

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800596

2012 MAY -9 AM 11:11

Heritage Square Shopping Center Llc	Town Of Summerville Construction And Codes Board Of Appeals Building official of the Town of Summerville South Carolina Richard Palmer
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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 order ends does not end the case.

ORDER INFORMATION

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)
RESPONDENT	APPOLLANT / PETITIONER	

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

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


 Circuit Court Judge
 3075
5/1/2012
 Judge Code
 Date

For Clerk of Court Office Use Only

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

Frances Isaac Cantwell Regan & Cantwell, LLC 105
Wappoo Creek Dr., Ste. 1-A Charleston, SC 29412

~~D. Mark Stokes Attorney at Law P.O. Box 60547 R.
Charleston, SC 29419~~
G. Waring Parker 907-B North Main Street Summerville,
SC 28483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham - Clerk of Court

Court Reporter

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT

Heritage Square Shopping Center, LLC,

CASE NO: 2011-CP-18-596

Appellant/Petitioner,

vs.

FINAL ORDER ON PETITION
OF APPELLANT/PETITIONER

Town of Summerville Construction and
Codes Board of Appeals and Richard
Palmer, in his capacity as the Building
Official of the Town of Summerville,
South Carolina,

Respondents

2012 MAY -9 AM 11:11
COURT CLERK

This Appeal came to be heard before me on March 13, 2012. Present were Frances I. Cantwell, Esq. representing the Appellant/Petitioner and G. Waring Parker, Esq. Representing the Respondents.

At the call of the case, the Attorneys announced they would submit a Record On Appeal (ROA) from which they would make their respective arguments. In addition Appellant/Petitioner has submitted a Memorandum in support of it's position. The Court also notes that Richard Palmer, in his capacity as the Building Official of the Town of Summerville has been dismissed as a defendant by a prior Consent Order of this Court.

The following facts have support in the Record.

FACTS

5/8/12

1. On or about October 15, 2009, Richard Palmer, Town of Summerville Building Official met with Jack Owens, a representative of Heritage Square Shopping Center, LLC concerning a report of a portion of the roof over the "Save More Grocery" had caved in. Owens and Palmer inspected the building and Owens indicated to Palmer the roof would be repaired.

2. On February 1, 2010, the Town sent a Condemnation Notice to Appellant giving it Ninety (90) days to repair the roof or demolish the entire building. The Town advised that if a structural engineer certified the demolition of the Save More portion of the property would not affect the structural integrity of the remainder of the property, only the Save More portion would need to be demolished.

3. On March 8, 2010, Mr. Owens sent a letter to the Town requesting the code sections that indicated the property was a safety hazard and that roof repair did not make economical sense. Further, Mr. Owens stated his engineer said there was no danger of the walls collapsing.

4. On March 11, Mr Palmer replied in response to Mr. Owen's letter of March 8, 2010 giving reference to the pertinent sections of the International Property Maintenance Code (IPMC) which was incorporated into Town Ordinance Section 6-37(6).

5. On July 12, 2010 the Town sent an additional notice as to why the building was unsafe and gave Appellant Thirty (30) days to begin demolition.

6. On August 6, 2010, Appellant sent a letter requesting an appeal which was set for August 17, 2010 before the Construction and Code Board of Adjustments and Appeals (Board).

7. On August 16, 2010 Appellant requested a continuance of the Appeal Hearing as it was in negotiations with a national grocery chain for a sale of a portion of the property

(including the Save More portion which was under the Town's demolition Notice). The target date given by Appellant for demolition by the prospective developers was to be in the January/February 2011 time frame and that the Town would be hearing from the developer's architects and engineers by October of 2010. This request was granted.

8. After hearing nothing from Appellant, it's architect or engineers by the end of October 2010, on November 18, 2010 the Town gave Notice to Appellant to begin demolition and the fines for failure to do so. The Notice also informed Appellant of it's right to appeal.

9. On December 8, 2010, Appellant's Attorney requested an appeal of the November 18, 2010 Demolition Notice.

10. On January 11, 2011, the Board held an initial hearing and, while they found the Town had correctly interpreted the Code, they deferred a final ruling until an on site inspection could be made.

