMO. The Appellant further alleges that the Determination is in violation of its constitutional rights to due process, equal protection, and protection of its property rights. The Appellant is aggrieved by the Determination, and therefore has filed this Appeal to the ZBOA.

VII. GROUNDS FOR APPEAL

The Appellant alleges that the Determination was improperly made, and is in error, because it is arbitrary and capricious, and is contrary to the explicit provisions of the CDC. Specifically, the Appellant contends that the Director ignored the specific language of the CDC and instead, applied a non-existence “burden of proof” to the Appellant.

VIII. THE APPELLANT’S ARGUMENTS FOR APPEAL

The Appellant submits that a thorough review of the history of the action of the Director herein leads to the conclusion that the Determination is wrong and should be reversed.

A. APPLICABLE SOUTH CAROLINA CASE LAW

Initially, the Appellant notes that our South Carolina courts have consistently held that zoning ordinances, being in derogation of the common law, are strictly construed against the governing authority and in favor of the property owner, so as to allow the freest and broadest use of one’s property. See, for example, Keane/Sherratt Partnership v. Hodge, 357 S.E.2d 193 (S.C.App. 1987), citing Purdy v. Moise, 75 S.E.2d 605 (S.C. 1953).

Further, when construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. City of Myrtle Beach v. Juel P. Corporation, 543 S.E.2d 538 (S.C. 2001).

B. THE NONCONFORMING USE

The Appellants contend that the use of the property as a Mobile Home Park for years prior to 2019, established the use as a “Legal Nonconformity” under CDC Section 8.1.20. There is no indication in the record, nor has Mr. Sample nor Ball Park Place, LLC, ever received a Notice from the County challenging the status of “Legal Nonconforming Use.” Thus, it may be legally assumed that the Appellants are entitled to the protection of the CDC’s “non-conforming” safe harbor. “It is the general policy of the County to allow such uses, structures, lots, signs, and other site features to continue to exist.” Section 8.1.10.

Further, legal nonconformities are allowed to continue, and are encouraged to receive routine maintenance in accordance with the requirements of this Article as a means of preserving safety and appearance. Minor repairs and normal maintenance that are required to keep legal nonconforming uses, structures, lots, signs, and other site features in a safe condition are permitted. Section 8.1.40. And finally, Section 8.1.50 provides that “No change in title or possession or right to possession of land involved shall be construed to prevent the continuance of such legal nonconformity.”

Thus, the totality of the record and the CDC provides that in this case, the legal nonconforming use is presumed to continue unless, under the analysis guided by Section 8.2.40, the nonconforming use “is abandoned” for a period of one year or longer. The Director is given the charge to make such a determination (in implied good faith), and is given a laundry list of “facts and circumstances” to consider as set forth above:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and,
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

A plain reading of the CDC-provided analysis provision in Section 8.2.40 (as required under City of Myrtle Beach v. Juel, id.), clearly puts the burden of proof on the Director in evaluating the current condition of the Property if the Director is going to strip away the nonconforming safe-harbor. For example, factor no. 1 assumes that the Director will be looking at a situation where the nonconforming use has been admittedly abandoned, and asks the Director to evaluate whether steps have been taken by the owner to “resume” the nonconforming use. Here, the Appellant vigorously denies that there has been an abandonment of usage, and the facts clearly show that at least one mobile home has been continually maintained and rented for at least the last seven years. So, the first factor should

either be held not applicable, or clearly marked in favor of the Appellant because Mr. Sample is doing everything he can to bring the mobile home park back since he purchased it.

As to factor no. 2, Mr. Sample provided the Director with evidence that SCANA has provided continuous utility service to the property at two locations through the present, and to six of the other sites at various times over the last nine years. So, the answer to question no. 2 is that utility service has not been disconnected. See Exhibit 3.

As to question no. 3, the Appellant has provided the Director with a “rent roll” and copies of rent checks proving that there has been a consistent, continuous renter in at least one mobile home through today. In addition, there have been others over the years. See Exhibits 1 and 2.

As to question no. 4, there is no indication that any signs have been removed.

As to question no. 5, there is no indication that the continuing validity of any business license was considered by the Director.

As to question no. 6, it is undisputed that the activities of a Mobile Home Park are continually evident on the property, as is acknowledged by the Director referring to Mr. Parks’ long-term rental.

As to question no. 7, there is no indication in the record that the Director has any reasonable basis to presume that the current (or former) owners intended to abandon the nonconforming use. To the contrary, the Director admits that a continuous rental mobile home is operating and the Appellant has shown he is ready, willing and able to complete the work necessary on the Property to expand the business back to its reasonable size and scope.

Notwithstanding the fact that all of the factors set forth in CDC Section 8.2.40 mitigate in favor of a finding of continuous nonconforming use, the Director states in his September 24, 2019 email determination that “I have determined that insufficient evidence exists, in accordance with the requirements of Section 8.2.40(B)...in order to establish this property as a legal non-conforming [sic] mobile home park.” The Director erred in setting a burden of proof that does not exist in the CDC, and then proclaiming that the Appellant failed to produce “sufficient evidence” to establish the Property as a legal nonconforming mobile home park. As the above analysis shows, the CDC presumes that the legal nonconformity continues unless the Director, in good faith using the standards provided in 8.2.40, determines that it was abandoned for at least a year. It was not the Appellant’s burden to prove that the nonconforming use continued (even though the evidence clearly supports that finding); it was the Director’s burden to show evidence supporting the

intentional abandonment of the nonconforming use for at least a year. There is absolutely nothing in the record to support a good faith analysis of these facts in the record leading to an objective conclusion that the nonconforming use had been abandoned.

C. DETRIMENTAL RELIANCE AND ESTOPPEL

Based on the fact that Beaufort County had recognized the Mobile Home Park on Ball Park Road as a legal nonconforming use for years (see the County's tax records attached as Exhibit 4), the Appellant purchased the property and has expended funds renovating and preparing the Property for renewed mobile home leasing. The Appellant alleges that if he had not observed the Mobile Home Park operating for years prior to the purchase unabated, he would not have incurred the substantial expenses for the purchase of the property. The Appellant acted in reliance on the County's earlier obvious determination that the Property was a legal nonconforming use to his detriment.

The Appellant alleges that (a) he had no knowledge of, and no means of knowledge of, any plans or intentions by the Director to attempt to change the nonconforming designation of the Property in an effort to prevent the Appellant's use of the Property for the continuation of its permitted use as a Mobile Home Park, (b) he relied on the prior determinations made by, and the conduct of, the County staff prior to the Director's email of September 24, 2019, and (c) based on the conduct of the County staff prior to the Determination email, the Appellant changed his position, to his prejudice, by expending substantial sums to acquire the Property.

Based on his lack of knowledge and the means of knowledge, his justifiable reliance on the prior determinations made by, and the conduct of, the County staff prior to the September 24, 2019 email, and his prejudicial change in financial position, the Appellant alleges that the Director is estopped from denying that the Appellant's use of the Property as a Mobile Home Park is a continuing legal nonconforming use.

IX. CONCLUSION

South Carolina law provides local governments with wide latitude to enact ordinances regulating what people can do with their property, but those ordinances must be drafted in such a manner that people can have a clear understanding as to what is permitted and what is not. Otherwise, such ordinances must be construed to allow people to use their property so as to realize its highest utility. In other words, a property owner must be able to read the Community Development Code, and the subdivision and land development regulations, and know what can and cannot be done, and also what he must do; the County staff and Director cannot make up their own rules and regulations, or ignore mandatory requirements.

The Appellant asks that the ZBOA consider this Appeal, the record of this matter, the testimony and materials to be introduced into the record of this Appeal at the hearing, and hold:

- a. that a legal nonconforming use of the Property as a Mobile Home Park was previously made by the County, and continues;
- b. that there has been no abandonment of the nonconforming use as a Mobile Home Park under CDC Section 8.2.40, nor any other relevant code or ordinance provision;
- c. that the Appellant has relied to his detriment on the prior determinations made by the County staff regarding the legal nonconforming use of the Property; and,
- d. reverse the Director's decision as stated in the September 24, 2019 "determination" email.

The Appellant reserves the right to submit additional materials, documents, and information to the ZBOA in connection with this Appeal.

RESPECTFULLY SUBMITTED on behalf of the Appellant on October 24, 2019.

LAW OFFICE OF THOMAS C. TAYLOR, LLC.

By: 

Thomas C. Taylor / SC Bar No.: 5499
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 Hilton Head Island, SC 29938
 Telephone: 843-785-5050 Fax: 843-785-5030
 E-mail: tom@thomastaylorlaw.com
 ATTORNEY FOR THE APPELLANT
 ROBERT L. SAMPLE, JR. and the BALL PARK
 PLACE, LLC.

October 24, 2019
 Hilton Head Island, South Carolina

110

1283

12 Sept 2012

Sun Rentals & Development Inc

Five Hundred 00

Rent 51011 ANK R

NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

Track your expenses...

☐ Car Wash	☐ Food	☐ Transportation	☐ Gas
☐ Credit Card	☐ Gas	☐ Insurance	☐ Other
☐ Entertainment	☐ Insurance	☐ Other	

THIS DAY
BALANCE
DEPOSIT
OTHER
TOTAL

500.00

107548

STORING YOUR DUPLICATE CHECKS IN YOUR CHECK BOOK

BY TRACKING YOUR EXPENSES...

☐ Clothing	☐ Food	☐ Transportation
☐ Credit Card	☐ Utilities	☐ Mortgage
☐ Entertainment	☐ Insurance	☐ Other

☐ DEBIT CARD

3 March 2013

Sea Rentals & Development Inc

Five Hundred \$

1587

BALANCE FORWARD	
THIS PM	500
BALANCE	
DEPOSIT	
EXPENSE	
BALANCE FORWARD	

NOT NEGOTIABLE

PM - BEAUFORT - COMMON PLEAS - CASE

95 shew
32
232.65

CON \$904 02/19
\$202 504
oct 11

15

DATE: 8/16/2013

TO: Sun Rentals + Development Inc

AMOUNT: Five Hundred 00

FROM: BANK OF AMERICA

NOT NEGOTIABLE

BALANCE FORWARD	
DEPOSIT	500.00
WITHDRAWAL	
OTHER	
BALANCE FORWARD	

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1647
67-1817532

9 Oct 2014
DATE

PAY TO THE ORDER OF San Rentals & Development Inc. \$ 200.00
Two-Hundred 00/100

REGIONS
LOT RENT #89 BALL PARK RD. Michael W. Pope

01647

South State Bank
Bluffton Oak for
2014-10-23 2547990658

for
deposit only

Posting Date	Oct 24 2014
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1647
Posting Seq No	9500410571
Business Unit Seq No	0000000000

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920		1671 67-181/532
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc.</u>		<u>18 Nov 2014</u> DATE
<u>Two Hundred</u> ⁰⁰ / ₁₀₀		\$ <u>200.00</u>
 REGIONS		DOLLARS 
FOR <u>Lot Rent 89 BALL PARK RD.</u>		<u>Michael W. Pope</u>
		
		for deposit only
South State Bank Bluffton Oak For 2014-12-05 2547007826		

Posting Date	Dec 08 2014
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1671
Posting Seq No	9600718723
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1673
67-181/532

12 Dec 2014 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred 00/100 DOLLARS

REGIONS
FOR 89 Ball Park Rd.

Michael W. Pope

01673

for deposit only

7785

Atlantic Community Bank

DEC 22 2014

Branch #001 Teller #102

6a 12-22-2014 >05008163 CS

Posting Date Dec 23 2014

DB/CR D

Amount \$200.00

Item Bank 60

Account [REDACTED]

Check No 1673

Posting Seq No 9200688481

Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1677
67-181/532

5 JAN 2015

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two hundred 00/100

REGIONS

FOR 89 Ball Park Rd Lot Rent

Michael W. Pope

01677

for deposit only

Atlantic Community Bank

JAN 09 2015

Branch #001 Teller #102
113007785

La 01-C9-2015 >053268163

Posting Date Jan 12 2015

DB/CR D

Amount \$200.00

Item Bank 60

Account [REDACTED]

Check No 1677

Posting Seq No 9400099247

Business Unit Seq No 0000000000

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920		1679 67-181/532
DATE <u>5 Feb 2015</u>		
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc</u> \$ <u>200.00</u>		
<u>Two Hundred 00</u>		
REGIONS		
FOR <u>Lot Rent 89 Ball Park Rd.</u>	<u>Michael W. Pope</u>	
[REDACTED] 01679		
[REDACTED] 2015-03-03 023		
South State Bank Ladys Island 2015-03-03 234622838		for deposit only

Posting Date	Mar 04 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1679
Posting Seq No	9100845740
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1682
67-181/532

17 March 2015
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100

REGIONS

FOR Hot Rent 89 Ball Park Rd. Michael W. Pope

1- [REDACTED] 01682

Make or Cash

2015 03 24 254

for deposit only

South State Bank
Bluffton Oak For
2015-03-24 2549260727

Posting Date Mar 25 2015
DB/CR D
Amount \$200.00
Item Bank 60
Account [REDACTED]
Check No 1682
Posting Seq No 9500133390
Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

15 April 2015 DATE

1684
67-181/532

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00

DOLLARS

REGIONS

FOR Rent SP Ball Park Rd. Michael W. Pope

01684

05/01/2015 2:57 PM
Br# 3 Tr# 306 Seq# 66
200.00

Sun Rentals
Nick Baccagione

Posting Date May 04 2015
DB/CR D
Amount \$200.00
Item Bank 60
Account
Check No 1684
Posting Seq No 9300150483
Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1688
67-181/532

13 MAY 2015

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS

REGIONS
FOR Rent 89 Ball Park Rd. Michael W. Pope

01688

CSB > [REDACTED] < 06/02/2015 [REDACTED]

06/02/2015 2:36 PM 3 11 PM 304 Seq# 70

Sun Rentals & Development
Michael W. Pope

Posting Date	Jun 03 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1688
Posting Seq No	9100004264
Business Unit Seq No	0000000000

MR MICHAEL W POPE
 89 Ball Park Rd
 St Helena Island, SC 29920

1690
 67-181/532

8 June 2015
 DATE

PAY TO THE ORDER OF **Sun Rentals + Development Inc.** \$ **200.00**
Two Hundred 00/100 COLLEARS

REGIONS
 FOR **Lot Rent 89 Ball Park Rd.** **Michael W. Pope**

06/19/2015 12:40 PM

CSB **06/19/2015**

Sun Rentals + Development Inc.
M. W. Pope

200.00
06/19/2015 12:40 PM

Posting Date	Jun 22 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1690
Posting Seq No	9500824531
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

12 July 2015 DATE

1692
07-181/532

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100 DOLLARS

REGIONS
FOR Lot Rent #89 Ball Park Rd. Michael W. Pope

01692

DEPOSIT ONLY
LOWCOUNTRY BANK
AM INVESTMENTS
0008029

Sun Rentals
PAYABLE TO
Beaufort Beach

-BranchName=PORT ROYAL OFFICE
-Inst=CBC NATIONAL BANK-ItemNum=
-RI Num=<

Posting Date	Jul 20 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1692
Posting Seq No	9300057058
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1694
67-181/532

13 Aug 2015 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00
Two Hundred 00/100

REGIONS
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

01694

Atlantic Community Bank
AUG 24 2015
Branch #001 Teller #105
e 08-24-2015

*Sun Rentals & Dev
Payable to
Nick Barrera*

Posting Date	Aug 25 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1694
Posting Seq No	9000346903
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1652
67-181/532

11 Sept 2015 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00 DOLLARS

REGIONS
FOR Lot Rent #89 BALL PARK Rl. Michael W. Pope

01652

013007785
for deposit only
ACB
Sep 28 2015
Branch #001 Teller #103
e 09-25 01

Posting Date Sep 28 2015
DB/CR D
Amount \$200.00
Item Bank 60
Account [REDACTED]
Check No 1652
Posting Seq No 9500453383
Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1654
67-181/532

15 Oct 2015 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred 00 DOLLARS

 **REGIONS**

FOR HOT RENT 89 BALL PARK RD. Michael W. Pope

 Security Features Display on Back

 01654

ED 11-10-20

Branch #011 Teller #102

NOV 10 2015

Atlantic Community Bank

For deposit only

ACB

Posting Date	Nov 12 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1654
Posting Seq No	9200334437
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1655
67-161/632

7 NOV 2015 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$200.00

Two Hundred 00 DOLLARS

 **REGIONS**
FOR Rent 89 Ball Park Rd. Michael W. Pope

01655

EP

Branch #001 Teller #102

NOV 10 2015

Atlantic Community Bank

3007785

ACB

For deposit only

se 11-10-2015

Posting Date	Nov 12 2015
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1655
Posting Seq No	9200334438
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1657
67-181/592

16 Dec 2015 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred 00/100 DOLLARS

REGIONS

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

01657

ED

ATLANTIC COMMUNITY BANK

JAN 08 2016

BRANCH #001

Teller #105

01-08-2016

deposit only

Posting Date Jan 11 2016

DB/CR D

Amount \$200.00

Item Bank 60

Account [REDACTED]

Check No 1657

Posting Seq No 9100845365

Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1660
67-181/532

18 Jan. 2016 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two-Hundred 00/100 DOLLARS

REGIONS

FOR Lot Rent #89 BALL PARK Rd. Michael W. Pope

01660

ATLANTIC COMMUNITY BANK

FEB 09 2016

BRANCH #06

TELLER #105

for deposit only

02-09-2016

Posting Date	Feb 10 2016
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1660
Posting Seq No	9400115376
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1662
57-181/532

5 Feb. 2016 DATE

PAY TO THE ORDER OF Sun Rentals & Development Tax \$ 200.00
Two Hundred 00 DOLLARS

REGIONS
FDR Lot Rent 89 BALL PARK RD. Michael W. Pope

01662

BRANCH #001
FEB 09 2016
ATLANTIC COMMUNITY BANK
deposits only

02-09-01662

Posting Date	Feb 10 2016
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1662
Posting Seq No	9400115375
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1663
67-1817532

10 March 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100 DOLLARS

REGIONS
FOR Rent #89 Ball Park Rd. Michael W. Pope

39950011101663

Branch #011 Teller #104
APR 06 2016
Atlantic Community Bank
e 04-06-2016
For deposit only

Posting Date Apr 07 2016
DB/CR D
Amount \$200.00
Item Bank 60
Account [REDACTED]
Check No 1663
Posting Seq No 9000075929
Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1666
67-181/532

8 Apr 2016 DATE

PAY TO THE ORDER OF Sea Rentals & Development Inc \$ 200.00
Two Hundred 00 DOLLARS

REGIONS
FOR 1st RENT 89 BALL PARK RD. Michael W. Pope

01666

ED

ACB

APR 20 2016

Branch #001 Teller #1

for deposit only

Posting Date Apr 21 2016
DB/CR D
Amount \$200.00
Item Bank 60
Account
Check No 1666
Posting Seq No 9000711454
Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1667
67-181/532

5 May 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred 00
100 DOLLARS

REGIONS
FOR Lot Rent 89 Ball Park Rd.

