

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 20-CVS-828

BURNETTE DOYLE SUTTON,)
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF HAYWOOD, acting by)
 and through its Development Services)
 Department and Board of Commissioners,)
)
 Defendant.)

**PLAINTIFF'S MOTION TO
COMPEL DEFENDANT'S
DISCOVERY RESPONSES**

FILED
2021 SEP 23 12:50
HAYWOOD

NOW COMES Plaintiff, Burnette Doyle Sutton, by and through the undersigned counsel, pursuant to Rule 37 of the North Carolina Rules of Civil Procedure, and hereby moves the Court for an Order compelling Defendant, County of Haywood, to respond fully and properly to Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. In support of this Motion, Plaintiff states as follows:

1. On January 27, 2021, Plaintiff served its First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions to Defendant. A true and accurate copy of the complete set of discovery requests sent via USPS first-class mail to counsel for Defendant is attached as Exhibit A.

2. On March 30, 2021, Defendant served their discovery responses to Plaintiff. True and accurate copies of Defendant's responses are attached as Exhibit B. Exhibit B includes all documents then produced.

3. On November 22, 2021, counsel for Plaintiff sent a Deficiency Letter to counsel for Defendant enumerating severe deficiencies in Defendant's discovery responses, and requesting supplementation. The letter was a good faith attempt to secure the requested information without court action, in accordance with North Carolina Rule of Civil Procedure 37(a)(2). A true and accurate copy of this letter sent via electronic mail to counsel for Defendant, along with a printed copy of the electronic mail confirming receipt by counsel for Defendant, is attached as Exhibit C.

4. On January 28, 2022, Defendant served their supplemental discovery responses to Plaintiff. True and accurate copies of Defendant's supplemental responses are attached as Exhibit D. Exhibit D includes all documents then produced.



5. On May 27, 2022, counsel for Plaintiff sent an inquiry to counsel for Defendant regarding additional supplemental discovery responses that were missing. A true and accurate copy of the inquiry sent via electronic mail to counsel for Defendant is attached as Exhibit E.

6. On June 16, 2022, counsel for Defendant responded to counsel for Plaintiff's inquiry from May 27, 2022, confirming existence of additional supplemental discovery responses and stating that such additional supplemental discovery responses would be sent the following day, June 17, 2022. A true and accurate copy of the response sent via electronic mail to counsel for Plaintiff is attached as Exhibit F.

7. On June 17, 2022, counsel for Plaintiff responded to counsel for Defendant's message from June 16, 2022, requesting that counsel for Defendant notify counsel for Plaintiff upon sending the additional supplemental discovery responses. A true and accurate copy of the response sent via electronic mail to counsel for Plaintiff is attached as Exhibit G.

8. On June 28, 2022, counsel for Plaintiff sent the first follow-up inquiry regarding the status of the additional supplemental discovery responses to counsel for Defendant, to which counsel for Defendant did not respond and did not provide such additional supplemental discovery responses. A true and accurate copy of the response sent via electronic mail to counsel for Plaintiff is attached as Exhibit H.

9. On July 1, 2022, counsel for Plaintiff sent the second follow-up inquiry regarding the status of the additional supplemental discovery responses to counsel for Defendant, to which counsel for Defendant did not respond and did not provide the requested additional supplemental discovery responses. A true and accurate copy of the response sent via electronic mail to counsel for Plaintiff is attached as Exhibit I.

10. On July 27, 2022, counsel for Plaintiff sent the third follow-up inquiry regarding the status of the additional supplemental discovery responses to counsel for Defendant, to which counsel for Defendant did not respond and did not provide the requested additional supplemental discovery responses. As of the date of this motion, counsel for Defendant has not provided the additional supplemental discovery responses, and has not offered any response or explanation whatsoever to counsel for Plaintiff since June 17, 2022. A true and accurate copy of the message sent via electronic mail to counsel for Defendant is attached as Exhibit J.

11. As of the date of this Motion, counsel for Plaintiff has not received any of the additional supplemental discovery responses requested in the May 27, 2022 correspondence.

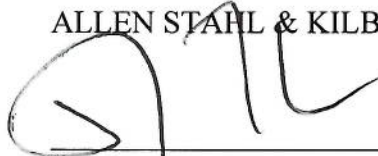
WHEREFORE, Plaintiff respectfully requests that the Court:

1. Enter an Order compelling Defendant to fully and properly respond to Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions within 14 days;
2. Award to Plaintiff its reasonable expenses incurred in obtaining the Court's Order pursuant to this Motion, including attorney's fees, in accordance with North Carolina Rule of Civil Procedure 37(a)(4); and

3. Provide any other and further relief the Court deems just and proper.

Respectfully submitted, this ^{sk}21 day of September, 2022.

ALLEN STAHL & KILBOURNE, P.L.L.C.