11. On January 14, 2011, the Board along with Mr. Owens made an on site inspection of the property.

12. On February 9, 2011, the Board held a final hearing and upheld the Town's Condemnation Order.

ARGUMENT

Appellant argues that less drastic means can be ordered to comply with mandates of the IPMC rather than demolition of the entire building. It is of the opinion of Appellant that perimeter fencing around the perimeter of the building, boarding of windows, doors and other openings together with installing a bracing system would serve to protect the public safety and that trespassers would pose no liability to the Town. This argument fails for the reasons set

below.


LEGAL CONCLUSIONS

The following Sections of the IPMC: 304.4, Structural members.; 304.6, Exterior walls; and 304.7 Roofs and drainage are controlling in this case when viewed in light of Sections 108.1.1 Unsafe structures; 108.1.3 Structures unfit for human occupancy and 110.1 General (which requires the Town to order demolition if the structure is not capable of being made safe). Despite having been give some Two and one-half (21/2) years to comply, Appellant has failed to bring it's property into compliance with the IPMC which is incorporated into Ordinance Section 6-37(6).

I have listened to the arguments of Counsel, reviewed the transcripts of the meetings of the Board, the Record on Appeal and Appellant's Memorandum and find that;

1. The Appeal of Appellant/Respondent of The Notice of Demolition issued by the Town for the Demolition of the property described in the November 18, 2010 Notice of Demolition be upheld; and,

IT IS SO ORDERED!


Honorable Maite Murphy, Master In
Equity for Dorchester County

Dated at St. George SC

This 8 day of ^{May}~~April~~, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP1800596

CERTIFIED COPY
 OCTOBER 25 AM 11:20

Heritage Square Shopping Center Llc	Town Of Summerville Construction And Codes Board Of Appeals
Building official of the Town of Summerville South Carolina	

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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 - 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

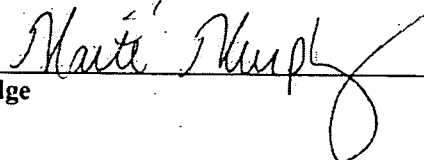
INFORMATION FOR THE JUDGMENT INDEX

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Maité Murphy  3075 3/25/2013
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

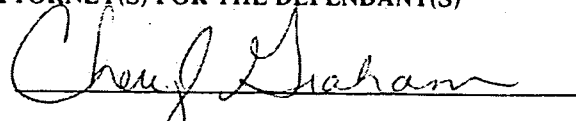
This judgment was entered on 3/25/2013, and a copy mailed first class or placed in the appropriate attorney's box on 3/25/2013, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Gowder Jr. PO Drawer 22247 Charleston, SC
 294132247
 George Trenholm Walker PO Drawer 22247 Charleston, SC
 294132247

G. Waring Parker 907B N. Main St. Summerville, SC
 294836632

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


 Cheryl Graham - Clerk of Court

Harry A. Walker
 Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

Heritage Square Shopping Center, LLC,)
)
Appellant/Petitioner,)
)
vs.)
)
Town of Summerville Construction and)
Codes Board of Appeals and Richard)
Palmer, in his capacity as the Building)
Official of the Town of Summerville,)
South Carolina,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO: 2011-CP-18-596

ORDER
(MOTION TO RECONSIDER
APPELLANT/RESPONDENT'S
RULE 59(e) MOTION TO ALTER,
AMEND OR RECONSIDER)

2013 MAR 25 AM 11:20
APPELLANT'S COPY

This matter came before me on February 11, 2013 pursuant to Appellant/Petitioner's Rule 59(e) SCRCR Motion to Alter, Amend or Reconsider my Order dated May 9, 2012, affirming the decision of the Summerville Construction and Codes Board of Appeal dated February 11, 2011, upholding the Town of Summerville Building Code Official's Demolition Order dated November 18, 2010.