Michael W. Pope

01667

ATLANTIC COMMUNITY BANK

PAY 20 2016

BRANCH #001

TELLER #105

05-20-2016

for deposit only

Posting Date	May 23 2016
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1667
Posting Seq No	9200066674
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1669
67-181/532

12 June 2016
DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00
Two Hundred 00/100 DOLLARS

REGIONS
FOR Id Port 89 Ball Park Rd. Michael W. Pope

01669

for deposit only

ATLANTIC COMMUNITY BANK

JUN 21 2016

BRANCH #1

TELLER #105

06-21-2016

Posting Date	Jun 22 2016
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1669
Posting Seq No	[REDACTED]
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1791
67-181/532

16 July 2016 DATE

PAY TO THE ORDER OF Sun Rentals And Development INC \$ 200.00

Two Hundred ⁰⁰/₁₀₀ DOLLARS

REGIONS

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

01791

BRANCH 501

ATLANTIC COAST CREDIT BANK

07-29-2016

TELLER#105

deposit only

ACB

Posting Date Aug 01 2016

DB/CR D

Amount \$200.00

Item Bank 60

Account

Check No 1791

Posting Seq No 9000587063

Business Unit Seq No 0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

20 Aug 2016 DATE

1792
67-181/532

PAY TO THE ORDER OF Sun Rentals & Development Inc \$ 200.00

Two Hundred 00

REGIONS

FOR Lot Rent 89 Ball Park Rd

Michael W. Pope

1078147 379301792

Atlantic Community Bank

AUG 30 2016

Branch #001 Teller# 104

Se 08-30-201

for deposit only

Posting Date	Aug 31 2016
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1792
Posting Seq No	9100853058
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1798
67-181/532

12 April 2017
DATE

PAY TO THE
ORDER OF

SUN Rentals & Development, Inc. \$ 200.00
Two Hundred 00/100

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

Personal Check

1798

Branch #001 Teller #104		Atlantic Community Bank		MAY 15 2017		e 05-15-2017		AC		FOR deposit only	
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Posting Date	May 16 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1798
Posting Seq No	4100146036
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

15 July 2017 DATE 1799 67-181/532

PAY TO THE ORDER OF Sun Rentals + Development Inc \$200.00
Two Hundred 00

REGIONS
FOR Lot Rent 89 Ball Park Rd Michael W. Pope

01799

for deposit only

Atlantic Community Bank
Aug 07 2017
Branch #001 Teller #102

08-07-2017

Posting Date	Aug 08 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1799
Posting Seq No	4200242772
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

9 Aug. 2017 DATE

1800
67-181/532

PAY TO THE ORDER OF: Sure Rentals & Development Inc. \$ 200.00
Two Hundred 00 DOLLARS

REGIONS
FOR Lot Rent 89 Ball Park Rd. Michael W Pope

1800

Branch 001 Miller #103

AUG 28 2017

Atlantic Community Bank

ACB

For deposit only

Posting Date	Aug 29 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1800
Posting Seq No	3100056627
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1802
67-181/532

DATE 3 Sept 2017

PAY TO THE ORDER OF SUN Rentals & Development INC \$ 200.00
Two Hundred 00 DOLLARS

REGIONS
FOR 1st RENT 89 Ball Park Rd Michael W. Pope

01802

For deposit only

SEP 20 2017

Atlantic Community Bank

Branch #001 Teller #102

09-20-2017

Posting Date	Sep 21 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1802
Posting Seq No	3700424277
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1803
67-181/532

4 Oct 2017
DATE

PAY TO THE ORDER OF: Sun Rentals & Development Inc \$ 200.00
Two Hundred 00/100 DOLLARS

REGIONS

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

1803

Atlantic Community Bank

OCT 24 2017

Branch #000 Teller #106

10-24-2017

for deposit only

Posting Date	Oct 25 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1803
Posting Seq No	3200994078
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

28 NOV. 2017 DATE

1804
67-181/532

PAY TO THE ORDER OF Sun Rentals & Development INC \$ 200.00

Two Hundred 00/100 DOLLARS

REGIONS NOV.
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

1804

for deposit only

CHECK HERE IF MOBILE DEPOSIT

ATLANTIC COMMUNITY BANK

NOV 30 2017

BRANCH #00

TELLER #105

Se 11-30-2017

Posting Date	Dec 01 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1804
Posting Seq No	3000934743
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1805
67-181/532

3 Dec 2017
DATE

PAY TO THE ORDER OF: Syn Rentals & Development INC. \$ 200.00
Two Hundred 05/100

REGIONS Dec.
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

1805

deposit only

CHECK HERE IF MOBILE DEPOSIT

ATLANTIC CO. BANK

NOV 30 2017

BRANCH #001

TELLER #105

11-30-2017

Posting Date	Dec 01 2017
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1805
Posting Seq No	3000934744
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1806
67-181/532

JAN 15, 2018
DATE

PAY TO THE ORDER OF Suw Rentals & Development INC. \$ 200.00

Two hundred ⁰⁰/₁₀₀ DOLLARS

 **REGIONS**
FOR Latent 89 Ball Park Rd. Michael W. Pope

15506 1806 01806

Personal Check

for deposit only

Atlantic Community Bank

FEB 09 2018

Branch 001 Teller #103

02-09-2018

ACB

Posting Date	Feb 12 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1806
Posting Seq No	3800509455
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

15 Feb 2018
DATE

1807
67-181/532

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two - Hundred 00/100

DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

12-1807

1807

Branch #001 Telet #102

FEB 20 2018

Atlantic Community Bank

deposit only

Posting Date	Feb 21 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1807
Posting Seq No	3700900928
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1808
67-181/532

03-01-2018 DATE

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00

Two Hundred 00/100 DOLLARS

 **REGIONS**
FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

1808

for deposit only

7705

Atlantic Community Bank

MAR 23 2018

Branch #001 Teller #103

03-23-2018

Posting Date	Mar 26 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1808
Posting Seq No	3000901225
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1809
67-181/532

15 April 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$ 200.00

Two-Hundred 00/100

DOLLARS



REGIONS

FOR Lot Rent 89 BALL PARK Rd.

Michael W. Pope

1809

PostNet Check

For
deposit only

Atlantic Community Bank

APR 7 2018

Branch #001 Teller #102

APR 04-2018

Posting Date	Apr 30 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1809
Posting Seq No	4000897360
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1810
67-181/532

15 MAY 2018
DATE

PAY TO THE ORDER OF: Sw Rentals & Development Inc \$ 200.00
Two Hundred 00
00
DOLLARS

 **REGIONS**

FOR Lot Rent 89 Ball Park Rd. Michael W. Pope

1810

for deposit only

Atlantic Community Bank

MAY 22 2018

Branch #01 Teller #102

Se 05-22-2018

Posting Date	May 23 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1810
Posting Seq No	3600078335
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1811
67-181/532

15 June 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals + Development Inc. \$ 200.00
Two Hundred 00/100

DOLLARS



REGIONS

FOR

Lease 89 Ball Park Rd.

Michael W. Pope

Michael Pope

SOUTH ATLANTIC BANK
30004 49

DWR 30004 TRN 49 06/22/18

for
deposit only

Posting Date	Jun 25 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1811
Posting Seq No	4000084849
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1812
67-181/532

15 July 2018

DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS



REGIONS

FOR Lot Rent 89 Ball Park Rd

Michael W. Pope



Machine Check

01812

SOUTH ATLANTIC BANK
30003 11

DWR 30003 TRN 1 07/19/18

For
deposit only

1. If the check is not cashed within 60 days of the date of issue, the bank will not be responsible for the payment of the check.

Posting Date	Jul 20 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1812
Posting Seq No	3500627758
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1813
57-181/532

9 Aug. 2018
DATE

PAY TO THE
ORDER OF

Sea Rentals & Development Inc. \$200.00
Two-Hundred 00/100

DOLLARS



REGIONS

FOR

LOT Rent 89 Ball Park Rd.

Michael W. Pope

Native Origin

SOUTH ATLANTIC BANK
30002 8

DWR 30002 TRN 08/15/18

for
deposit only

DEPOSIT HERE TO
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Posting Date	Aug 16 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1813
Posting Seq No	3200526033
Business Unit Seq No	0000000000

1815
67-181/532

12 Sept. 2018
DATE

PAY TO THE
ORDER OF 'C'

PAY TO THE ORDER OF: Sun Rentals & Development Inc. \$ 200.00
TWO - Hundred 00/100 DOLLARS

DOLLARS

REGIONS

FOR Lot Rent 89 Call Rock Rd.

Michael W. Pope
1815

14-00000 145001840 01815

SOUTH ATLANTIC BANK
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**for
deposit only**

153

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1817
67-181/532

15 Oct. 2018

DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc \$200.00
Two Hundred 00/100

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

Marked Clerk

01817

SOUTH ATLANTIC BANK
30002 6

deposit only

Posting Date	Oct 25 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	1817
Posting Seq No	3300507914
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1818
67-181/532

5 Nov 2018
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$ 200.00
Two Hundred ~~00~~ ⁰⁰

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

1818

Helena Clark

SOUTH ATLANTIC BANK
30002 34

FOR
deposit only

Posting Date	Nov 20 2018
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1818
Posting Seq No	4100898181
Business Unit Seq No	0000000000

MR MICHAEL W POPE
89 Ball Park Rd
St Helena Island, SC 29920

1841
67-181/532

15 Feb. 2019
DATE

PAY TO THE
ORDER OF

Sun Rentals & Development Inc. \$ 200.00
Two Hundred ⁰⁰/₁₀₀

DOLLARS



REGIONS

FOR

Lot Rent 89 Ball Park Rd.

Michael W. Pope

01841

SOUTH ATLANTIC BANK
30002 37

for
deposit only

Posting Date	Mar 14 2019
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	
Check No	1841
Posting Seq No	3100061907
Business Unit Seq No	0000000000

MR MICHAEL W POPE 89 Ball Park Rd St Helena Island, SC 29920	1866 87-181/532 15 March 2019 DATE
PAY TO THE ORDER OF <u>Sun Rentals & Development Inc</u> <u>TWO - Hundred ⁰⁰/₁₀₀</u>	\$ 200.00 DOLLARS
REGIONS FOR <u>Lot Rent 89 Ball Park Rd.</u> MICHAEL W. POPE	MICHAEL W. POPE
SOUTH ATLANTIC BANK 0003 12	deposit only

Posting Date	Apr 02 2019
DB/CR	D
Amount	\$200.00
Item Bank	60
Account	[REDACTED]
Check No	0
Posting Seq No	4300348440
Business Unit Seq No	0000000000

1867
67-181/532

15 April 2019
DATE

PAY TO THE
ORDER OF

PAY TO THE ORDER OF Sun Rentals + Development Inc. \$ 200.00
Two-hundred ⁰⁰/₁₀₀

~~DOLLARS~~



REGIONS

FOR

FOR Lot Rent 87 Ball Park Rd

Michael W. Pope

12

Harland Clarke

0186 ?

SOUTH ATLANTIC BANK

Downloaded from <http://ajphaphysiol.org/> on June 12, 2015

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158

Image -- Webpage Dialog

MR. MICHAEL W POPE
89 Ball Park Rd
St. Helena Island, SC 29920

1842
07 101522

13 MAY 2019

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 200.00
Two Hundred 00/100

COLLARS

AL REGIONS

Lot 101 Ball Park Rd. Michael W. Pope

SOUTH ATLANTIC BANK

for
deposit only

Image -- Webpage Dialog

MR MICHAEL W POPE
89 Bell Park Rd
St. Helena Island, SC 29920

1843
ST. HELENA

June 2019

PAY TO THE ORDER OF Sun Rentals & Development Inc. \$ 22.00
Twenty-Two 00/100 DOLLARS

REGIONS Electric Bill Lot Rent of Bell Park + Michael W Pope

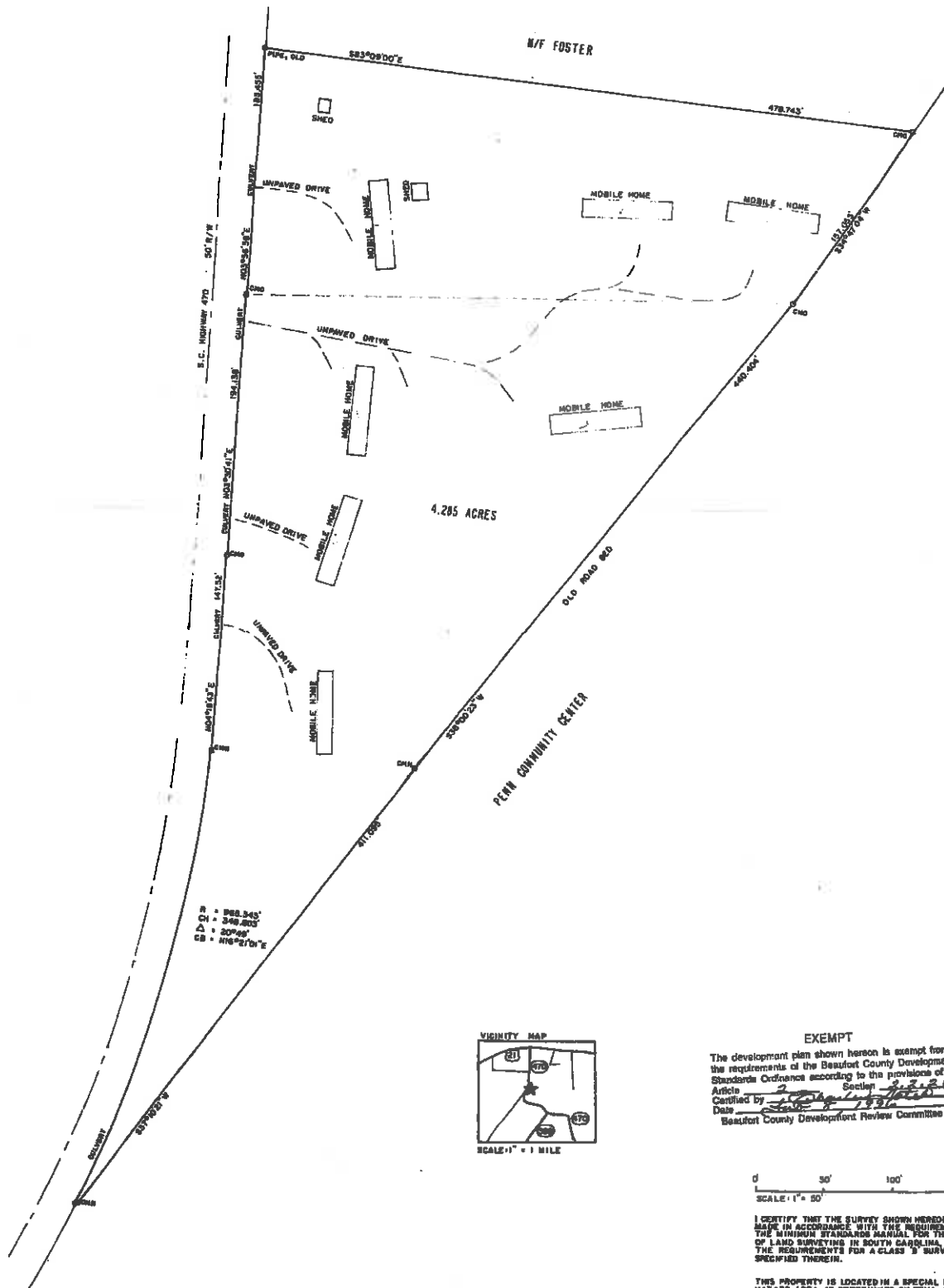
SOUTH BEACH

For deposit only

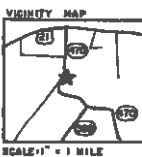
H+4 642
FILED 1544
JOHN A. SULLIVAN, JR.
S.M.C.
BEAUFORT COUNTY, S.C.
96 FEB -8 PM 4:46
BK PG
FOLDER #

PROPERTY OF DAVID T. & ANN K. HUTCHERSON
PORTION OF LOTS 15, 16, 17, 18, SECTION 20, 1S-1E
ST. HELENA ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
NOVEMBER 8, 1990
REFERENCES: F-4174, F-2415, F-2216

PLAN NO. 85
PAGE 13
REV. 2-8-96



R = 368.345'
CH = 348.800'
Δ = 20°48'
CB = 416°21'01"E



EXEMPT

The development plan shown hereon is exempt from the requirements of the Beaufort County Development Standards Ordinance according to the provisions of Article 2, Section 2-2.2.2.3. Certified by: [Signature] Date: 1/13/91 Beaufort County Development Review Committee



I CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS THE REQUIREMENTS FOR A CLASS 'B' SURVEY AS SPECIFIED THEREIN.

THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FEMA. FIRST COMMUNITY PANEL NUMBER 49002S 05D 3 ZONE C.
SURVEY & PLAT BY: NELS CHRISTENSEN IV, NLS 13182
1804 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(803) 524-4148

LEGEND
CNO - CONCRETE MONUMENT, OLD
CMN - CONCRETE MONUMENT, NEW

L-0141

Tom Taylor

From: Robert sample <robexample@gmail.com>
Sent: Tuesday, October 22, 2019 9:23 AM
To: Tom Taylor
Subject: Fwd: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

Tom Please see SCE&G data below. Thanks.

----- Forwarded message -----

From: MOSS, PARKS <henry.moss@scana.com>
Date: Mon, Aug 26, 2019 at 1:08 PM
Subject: RE: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)
To: Robert sample <robexample@gmail.com>

Mr. Sample,

Per your question below regarding the electric services for the addresses you provided on Ball Park Road on Saint Helena Island, the following addresses had active electric accounts/service as follows:

79 Ball Park: May 2004---Present

81 Ball Park: Feb. 1994 to July 2011

83 Ball Park: Feb 1994 to July 2008

87 Ball Park: Feb. Feb 1996 to Nov 2010

89 Ball Park: July 1994 to Present

93 Ball Park: Dec 1997 to July 2008

95 Ball Park: April 1991 to Sept 2011

101 Ball Park: Dec 1991 to May 2016

If you have any questions, please let me know.

Regards,

Parks

Parks Moss

Senior Account and Project Manager

Customer Service Engineering

843-815-8808 (office)

843-540-1315 (mobile)



From: Robert sample <robesample@gmail.com>
Sent: Tuesday, August 20, 2019 1:03 PM
To: MOSS, PARKS (SCE&G - 7) <henry.moss@scana.com>
Subject: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

***This is an EXTERNAL email from Robert sample (robesample@gmail.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

Mr Moss,

I am the owner of Ball Park Place LLC mobile home park. The addresses are 79, 81, 83, 87, 89, 93, 95, and 101 Ball Park Rd. Could you please provide me any activity data you have on these addresses. The previous owner a bank took possession of the property back in 2010. They soon after began removing the homes from the property leaving only one (89 Ballpark/Mike Pope) which currently have an active account with you. I will provide this info to the County to prove that indeed in prior years this was an active park and even today though operation has been scaled back it is still active. On another note Jacob weeks ago disconnected power from a few of the sites because they were missing meters. I believe this presented a safety hazard. I intend to rebuild and replace a few of the panels for new homes once I get clearance from the County.

Thanks in advance,

Robert Sample

8434769639

Beaufort County, South Carolina

Beaufort County, South Carolina

Beaufort County, South Carolina

Inbox (33,518) - robexample@gmail.com - Gmail

SC-beaufort-county.governmax.com/s:~/default.asp?sid=FCOT

...