Derek J. Allen

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, the undersigned attorney certifies that the foregoing was served upon the parties identified and as addressed below by

_____ mailing a copy to the attorney's office.

_____ handing a copy to the attorney or leaving it at the attorney's office with a partner or employee.

_____ sending a copy to the attorney's office by a confirmed telefacsimile transmittal.

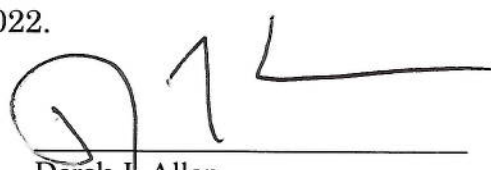
X emailing it to the attorney as an attachment.

Bryant Morehead
Haywood County Manager
Haywood County Historic Courthouse
215 N. Main Street, Third Floor
Waynesville, NC 28786

Frank Queen
Haywood County Attorney
Haywood County Historic Courthouse
215 N. Main Street, Third Floor
Waynesville, NC 28786

FILED
2022 SEP 23 P 12:50
HAYWOOD CO., C.S.C.
BY _____

This the 21st day of September, 2022.



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STATE OF NORTH CAROLINA
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE# 20 CVS 828

BURNETTE DOYLE SUTTON,)
)
Plaintiff,)
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v.)
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COUNTY OF HAYWOOD, acting by)
and through its Development)
Services Department and Board of)
Commissioners,)
)
Defendants.)

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS
FOR PRODUCTION OF
DOCUMENTS, AND REQUESTS
FOR ADMISSIONS TO
DEFENDANT**

PLEASE TAKE NOTICE that, pursuant to Rules 26, 33, 34, and 36 of the North Carolina Rules of Civil Procedure, Plaintiff Burnette Doyle Sutton, by and through the undersigned counsel, hereby requests that Defendant Haywood County answer separately and full in writing, under oath, within 30 days after service hereof, the following requests.

DEFINITIONS AND INSTRUCTIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the North Carolina Rules of Civil Procedure.

1. **Communication.** The term "communication" means the transmittal of information by any means in the form of fact, ideas, inquiries or otherwise. The term "communication" includes posts and/or messages on social media, as well as text messages.
2. **Document.** The term "document" means the original and any copy of any material of any kind or nature, that is written, printed, typed, photographed, photostatted, microfilmed, recorded (electrically, electronically, magnetically, graphically, or otherwise) or which is capable of being recorded or reproduced in any form, whether prepared by you or by any other person. The term includes, but is not limited to; each and every note, memorandum, letter, correspondence, telefacsimile, cable, telegram, telex, circular, transmission,



communication, electronic mail, instant message, chat, social media post or message, blog, web page, RSS feed, text message, data processing input and output, voicemail message, telephone call record, telephone record or recording, interview, inter-office communication, conference, meeting or other conversation, release, paper, book, record, published or unpublished speeches or articles, report, agenda, bulletin, notice, announcement, advertisement, instruction, charge, manual, brochure, publication, schedule, statistical record, notation, desk calendar, appointment book, diary, list, tabulation, sound reporting, computer printout, lease, filing with governmental authority, license, permit, photograph, tangible thing, transcript, minute, tabulation, work paper, cost sheet, prospectus, memorandum of any telephone or in-person conversation, financial report or statement, bank statement, draft, check, canceled check, receipt, credit card receipt, credit card statement, contract, agreement, order, invoice, purchase order, bill of lading, book of accounts, bookkeeping and accounting record, affidavit, statement, summary, opinion, study, evaluation, analysis, plan, drawing, sketch, blueprint, graph, chart, account, notebook, sketchbook, scrapbook, draft, summary, transcript, computer data base, computer printout or other computer generated matter, technical report, laboratory report or notebook, engineering report, any notes and drafts related to the foregoing, and all things similar to any of the foregoing, however denominated.

The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations. The term also includes any physical, digital, optical or magnetic storage device which may have contained stored data, but which has been entirely or partially deleted or erased, including but not limited to disks, hard drives, flash drives, memory cards, RAM and ROM computer memory chips, facsimile print cartridges, carbon paper, and the memory chips of digital copying machines scanners, and printers.

3. **Identify (with Respect to Natural Persons).** When referring to a natural person, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the person's full name; (b) his or her present or last known address; (c) his or her present or last known place of employment; (d) his or her present or last known phone number; and (e) his or her relationship with the Defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of the person.