W. Andrew Gowder, Jr., Esq., appeared on behalf of Appellant/Petitioner and G. Waring Parker, Esq., for Respondents.

I grant the relief requested by Appellant/Respondent's motion only to the extent of amending my Order of May 9, 2012, to provide additional factual details and references to controlling authority supporting my decision. The Demolition notice issued by Respondent is confirmed for the reasons set forth below and in my Order of May 9, 2012.

3/25/13

Hereafter, Appellant/Petitioner will be referred to as Heritage and Respondents as the Town. References to the International Property Maintenance Code will be to either the IPMC or the code. The Town of Summerville Construction and Codes Board of Appeals will be referred to as the Board.

Based upon the evidence presented, pleadings on file, and arguments of counsel, I make the following findings of fact and conclusions of Law:

1. Facts have not been contested and have ample support in the Record on Appeal before the Court to incorporate herein.
2. Heritage owns a shopping center located in the Town of Summerville at the intersection of Highway 78 and the Berlin G. Myers Parkway. Within the shopping center is located a building containing approximately 80,000 square feet, hereafter referred to as the main building. A portion of the main building once housed a Save More Grocery flanked on each side by a K-mart and a drug store. The main building has been vacant for a number of years.
3. On or about October 15, 2009, Richard Palmer, Town of Summerville Building Codes Official met with Jack Owens, a representative of Heritage Square Shopping Center, LLC concerning a report that a portion of the roof over the Save More Grocery had caved in. After Owens and Palmer inspected the building, Owens indicated to Palmer the roof would be repaired.
4. On February 1, 2010, the Town sent a Condemnation Notice to Heritage giving it ninety (90) days to repair the roof or demolish the entire building. The Town advised that if a structural engineer certified the demolition of only the Save More portion of the property would

not affect the structural integrity of the remainder of the main building, only the Save More portion would need to be demolished.

5. On March 8, 2010, Mr. Owens sent a letter to the Town requesting the code sections indicating the property was a safety hazard. He stated the option of repairing the roof did not make economical sense. Further, Mr. Owens stated his engineer said there was no danger of the walls collapsing.

6. On March 11, 2010, Mr. Palmer replied in response to Mr. Owen's letter of March 8, 2010, by references to the pertinent sections of the IPMC which was incorporated into Town Ordinance Section 6-37(6). Mr. Palmer further explained the justification in ordering demolition of the main building.

7. On July 12, 2010, the Town sent an additional notice to Heritage reiterating the facts necessitating demolition and why the building was unsafe. Heritage was given thirty (30) days to begin demolition.

8. On August 6, 2010, Heritage sent a letter requesting an appeal which was set for August 17, 2010, before the Board.

9. On August 16, 2010, Heritage requested a two (2) week continuance of the Appeal Hearing as it was in negotiations with a national grocery chain for a sale of a portion of the property including the main building which was under the Town's Demolition Notice. The Town granted this request by giving Heritage a thirty (30) day extension.

10. After hearing nothing from Heritage, its architect or engineers, on November 18, 2010, the Town gave Notice to Heritage to begin demolition within thirty (30) days and the penalties for failure to do so. The Notice again informed Heritage of its right to appeal.

11. On December 8, 2010, Heritage's attorney requested an appeal of the November 18, 2010 Demolition Order.
12. On January 11, 2011, the Board began the hearing on Heritage's Appeal. While finding the Town had correctly interpreted the Code, the Board deferred a final ruling until an on-site inspection could be made.
13. On January 14, 2011, the Board, along with Mr. Owens, made an on-site inspection of the main building
14. On February 9, 2011, the Board reconvened the hearing to discuss the on site inspection and listen to the presentation of Heritage and their attorney. In its Decision of February 11, 2012, the Board upheld the Town's Condemnation Order.
15. The Town of Summerville enacted an Ordinance, Chapter 6, Article II Section 6-37, which adopted and incorporated the IPMC. This was done under the authority of S.C. Code 6-9-10, which is the basis of the controlling authority.
16. In their appeal of the Board's Decision and Motion to Reconsider, Heritage raises five (5) issues to support its assertions that the actions of the Board were arbitrary and capricious, in excess of authority granted to it and/or legally erroneous. These exceptions will be addressed in the order presented.

a. The Order of the Summerville Construction and Codes Board of Appeals (the "Board") failed to set out separate findings of fact and conclusions of law. This Court's Order of 5/09/12. failed to address this issue.