Print Print First First Previous Next Last

Partitions
County Home
Medians
Real Property
Personal Property
Vehicle Tax
Jobs
Firearms
County Judges

CSB PROPERTY MANAGEMENT II LLC	3764 2601	5/30/2019	Real	Verant	\$60,000	\$60,000
Multiple Owners	3010 1740	10/29/2010	Ma		\$60,000	\$60,000
LAWLER J CARL SUSAN M JTROS	2249 2217	10/21/2005	Fu		\$65,000	\$65,000
LANIER J CARL	1244 577	10/6/1999	Fu		\$120	\$120
HUTCHENSON DAVID T ANN K	836 851	2/12/1996	Fu		\$58,000	\$58,000
HUTCHENSON DAVID T ANN K	224 680	10/1/1975	Or		\$0	\$0
		12/31/1776	Or		\$0	\$0

Building	Type	Live Cycle Description	Improvements	Structure	Acres	Square Footage	Improvement Size
R01	CARSHEDO	Gr. Floor / Carport - Attached	1995	0	0		600
R01	MOBILE HOME	Mobile Home Park - Mobile	0000	0	0		600

Beaufort County makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

Print Print First First Previous Next Last

Austin, Hillary

From: Greenway, Eric
Sent: Tuesday, September 24, 2019 8:32 AM
To: Robert sample
Cc: Austin, Hillary; Judge, Tamekia
Subject: RE: Ball Park Rd Mobile Home Park

Mr. Sample,

After a review of the electric service history, the rent roll spreadsheet, the historic aerials and the property tax records for the subject parcel I have determined that insufficient evidence exists, in accordance with the requirements of Section 8.2.40 (B) - Discontinuance of Use of the Beaufort County Community Development Code, in order to establish this property as a legal non-conforming mobile home park. The requirements of Section 8.2.40 are:

B. The Director shall have the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:

1. If steps have been taken by the property owner to resume the nonconforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

If have any questions regarding this please feel free to let me know and please note that this is an official written determination and must be appealed within 30 days of receipt of this email.

Eric L. Greenway, AICP
Community Development Director
Beaufort County Council
Office: 843-255-2143
Mobile: 843-441-6129 (preferred)



Judge, Tamekia

From: Greenway, Eric
Sent: Wednesday, November 13, 2019 2:41 PM
To: Austin, Hillary; Judge, Tamekia
Subject: FW: ball park rent roll
Attachments: Rent Roll Ball Park.xls

From: Robert sample <robesample@gmail.com>
Sent: Monday, August 26, 2019 4:49 PM
To: Greenway, Eric <egreenway@bcgov.net>
Subject: Fwd: ball park rent roll

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Eric please see attached rent roll from Mr Borreggine. He managed the property for the bank and was part of the divestiture of mobile homes. As you can see very quickly the bank decided to scale back operation and get rid of homes hence the vacancies. Mr Pope still resides on the property and has so for over a decade. The spreadsheet only goes up to 2013. I have Mr Pope gathering old checks from his bank to fill the gap to present. Since I bought the place, Ive given Mr Pope a few months free rent in exchange of helping me get place ready for new homes. Its understood that this gentleman's agreement will not go beyond September.

Robert

----- Forwarded message -----

From: Nick Borreggine <100goldwing@gmail.com>
Date: Tue, Aug 20, 2019, 8:35 AM
Subject: ball park rent roll
To: <robesample@gmail.com>

fyi

Judge, Tamekia

From: Greenway, Eric
Sent: Wednesday, November 13, 2019 2:41 PM
To: Austin, Hillary; Judge, Tamekia
Subject: FW: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)
Attachments: image003.jpg

From: Robert sample <robesample@gmail.com>
Sent: Monday, August 26, 2019 4:07 PM
To: Greenway, Eric <egreenway@bcgov.net>
Subject: Fwd: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Eric,

Please see below thread for requested information about thwme Ballpark property. As you can see 79 and 89 have been active since 1994 to present. 89 is where the current trailer is and 79 would have to be where the pump that runs the park's well is. Mr Moss couldnt give me customer's personal info so he has provided the beginning and ending dates for service for the various account. Again the former property owner took possession of the in 2010 and began to divest itselfnof the homes on the property. I will forward what I have recieved as rent rolls in another email.

Thanks Robert

----- Forwarded message -----

From: MOSS, PARKS <henry.moss@scana.com>
Date: Mon, Aug 26, 2019, 1:08 PM
Subject: RE: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)
To: Robert sample <robesample@gmail.com>

Mr. Sample,

Per your question below regarding the electric services for the addresses you provided on Ball Park Road on Saint Helena Island, the following addresses had active electric accounts/service as follows:

79 Ball Park: May 2004---Present

81 Ball Park: Feb. 1994 to July 2011

83 Ball Park: Feb 1994 to July 2008

87 Ball Park: Feb. Feb 1996 to Nov 2010

89 Ball Park: July 1994 to Present

93 Ball Park: Dec 1997 to July 2008

95 Ball Park: April 1991 to Sept 2011

101 Ball Park: Dec 1991 to May 2016

If you have any questions, please let me know.

Regards,

Parks

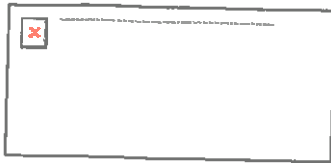
Parks Moss

Senior Account and Project Manager

Customer Service Engineering

843-815-8808 (office)

843-540-1315 (mobile)



From: Robert sample <robeshample@gmail.com>
Sent: Tuesday, August 20, 2019 1:03 PM
To: MOSS, PARKS (SCE&G - 7) <henry.moss@scana.com>
Subject: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

***This is an EXTERNAL email from Robert sample (robeshample@gmail.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

Mr Moss,

I am the owner of Ball Park Place LLC mobile home park. The addresses are 79, 81, 83, 87, 89, 93, 95, and 101 Ball Park Rd. Could you please provide me any activity data you have on these addresses. The previous owner a bank took possession of the property back in 2010. They soon after began removing the homes from the property leaving only one (89 Ballpark/Mike Pope) which currently have an active account with you. I will provide this info to the County to prove that indeed in prior years this was an active park and even today though operation has been scaled back it is still active. On another note Jacob weeks ago disconnected power from a few of the sites because they were missing meters. I believe this presented a safety hazard. I intend to rebuild and replace a few of the panels for new homes once I get clearance from the County.

Thanks in advance,

Robert Sample

8434769639

[illegible]

[illegible]

[illegible]

BALL PARK**RENT ROLL**Acc # xxxxx **7924**

LOT #	TENANT	PHONE	RENT	DEP	JAN	FEB	MAR	APR
MH 79	Vacant							
MH 81	Terry Daughty	575-1706	500		400	700	400	425
MH 83	Vacant							
MH 87	Vacant							
MH 89	Mike Pope	812-8633	500		500	500	500	500
MH 93	Vacant							
MH 95	John & A Pizarro		600		600	600	600	
Lot 99	Home Repoed				350	200	275	275
MH 101	Kwajalyn Lasene		525		525	300	525	
	Horton H958446 14x76							

TOTAL POTENTIAL RENT 2125**Rent Collected 2375 2300 2300 1200**

Deposits 1975 1100 275 775

400 500 1825 425

700 200

Total Deposits 2375 2300 2300 1200

2010

MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
-----	-----	-----	-----	-----	-----	-----	-----

450 290

500 500 500 500 500 500 500

1050 200 600 600 600 600 600

275 275 275 275

300 350 525

440

2125 1775 2630 1375 1100 1100 1100

875 275 875 1375 1100 1100 600

750 500 1025 500

500 500 290

500 440

2125 1775 2630 1375 1100 1100 1100

[illegible]

[illegible]

ELECTRONICALLY FILED - 2020 Feb 10 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700112

BALL PARK				RENT ROLL												2013																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			</
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From: Greenway, Eric
Sent: Wednesday, August 14, 2019 9:26 AM
To: 'Robert sample' <robesample@gmail.com>
Cc: Austin, Hillary <hillarya@bcgov.net>
Subject: RE: Ball Park Rd Mobile Home Park

Mr. Sample,

I appreciate the history of this property. As you and I discussed, I need actual proof that this property has been recently used as a mobile home park. I have reviewed the historical aerals and see no verifiable evidence that multiple homes have been located on this property for use as residences. See my comments in red below for additional records needed for me to complete my determination.

Eric G.

From: Robert sample <robesample@gmail.com>
Sent: Wednesday, July 24, 2019 1:03 PM
To: Greenway, Eric <egreenway@bcgov.net>
Subject: Ball Park Rd Mobile Home Park

Eric,

1. I am the owner of Ball Park Place LLC (79, 81, 83, 87,89, 93, 95, and 101) Ball Park Rd. I have begun renovating the property and intend to continue operation of it by filling the vacant sites with new modern homes.
2. For at least the last 20 years, this property has had in various degrees continuous operational water, electricity and septic utilities. The current tenant has been living on the property for at least two decades and have been using these utilities. Up until recently Dominion Power disconnected power to a few of sites for safety reasons (sites had power but no meter which presented a safety hazard). **Please provide records from Dominion Energy verifying electrical service history for each address.**
3. Though a few need to be rebuilt and replaced, several electrical panels are still evident on site. And water lines (spickets), the well and operational pump is also evident. The septic tanks are still in the ground. Various telephone and cable lines are also present throughout. A charge has been placed on the underground lines and they are viable. **Please provide records from the appropriate utility verifying service history for each address.**
4. This park has been under constant management by a rental consultant company and rental income has been collected from the tenant. The last owner (a bank) divested itself of the other mobile homes on the property but deliberately left and have continuously rented the existing home in an effort to continue the operation of the mobile home park. **Please provide lease and payment records from the management company verifying the rental history for each address.**
5. I am sensitive to the adjacent property owner's concern of privacy and safety, and am willing (within reason) to do what is necessary to alleviate these concerns.
6. The County's Assessors office and tax records indentify this property as a mobile home park.
7. Last, if needed I can provide affidavits from my tenant who's lived on the property for two decades and the former property management consultant if needed.

Robert
8434769639

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE No.: 2020-CP-07-00112
ERIC GREENWAY, as agent for	)	
Beaufort County,	)	
	)	
Appellant,	)	
	)	
vs.	)	RETURN OF BEAUFORT COUNTY ZONING
	)	BOARD OF APPEALS TO APPELLANT'S
BEAUFORT COUNTY ZONING	)	PETITION FOR APPEAL FROM THE
BOARD OF APPEALS, ROBERT	)	BEAUFORT COUNTY ZONING BOARD OF
SAMPLE, JR., and BALLPARK	)	APPEALS
PLACE, LLC,	)	
	)	
Respondents.	)	
	)	

The Respondent Beaufort County Zoning Board of Appeals ("Board") would respond to the Petition for Appeals from the Beaufort County Zoning Board of Appeals as follows:

This is an appeal from the Beaufort County Zoning Board of Appeals' decision dated November 22, 2019. See Exhibit A. Jurisdiction is set forth in Section 6-29-280, Code of Laws of South Carolina, 1976, as amended.

FACTS/PROCEDURAL BACKGROUND

Respondent Ballpark Place, LLC, is the owner of real property located in Beaufort County, South Carolina, bearing the PIN Nos. R300 016 000 183B 0000 ("183B") and R300 016 000 0360 0000 ("360"). Ball Park Road Mobile Home Park, composed of 183B and 360 ("Park"), is managed by Robert Sample, Jr. and is located on St. Helena Island, abutting Ballpark Road. Together, both parcels encompass approximately 4.29 acres of land. The parcels were planned for and presently contain nine improved sites intended for the placement of manufactured homes. Currently, the parcels have access to water, sanitary sewer, and electricity.

Ballpark Place, LLC, purchased the Park on May 30 2019, intending to continue the Park's use as a Manufactured Home Community pursuant to its legal non-conforming, or "grandfather", use. Prior to Ballpark Place, LLC's ownership, the Park was owned by CSB Property Management II, LLC, ("CSB") from October 29, 2010, until May 30 2019. During the time of the CSB's ownership of the Park, several of the nine pads were leased to manufactured homeowners, eventually dwindling to one leasee of the nine pads.

Prior to 2014, the Park was zoned Rural with a limited use defined under Section 106-1098, Code of Ordinances for Beaufort County, Zoning and Development Standard, Supp. No. 24 ("Old Code"):

Manufactured Home Community-A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights. Subdivision of land as a single-family detached, single-family cluster, family compound, planned community or small single-family affordable land use and intended for fee-simple sale of lots for manufactured homes does not constitute it being defined under this use. For purposes of this definition, a manufactured home is a residential dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS). This does not include recreational vehicles, travel trailers or motorized homes licensed for travel on highways, nor manufactured housing units designed and built to meet applicable requirements of the South Carolina Modular buildings Construction Act.

Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014).

In 2014, County Council adopted and implemented the Community Development Code, which changed the zoning of the subject parcel to T2R, eliminating the Rural zoning and the limited Manufactured Home Community use.

The individual parcels are described below:

PARCEL R300 016 000 183B 0000

Parcel 183B contains five separate sites with addresses of 79, 81, 83, 87, and 89 Ball Park Road **See Tax Records** and given a class of ComImp MobileHomePark. Parcel 183B is 3.79 acres. For Tax Year 2019, the County Assessor has placed a value of \$92,200 for the parcel, apportioning \$63,800 for the land value and \$28,400 for the "building" value. This averages \$16,833/acre for land value. This land value is similar to the value for both 2011 and 2012. Except for a minor down adjustment in Tax Year 2013, the quadrennial reassessment for Beaufort County, the valuation by the county has remained the same. The sites at 79 and 89 Ball Park Road have had continual active electrical accounts from 1994 and 2004, respectively, until now. See Exhibit C. Additionally, several of the sites continued to have active electrical service and only required electrical meters for active service. See Exhibit B.

PARCEL R300 016 000 0360 0000

Parcel 0360 contains four separate sites with addresses of 93, 95, 99, and 101 Ball Park Road and gives a class of MHVac UnplattedSite SeveredMH. Parcel 0360 is 0.5 acres. For Tax Year 2019, the County Assessor has placed a value of \$12,800 for the land. This averages \$25,600/acre for land value. This land value is similar to the value for both 2011 and 2012. Except for a minor down adjustment in Tax Year 2013, the quadrennial reassessment for Beaufort County, the valuation by the county has remained the same. The site at 101 Ball Park Road has had a continual active electrical account from 1991 to 2016. See Exhibit C.

Upon the purchase of the Park, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes. During his preparations of the Park, Mr. Sample verified that utilities were still connected, such as sanitary sewer available to each site through functioning septic systems, and water available to each site via a well in the Park. Mr. Sample also

verified that electrical utilities¹ were available to each site and functioning, and that the stands required to place new manufactured home were functional or repairable. All sites were available for lease for home sites, with one site continually being leased by Mr. Pope.

The administrative appeal heard by the Board resulted from a denial by Eric Greenway, the Beaufort County Community Development Department Director, of recognition of legal non-conforming status for the Park as a Manufactured Home Community. Upon a hearing of the evidence presented by the Ballpark Place, LLC and the County, the Board issued its ruling overturning the decision of the Beaufort County Staff with the following findings:

1. The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
2. There was no interruption in the legal, pre-existing, non-conforming use.

The decision of the Board has been appealed by Eric Greenway, the Community Development Department Director for Beaufort County ("Staff").

STANDARD OF REVIEW

The Court of Appeals of South Carolina clearly set forth the standard of review in zoning appeals. *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282 (Ct.App.2011). "Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision 'is arbitrary, capricious, has no reasonable relation to a lawful purpose, or in the [zoning] board has abused its discretion.'" *Id.* at 116, 719 S.E.2d at 284 (quoting *Rest. Row Assocs. V. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (quoting *Cnty. Of Richland v.*

¹ . "had an electrical contractor come out to check the viability of the stands", "had No Cuts come out to identify the lines", "had SCE&G come out and ...Beaufort Jasper come out". See Exhibit C.

Simpkins, 348 S.C. 64, 668, 560 S.E.2d 902, 904 (Ct.App.202)). "The factual findings of the Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law." *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995).

In *Rest. Row Assocs. v. Horry Cnty*, the Supreme Court of South Carolina clearly states the standard of review in zoning appeals:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)

(quotation marks omitted).

"The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." SC Code Section 6-29-840.

LAW

In sitting as the appellate body for decisions on interpretations of all provision of the CDC, the Board is limited to a review of:

- a. The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
- b. The decision-maker made the decision based on a standard not contained in this Development Code or other appropriate County ordinances, regulations, or state law,

or that a standard more strict or broad than the standard established in this Development Code was applied. (This Development Code does not allow administrative decision-makers to consider or create standards not officially adopted); or

- c. The decision-maker made an error in applying a standard or measuring a standard.

The Planning Director should consider at least seven criteria in determining whether abandonment of a particular use has occurred:

1. If Steps have been taken by the property owner to resume the non-conforming use:
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the non-conforming use have been removed; if signs advertising the non-conforming use have been removed;
4. If business licenses for the non-conforming use have expired or not been renewed;
5. If activities generally associated with the non-conforming use are no longer observed on the property; and
6. Other actions which, in the opinion of the Director, demonstrate an intention of the part of the owner to abandon the non-conforming use.

ANALYSIS

The Board's decision regarding the alleged abandonment of the legal non-conforming use of the Park should be affirmed as it was based on evidence presented to the Board. In order for a decision of the Board to be overturned, their decision must be arbitrary, capricious, have no reasonable relation to a lawful purpose, or the zoning board has abused its discretion, nor contrary to law.

The parties agree there is no question as to the establishment of the use of the Park as a Manufactured Home Community prior to the adoption of the current zoning of the property as T2R in 2014.² The sole issue here is whether the Manufactured Home Community use was abandoned.

I. The Manufactured Home Community use was not abandoned.

The Board properly considered evidence presented regarding the criteria for abandonment of the Manufactured Home Community use and determined the standard for abandonment was not met, and that, as a matter of fact, the Manufactured Home Community use had not been abandoned, thus concluding the property maintained its legal, non-conforming use as a Manufactured Home Community.

The Board received evidence and correctly determined that the Park continued to meet the requirements of Section 106-1098 and that the legal, non-conforming use was never abandoned. The evidence presented to the Board included a plat showing the locations of the "pads," rent rolls showing the continued leasing of one of the nine sites to Mr. Pope, the admission by Mr. Greenway that Mr. Pope resides on the site, communications from SCE&G as to the current and prior electrical status, and testimony from Mr. Sample that the sites had water and sanitary sewer available. When asked how many sites were not in suitable repair for usage, Mr. Sample indicated the only issue with the sites was the condition of the "stands" for the placement of incoming homes, which could be easily repaired. Additionally, real property Printout of Tax Records from the County indicated the Park was described as a manufactured housing site.³ The evidence presented

² The following exchange occurred during the Board hearing and appears in the transcript from the hearing. See Exhibit B. Mr. Williams is a Board member and Ms. Austin is the Beaufort County Zoning and Development Administrator. Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community [use] that is there now would have been a legal nonconforming use?" Ms. Austin replied, "Yes." Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?" Ms. Austin replied, "Yes."

³ The Tax Records show the County considered the Park to be a mobile home park. In fact, it appears from the records the property had been taxed as such since 2009. Appellant contends the "abandonment" occurred in 2012, but clearly

to and elicited by the Board clearly addressed the seven criteria. The first criteria, "[i]f steps have been taken by the property owner to resume the nonconforming use" immediately assumes the non-conforming use was ceased. However, the Park continued to operate and address any repair issues. The second criteria, "[i]f utility services such as water, gas, and electricity to the property have been disconnected" was addressed through the email from SC&G stating the status of electric hook-ups to the sites. However, the Staff ignores the critical criteria: water, and by extension, sanitary sewer. Mr. Sample testified that each of the sites had currently operating water supplies provided by an onsite well system, and sanitary sewer was provided to each site via functioning septic systems. Criteria three was also addressed in the evidence presented for criteria two. The functioning water, sewer, and electrical services were still available at the site. Admittedly, there were some repairs to be made; nonetheless, Mr. Pope's site continues to function, and other sites are available for home placement. As to criteria six, "[i]f activities generally associated with the non-conforming use are no longer observed on the property," there was evidence of the continued existence of utility hook-ups, Mr. Pope's home, property tax records, and other visible evidence of the continued Manufactured Home Community use. The Board properly considered the evidence presented to them and correctly found the legal, non-conforming use as a Manufactured Home Community had not been abandoned.

The use definition for a Manufactured Home Community in the Old Code requires sites to be planned and improved for the placement of three or more manufactured homes. It does not require they be leased. The Appellant's contention that the Manufactured Home Community use requires more than one site must be leased is incorrect. The first sentence in the Manufactured

the County continued to tax as if the use was not abandoned. In a separate Tax Record, the County notes nine different address/sites. See Exhibit D.

Home Community use definition states, "A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights." The definition simply requires there must be at least three sites planned and improved and those sites shall be for the placement of manufactured homes. The definition then defines the manufactured homes should be for residential use and should be leased to individuals with customary leasehold rights. The Board correctly interpreted the Manufactured Home Community use definition and ruled accordingly.

The Board correctly determined that the Park continued to meet the requirements of Section 106-1098 of the Old Code. The evidence presented to the Board included a plat showing the locations of the "pads," rent rolls showing the leasing of one of the nine sites to Mr. Pope, and the admission by Mr. Greenway Mr. Pope resides on the site,

2. Staff wrongly interpreted the ordinance.

The Staff wrongly contends Section 106-1098 of the Old Code requires, among other things, that "more than one site" must be leased to individuals. The contention there must be "more than one site on the Parcels [] leased to individuals is not supported by the plain language of Section 106-1098, which requires that for a site to qualify as a Manufactured Home Community use, it must be "planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights." The Board properly found, based on the evidence before it, that there is no requirement that any of the three or more planned and improved sites must be leased, as put forth by the Appellant. The second portion stating "where home sites within the development are leased to individuals who retain customary leasehold rights" is merely defining the term

"residential dwellings," and not requiring more than one site must be leased to individuals. If this were the standard, it would lead to absurd and unfair housing practices at once. As it is presently, if this arbitrary abandonment threshold has been reached, Mr. Pope must now vacate his longtime home.

The threshold issue is whether the Board's decision regarding the alleged abandonment was arbitrary, capricious, and without supporting evidence. The Board was presented with sufficient evidence leading to their decision, which should be affirmed.

CONCLUSION

The Board found, as a matter of fact, that the Manufactured Home Community use of the Park had not been abandoned, and that finding is binding on this Honorable Court in this action.

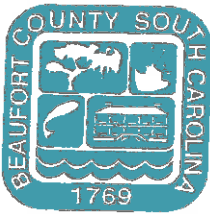
For the above stated reasons, the Beaufort County Zoning Board of Appeals believes and requests that its written decision declaring there was no interruption of the legal, pre-existing, non-conforming Manufactured Home Community use of the two parcels in question should be upheld.

Respectfully submitted,

/s/Bradley A. Mitchell
Bradley A. Mitchell
Brad Mitchell Law, LLC
Post Office Box 30206
Charleston, South Carolina 29407
brad@bradmitchelllaw.com
843.860.3041

July 27, 2020

Respondent ZBOA Exhibit A



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

November 22, 2019

Mr. Robert Sample, Jr.
P.O. Box 2238
Beaufort, SC 29901

Law Office of Thomas C. Taylor, LLC
P.O. Box 5550
Hilton Head Isl., SC 29938

Re: ZBOA – Robert Sample Jr. – Ball Park Road Mobile Home Park (Administrative Interpretation Appeal)
Article 8, Division 2.40 of the Community Development Code
79, 81, 83, 87, 89, 93, 95 & 101 Ball Park Rd., St. Helena Island
District 300, Tax Map 016, Sub Map 000, Parcel 0360
District 300, Tax Map 016, Sub Map 000, Parcel 183B

Dear Sirs,

On Thursday, November 21, 2019, the Zoning Board of Appeals completed its review of your request for an Appeal of an Administrative Interpretation from Article 8, Division 2.40 of the Beaufort County Community Development Code. The Zoning Board of Appeals (6 members for, 0 members against, 1 member absent, 0 vacancy) granted your request for an Appeal of an Administrative Interpretation and voted to overturn the decision of Beaufort County Staff.

The Board granted the request for the Appeal based on the following findings:

- 1) The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
- 2) There was no interruption in the legal, pre-existing, non-conforming use.

If you require additional information of the Zoning Board of Appeals relating to this matter, please contact Hillary Austin, Zoning & Development Administrator, at (843) 255-2173.

Sincerely,

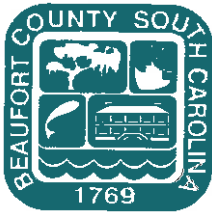
Thomas Gasparini
Chairman, Zoning Board of Appeals

Beaufort, South Carolina

This 19th Day of December, 2019

"Professionally we serve; Personally we care!"

Respondent ZBOA Exhibit B



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, November 21, 2019, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Kevin Mack, Vice-Chairman
Mr. John Chemsak
Mr. Mark McGinnis
Mr. Cecil Mitchell, III
Mr. Chester Williams

MEMBERS ABSENT

Mr. Bernard Rivers

VACANCY

None

STAFF PRESENT

Mr. Eric Greenway, Community Development Director
Ms. Hillary Austin, Zoning Administrator
Mrs. Tamekia Judge, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE: Mr. Gasparini led those assembled with the Pledge of Allegiance.

REVIEW OF AGENDA:

The applicant requested to withdraw the application from the agenda.

Mr. Williams made a motion to amend the agenda removing items #7 and #8.

Mr. Mack seconded the motion.

MOTION: Mr. Williams made a motion to adopt the agenda with the change to remove items #7 and #8. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

REVIEW OF MINUTES:

MOTION: Mr. Williams made a motion to adopt the October 24, 2019 minutes as written. Mr. Mack seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, and Williams; ABSTAIN: Chemsak and Mitchell; ABSENT: Rivers; VACANCY: None).

NEW BUSINESS

NICOLE SCOTT, NEXSON PRUET – K & R DEVELOPMENT (APPEAL CONTINUANCE)

Mr. Williams and Mr. Gasparini recused themselves from the consideration of the application because they represent the neighboring property.

Mr. Mack, Vice-Chairman, chaired the meeting.

November 21, 2019, Zoning Board of Appeals
Page 1

"Professionally we serve; Personally we care!"

Mr. McGinnis made a motion to grant the continuance of the application, until the December 19, 2019 meeting.

Mr. Chemsak seconded the motion.

MOTION: Mr. McGinnis made a motion to grant the continuance of the application until the December 19, 2019 meeting. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, McGinnis and Mitchell; ABSTAIN: Gasparini and Williams; ABSENT: Rivers; VACANCY: None).

Mr. Gasparini, Chairman and Mr. Williams rejoined the meeting.

ROBERTS SAMPLE JR. – BALL PARK ROAD LLC (ADMINISTRATIVE INTERPRETATION – APPEAL)

Mr. Williams stated that he represented Mr. Sample in an unrelated matter, and does not have a conflict of interest for this application. Mr. Williams will not recuse himself from this matter. Mr. Williams also stated that he has a professional relationship with Mr. Taylor.

Mr. Gasparini stated that he works with Mr. Williams at his law firm and he has a professional relationship with Mr. Taylor. Mr. Gasparini stated that he does not have a conflict of interest with this application and he will not recuse himself.

Mr. Thomas Taylor stated, "This appeal is from an interpretation from Mr. Greenway as it relates to Mr. Robert Sample's application to be able to continue a previously authorized and fully recognized nonconforming use of a Mobile Home Park out on St. Helena. Mr. Sample acquired the Mobile Home Park in early 2019; that he began to do work on. It is very important and undisputed that at the time he bought it, there was one mobile home on it, which had a continuing long-standing rental. There was already electrical use utilities in service at the Mobile Home Park. I believe, that the County recognizes this year, on the tax record the continuing validity of a Mobile Home Park. That this is and was a legal nonconforming use up until the time that the County Staff took a look at it, and then went on to opine earlier this year that the rental checks and the other evidence that was there apparently did not suffice under Mr. Greenway's observation to prove that there was a continuing use there. My argument is that this was an improper shift in the burden of proof necessary. Mr. Greenway's determination, that it had been abandoned came about from his supposed review of the certain parameters that are set forth in the Code. We believe that the evaluation should not start at the point where a legal nonconformity in the CDC Section 8.1.20 is presumed to continue until such time as it is abandoned. The code is very clear that this is a nonconforming safe harbor. The code provides that it is the general policy of the County to allow such uses to continue to exist. Therefore it is presumed, in this Community under the code that a legal nonconforming use recognized by the County will continue until it is abandoned. If there comes a time when it is appropriate for Staff to take the position, that something has been abandoned, then the Code is very clear. The steps used to analyze by the Director, or to look and see if steps have been taken by the property owner to resume the nonconforming use, there is a clear delineation by County Council that there has to have been an abandonment prior. In order to have a resumption in nonconforming use there has to have been a determination that it has been abandoned. In this case, I believe the Staff will admit that there has never been a determination prior to this, that it has been abandoned. In fact, there is clearly a continuing use, there is continuing electrical utilities, and the taxes paid as a Mobile Home Park."

Mr. Williams stated, "I don't see a definition in the Code for a Mobile Home Park."

Ms. Austin stated, "It's a Manufactured Home Community."

Mr. Williams stated, "That's the term we should be using instead of a Mobile Home Park."

Mr. Gasparini asked Mr. Taylor, "What steps has Mr. Sample taken to reinstate the lot?"

Mr. Taylor replied, "Mr. Sample has taken numerous steps. He has begun to right the electrical boxes that were not right, he has repaired the septic tank systems that has been left in disrepair and he has begun to repair the pads for the replacement homes."

Mr. Gasparini asked Mr. Taylor, "Does he need permits to do any of that?"

Mr. Sample stated to the Board, "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. I had an electrical contractor come out to check the viability of the stands, I had No Cuts come out to identify the lines, I had SCE & G come out and I had Beaufort Jasper come out. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."

Mr. Mack asked Mr. Sample, "Did you make repairs to the septic tanks?"

Mr. Sample replied, "I haven't made any repairs, the septic tanks are pretty good; I was trying to identify where they were."

Mr. McGinnis asked Mr. Sample, "How many home sites do you have?"

Mr. Sample replied, "It is nine or ten."

Mr. McGinnis asked Mr. Sample, "How many of those nine or ten sites do you believe are not in suitable repair for usage?"

Mr. Sample replied, "The stands have to be repaired. When the previous owner removed the homes, they messed up the stands."

Mr. McGinnis asked Mr. Sample, "At any time during the past several years, has there been less than two home sites occupied?"

Mr. Sample replied, "To my knowledge, I think they have."

Mr. Taylor stated to the Board, "The nonconforming uses have not been removed. There was never any intention to abandon the use when the property went into foreclosure."

Mr. Gasparini asked Mr. Taylor, "The nonconforming got started under the old code did it not; not this code? What did the old code say about Mobile Home Parks?"

Ms. Austin replied, "It has always been anything more than one mobile home on a piece of property. You have to establish a Mobile Home Park because you can only have one house per parcel. I don't know when this mobile home park was established."

Mr. Gasparini asked Ms. Austin, "If you had a Mobile Home Park under the old code and you had five people and four of them moved and you still had one, there wasn't a requirement that you had to close the park because you didn't have two people?"

Ms. Austin replied, "There was never a requirement that you close it, but you don't let it go for more than a year. There was always that nonconforming issue that says if you close the nonconforming use for more than a year or you don't use it, then you lose the grandfathering."

Mr. Gasparini asked Ms. Austin, "As long as someone was renting a mobile home that's a continuing use, is it?"

Mr. Taylor stated, "There was no definition in the former code as to a Mobile Home Park."

Mr. Greenway stated, "That issue is irrelevant what the old code says, it is grandfathered under the current code. That is what establishes the nonconformity."

Mr. Gasparini asked, "It doesn't have to conform with the current code if it's grandfathered, correct?"

Mr. Greenway stated, "The current code is what establishes the standards for approving nonconformity."

Mr. Gasparini stated, "It was established some time under the former code, and my understanding of how something gets grandfathered is, as long as it continues to meet the former code it gets to be a nonconforming use. You can't change the code to put the use away."

10 minute Recess

Recess ended

Mr. Gasparini asked Mr. Williams, "In order to continue a nonconformance, you would have to meet the old rules not the new ones, is that right?"

Mr. Williams replied, "It is the change in the rules, assuming what was then the mobile home park was legally established at the time it was established, it is the change in the rule by the adoption of the new code that makes it nonconforming."

Ms. Austin read the code, "In the old code, Manufactured Home Community was allowed in the rural zoning district as a limited use. The definition for that is, a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals."

Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community that is there now would have been a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Taylor stated, "Was there a good faith analysis made by the Director as to whether or not there was an intention to abandon this and it should be allowed to continue as a legal nonconforming use."

Mr. Gasparini asked, "At some point the bank took over, how did that work?"

Mr. Sample replied, "The property managers was hired by the bank to manage the property."

Mr. Gasparini stated, "The bank had the property since 2014, and when did you buy it?"

Mr. Sample replied, "This year."

Mr. Greenway stated, "One of the key component to establishing a Mobile Home Park is the existence of manufactured homes in that park. This park has not operated as a Mobile Home Park for some period of time, in excess of a year. There has only been one mobile home on the property that was established by the power, receipts that I looked at, and the rent roll for that period of time, and I did not feel that I could in my power grandfather the Mobile Home Park. I wrote a determination denying his grandfathered use and I explained to him in my email that he had the right to appeal that decision to you all. It has not operated as a Mobile Home Park, in my opinion, and has not for several years. This is not a grandfathered Mobile Home Park in the eyes of the Staff."

Mr. Williams asked Mr. Greenway, "The primary basis for your determination was that there was not two or more manufactured homes on the property?"

Mr. Greenway replied, "That is correct."

Mr. Williams asked, "What zoning district is the property located in?"

Ms. Austin replied, "T2R."

Mr. Williams asked, "What's the residential density in that district?"

Ms. Austin replied, "One per three."

Mr. Mitchell asked Mr. Greenway, "When you established it, there is only one mobile home in that park, you did that through pictures?"

Mr. Greenway replied, "I did it through aials and the rent roll."

Mr. Mitchell stated, "I just saw two open electric service accounts and I am trying to figure out how we know that there wasn't two mobile homes, up until six months ago."

Mr. Gasparini asked Mr. Greenway, "Is it undisputed that this gentleman, Mike Pope, has a mobile home out there and lives in it?"

Mr. Greenway replied, "Yes, there is a mobile home on the property and someone does reside there."

Mr. Gasparini stated, "The way I read the rent roll, there are nine spots and all of them are vacant except for Mr. Pope's. If I understand your argument, as soon as less than two of them are occupied then it can't be grandfathered any more, is that the way I understand your determination?"

Mr. Greenway stated, "That is correct. The zoning district allows based on the size of the property and without a subdivision on the property, it allows one dwelling on the property. There is one dwelling on the property right now in accordance with the zoning district."

Mr. McGinnis asked Mr. Greenway, "Is that for up to one year?"

Mr. Greenway replied, "Yes, that's correct."

Mr. Gasparini asked Mr. Greenway, "How do you stay grandfathered if you have to meet the new code anywhere?"

Mr. Greenway replied, "You stay grandfathered by maintaining the grandfathered use of the property."

Mr. Gasparini asked Mr. Greenway, "Doesn't Mr. Pope's dwelling establish that?"

Mr. Williams stated, "The old code required three manufactured homes on the property."

Mr. Gasparini stated, "It required it to establish the Mobile Home Park. As Mr. Mitchell suggested, if there is a period of time when you can't rent to people, do you lose your business?"

Mr. Greenway stated, "They haven't made necessary repairs or attempted to do so for many years. Our position as Staff is that the time frame for him to do that has expired because it has been more than one year that this grandfathered situation has expired, so now it's too late."

Mr. Gasparini asked, "So the County's position is that it expired before Mr. Sample ever got the property?"

Mr. McGinnis asked, "When was the last time there were other mobile homes out there even if they were unoccupied?"

Mr. Sample replied, "I am not sure."

Mr. Gasparini stated, "So we think this got established even before the old code was adopted."

Ms. Austin replied, "Yes."

Mr. McGinnis stated that there was no intent to abandon it, since the bank had hired a managing company to operate it even if they didn't have more than one."

Mr. Williams asked Mr. Greenway, "Is the tract that we are talking about a parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings?"

Mr. Greenway replied, "I can't say that, there is no evidence to that at this point."

Mr. Williams stated, "There is a recorded plat that shows seven mobile homes on it and we have agreed that it was a legal nonconformity upon the adoption of the new code. Mr. Williams asked, does the property still meet the old code definition of a Manufactured Home Community?"

Mr. Greenway stated, "I don't have any evidence proving that."

Mr. Mitchell made a motion to overturn the County's determination that the pre-existing legal nonconforming use was abandoned for more than one year.

McGinnis seconded the motion.

Mr. Chemsak asked, "How many lots would this be approved for?"

Mr. Gasparini stated, "The Board is not making a determination about how many homes are allowed there."

MOTION: Mr. Mitchell made a motion to overturn the determination made by the County, that the pre-existing legal nonconforming use was abandoned for more than one year. The property shall remain as an existing legal nonconforming use for a Mobile Home Park. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

ADJOURNMENT

MOTION: Mr. Williams made a motion to adjourn the meeting. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell, and Williams; ABSENT: Rivers; VACANCY: None).

The meeting adjourned at approximately 6:14 p.m.

Note: The video link of the November 21, 2019, Zoning Board of Appeals meeting is:
https://beaufort.granicus.com/player/clip/4592?view_id=15

Respondent ZBOA Exhibit C

Judge, Tamekia

From: Greenway, Eric
Sent: Wednesday, November 13, 2019 2:41 PM
To: Austin, Hillary; Judge, Tamekia
Subject: FW: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)
Attachments: image003.jpg

From: Robert sample <robesample@gmail.com>
Sent: Monday, August 26, 2019 4:07 PM
To: Greenway, Eric <egreenway@bcgov.net>
Subject: Fwd: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Eric,

Please see below thread for requested information about thwme Ballpark property. As you can see 79 and 89 have been active since 1994 to present. 89 is where the current trailer is and 79 would have to be where the pump that runs the park's well is. Mr Moss couldnt give me customer's personal info so he has provided the beginning and ending dates for service for the various account. Again the former property owner took possession of the in 2010 and began to divest itselfnof the homes on the property. I will forward what I have recieved as rent rolls in another email.

Thanks Robert

----- Forwarded message -----

From: MOSS, PARKS <henry.moss@scana.com>
Date: Mon, Aug 26, 2019, 1:08 PM
Subject: RE: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)
To: Robert sample <robesample@gmail.com>

Mr. Sample,

Per your question below regarding the electric services for the addresses you provided on Ball Park Road on Saint Helena Island, the following addresses had active electric accounts/service as follows:

79 Ball Park: May 2004---Present

81 Ball Park: Feb. 1994 to July 2011

83 Ball Park: Feb 1994 to July 2008

87 Ball Park: Feb. Feb 1996 to Nov 2010

89 Ball Park: July 1994 to Present

93 Ball Park: Dec 1997 to July 2008

95 Ball Park: April 1991 to Sept 2011

101 Ball Park: Dec 1991 to May 2016

If you have any questions, please let me know.