I find that when the matter was heard before the Court on March 13, 2012, a Record on Appeal was submitted with the approval of both parties. Thus, while the Order may have been

more artfully drawn (prepared by counsel for Respondent and reviewed by the Attorney for Heritage), there were sufficient facts and authority contained in the Record On Appeal which I reviewed as noted in the May 9, 2012 Order. The facts and code sections upon which the Court based its decision to uphold the Town's Demolition Order are more fully set forth herein.

b. Appellant/Petitioner raised as an issue of its appeal that the intent of the International Property Maintenance Code (herein "IPMC" or "Code") was to secure the public health, safety and welfare, and that the IPMC specifically authorized the use of alternate measures not set out in the Code when the requirements of the Code, that being public safety, could be adequately satisfied by such alternate measures. The Order does not address these provisions of the Code or Appellant/Petitioner's argument that its proposed alternate remedy adequately satisfied the intent of the Code to secure the safety of the public. The Order references provisions of the Code that set out how the public safety can be secured, but not whether the alternate measure proposed by Appellant/Petitioner adequately satisfied the requirements of these provisions.

I find that Section 101.3 of the Code states its intent:

"This Code shall be construed to secure its expressed intent, which is to insure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structure and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein."
ROA, Ex. 20, INTERNATIONAL PROPERTY MAINTENANCE CODE:

Heritage asserts Code Section 111.1 authorizes the requirements of this Code to be adequately satisfied by other means as a grounds for an appeal of a Demolition Order. Heritage

further asserts that their proposal would satisfy the intent of the Code. The Record before the Court shows why the Board, as well as the Court, had basis in fact and in the Code to reject Heritage's proposed alternative measures.

I find that Code Section 102.1 states that, where in a specific case, different sections of this Code specify different requirements, the most restrictive shall govern. ROA, Ex. 20. Existing structures which do not comply with the provisions shall be altered or repaired to provide a minimum level of health and safety as required herein, Code Section 101.3. ROA, Ex. 20.

Palmer, in his correspondence to Heritage dated February 1, 2010, ROA, Ex. 1; March 11, 2010, ROA Ex. 3; and July 12, 2010, ROA, Ex. 4, set forth the danger and unsafe conditions of the property. Heritage could have repaired the roof, it did not. Heritage could have escaped demolition of the entire building had it engaged a structural engineer to certify the adjacent portions of the main building would remain structurally sound if only the Save More Grocery portion were to be demolished, it did not.

Further, at its appeal before the Board on January 11, 2011 and February 9, 2011, the alternative measures were addressed and rejected as follows:

1. Edward Tipper – ...The site visit presented conditions far worse than he had imagined. Bracing will not stop deterioration. ROA, Ex. 13.
2. Carlos Martinez– ...building is not in good condition. ...does note that bracing will not make this building code compliant. Id.
3. Steve Hatton – No other motive on his part except public safety. Id.
4. Julian Seale – ...Bracing will not suffice. Id.

5. Gene Brislin – ...Code requires that even vacant buildings be in decent repair, dry, and able to be occupied. This building has a collapsed roof, rusted decking and various other repairs that would need to be done before building could be occupied.

In order for Appellant's alternative proposals to be accepted which would fence, shutter and brace the building, it would have to be deemed not in danger of structural collapse. Code §108.2, Closing of Vacant Structures. ROA, Ex. 20.

The Board Chairman gave his view as to why the alternative measures would not work in light of the Code. He starts with the premise the Code requires building owners to maintain a certain level of repair to a structure and when that requirement isn't met, the Code has an escalation process resulting in demolition. He acknowledges the Code allows a vacant building to be enclosed if it were in decent repair. His opinion was the Heritage building was not even close to that point. He noted the roof had collapsed, the deck was rusted through and most of the structural stuff was rusted to a point to make it unsafe under the Code. ROA, Ex. 23, pg. 14, L15-25; pg. 15, L1-25; pg. 16, L21-25; pg. 17, L1-9.