Regards,

Parks

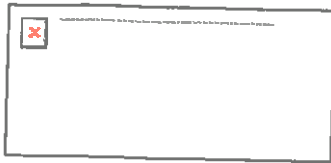
Parks Moss

Senior Account and Project Manager

Customer Service Engineering

843-815-8808 (office)

843-540-1315 (mobile)



From: Robert sample <robeshample@gmail.com>
Sent: Tuesday, August 20, 2019 1:03 PM
To: MOSS, PARKS (SCE&G - 7) <henry.moss@scana.com>
Subject: Ballpark Place Mobile Home Park (Ballpark Rd St Helena)

***This is an EXTERNAL email from Robert sample (robeshample@gmail.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

Mr Moss,

I am the owner of Ball Park Place LLC mobile home park. The addresses are 79, 81, 83, 87, 89, 93, 95, and 101 Ball Park Rd. Could you please provide me any activity data you have on these addresses. The previous owner a bank took possession of the property back in 2010. They soon after began removing the homes from the property leaving only one (89 Ballpark/Mike Pope) which currently have an active account with you. I will provide this info to the County to prove that indeed in prior years this was an active park and even today though operation has been scaled back it is still active. On another note Jacob weeks ago disconnected power from a few of the sites because they were missing meters. I believe this presented a safety hazard. I intend to rebuild and replace a few of the panels for new homes once I get clearance from the County.

Thanks in advance,

Robert Sample

8434769639

Respondent ZBOA Exhibit D

THOMSON REUTERS

AUMENTUM

 Lock Penalty Charges-Installment 1

PIN: **R300 016 000**
0360 0000 TAG: **300-ST HELENA ISLAND** Current owner: **BALLPARK PLACE LLC**
 AIN: **07599850** TIF: Ownership type: **Sole Ownership**
 Status: **Active** County: **07-Beaufort** Situs address: **101 BALL PARK RD**
 Geocode: Case: Description: **POR LOTS 15 16 17 18 SEC (...)**
 Rev acct: **0228098096** Pmt pln: Class: **MHVac UnplattedSite SeveredMH**
 Tax sale: ACH pln: Roll type: **Real**

Year/Bill **2019-5217818-A** | ***PROPERTY TAX BILL*** | **Print** | **Bill Detail** Total Due **10/29/2019**

Bill type: Original Actual	Owner of record:	Bill 2019-5217818 Inst 1-January 15	\$158.09
Bill dates: <u>October 15, 2019</u>	CSB PROPERTY MANAGEMENT II LLC	Total Current	\$158.09
Amount:	5 BOW CIR	Delinquent	\$0.00
Paid date:	HILTON HEAD ISLAND SC 29928	Adv/Surplus	\$0.00
Receipt:		Total Due	\$158.09

Sequence no: 0

Paid by:

Decal no:

Description: POR LOTS 15 16 17 18 SEC 20 1S1E PB66 P83

Values/Exemptions

AppAcres 0.5000
NoneClass 1.0000
None

Appraised 12,800 USD

MHValue 0

UseAcres 0

HmstQualVal 0

MidAcres 0.5000

Charge Summary

Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings
158.09	0.00	158.09	0.00	0.00

Detail

THOMSON ELECTRA

AUMENTUM

 Lock Penalty Charges-Installment 1
PIN: **R300 016 000**
0360 0000TAG: **300-ST HELENA**
ISLANDCurrent owner: **BALLPARK PLACE LLC**AIN: **07599850**

TIF:

Ownership
type: **Sole Ownership**Status: **Active**County: **07-Beaufort**Situs address: **101 BALL PARK RD**

Geocode:

Case:

Description: **POR LOTS 15 16 17 18 SEC (...)**Rev acct: **0228098096**

Pmt pln:

Class: **MHVac UnplattedSite SeveredMH**

Tax sale:

ACH pln:

Roll type: **Real**

Situs Addresses

Address	City	State	Postal code	Primary
99 BALL PARK RD		South Carolina	29920	
95 BALL PARK RD		South Carolina	29920	
93 BALL PARK RD		South Carolina	29920	
101 BALL PARK RD		South Carolina	29920	X

ELECTRONICALLY FILED - 2020 Feb 30 2:05 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP07000112

THOMSON REUTERS

AUMENTUM

 Lock Penalty Charges-Installment 1
PIN: **R300 016 000**
183B 0000TAG: **300-ST HELENA**
ISLANDCurrent owner: **BALLPARK PLACE LLC**AIN: **00292551**

TIF:

Ownership
type: **Sole Ownership**Status: **Active**County: **07-Beaufort**Situs address: **87 BALL PARK RD**

Geocode:

Case:

Description: **POR LOTS 15 16 17 18 SEC (...)**Rev acct: **0228098097**

Pmt pln:

Class: **ComImp MobileHomePark**

Tax sale:

ACH pln:

Roll type: **Real**Year/Bill **2019-5152478-A** ▼***PROPERTY TAX BILL*** ▼**Print****Bill Detail**Total
Due**10/29/2019**Bill type: **Original Actual**

Owner of record:

Bill 2019-
5152478Bill dates: **October 15, 2019**CSB PROPERTY MANAGEMENT II LLC
5 BOW CIR
HILTON HEAD ISLAND SC 29928Inst 1-January
15 \$1,403.28

Amount:

Total Current \$1,403.28

Paid date:

Delinquent \$0.00

Receipt:

Adv/Surplus \$0.00

Sequence no: **0**

Total Due \$1,403.28

Paid by:

Decal no:

Description: **POR LOTS 15 16 17 18 SEC 20 1S1E PB55 P83 *SPLIT 6/83 3.57 AC 16/1...**

Values/Exemptions

AppAcres 0.7300
NoneAppAcres 3.0600
NoneClass 1.0000
NoneClass 1.0000
NoneClass 1.0000
None

Charge Summary

Detail

Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings
1,403.28	0.00	1,403.28	0.00	0.00

THOMSON REUTERS

AUMENTUM



Lock Penalty Charges-Installment 1

PIN: **R300 016 000**
183B 0000

TAG: **300-ST HELENA ISLAND**

Current owner: **BALLPARK PLACE LLC**

AIN: **00292551**

TIF:

Ownership type: **Sole Ownership**

Status: **Active**

County: **07-Beaufort**

Situs address: **87 BALL PARK RD**

Geocode:

Case:

Description: **POR LOTS 15 16 17 18 SEC (...)**

Rev acct: **0228098097**

Pmt pln:

Class: **ComImp MobileHomePark**

Tax sale:

ACH pln:

Roll type: **Real**

Situs Addresses

Address	City	State	Postal code	Primary
89 BALL PARK RD		South Carolina	29920	
81 BALL PARK RD		South Carolina	29920	
83 BALL PARK RD		South Carolina	29920	
79 BALL PARK RD		South Carolina	29920	
87 BALL PARK RD		South Carolina	29920	X

ELECTRONICALLY FILED - 2020 Feb 30 2:05 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP07000112

Overview

Overview

00292551

87 BALL PARK RD.

Date received for
10/23/2019

-2018

2019

100

RESEARCHER'S NOTE

Exhibit B-10-1

SECRET

1980-1981

2007 / November

Support for

Property ID (PIN)

SECRET

September 30, 1956

THE

10

Decorative separator

1997

Security Council

1994

Real Property

1995年10月10日

1998

De Looze

Year	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
Revenue	\$63,800	\$63,800	\$49,600	\$49,600	\$49,600	\$49,600	\$49,600	\$49,600	\$63,317	\$69,395	\$69,395
Expenses	\$28,400	\$28,400	\$28,800	\$28,800	\$28,800	\$28,800	\$28,800	\$28,800	\$22,582	\$24,750	\$24,750
Net Income	\$92,200	\$92,200	\$78,400	\$78,400	\$78,400	\$78,400	\$78,400	\$78,400	\$85,899	\$94,145	\$94,145
Depreciation	\$1,403.28	\$1,327.51	\$1,201.87	\$1,176.62	\$1,124.46	\$1,082.75	\$1,046.14	\$1,043.50	\$1,026.61	\$1,110.96	\$1,087.85
Interest	\$0.00	\$1,327.51	\$1,201.87	\$1,176.62	\$1,124.46	\$1,082.75	\$1,046.14	\$1,043.50	\$1,026.61	\$1,110.96	\$1,087.85
Income Tax	\$0.00	\$1,327.51	\$1,201.87	\$1,176.62	\$1,124.46	\$1,082.75	\$1,046.14	\$1,043.50	\$1,026.61	\$1,110.96	\$1,087.85
Net Income	\$92,200	\$92,200	\$78,400	\$78,400	\$78,400	\$78,400	\$78,400	\$78,400	\$85,899	\$94,145	\$94,145

FOR LOTS 15 16 17 18 SEC 20 151E P85 P83 *SPLIT 6/83 3.57 AC 16/183D *T ACCT 83 CORRECT VALUE SPLIT 1/05 2.70 AC 16/183E SPLIT 3/85 1.0 AC 16/244 BOND FOR TITLE ON FILE IN ASS. OFFICE (J. CARL LANIER) SPLIT 6/98 0.50 AC 16/360

Owner: Balfark Place LLC
Owner Address: PO BOX 2239
 BEAUFORT SC 29901

Property Class Code
AC000000
ComImp MobileHomePark
3.7900

Transactions
County Home
Mortgages
Real Property
Personal Property
Vehicle Tax
Taxes
Feudalism
County Login

Year	2013	2012	2011	2010	2009
Revenue	\$49,600	\$63,317	\$63,317	\$69,395	\$69,395
Operating Expenses	\$28,400	\$22,582	\$22,582	\$24,750	\$24,750
Operating Income	\$21,200	\$40,735	\$40,735	\$44,645	\$44,645
Net Income	\$1,046.14	\$1,043.50	\$1,026.61	\$1,110.96	\$1,087.85
Net Income per Share	\$1.04614	\$1.04350	\$1.02661	\$1.11096	\$1.08785

Owner	501(c)3 Dispositions	Book & Page	Date	Final	Variant	Book Page
CSB PROPERTY MANAGEMENT II LLC		3764 2601	5/30/2019	Eu		\$60,000
Multiple Owners		3010 1746	10/29/2010	Ma		\$60,000
LANIER J CARL SUSAN M TIROS		2249 2217	10/1/2005	Fu		\$165,000
LANIER J CARL		1244 577	10/6/1999	Fu		\$1
HUTCHERSON DAVID T ANN K		836 851	2/12/1996	Fu		\$58,000
HUTCHERSON DAVID T ANN K		224 680	10/1/1975	Ok		\$0
			12/31/1776	Or		\$0

Building	Type	Use Code Description	Construction Year	Floors	Rooms	Square Footage	Improvement Size
R01	CASHEDD	Garage / carport - detached	1995	0	0		6000
R01	MPARK	Mobile Home Park - MCH	0000	0	0		7

Benford County makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

Print Print First First Previous Next Last

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE No.: 2020-CP-07-00112
ERIC GREENWAY, as agent for	)	
Beaufort County,	)	
	)	
Appellant,	)	
	)	
vs.	)	RETURN OF ROBERT SAMPLE, JR. and
	)	BALLPARK PLACE, LLC TO APPELLANT'S
BEAUFORT COUNTY ZONING	)	PETITION FOR APPEAL FROM THE
BOARD OF APPEALS, ROBERT	)	BEAUFORT COUNTY ZONING BOARD OF
SAMPLE, JR., and BALLPARK	)	APPEALS
PLACE, LLC,	)	
	)	
Respondents.	)	
_____	)	

The Respondents Robert Sample, Jr. and Ballpark Place, LLC (hereinafter collectively referred to as "Ballpark Place") respond to the Petition for Appeal from the Beaufort County Zoning Board of Appeals in this matter as follows:

Ballpark Place joins in and adopts all of the arguments set forth in the Return of the Beaufort County Zoning Board of Appeals filed with this Court on July 31, 2020. The Beaufort County Zoning Board of Appeals properly considered Ballpark Place's appeal on November 22, 2019, and granted Ballpark Place's request that the Administrative Interpretation of Mr. Greenway be overturned. The ZBOA's determination that the property continued to have pads available for rent and thus met the requirements of the former zoning and development standards Code for the use of the property, and that there had been no interruption in the legal, pre-existing, non-conforming use, was based upon evidence presented at the hearing, and should be upheld by this Court.

STANDARD OF REVIEW

The Court of Appeals of South Carolina clearly set forth the standard of review in zoning appeals. *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282

(Ct.App.2011). "Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision 'is arbitrary, capricious, has no reasonable relation to a lawful purpose, or in the [zoning] board has abused its discretion.'" *Id.* at 116, 719 S.E.2d at 284 (quoting *Rest. Row Assocs. V. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (quoting *Cnty. Of Richland v. Simpkins*, 348 S.C. 64, 668, 560 S.E.2d 902, 904 (Ct.App.202)). "The factual findings of the Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law." *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995).

In *Rest. Row Assocs. v. Horry Cnty*, the Supreme Court of South Carolina clearly states the standard of review in zoning appeals:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)

(quotation marks omitted).

"The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." SC Code Section 6-29-840.

ANALYSIS

The ZBOA's decision rejecting the alleged "abandonment" of the legal non-conforming use of the property must be affirmed as it was based on evidence presented to the Board. In order for a decision of the Board to be overturned, their decision must be arbitrary, capricious, have no reasonable relation to a lawful purpose, or it must be shown that the ZBOA abused its discretion, contrary to law.

The parties agree that there is no question as to the establishment of the use of the Ballpark property as a Manufactured Home Community prior to the adoption of the current zoning of the property as T2R in 2014.¹ The sole issue before this Court is whether the Manufactured Home Community use was abandoned.

I. The Manufactured Home Community use was not abandoned.

The Board properly considered evidence presented regarding the criteria for abandonment of the Manufactured Home Community use and determined the standard for abandonment was not met, and that, as a matter of fact, the Manufactured Home Community use had not been abandoned at all, thus concluding the property maintained its legal, non-conforming use as a Manufactured Home Community.

The Board received evidence and correctly determined that the property continued to meet the requirements of Section 106-1098 and that the legal, non-conforming use was never abandoned. The evidence presented to the Board included a plat showing the locations of the "pads," rent rolls showing the continued leasing of one of the nine sites to Mr. Pope, the admission

¹ The following exchange occurred during the Board hearing and appears in the transcript from the hearing. Mr. Williams is a Board member and Ms. Austin is the Beaufort County Zoning and Development Administrator. Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community [use] that is there now would have been a legal nonconforming use?" Ms. Austin replied, "Yes." Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?" Ms. Austin replied, "Yes."

by Mr. Greenway that Mr. Pope resides on the site, communications from SCE&G as to the current and prior electrical status, and testimony from Robert Sample that the sites had water and sanitary sewer available. When asked how many sites were not useable, Mr. Sample indicated the only issue with the sites was the condition of the "stands" for the placement of incoming homes, which could be easily repaired. Additionally, real property Printout of Tax Records from the County indicated the Park was described as a manufactured housing site.² The evidence presented to and elicited by the Board, clearly addressed the criteria that was to be considered by the staff. The first criteria, "[i]f steps have been taken by the property owner to resume the nonconforming use" immediately assumes the non-conforming use was ceased. However, the evidence showed that the property had continued to operate and that repairs had been and were being made. The second criteria, "[i]f utility services such as water, gas, and electricity to the property have been disconnected" was addressed through the email from SC&G stating the status of electric hook-ups to the sites. However, the Staff ignores the critical criteria of water, and by extension, sanitary sewer. Mr. Sample testified that each of the sites had currently operating water supplies provided by an onsite well system, and sanitary sewer was provided to each site via functioning septic systems. Criteria three was also addressed in the evidence presented for criteria two. The functioning water, sewer, and electrical services were still available at the site. Admittedly, there were some repairs to be made; nonetheless, Mr. Pope's site continues to function, and other sites are available for home placement. As to criteria six, "[i]f activities generally associated with the non-conforming use are no longer observed on the property," there was evidence in the form of the continued existence of utility hook-ups, Mr. Pope's home, property tax records, and other

² The Tax Records show the County considered the Park to be a mobile home park. In fact, it appears from the records the property had been taxed as such since 2009. Appellant contends the "abandonment" occurred in 2012, but clearly the County continued to tax as if the use was not abandoned. In a separate Tax Record, the County notes nine different address/sites.

visible evidence of the continued Manufactured Home Community use. The Board properly considered the evidence presented to them and correctly found the legal, non-conforming use as a Manufactured Home Community had not been abandoned.

The use definition for a Manufactured Home Community in the Old Code requires sites to be planned and improved for the placement of three or more manufactured homes. It does not require they be leased. The Appellant's contention that the Manufactured Home Community use requires more than one site must be leased is incorrect. The first sentence in the Manufactured Home Community use definition states, "A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights." The definition simply requires there must be at least three sites planned and improved and those sites shall be for the placement of manufactured homes. The definition then defines the manufactured homes should be for residential use and should be leased to individuals with customary leasehold rights. The Board correctly interpreted the Manufactured Home Community use definition and ruled accordingly.

The Board correctly determined that the Park continued to meet the requirements of Section 106-1098 of the Old Code. The evidence presented to the Board included a plat showing the locations of the "pads," rent rolls showing the leasing of one of the nine sites to Mr. Pope, and the admission by Mr. Greenway that Mr. Pope has historically, and continues to reside on the property,

2. Staff wrongly interpreted the ordinance.

The Staff incorrectly asserts that Section 106-1098 of the Old Code requires, among other things, that "more than one site" must be leased to individuals. The contention there must be more than one site on the property leased to individuals, is not supported by the plain language of Section

106-1098, which requires that for a site to qualify as a Manufactured Home Community use, it must be "planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights." The Board properly found, based on the evidence before it, that there is no requirement that any of the "three or more" planned and improved sites must be leased, as contended by the Appellant. The second portion stating "where home sites within the development are leased to individuals who retain customary leasehold rights" is merely defining the term "residential dwellings," and in no way requires more than one site be leased to individuals. If that position were upheld, it would lead to absurd and unfair housing practices at once: Mr. Pope would have to vacate his longtime home.

The threshold issue is whether the Board's decision regarding the alleged abandonment was arbitrary, capricious, and without supporting evidence. The Board was presented with sufficient evidence leading to their decision, which should be affirmed.

CONCLUSION

The Board found, as a matter of fact, that the Manufactured Home Community use of the property had not been abandoned, and that finding is binding on this Court in this appeal.

For the above-stated reasons, Robert Sample, Jr. and Ballpark Place, LLC urge this Court to affirm the ZBOA's written decision of November 22, 2019 declaring there was no interruption of the legal, pre-existing, non-conforming Manufactured Home Community use of the two parcels. Further, Robert Sample, Jr. and Ballpark Place, LLC request that this honorable Court award them recovery of their attorney's fees associated with this appeal by Beaufort County.

Respectfully submitted,

/s/Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC

P.O. Box 5550

Hilton Head Island, SC 29938

S.C. Bar No. 5499

tom@thomastaylorlaw.com

843-785-5050

August 4, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL CASE NO.: 2020-CP-07-0112

ERIC GREENWAY, as agent for Beaufort
County,

Appellant,

vs.

**NOTICE OF MOTION, MOTION FOR
RECONSIDERATION, AND
MEMORANDUM IN SUPPORT**BEAUFORT COUNTY ZONING BOARD
OF APPEALS, ROBERT SAMPLE, JR.,
and BALLPARK PLACE, LLC,

Respondents.

TO: THOMAS C. TAYLOR, ATTORNEY FOR RESPONDENTS ROBERT SAMPLE, JR. and
BRADLEY A. MITCHEL, ATTORNEY FOR RESPONDENT BEAUFORT COUNTY
ZONING BOARD OF APPEALS

PLEASE TAKE NOTICE that the Appellant, Eric Greenway, as agent for Beaufort County, shall move the Court to alter or amend its order dated October 6, 2020 (hereinafter the “Order”) at such time and place as directed by the Court, upon the following grounds:

FACTS AND PROCEDURAL HISTORY**Department of Community Development Determination**

In May 2019, Ball Park Place, LLC purchased two parcels of real property located on Saint Helena Island (hereinafter the “Property”). The property had been used as a manufactured home community prior to its being purchased by Ball Park Place, LLC but was not being used as such in May 2019. Robert Sample (hereinafter “Sample”), sole member of Ball Park Place, LLC, wished to use the Property as a manufactured home community. However, the Property is zoned T2 Rural

(hereinafter “T2R”) pursuant to the Community Development Code of Beaufort County (hereinafter “CDC”) and manufactured home communities are not a permitted use in T2R zones.¹

In July 2019, Sample sought a determination from Eric Greenway, Director of the Beaufort County Department of Community Development (hereinafter “DCD”), that the Property’s use as a manufactured home community was a Legal Nonconformity, i.e., a use that was, at the time of its commencement, properly permitted and legally established but that no longer complied with the applicable provisions of the CDC.² Legal nonconformities are allowed to continue provided the legal nonconforming use has not been abandoned for a period of one year or longer.³ Pursuant to the CDC, the Director of the DCD (Greenway at all times relevant to this matter) is charged with determining whether a legal nonconforming use has been abandoned for a period of one year or longer.⁴ The burden of establishing that a nonconformity lawfully exists is the responsibility of the owner of the land on which the nonconformity is located.⁵ So, to establish that the Property’s use as a manufactured home community was a legal nonconformity, Ball Park Place, LLC had to show that that use had not been abandoned for one year or more.

To establish that the use of the Property as a manufactured home community had not been abandoned for one year or more, Sample sent Greenway an email dated July 24, 2019 which made unsupported claims about the history of the use of the property as a manufactured home community. Greenway responded to Sample by asking him for “actual proof that this property has been recently used as a mobile home park.”⁶ In response to that request, Sample produced the following:

¹ CDC §3.1.60

² CDC § 8.1.20.A

³ CDC § 8.1.40 and 8.2.40.A.

⁴ CDC § 8.2.40(B)

⁵ CDC § 8.1.30

⁶ See Email from Greenway to Sample dated August 14, 2019

1. Copies of rent rolls from the Property's previous owner for the years 2009, 2010, 2011, 2012, and 2013;
2. An email dated August 26, 2019 from a SCANA employee showing the times at which the various addresses on the Property had active electric service;
3. A plat of the Property dated November 8, 1990;
4. Copies of fifty-one checks made payable to Sun Rentals and Development from Michael W. Pope issued between August 2012 and June 2019.

Greenway reviewed the items presented to him and reviewed historic aerial photographs of the Property.⁷ On September 24, 2019, Greenway determined that the Property had not been abandoned for one year or more and sent Sample an email informing him of the same.⁸

Appeal to the Zoning Board of Appeals

On October 24, 2019, Sample applied for an appeal to the Beaufort County Zoning Board of Appeals (hereinafter "ZBOA") of Greenway's determination. Attached to the Application for Appeal were the evidentiary items Sample had presented to Greenway and a Narrative prepared by counsel for Ball Park Place, LLC and Sample. The Narrative stated that the ground for appeal was that Greenway's determination was "arbitrary and capricious, and is contrary to the explicit provisions of the CDC. Specifically [Ball Park Place, LLC] contends that the Director ignored the specific language of the CDC and instead, applied a non-existence (*sic*) "burden of proof to [Ball Park Place, LLC]."⁹

⁷ See Email from Greenway to Sample dated September 24, 2019

⁸ *Id.*

⁹ See, Attachment 1 to the Appeal Application of Robert L. Sample, Jr.

Evidence Considered by the ZBOA

The appeal was heard by the ZBOA on November 21, 2019. The participants in the hearing, in addition to the ZBOA members, were Sample, Greenway, Sample's counsel, and the Beaufort County Zoning Administrator, Hillary Austin (hereinafter "Austin"). The same information that had been provided to Greenway for his investigation was provided to the ZBOA, i.e., the checks, the rent rolls, the SCANA email, and the 1990 plat of the Property.

The checks tended to prove that there had been at least one mobile home on the property since 2012.

The rent rolls showed that, at one time, there were as many as seven useable mobile homes on the Property and as many as five mobile homes that were actually rented. They also show that the last time more than one home on the Property was rented was May 2011.

The SCANA email showed that two addresses on the Property had continuously active electric services up to August 2019. It also showed that the last time there had been more than two active accounts was in May 2016.

The plat showed that there were seven mobile homes on the Property in 1990.

The ZBOA also considered testimony from Sample and his counsel, Thomas Taylor (hereinafter "Taylor"). Taylor testified that "[Sample] has begun to right the electrical boxes that were not right, he has repaired the septic tank systems that has been left in disrepair and he has begun to repair the pads for the replacement homes."¹⁰

Sample testified that the work he had done on the Property towards reinstating its use as a manufactured home park was "poking around trying to find my infrastructure with a mini excavator", having "an electrical contractor come out to check the viability of the stands, . . . had

¹⁰ See Minutes for November 21, 2019 ZBOA Meeting

No Cuts come out to identify lines, . . . had SCE&G come out and had Beaufort Jasper [Water and Sewer Authority] come out, . . . and had different contractors to come out to check the lines and utilities.”¹¹ He testified that he hadn’t made any repairs to septic tanks and was trying to identify where the septic tanks were.¹² When asked by the ZBOA how many of the home sites on the Property were suitable for usage, Sample responded that “[t]he stands have to be repaired. When the previous owner removed the homes, they messed up the stands.”¹³ When asked if here had recently been fewer than two occupied home sites on the Property, Sample said “[t]o my knowledge, I think they have.”¹⁴ When asked when more than one mobile home had been present on the Property, Sample replied “I am not sure.”¹⁵

Greenway did not present any evidence other than that which had been presented to him for use in his determination. In summarizing that evidence, Greenway stated that “This park has not operated as a Mobile Home Park for some period of time, in excess of a year. There has only been one mobile home on the property that was established by the power, receipts that I looked at, and the rent roll for that period of time . . . It has not operated as a Mobile Home Park, in my opinion, and has not for several years.”¹⁶ He stated that there was only one mobile home on the Property by reviewing historic aerial photographs of the Property and the rent rolls presented by Sample. He further stated that the owners of the Property had not “made the necessary repairs [to avoid abandonment of the use] or attempted to do so for many years.” When asked if the Property was a “parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings,” Greenway responded that “there is no evidence to that

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

at this point.”¹⁷ When asked if the Property still met the Old Code definition of a Manufactured Home Community, he stated “I don’t have any evidence proving that.”¹⁸

No evidence was presented to the ZBOA which would indicate that more than one home site on the Property had been leased since, at the very latest, May of 2011.

Standard Applied by the ZBOA

Austin accurately stated that, under the Code of Ordinances for Beaufort County in Chapter 106, Zoning and Development Standards (hereinafter the “Old Code”), the definition of a Manufactured Home Community was “a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals.”¹⁹ The ZBOA and parties to the appeal agreed that the Property’s use a manufactured home community was properly permitted and legally established at the time of its commencement under the Old Code but that it no longer complied with the applicable provisions of the CDC.²⁰ In reference to CDC § 8.2.40.A., Austin stated that “. . . if you close the nonconforming use for more than a year or you don’t use it, then you lose the grandfathering.”²¹

There was some indication that the ZBOA recognized the considerations to be made by the Director of the DCD in determining whether a nonconforming use had been abandoned as set out in CDC § 8.2.40.²² However, these considerations were not specifically discussed.²³

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014)

²⁰ See Minutes for November 21, 2019 ZBOA Meeting

²¹ *Id.*

²² *Id.*

²³ *Id.*

Taylor asserted that the Director of the DCD bore the burden of proof for establishing nonconformity.²⁴ However, there was no further discussion on this point by the ZBOA or any party to the hearing.²⁵

The ZBOA's Decision

At the conclusion of the hearing, the ZBOA voted unanimously in favor of a motion to “overturn the County’s determination that the pre-existing legal nonconforming use was abandoned for more than one year.”²⁶ It issued a written decision on December 19, 2019. The decision stated that Sample’s appeal was granted and was “based on the following findings:

- 1) The property continued to have pads available for rent and thus met the requirement of the former statute of the use of the property.
- 2) There was no interruption in the legal, pre-existing, non-conforming use.”²⁷

The decision gave no details as to the bases therefor.²⁸ However, the ZBOA’s decision makes it clear that, in the opinion of the ZBOA, the rental and presence of only one mobile home on the Property constituted a continuance of the use of the Property as Manufactured Home Community.

Appeal of the ZBOA Decision

Greenway’s Appeal

On January 20, 2020, Greenway, as agent for Beaufort County, filed a Petition for Appeal from the Beaufort County Zoning Board of Appeals. That appeal cited the applicable CDC sections and argued that the ZBOA’s ruling was in error because Ball Park Place, LLC had failed to establish that the Property’s use as a manufactured home community was a legal nonconforming use because it failed to establish that such use had previously existed *and* had not been abandoned

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Letter dated November 22, 2019 from Thomas Gasparini to Sample and Taylor

²⁸ *Id.*

for one year or more. That appeal requested that the court overturn the decision of the ZBOA on the grounds that (1) the ZBOA's findings were not supported by and were contrary to the evidence in the record and (2) the ZBOA misapplied the standard for the use that constituted a Manufactured Home Community under the Old Code.²⁹ Specifically, the appeal argued that Ballpark Place, LLC had only shown that one mobile home had been continuously leased and, to be considered a Manufactured Home Community under even the broadest interpretation of the Old Code, more than one mobile home had to be leased.

The ZBOA and Sample/Ballpark Place, LLC filed returns to Greenway's Petition on July 31, 2020 and August 5, 2020, respectively. The Sample/Ballpark Place, LLC return was a nearly verbatim copy of the ZBOA return.

The Hearing

The appeal was heard by Hon. Marvin H. Dukes, III on August 6, 2020. Greenway, by and through his counsel, made the following argument:

1. There is evidence in the record that, as recently as 2010, there were five home sites on the property that were rented.
2. However, CSB Property Management II, LLC became the property owner in October 2010 and, according to the Appellee, began to curtail the property's use as a manufactured home community, divesting itself of the mobile homes on the property.
3. By June 2011, there was only one site being rented. That is the sole site that has been rented since.
4. Rent rolls were kept until 2013 reflecting the rental, but there are no rent rolls for subsequent years.
5. By September 2011, electrical service had been disconnected for all but three sites.
6. The electrical service for 101 Ballpark Road was disconnected in May 2016.

²⁹ See Petition for Appeal from the Beaufort County Zoning Board of Appeals, p. 12.

7. 79 Ballpark Road is the home site currently being leased by Pope. The Appellee is unsure of the location of 89 Ballpark Road.
8. Other than checks showing that one of the sites was rented from 2013 to the present, there is no information about the rental of the Property between the end of 2013 to May 2019.
9. The Property was conveyed to Ballpark Place, LLC on May 30, 2019.
10. After purchasing the Property and hoping to use it as a Manufactured Home Community, Ballpark Place found that the home sites were not in suitable shape for usage.
11. Despite the Appellee's desire to establish a Manufactured Home Community, the property is in a T2R zone. Manufactured Home Communities are not a permitted use in T2R zones.
12. However, site features established before the adoption of the CDC which do not conform to the CDC's terms and requirements, but which were properly permitted and legally established at the time of their establishment, are known as Legal Nonconformities under the CDC and are permissible pursuant to CDC § 10.1.140.
13. However, pursuant to CDC § 8.2.40(A) "if a nonconforming use is abandoned for a period of one year or longer, it shall not be reestablished and shall only be replaced with a conforming use."
14. The nonconforming use here is the use of the property as a Manufactured Home Community. There is no argument that the property was, at one time, legally used as a Manufactured Home Community as defined by the zoning code that preceded the CDC.
15. Under the Old Code, at section 106-1098, a Manufactured Home Community was defined as "[a] parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights."
16. So, there were two requirements for property to be a Manufactured Home Community:
 - (1) It had to be planned and improved for the placement of three or more manufactured homes for use as residential dwellings; and
 - (2) home sites within the development had to be leased.
17. There is some ambiguity surrounding the second requirement. It could mean either that:
 - (1) More than one home site on the property is held out to be leased; or
 - (2) More than one home site is actually leased.
18. It is the position of the Appellant that the latter is the proper interpretation.

19. Here, Ballpark Place was looking for a determination from the Director that the use of the property as a Manufactured Home Community was a legal nonconforming use that had not been abandoned for one year or longer.
20. The burden of establishing that a nonconformity lawfully exists – that is to say it has not been abandoned – is the responsibility of the owner of the land on which the nonconformity is located pursuant to CDC § 8.1.30.
21. The Director is charged with determining whether a legal nonconforming use exists and has or has not been abandoned for a period of one year or longer pursuant to CDC § 8.2.40(B).
22. So, Ballpark Place had the burden of proving to the Director that the property's use as a Manufactured Home Community had not been abandoned for more than one year and it was the Director's responsibility to make a determination based on what was presented to him.
23. That is to say, Ballpark Place had to show that, without interruption for a year or more, (1) there were three or more home sites planned and improved and (2) more than one of those sites was either leased or held out for lease.
24. Based on the record, it is clear that the property's use as a Manufacture Home Community was abandoned in June 2011.
25. However, in the absolute most favorable light to the Appellee, and under the most generous interpretation of the definition of Manufactured Home Community under the Old Code, the most recent date on which the property's use as a Manufacture Home Community must be considered abandoned is May 2016 – when the electrical service for the homesite at 101 Ball Park was ended.
26. That is to say, the fact that electricity was connected until that point is the only evidence that could show that there were three home sites available for lease up to that time.
27. So, being as generous as possible, the time frame that the Director would have to consider would be May 2016 to May 2017.
28. Pursuant to CDC § 8.2.40(B), in determining whether the use has been abandoned for more than one year, the Director must consider “all of the facts and circumstances regarding the nonconforming use, including, but not limited to seven particular considerations.
29. These considerations and the information in the record relevant to these considerations are as follows:
 1. If steps have been taken by the property owner to resume the nonconforming use;

Relevant Considerations: There is nothing in the record that reflects any such steps were taken until after May 2019

2. If utility services such as water, gas, and electricity to the property have been disconnected;

Relevant Considerations: The record shows that electricity for all but two home sites was disconnected as of May 2016 to present. There is nothing else is in the record on this point.

3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;

Relevant Considerations: The record shows that fixtures necessary for operation had either been removed or were not in good enough condition to be used.

4. If signs advertising the nonconforming use have been removed;

Nothing in the record

5. If business licenses for the nonconforming use have expired or not been renewed;

Nothing in the record

6. If activities generally associated with the nonconforming use are no longer observed on the property; and

Nothing in the record.

7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.”

Nothing in the record

30. Applying the facts to the above considerations, the Director determined that the property’s use as a Manufactured Home Community had been abandoned for more than one year and, as such, its prospective use as the same was not a legal nonconforming use.

31. Upon Ballpark Place’s appeal of the Director’s decision, the ZBOA was presented with the same evidence available to the Director

32. Despite this, the ZBOA found that:

1. The property continued to have pads available for rent and thus met the requirement of the former statute of the use of the property.
2. There was no interruption in the legal, pre-existing, non-conforming use.”

33. As such, the findings of the ZBOA are arbitrary and unsupported by the evidence. Such a decision warrants a decision by this court overruling that of the ZBOA.

34. In deciding appeals on ZBOA decisions, the appellate court may substitute its judgment for that of the zoning board if the zoning board has abused its discretion. *Newton v. Zoning Bd. of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011)
35. An abuse of discretion occurs when a trial court's decision is arbitrary or unsupported by the evidence. *Id.*
36. Here, there was no evidence that would support the claim that the property's use as a Manufactured Home Community was not abandoned from June 2011 to May 2019.
37. As such, the ZBOA abused its discretion and made an arbitrary decision. So, its decision must be overturned, and the Director's determination must have prospective application.
38. Much of the material contained in the returns submitted by the Appellees was inaccurate and unsupported by the record. The statements in those returns that are inconsistent with the record are as follows:
 - a. "The parcels . . . presently contain nine improved sites intended for the placement of manufactured homes."
 - b. "Currently, the parcels have access to water, sanitary sewer, and electricity."
 - c. "Additionally, several of the sites continued to have active electrical service and only required electrical meters for active service."
 - d. "Upon the purchase of the Park, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes."
 - e. "Mr. Sample verified that utilities were still connected, such as sanitary sewer available to each site through functioning septic systems, and water available to each site via a well in the Park."
 - f. "Mr. Sample also verified that electrical utilities¹ were available to each site and functioning, and that the stands required to place new manufactured home were functional or repairable."
 - g. "All sites were available for lease for home sites, with one site continually being leased by Mr. Pope."
 - h. "Mr. Sample indicated the only issue with the sites was the condition of the 'stands' for the placement of incoming homes, which could be easily repaired."
 - i. "However, the Park continued to operate and address any repair issues."

- j. “Mr. Sample testified that each of the sites had currently operating water supplies provided by an onsite well system, and sanitary sewer was provided to each site via functioning septic systems.”
- k. “The functioning water, sewer, and electrical services were still available at the site.”
- l. “. . . other sites are available for home placement.”
- m. “. . . there was evidence of the continued existence of utility hook-ups.”
- n. “. . . visible evidence of the continued Manufactured Home Community use.”

The ZBOA and Sample/Ballpark Place, LLC offered no argument to Greenway’s representation of the record except to say that certain of the statements in their returns which Greenway pointed out as not being in the record should be considered as in the record because they were the testimony of Sample at the ZBOA hearing. Counsel for Greenway objected to the court’s consideration of that or any other factual testimony at the ZBOA hearing as being in the record because, pursuant to CDC § 7.3.70.C.6.(a), the ZBOA “shall base its decision solely on the record of the appeal, as supplemented by arguments presented at the public hearing . . .” Pursuant to CDC § 7.3.70.C.3., the record of the appeal consists of the “record of material considered by the decision-maker in making the decision . . . plus the Comprehensive Plan and this Development Code . . .” Since testimony first presented at the ZBOA was not before Greenway when making his determination, it could not have been considered by the ZBOA in making its decision or by the court on appeal.

Taylor argued that the ZBOA’s decision should not be disturbed because, pursuant to *Vulcan Materials Co. v. Greenville County Bd. Of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), the ZBOA’s factual finding could not be disturbed unless a review of the record disclosed that there was no evidence which reasonably supported its findings. Counsel for

Greenway stated that the *Vulcan* standard had been accurately stated, but that there was no evidence at all in the record which reasonably supported the ZBOA's findings.