Appellant's structural expert issued a letter dated February 8, 2011. ROA, Ex. 17. Mr. Smith made a visual observation and noted the old grocery store is obviously compromised. His opinion was that an exterior bracing would minimize the potential collapse of the front wall into the public realm of the property. He informed Heritage to let him know if they wanted him to make further observations and devise a plan to secure the exterior walls. No such request was made. Mr. Smith did not address the structural integrity of the main building or the rear or side walls. He did not address the issue of the roof acting as support to keep adjacent walls from

collapsing. As noted by Board Member Tupper, his letter was just a letter and no explanation of how it could work. ROA, Ex. 23, pg. 10, L17-19.

The Order of the Board (ROA, Ex. 13, pgs. 1 and 2) dated February 9, 2011, concluded Palmer correctly interpreted the Code and referenced the minutes of the January 11, 2011 appeal hearing to support this conclusion. (ROA, Ex. 13, pgs. 4 and 5). In addition, Mr. Bennett conceded that Palmer had correctly interpreted the Code and it does apply. ROA, Ex. 22, pg. 25, L18-25; pg. 26, L17-25. Mrs. Cantwell clarified that while Palmer correctly interpreted the Code, he misinterpreted the Code by not looking at Heritage's alternative proposal. ROA, Ex. 22, pg. 27, L6-19. Also during the January 11, 2011 hearing, and as reflected in the above minutes, Palmer correctly stated the Code section he used in arriving at his decision to issue the Demolition Order. In his February 2, 2010, correspondence to Mr. Owens containing the Demolition Order (ROA, Ex. 1), Mr. Palmer noted the need for demolition was based on public safety. Further, Heritage could avoid demolition of the entire building by furnishing a letter from a structural engineer that the remainder of the building on either side of the Save More Grocery (the portion to be demolished) will remain structurally sound. Mr. Owens responds to the demolition order on March 8, 2010 (ROA, Ex. 2) and asked for the Code sections that makes an unoccupied building a safety hazard to the public. Palmer responded to this request on March 11, 2010 (ROA, Ex. 3) and clarified the property was not condemned because it was unoccupied, rather it was unsafe and no longer fit for human occupancy. The reason it was unsafe and applicable Code section are contained in this letter.

A fair reading of the Board minutes of February 9, 2011 (ROA Ex. 12) and the transcript of this meeting (ROA Ex. 23), give no doubt the Board and this Court had ample facts before it

upon which to uphold the Demolition Order. The Chairman of the Board, who is a structural engineer (ROA Ex. 22, pg. 31, L6-7) notes on page 2 of the minutes of February 9, 2011, that "...the Maintenance Code requires that even vacant buildings be in decent repair, dry and able to be occupied. This building has a collapsed roof, rusted decking, and various repairs that would need to be done before the building could be occupied". Code Section 108.2, CLOSING OF VACANT STRUCTURES, states that if a structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to order that the structure be closed. Thus, Heritage's alternative means could not pass code because it was found to be in danger of collapse. The Chairman's comment followed the Board member's comment that bracing the outer walls were not a viable alternative means.

c. The Order indicates a misunderstanding of Appellant/Petitioner's argument regarding the Board's heightened concern for trespassers and vagrants. Appellant/Petitioner did not argue the presence of trespassers or vagrants posed liability to the Town.

Appellant/Petitioner argued that the proceedings of the Board demonstrated a heightened concern for the safety of trespassers and vagrants, beyond that imposed by law, thus indicating the Board's decision was based on an error of law. The Order does not address this issue.

I find that a review of ROA, Ex. 22 and Ex. 23, Transcript of the January 11, 2011 hearing, and the February 9, 2011 hearing, as well as the minutes from those meetings, reveal scant references of liability concerns expressed by the Board.