The Order

The court issued an Order Denying and Dismissing Appeal (hereinafter "Order") on October 6, 2020. Most of the Order's findings of facts do not reflect the record on appeal, including the following:

1. "The parcels were planned for and presently contain nine improved sites intended for the placement of manufactured homes."
2. "Currently, the parcels have access to utility services for water, sewer, and electricity."
3. "During the time of the CSB's ownership of the Park, several of the nine pads were leased to manufactured homeowners . . ."
4. "Upon the purchase of the Park, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes."
5. "During his preparations of the Park, Mr. Sample verified that utilities were still connected, such as sewer available to each site through functioning septic systems, and water available to each site via a well in the Park."
6. "Mr. Sample also verified that electrical utilities were available to each site and functioning, and that the stands required to place new manufactured home were functional or repairable."
7. "All sites were available for lease for home sites . . ."
8. "During their presentation to the Board, Mr. Sample and his counsel presented evidence of the continuous, uninterrupted use of the Park as a Manufactured Home Community . . ."

9. "The Board received evidence showing the Park continued to meet the requirements of Section 106-1098 of the Old Code."
10. "The evidence presented to the Board included . . . testimony from Mr. Sample that the sites had water and sewer services available."
11. "When asked how many sites were not in suitable repair for usage, Mr. Sample indicated the only issue with the sites was the condition of the "stands" for the placement of incoming homes, which could be easily repaired."
12. "The evidence presented to and elicited by the Board clearly addressed the seven criteria."
13. "However, the evidence presented to the Board clearly indicates that the Park continued to operate and address any repair issues."
14. ". . . Mr. Sample's testimony that each of the sites had currently operating water supplies provided by an onsite well system, and sewer was provided to each site via functioning septic systems."
15. "The functioning water, sewer, and electrical services were still available at the site."
16. ". . . other sites [aside from the one rented by Pope] are available for home placement."
17. ". . . there was . . . visible evidence of the continued Manufactured Home Community use."

Based on these findings of fact, the court found that there was evidence in the record to support the decision of the ZBOA and therefore denied Greenway's appeal.

The Order did not address Greenway's objection to the consideration of material not in the record on appeal. It likewise did not address whether a parcel of land which only leased one home site could be considered a Manufactured Home Community as that term was defined by the Old

Code. It also did not address which party bore the burden of establishing that a nonconformity lawfully existed.

LAW AND ANALYSIS

A party may move the court to alter or amend its order when the court has misunderstood or failed to fully consider an argument or issue and the party wishes for the court to reconsider it.³⁰ It is inherently unfair to disallow a party an opportunity to call the court's attention to a possible misapprehension of an earlier argument and also revisit a previously raised argument, even if it means rehashing all or part of those arguments.³¹

Here, reconsideration and rehearing are necessary. The Order ignores the record on appeal and bases most, if not all of, its findings on material not in that record. Had the court refused to consider and include matter outside the record on appeal, it would have found that there was no evidence which reasonably supported the ZBOA's findings.

As such, it is necessary for the court to reconsider this matter and alter or amend its judgment such that it:

1. Does not include matter that was not in the record on appeal;
2. Reverses its ruling on Greenway's objection to the consideration of material not in the record on appeal;
3. Finds that, pursuant to CDC § 8.1.30, the burden of establishing that the Property's use as a Manufactured Home Community was a legal nonconforming use which had not been abandoned was the responsibility of Ballpark Place, LLC;
4. Finds that a parcel of land which only leases one home site cannot be considered a Manufactured Home Community as that term was defined by the Old Code;

³⁰ *Elam v. S.C. DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004).

³¹ *Id.*

5. Finds that there was no evidence in the record on appeal to the ZBOA which reasonably supported the ZBOA's findings
6. Overturns the decision of the ZBOA; and
7. Upholds Greenway's determination that the use of the Property as a Manufactured Home Community was abandoned for one year or more and therefore cannot be continued.

Submitted October 16, 2020.

Coppage Law Firm, LLC

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1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No. 2020-CP-07-00112

3

4 Eric Greenway, as agent)
 for Beaufort County,)
 5)
 Appellant,)
 6) HEARING
 vs.)
 7) August 6, 2020
 Beaufort County Zoning)
 8 Board of Appeals, Robert)
 Sample, Jr., and Ballpark)
 9 Place, LLC,)
)
 10 Respondents,)
 _____)

11

12 Hearing reported by Deborah S. Thomas,
 13 Certified Verbatim Reporter and Notary Public in and
 14 for the State of South Carolina; said hearing held
 15 before Honorable Marvin H. Dukes, III, Beaufort
 16 County Master in Equity and Special Circuit Court
 17 Judge in accordance with the South Carolina Rules of
 18 Civil Procedure, at the Beaufort County Courthouse,
 19 102 Ribaut Road, Room 212, Beaufort, South Carolina
 20 on August 6th, 2020, at the hour of 1:33 p.m.

21

22 _____
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 23 (803) 206-7390

24

25

2

1 Appearances

2

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1 EXHIBIT INDEX
2
3 Exhibits: Marked at Page
4 (Exhibits retained by Clerk of Court.)
5 None Proffered
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1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.
4 JUDGE DUKES: Good afternoon. We're
5 here in 2020-CP-07-00112, Greenway versus ZBOA.
6 This is an appeal from a finding by the ZBOA. That
7 appeal made by Eric Greenway as agent for Beaufort
8 County.
9 And, Mr. Coppage, I'm happy to hear from
10 you, sir.

11 MR. COPPAGE: Thank you, Judge. Like
12 you said, this is an appeal from the Zoning Board of
13 Appeals' decision regarding property owned, Ballpark
14 Road, on St. Helena Island. I represent Eric
15 Greenway as the Director of the Department of
16 Community Development for Beaufort County.

17 I'll give some factual background to start
18 out. There is evidence in the record that as
19 recently as 2010, there were five homesites for
20 mobile homes on the property we're talking about
21 here that were actually rented.

22 However, CSD Property Management II, LLC
23 became the property owner in October of 2010 and
24 began to curtail the property use as a manufactured
25 home community at that point, divesting itself of

↑

6

1 the mobile homes on the property. By June 2011,
2 there was only one site being rented. And that is
3 the sole site that's been rented since.

4 Rent roles were kept until 2013 reflecting
5 the rental, but there are no rent roles for
6 subsequent years.

7 By September of 2011, electrical service

8 had been disconnect for all but three sites on the
9 property. Those sites being the addresses 79, 89
10 and 101 Ballpark Road.

11 The electrical service for 101 Ballpark
12 Road was disconnected in May of 2016.

13 79 Ballpark Road is the site that's still
14 being leased.

15 89 Ballpark Road still has electrical
16 service, but the Appellee is unsure of the locations
17 of that homesite.

18 Other than checks from the lessor from
19 that one homesite from 2013 to present, there is no
20 other information about the property between the end
21 of 2013 to May of 2019, save that electrical was
22 turned off for one of the sites in 2016.

23 The property was conveyed to Ballpark
24 Place, LLC, which is the Appellee, on May 30th,
25 2019.

↑

7

1 After purchasing the property and hope to
2 be used as a manufactured home community, Ballpark
3 Place found that homesites were not in suitable

4 shape for usage.

5 Despite the appellee's desire to establish
6 a manufactured home community, the proper -- the
7 property is in a T2R zone. And manufactured home
8 communities are not permitted in that zone.

9 However, the site features established
10 before the adoption of the CDC which is, of course,
11 the current zoning code for Beaufort County, the
12 site features established before it's adoption which
13 don't conform to the CDC's terms and requirements
14 but which were properly permitted and legally
15 established at the time of their establishment are
16 known as legal nonconformities under the CDC. And
17 they are permissible assuming they have been
18 continued since the time they were established.

19 But if a nonconforming use is abandoned
20 for a period of one year or longer, it shall not be
21 reestablished and shall only be replaced with a
22 conforming use.

23 Well, the nonconforming use here is the
24 use of the property as a manufactured home
25 community. There's no argument that the property

1 was, at one time, legally used as a manufactured
2 home community as defined by the zoning code that
3 preceded the CDC. I'll call that the old code.

4 Under the old code, that kind of community
5 was defined as a parcel of land, planned and
6 improved for the placement of three or more
7 manufactured homes for use as residential dwellings
8 where home sites within the development are leased
9 to individuals who retain customary leasehold
10 rights.

11 So there were two requirements for a
12 property to be considered a manufactured home
13 community. First, it had to be planned and improved
14 for the placement of three or more manufactured
15 homes for use as dwellings. And second, home sites
16 within the development had to be leased.

17 Now, there's some ambiguity surrounding
18 that second requirement. It could mean either that
19 more than one of the homesites on the property was
20 held out to be leased or more than one homesite was
21 actually leased.

22 Now, it's the position of the Appellant,
23 my client, that the homes actually had to be leased,
24 but it's likely that that distinction is going to be
25 immaterial here. But I'll be happy to talk more to

1 it if the court would like me to.

2 And here, Ballpark Place was looking for
3 determination from the Director that -- my client,
4 that the use of the property was a legally
5 nonconforming use that had not been abandoned for
6 one year or longer. The Director of the Department
7 of Community Development is the person who makes
8 that determination.

9 But the burdening for establishing that a
10 nonconformity lawfully exists, and that is to say it
11 has not been abandoned for a year or longer, is the
12 responsibility of the owner of the land on which the
13 nonconformity is located. So, Ballpark Place, LLC.

14 So, Ballpark Place had the burden of
15 proving to the Director that the property's use as a
16 manufactured home community had not been abandoned
17 for more than one year. That is to say that it had
18 to show that without interruption for a year or
19 more, one, there were three or more homesites
20 planned and improved. And, two, more than one of
21 those sites was either leased or held out for lease

22 depending on how you interpret the ordinance.

23 Based on the record, based on what was
24 presented to the Director, it is clear that the
25 property used as a manufactured home community was

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10

1 abandoned in June 2011. And I'm working off of rent
2 roles from Page 97 of the record of appeal. That --
3 that's when they stopped renting to more than one
4 person on the property.

5 However, in the absolute most favorable
6 light to the Appellee and under the most generous
7 interpretation of the definition of manufactured
8 home community under the old code, the most recent
9 date on which the property's use as a manufactured
10 home community must be considered abandoned is May
11 2016. And that's when the electrical service for
12 the homesite at 101 Ballpark was ended.

13 So that was the last time that there were
14 three homesites that actually had electricity
15 connected. So that was the last point where there's
16 evidence that could show that there were three
17 homesites that could have been available for lease.

18 So being as generous as possible, the

19 timeframe the Director would have to consider on
20 figuring out whether or not this was abandoned and
21 whether or not the property owner tried to pick back
22 up the use as a manufactured home community would be
23 from May 2016 or June 2016 to May or June of 2017.

24 Now, in determining whether the use had
25 been abandoned for more than a year, the Director

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11

1 must consider all of the facts and circumstances
2 regarding the nonconforming use including but not
3 limited to seven particular considerations. Those
4 being -- and the considerations and facts pertinent
5 to them as steps have been taken.

6 First, if steps had been taken by the
7 property owner to resume the nonconforming use. So
8 there was nothing presented to the Director. There
9 is nothing in the record that reflects any such
10 steps were taken to resume the nonconforming use
11 until after May of 2019 when Ballpark Place became
12 the owner of the property.

13 Second, if utility services such as water,
14 gas and electricity to the property have been

15 disconnect. And we do have some of that. The
16 evidence presented to the Director shows the
17 electricity for all but two homesites was
18 disconnected as of May 2016 to present. There's
19 nothing else that was presented to the Director on
20 this point. There's nothing else in the record on
21 this point.

22 Third, if equipment or fixtures necessary
23 for the operation of a nonconforming use had been
24 removed. The record shows that fixtures necessary
25 for the operation had either been removed or were

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12

1 not in good enough condition to be used.

2 Fourth, if signed advertising of
3 nonconforming use had been removed. We have nothing
4 in evidence as to that.

5 Fifth, if business licenses for the
6 nonconforming use have expired or not been renewed.
7 Again, nothing in evidence. Nothing in the record.

8 Sixth, if activities generally associated
9 with nonconforming use are no longer observed on the
10 property. We have nothing in the record on that.

11 Seventh, other actions which, in the

12 opinion of the Director, demonstrate an intention on
13 the part of the owner to abandon the nonconforming
14 use. And again, we have nothing in the record on
15 that.

16 Now, the Director, Mr. Greenway, did
17 communicate to Mr. Sample the sole member of
18 Ballpark Place these seven considerations to be made
19 and asked for evidence which would tend to prove
20 them. However, Mr. Sample was not able to provide
21 any evidence to those points, so we are left with
22 the facts that we have as they have been presented
23 today and as they were presented to the Director.

24 So upon the facts of these other
25 considerations, Mr. Greenway determined the

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13

1 property's use as a manufactured home community had
2 been abandoned for more than one year. And as such,
3 it's perspective used as the same was not a legal
4 nonconforming use. So he could not carry on with
5 the property as a manufactured home community.

6 Ballpark Place appealed that decision to
7 the zoning board of appeals and the ZBOA was

8 presented with the same evidence that was made
9 available to the Director. Despite this, the ZBOA
10 made a finding that, first, the property continued
11 to have pads available for rent and thus met the
12 requirement of the former statute of the use of the
13 property. There was no interruption in the legal,
14 pre-existing, nonconforming use. That ruling from
15 the ZBOA can be found on Page 2 of the record of the
16 appeal.

17 Since it made those findings with no
18 supporting evidence, their findings are arbitrary
19 and they aren't supported by evidence. And that
20 decision warrants a decision by this court
21 overruling the ZBOA decision.

22 As far as the standard that this court is
23 applying in deciding appeals on ZBOA decisions, this
24 court can substitute it's judgment for that of the
25 zoning board if the zoning board abused its

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14

1 discretion. That did happen in this case.

2 An abuse of discretion occurs when the
3 court's decision is arbitrary or unsupported by the
4 evidence. Since there was absolutely no evidence

5 which showed that the property wasn't abandoned, the
6 BZOA's determination was totally arbitrary. It was
7 based on nothing and unsupported by evidence. As
8 such, the ZBOA abused its discretion, made an
9 arbitrary decision. And it's decision must be
10 overturned. And the Director's determination must
11 have perspective application. That is to say that
12 there is no legal nonconforming use as a
13 manufactured home community on the property.

14 That would conclude my argument on the
15 merits. However, I would, after reviewing the
16 returns to this petition that have been submitted by
17 Ballpark Place, after reviewing those, I would like
18 to call the court's attention to parts of those
19 returns which do not reflect evidence that was
20 actually in the record and ask that or objective to
21 the court's consideration of those items.

22 From Page 1, and I'll start with the
23 ZBOA's return, and I'll just stay there. The return
24 of Ballpark Place is nearly verbatim same as that of
25 the ZBOA.

1 On the first page of the ZBOA's return, it
2 stated that the parcels presently contain nine
3 improved sites intended for the placement of
4 manufactured homes. There is nothing in evidence
5 that reflects that.

6 Again, on Page 1, currently the parcels
7 have access to water, sanitary sewer and
8 electricity. Not supported.

9 On Page 3, claim that several of the sites
10 continue to have active electrical service and only
11 require electrical meters for active service. And
12 that upon the purchase of the property, Mr. Sample
13 began to work to prepare all the sites for the
14 continued placement of manufactured homes. And
15 Mr. Sample verified the utilities were still
16 connected, such as sanitary sewer available to each
17 site for functioning septic systems and water
18 available to each site via a well in the park. None
19 of those were evidence presented to the Director.
20 None of those items are in the record and cannot be
21 considered today.

22 On Page 4 of that return, Mr. Sample
23 verified that electrical utilities were available at
24 the site and functioning and that the stands
25 required to place new manufactured homes were

1 functional or repairable and all sites were
 2 available for lease for homesites with one site
 3 continually being leased by Mr. Pope. There is
 4 nothing in the record or evidence that was given to
 5 the Director that sites were available for lease for
 6 homesites any time after 2013.

7 On Page 7, Mr. Sample indicated the only
 8 issue with the sites was the condition of the stands
 9 for the placement of incoming homes which could be
 10 easily repaired.

11 And the rest are on Page 8. The park
 12 continued to operate and address any repair issues.
 13 Sample testified that each of the sites that
 14 currently operating water supplies provided by an
 15 on-site well system and sanitary sewer was provided
 16 to each site via functioning septic systems.
 17 Functioning water, sewer and electrical services
 18 were still available at the site. Other sites are
 19 available for home placement.

20 There was evidence of the continued
 21 existence of utility hookups and visible evidence of
 22 the continued manufactured home community use.

23 There was no evidence presented to the
24 Director. But -- none of those items are in the
25 record on appeal, not considered by the ZBOA, so I

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17

1 would object to the court's consideration of any of
2 those.

3 All right. Thank you, Your Honor.

4 JUDGE DUKES: Thank you. Let's see.
5 Are we going to hear from Mr. Mitchell or
6 Mr. Taylor? Both? Either one of you?

7 MR. TAYLOR: Mr. Mitchell is the lead
8 dog, Judge.

9 JUDGE DUKES: All right.
10 Mr. Mitchell.

11 MR. TAYLOR: Brad, your mic might be
12 off.

13 MR. MITCHELL: Can you hear me now?

14 JUDGE DUKES: Much better.

15 MR. MITCHELL: Okay. There's all
16 sorts of hidden buttons to turn these things off and
17 on.

18 As we know, I represent the ZBOA. First,

19 I'll address the opposition that there was no facts
20 presented to certain things. And I'd like to draw
21 your attention to, I think, number Page 006 that was
22 submitted to the court earlier. And it's testimony
23 by Mr. Sample.

24 And there Mr. Sample talks about
25 electrical hookups. He talks about he had No Cuts

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18

1 come out to identify the lot. He had SCD -- G&E and
2 Beaufort and Jasper come out. He says I might pump
3 water but I have a well. And he has a septic
4 system. As a matter of fact, he was questioned by
5 Mr. Mack. I have -- did you have -- did you have to
6 make repairs to the septic tanks? And Mr. Sample
7 responded, I haven't made any repairs. The septic
8 tanks are in pretty good -- are pretty good. I was
9 just trying to identify where they were.

10 And so the allegations that these facts
11 were not presented before the Board I don't think is
12 an accurate statement. But --

13 MR. COPPAGE: And, Your Honor, I
14 would raise my objection to that. According to
15 commuted on the Code Section 7.3.70(c)(5), appeals

16 under the administrative agent are solely based on
17 the materials available to the agent rendering the
18 initial decision and advisory parties prior to the
19 decision. And the ZBOA cannot consider a new or
20 altered plans. So the testimony as to facts from
21 Mr. Sample could not have been considered by the
22 ZBOA. Can't be considered here.

23 JUDGE DUKES: Wow. That's -- I mean,
24 I'm not disputing your reading of the -- of the
25 code, but that's a new one on me. There's regularly

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19

1 testimony at these, right?

2 MR. COPPAGE: Well, you can certainly
3 testify to what happened during the agent's review
4 of things. You can certainly talk about the
5 evidence that was shared back and forth. But,
6 obviously, based on that portion of the code, you
7 can't present new evidence at that ZBOA appeal. It
8 just has to be based on what was available to the
9 agent.

10 JUDGE DUKES: And tell me that
11 section, again.

12 MR. COPPAGE: That is 7.3.70(c)(5) of
13 the community development code. And that is on
14 Page 5 of my client's petition.

15 JUDGE DUKES: Okay. All right.
16 Thank you so much.

17 Mr. Mitchell, please continue, sir.

18 MR. MITCHELL: Your Honor, I don't
19 know how to respond to that because I have not ever
20 heard that before. I don't why you'd have a hearing
21 in front of a ZBOA if you couldn't present evidence.
22 And the evidence presented at the ZBOA was not new
23 evidence. It was evidence that was pre-existing.
24 Even if you went that far to say that they couldn't
25 present anything that was new, the court was -- what

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20

1 was not new was that there was a septic tank, that
2 there was a well, that there was sites planned and
3 sites prepared to lease to mobile homes.

4 So I don't know if -- I'm confused on why
5 that would be new evidence. But I'll move on.

6 Let's -- I'd like to focus on what Vulcan said in
7 the case Vulcan where it talked about how the court
8 should consider or finding the facts of ZBOAs.

9 And it's very differential to the Board's
10 findings of fact as it equates them to a jury's
11 finding it will not be disturbed unless a review of
12 the record discloses that there is no evidence which
13 reasonably supports the jury's finding. In this
14 case the (inaudible).

15 And we've talked about the evidence. And
16 I don't want to go back through it again unless you
17 want to. But there's plenty of evidence on what was
18 out there.

19 First, I -- next, I'd like to go back and
20 discuss when the County proposed the abandonment
21 happened. There was the allegation that happened in
22 2011, which couldn't be because in the hearing
23 itself, the County admits that there was a legal
24 nonconforming use for the manufactured homes
25 community existing in 2014 when the ordinance

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21

1 changed. So we know it's not in 2011. So you have
2 to look at 2016 and whatever.

3 Well, in 2011, by the admission of the
4 other side, there only one mobile home that was

5 present that was being leased. If there is -- if
6 the evidence is that there has to be more than one
7 mobile home leased, that was -- that condition was
8 present in 2014. Yet, they admitted that there was
9 still a legal nonconforming use of the manufactured
10 home community use.

11 And I'd draw your attention to the
12 testimony or the evidence. And I -- we talked about
13 it with Mr. Sample that he was out there looking --
14 that there was functioning septic systems. There
15 was functioning water. That some of the sites might
16 have been in disrepair. But he discussed,
17 specifically, the stands which were the electrical
18 wires hooked up to and helped place the mobile homes
19 in the site. And that he was trying to repair
20 those.

21 The assumption that the Appellant makes is
22 that there was a -- the nonconforming use was
23 abandoned. It was never abandoned. It was
24 continued to be used. And so the -- so all he was
25 doing was trying to maintain that level of service

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22

1 to the mobile home site and make repairs that you do

2 normally day-to-day on any mobile home site.

3 MR. COPPAGE: And, Your Honor,
4 just -- Your Honor, just so I just don't interrupt
5 Mr. Mitchell and don't make this process over WebEx
6 more difficult than it has to be made. I just rely
7 on my prior objection to anything that was raised
8 during the ZBOA hearing.

9 JUDGE DUKES: Oh, no. You made that
10 -- the objection is noted for the record. I'm going
11 to allow him to continue on, though.

12 MR. COPPAGE: Thank you. I'll stay
13 out of it.

14 MR. MITCHELL: I believe what the
15 question comes then is the interpretation of the
16 ordinance. The County interprets it that there has
17 to be -- it was purposed that there was two elements
18 to it.

19 The first one is that there has to be
20 more than three sites planned and improved. And I
21 think we all agree that there were three sites
22 planned and approved at certain points.

23 The second part is where the question of
24 this abandonment issue comes up. And that is
25 deciding what else needs to be present in order to

1 maintain that manufactured home use, community use.
 2 And the question was there had to be more than one
 3 leased. Because there was just one lease, then it
 4 would definitely fall in because Mr. Pope was
 5 continuing to lease it.

6 The question comes in the interpretation
 7 of that portion of the ordinance. The way the ZBOA
 8 interpreted it was that that Number 3 only modified
 9 how many sites needed to be planned and approved
 10 which we all agree is that there was more than
 11 three. The last part of that sentence, as it is in
 12 my brief, just merely describes what a manufactured
 13 home is supposed to be doing. You're not -- you're
 14 not supposed to put a trailer on there that's going
 15 to be used for a business.

16 So that's the reason why the tail end of
 17 that ordinance talks about manufactured homes that
 18 should be leased in the ordinary course as a
 19 leasehold.

20 The other evidence of -- that I failed to
 21 mention earlier was that there was tax records that
 22 were presented to the ZBOA that was available to the

23 County at the time. And the tax records, as you can
24 -- and if you look at them, the County obviously
25 kept taxing those two -- those two parcel as if

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1 there was a manufactured home community on there.
2 You can see the classes. And you can see that on
3 the portions of them, it talks about specific sites.
4 And they continued to tax that all the way up until
5 2019.

6 The part of the evidence that was
7 presented to the ZBOA and was available to the
8 County for their interpretation was plats showing
9 the individual sites.

10 So in conclusion, Your Honor, I believe
11 this is a question of that there was evidence, which
12 meets the threshold of Vulcan, presented to the
13 ZBOA. And that overturning this -- the ruling would
14 be against that holding in Vulcan.

15 JUDGE DUKES: Thank you so much.

16 Mr. Taylor, do you have anything to add?

17 MR. TAYLOR: Your Honor, I do. Thank
18 you very much.

19 Judge, the first thing I want to make sure

20 and point out is this. Before I read you the
21 provision that Ben was talking about a minute ago
22 about what's allowable and what's not, please, the
23 Court should understand that all of Mr. Sample's
24 testimony given before the ZBOA, was given without
25 objection from either Mr. Greenway or anybody else

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1 at the ZBOA hearing, on the record. Nobody once
2 said anything about how, no, wait a second. You
3 can't do that because you didn't tell Mr. Greenway
4 that. And that's because, Your Honor, it's always
5 accepted that at an appeal hearing such as this,
6 Mr. Sample or whoever else's ox is about to be gored
7 has the right to testify.

8 Now, Your Honor, the provision that was
9 cited to you a minuted ago by Ben saying he objected
10 to all of it, it's important because we don't
11 usually thing about someone saying, well, they can't
12 take testimony. It says appeals shall not consider
13 new or altered plans except for information
14 submitted but not discussed or considered in
15 rendering a decision shall be considered part of the

16 original evidence.

17 If hearings were held and testimony given
18 transcripts and other record items of those
19 proceedings shall be the exclusive basis of the
20 appeal. Your Honor, this clearly contemplates that
21 in a hearing such as the ZBOA hearing that was held
22 on Mr. Greenway's determination that Mr. Sample is
23 going to be able to testify as to what he told Mr.
24 Greenway and as to what the facts are. So I think
25 talking about objecting to all of that that Mr.

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1 Sample said at the ZBOA is really inappropriate and
2 certainly I think the Court should talk it into
3 consideration.

4 Judge, very succinctly, what we're here
5 about today is because on November 22nd, 2019, the
6 ZBOA issued a findings of fact and conclusions of
7 law that said the Board grants the appeal based on
8 the following findings. The property continued to
9 have pads available for rent. And that's not the
10 requirements of the former statute for the use on
11 the property. And two, there was no interruption in
12 the legal, pre-existing, nonconforming use.

13 Your Honor, that was a finding of fact by
14 the ZBOA. It was not a conclusion of law. It was a
15 finding of fact which as Mr. -- as Brad has talked
16 under Vulcan and all of this progeny, the finding of
17 fact supported by any evidence must be upheld by
18 this Court.

19 Judge, the only thing that gets really
20 muddled in here is this continuing focus on the old
21 code's definition of a manufactured home community.
22 And talking about a partial of land planned and
23 improved for the placement of three or more
24 manufactured homes when used as residential
25 dwellings where the home sites within the

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1 development are leased to individuals who retain
2 customary leasehold rights.

3 Clearly and without anybody contending
4 otherwise, this was a manufactured home community
5 that was completely sufficient and proper under the
6 old code and that it continued because, Judge, still
7 there were -- there were improvements for the
8 placement of three or more manufactured homes

9 contending there during the entire time period.

10 What you have not heard today is the fact
11 that Mr. Pope lived there the entire time. There
12 has been one resident who has continued to live
13 there the entire time.

14 There is no basis for an assertion that
15 there needed to be three people living there at any
16 point in time. That is just taking the wording and
17 trying to use it for your benefit in arguing that it
18 was not grandfathered in. This clearly continued on
19 and clearly meets the requirements under the terms
20 of the code for being a proper, pre-existing,
21 nonconforming use.

22 And of key importance, again, Judge, is
23 the fact this is a finding of fact by the ZBOA which
24 must be upheld if there is any evidence whatsoever
25 to support it and there is clearly any evidence

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1 within the terms of the record to support it.

2 As many times as I've been in front of
3 you, Judge, I've never been on this side. And I've
4 always wanted to say Vulcan). That's all we need to
5 talk about. Hey, Judge, on behalf of Mr. Sample, we

6 ask that the ZBOA's finding be upheld.

7 JUDGE DUKES: Thank you so much.

8 Mr. Coppage, any last thoughts?

9 MR. COPPAGE: Yes, sir. I'll just
10 respond briefly. Mr. Mitchell addressed ambiguity
11 about the County's idea of when the abandonment
12 started. He's right. We don't know when the
13 abandonment started. We just know that it's been
14 abandoned for at least three years. The date of May
15 2016 was being as generous as possible to the
16 Appellee try to set some time for the court to
17 consider when the abandonment started. That is
18 absolutely the latest you could use because that's
19 the last time we have any evidence as to when at
20 least three sites could have been improved for
21 lease.

22 Even though we've got evidence in an email
23 from Mr. Sample saying that one of the other sites
24 that had electricity at that time, that still has an
25 electrical hookup, he doesn't even know where it is.

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1 And again, the burden is not on the

2 Department of Community Development to find out.
3 The burden to show that its legal, nonconforming use
4 hasn't been abandoned is on the property owner. And
5 there's been much said about the requirement under
6 the old code. I think the more important part of
7 that definition for this case is that there were
8 three sites that are improved.

9 I don't disagree that ten years ago there
10 were several sites that were improved for the
11 placement of mobile homes. But at some point, they
12 were no longer improved. They fell into disrepair.
13 They didn't have electricity connected. They didn't
14 have other utilities. And we just don't have any
15 evidence about them at all.

16 If Mr. Sample could have presented
17 evidence to the Director showing that those sites
18 actually were improved, that they were improved
19 either back in 2011 or 2013 or 2014, whenever it
20 was, then this could have been a different story.
21 We just don't have any evidence on that.

22 And again, the burden is on Ballpark
23 Place, the property owner.

24 Mr. Mitchell brought up the tax records,
25 that the tax card off the County website had

1 something about mobile homes. I would just contend
 2 that that doesn't -- that's irrelevant to what we're
 3 doing here. We're trying to determine if it was a
 4 manufactured community -- or manufactured home
 5 community as defined by the old code. The old
 6 code's definition of that kind of community has
 7 nothing to do with how the property is taxed.

8 And with regard to Mr. Taylor's argument
 9 on whether or not Mr. Samples' testimony at the ZBOA
 10 hearing should be considered. I would just renew my
 11 objection. I believe the ordinance stands on its
 12 own. However, if the court is inclined to consider
 13 testimony taken by Mr. Sample during that hearing, I
 14 would call the court's attention to that same Page 6
 15 where Mr. Sample testified in which -- beg the
 16 court's indulge for just a moment while this jet
 17 flies over.

18 JUDGE DUKES: It's flying over here,
 19 too.

20 MR. COPPAGE: Thank you. I would
 21 just call the court's attention to his testimony
 22 when he was asked about the homesites. He said
 23 they'd been damaged, and they would have to be

24 repaired. He didn't say they were still in place,
25 that they were already to use, that they'd be easily

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1 repaired. Nothing like that. Nothing like the
2 Appellees have contended. Just that they were
3 damaged when the previous owner removed the mobile
4 homes from those sites, and they would need to be
5 repaired.

6 I have no argument that Vulcan applies
7 here. But I think under that standard -- I'm sure
8 under that standard that overruling the ZBOA's
9 decision is still appropriate because they're is
10 just no evidence showing that those sites were
11 improved and available for lease. There was --
12 there's just been one out there that's improved and
13 been leased for the last nine years, I think. And
14 there's just absolutely no evidence showing
15 otherwise. Again, that burden's on Ballpark Place.

16 JUDGE DUKES: But I mean, they met
17 that burden, right? I mean, they met the burden and
18 now the burden is your burden and the appeal. I
19 mean, they met the burden they needed to to get

20 through the ZBOA. And again, I'll need to look at
21 what you gave me on the inability to take testimony
22 at the ZBOA as any evidence. But honestly, that
23 surprises me because if that's the case, we've been
24 doing it wrong for a while, which is may be true.

25 But, I mean, certainly, it looks like

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1 Mr. Sample testified certainly that he didn't intend
2 to abandon the property, that there were multiple
3 sites, that there were septic tanks, that there was
4 at least -- it sounds like the evidence was there
5 was at least one mobile home throughout all of this
6 that was on there and occupied.

7 I mean, we all know how mobile home parks
8 work. The mobile home goes out. The power is
9 disconnected. The new one rolls in, hooks up to the
10 septic tank, new power is attached to it. At least
11 I think that's the way they work.

12 So, I mean, is there -- and you say there
13 was no evidence which is sort of the standard. But,
14 I mean, I've seen a pretty good bit of evidence if
15 you follow Mr. Samples testimony as to what the
16 place was.

17 I mean, the any evidence standard is my
18 understanding of the standard here.

19 MR. COPPAGE: Well, Your Honor,
20 Mr. Sample didn't come into possession of this
21 property until 2019. The use as a manufactured home
22 community had been abandoned well before that.
23 We've got no evidence showing that it was used as a
24 manufactured home community any time.

25 And again, here's your any evidence

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1 standard. The only evidence that could possibly
2 show that it was still being used as a manufactured
3 home community ended in May 2016. That's when there
4 were -- the only evidence that there were three
5 improved sites for home placement.

6 So, sure, he could have -- once he got it
7 in 2019, he could have gone out there and poured
8 tons of concrete and make it a beautiful mobile home
9 park. But that doesn't change that this place had
10 been abandoned for years under that use.

11 Just from a common sense argument, I think
12 we've set out the legal argument pretty well here.

13 Just from the common sense standpoint, if you drive
14 by the place and you see one mobile home on the
15 property and you see no stands, you see no pads out
16 there, that's not a mobile home park anymore. And
17 that's exactly what we're dealing with. And that's
18 exactly how it had been for many, many years.

19 So there's -- again, it's -- the burden's
20 on Ballpark Place. He didn't meet that burden. The
21 ZBOA made this ruling despite his not having met
22 that burden.

23 JUDGE DUKES: I'm not sure what a
24 stand is. I know what a pad is.

25 MR. COPPAGE: I think -- I think

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1 it's the electrical hookup.

2 MR. MITCHELL: That's correct.

3 JUDGE DUKES: That's what they call
4 the stand? Okay. I would have -- I don't know what
5 I would have called it. But --

6 MR. TAYLOR: Your Honor, just briefly
7 after Mr. Coppage.

8 (Several indiscernible voices.)

9 JUDGE DUKES: Okay. Go ahead.

10 MR. TAYLOR: -- have everybody be
11 able to have their say.

12 Judge, he's boot-strapping this argument,
13 again, for some need for three when there is no need
14 for three in the code. Mr. Pope lived there and
15 still lives there today. It has been used as a
16 manufacturing home community. To say that you have
17 to have some minimum of three is simply a misreading
18 of this.

19 But on a bigger picture, Judge, and Ben's
20 very right, as a practical matter, what I believe
21 the court should also keep in mind aside from the
22 fact that it isn't any evidence standard is this,
23 the ZBOA was set up for exactly the reason that we
24 are here about. And that is to make sure that
25 single administrative person is not allowed to take

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1 and make decisions that are not particularly
2 fact-based without seeing in front of the community
3 an opportunity to appeal. That's what the ZBOA sets
4 forth in exactly these types of things to make a
5 finding of fact about whether or not it had been

6 abandoned. And clearly, that is the specific thing
7 they decided. And again, Your Honor, that's a
8 finding of fact that must be upheld on any evidence
9 standard.

10 JUDGE DUKES: All right.

11 MR. MITCHELL: If I can add real
12 quick. Instead of beating a dead horse here, I just
13 want to leave the standard that the -- these mobile
14 home parks that says, a parcel of land, land and
15 improved for the placement of three or more
16 manufactured homes. And it continues, for the use
17 as residential dwellings where homesites within the
18 development are leased to individual who obtain
19 customary leasehold rights.

20 There's no requirement to even lease any
21 of those three sites. They just have to be planned
22 and improved. That -- if it's a questions of
23 improvement, there is no standard for what improve
24 means. If it means you've got to lay out concrete,
25 I've been to mobile homes that -- parks that have no

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1 concrete. Does it mean it has to have water hooked
2 up to it through a utility server? At least in this

3 case, they have a community well that services on
4 the sites. And the same thing with sanitary sewer
5 with septic.

6 And to torture it and try to require at
7 least one -- more than one of those sites to be
8 leased, I don't read that in that at all in the
9 definition for manufactured home community use.

10 That's all I have, Your Honor.

11 JUDGE DUKES: All right. Thanks a
12 lot. All right. Well, let me -- I've been trying
13 to read the six-point print that I'm reduced to when
14 I have a small window next to the WebEx. So I'm
15 going to have to go back and turn it into 12-point
16 print and try to read it all.

17 But anything else for this record?

18 MR. COPPAGE: And, yeah, I think Brad
19 probably clarified it, but I -- the argument that
20 three mobile homes have to be out there being leased
21 is not an argument we're making. There just have to
22 be three sites improved for the placement of mobile
23 homes. And this -- there has to be more than one
24 site, at the very least, held open for lease. We
25 would say that, based on my reading of it, it looks

1 like more than one actually has to be leased from
2 time-to-time which there's no evidence that that
3 was. But they would at least have to be held open
4 for leasing under the broadest reading of that
5 ordinance.

6 JUDGE DUKES: All right. Thank you
7 so much. All right. Well, let me try to take a
8 look at it. And if you all haven't heard from me in
9 a week, shoot me an email. Say, where's our ruling.
10 And I won't be offended by that. And -- but I'll
11 try to look at it right now if I can.

12 So, anything else for this record?

13 MR. COPPAGE: Not from the Appellant.

14 MR. TAYLOR: -- Mr. Sample or
15 Ballpark, Judge.

16 JUDGE DUKES: All right. Thank you
17 so much. You all have a great day and a great
18 weekend.

19 (Whereupon, the hearing was concluded
20 at 2:18 p.m.)

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Certificate of Reporter

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I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of 2020-CP-07-00112; Eric Greenway v. Beaufort County Zoning Board of Appeals, et al, on the 6th day of August, 2020: and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Benjamin T. Coppage, Esquire, Coppage Law Firm, LLC, 1010 Carteret Street, Beaufort, South Carolina 29902.

In witness whereof, I set my hand and sealed this 23rd day of November, 2020.

My Commission
expires 2/7/28

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Aug 06 2021

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2021-000139

Case No. 2020-CP-07-0112

Eric Greenway, as Agent for Beaufort County.....Appellant,

v.

Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark
Place, LLC.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

s/Benjamin T. Coppage

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August 6, 2021

Beaufort, South Carolina