In the Transcript of the January 11, 2011 meeting, at pg. 22, L17-18, a voice states:

"(Inaudible.) It's a liability question". This had nothing to do with vagrant or trespasser liability. Mrs. Cantwell stated that she knew people trespassed and the law would require me to

look out for trespassers. Id @ pg. 36, L5-7. The Code has nothing to do with Trespassers or liability to them, or liability to anyone for that matter. Safety of the public is the overriding concern and to make properties safe and habitable. Like it or not, vagrants and trespassers are members of the public.

d. The Order does not address the inconsistency of the Board requiring the demolition of all three (3) units of the main building on site as being the only means of securing public safety, but yet still allowing other portions of the site, including the abutting parking lot, to be used for commercial, public and community events.

I find that the demolition of the main building was ordered by the Board as a last resort to secure public safety. Heritage could have repaired the roof or had a structural engineer certify demolition of the old Save More Grocery would not affect the structural integrity of the adjacent portions of the main building. Nevertheless, neither Palmer nor the Board gave permission to others to use the parking lot. This area was not the subject of the Demolition Order and, therefore, there was no inconsistency to be addressed.

e. The Order does not address Appellant/Petitioner's argument that the Board's order was excessive in requiring the entire main building to be demolished, despite unrefuted evidence that undamaged portions of the building retained significant value for reuse or renovation and that a means of securing public safety had been demonstrated.

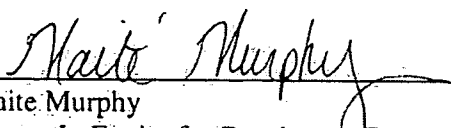
I find that the only reason the entire main building was required to be demolished was Heritage's failure to comply with the requirements of the Code by repairing the roof or have a structural engineer certify that the adjacent portions of the main building would remain structurally sound if only the Save More Grocery were to be demolished. Responses above make

this abundantly clear and why those requirements were necessary for public safety. Whether the building has value for reuse or renovation is not related to public safety as set forth in the Code and, therefore, not an issue. This Court has not been pointed to any section of the Code where public safety is overruled by monetary value. Finally, the means of securing public safety was rejected by the Board and the record before the Court supports this conclusion as noted in the above.

CONCLUSION

This matter came to light over three (3) years ago. Heritage has been given every opportunity and ample time to rectify the situation yet, the safety of the public remains at risk. Heritage has failed to show the actions of the Town or the Board were arbitrary and capricious, in excess of authority granted and/or legally erroneous and I so find. For the reasons set forth above, and incorporated as an Order of this Court, it is ordered that the Demolition Order issued by the Town on November 18, 2010 is hereby confirmed. Plans for demolition shall be submitted to the Town of Summerville within thirty (30) days of the signing of this Order.

IT IS SO ORDERED.


Maite Murphy
Master In Equity for Dorchester County
Special Circuit Court Judge

Dated: March 26, 2013
St. George, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP1800596

2013 APR 19 PM 12:44

Heritage Square Shopping Center Llc	Town Of Summerville Construction And Codes Board Of Appeals	Building official of the Town of Summerville South Carolina
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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:
 Pursuant to this Court's authority under Rule 59(f) SCRC, the Plaintiff's Second Rule 59(e) Motion to Alter, Amend or Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this court will not consider further arguments on the matter.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

4/18/13

INFORMATION FOR THE JUDGMENT INDEX

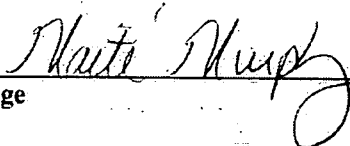
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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.**

Maité Murphy



Circuit Court Judge

3075

Judge Code

4/18/2013

Date

For Clerk of Court Office Use Only

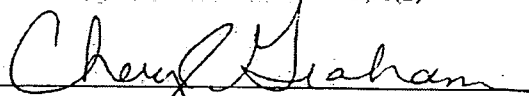
This judgment was entered on 4/18/2013, and a copy mailed first class or placed in the appropriate attorney's box on 4/18/2013, to attorneys of record or to parties (when appearing pro-se) as follows:

W. Andrew Gowder Jr. PO Drawer 22247 Charleston, SC
294132247
George Trenholm Walker PO Drawer 22247 Charleston, SC
294132247

G. Waring Parker 907B N. Main St. Summerville, SC
294836632

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Harry A. Walker

Court Reporter