4. **Identify (with Respect to Persons other than Natural Persons).** When referring to a person other than a natural person (such as a partnership, corporation, etc.) "to identify" means to give, to the extent known or obtainable by reasonable means: (a) its official name, (b) its organizational form; (c) its place of registration, if any, (d) its address, and (d) its officers, managers, or owners, and (e) its relationship to Defendant.
5. **Identify (With Respect to Documents).** When referring to documents, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the location of the original, and (e) the author(s), signatory(ies), addressees(s) and recipient(s).
6. **Identify (With Respect to Communications).** When referring to communications, "to identify" means to give, to the extent known or obtainable by reasonable means: (a) the names, addresses, phone numbers, and last known places of employment of the participants to the communication; (b) the names, addresses, phone numbers, and last known places of employment of any witnesses to the communication; (c) the relationship of the participants and witnesses to Defendant, (d) the subject matter of the communication; (e) the location(s) of the communication; (f) the location of a copy, recording or transcription of the communication; (g) the mode of communication (e.g. written, by telephone, meeting, etc.); and (h) the date of the communication.
7. **Parties.** The terms "Plaintiff" and "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, means the party and, where applicable, its officers, agents, employees, and partners. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
8. **Person.** The terms "person" and "persons" shall mean and include any natural person, government entity, business, firm, association, partnership, joint venture, corporation, estate, trust, receiver, syndicate, municipal corporation, and any other form of legal entity or other group or combination acting as a unit.
9. **Statement.** The terms "statement" and "statements" shall mean: (a) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (b) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded.
10. **Concerning.** The term "concerning" means relating to, referring to, describing, evidencing, or constituting.
11. **And/Or.** The connectives "and" and "or" shall be construed either disjunctively or conjunctively wherever they appear as necessary to bring within the scope



of this discovery request all responses that might otherwise be construed to be outside of its scope, and neither of these words shall be interpreted to limit the scope of a request.

12. **Tense/ Grammatical Number/Grammatical Aspect/Case/Gender.** The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." "Each" or "every" encompasses "each and every." The use of a verb in any grammatical aspect shall be construed as the use of the verb in all other grammatical aspects. The use of a word in any case shall be construed as the use of the word in all cases. Words in the masculine, feminine or neutral form shall include each of the other genders.
13. **Relating to.** The phrase "relating to" is intended to include documents or communications which either support or refute the claim, matter statement, proposition, or theory referred to in the documents referenced in the specific request for document production. The term "relating" (or "relate") shall mean: pertaining, describing, referring, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.
14. **Referring to.** The phrase "referring to" is intended to include documents or communications which mention, refer or allude to the claim, matter, statement, proposition or theory referred to in the specific request for document production. The term "referring" (or "refer") shall mean: pertaining, describing, relating, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.
15. **Describe:** The term "describe" shall mean to detail in full, with specificity, the event or situation at issue.
16. **Claims of Privilege.** If a claim of privilege is asserted concerning any information sought or any document for which identifications are requested, provide the following: (a) Identify all communications by stating the participants in the communication, the date of the communication, and the general subject matter of the communication; (b) Identify all documents by identifying the (i) type of document (letter, memo, and so forth); (ii) general subject matter of the document; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); and (c) State the nature of the privilege asserted; and (d) State in detail the factual and legal basis for the claim of privilege.

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17. **You or Your** means you and all your present and former agents, employees, representatives, and all other persons acting in behalf of the party upon whom the interrogatories are served.
18. **Each Independent:** Each Interrogatory shall be construed independently, and no interrogatory limits the scope of any other interrogatory.

INTERROGATORIES

1. Identify and state with particularity the statutory authority under which Chapter 114 of the Haywood County Ordinances (hereinafter "Chapter 114") was adopted.

RESPONSE:

2. Identify and state with particularity the statutory authority under which the specific requirement in Chapter 114 that wrecker services cannot be located closer than 500 feet of a residence, school, or business (hereinafter the "500-foot requirement") was adopted.

RESPONSE:

3. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's contention that the 500-foot requirement is a proper exercise of the County's police powers (see Defendant's Answer, denying Paragraphs 21 and 22 of Plaintiff's Complaint).

RESPONSE:

4. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 21 of Plaintiff's Complaint.

RESPONSE:

5. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's contention that the 500-foot requirement "regulate[s], prohibit[s], or abate[s] acts, omissions, or conditions" of wrecker services (see Defendant's denial of Paragraph 21(c) of Plaintiff's Complaint).

RESPONSE:

6. State whether Defendant contends that the 500-foot requirement is a zoning regulation as defined in N.C.G.S. § 160D-701 and/or § 160D-702 (formerly § 153A-340) and the legal and factual basis for that contention.

RESPONSE:

7. State whether Haywood County has a Comprehensive Plan (as that term is defined in N.C.G.S. § 160D-102, § 160D-501, and § 160D-701) (hereinafter, "Comprehensive Plan").

RESPONSE:

8. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 26 of Plaintiff's Complaint.

RESPONSE:

9. State all legal and factual bases for your contention that the 500-foot requirement is in accordance with Haywood County's Comprehensive Plan.

RESPONSE:

10. If there is a Comprehensive Plan for Haywood County,
 - a. Describe the Comprehensive Plan and its contents;



RESPONSE:

- b. Identify all documents that comprise the Comprehensive Plan;

RESPONSE:

- c. State the date on which the Comprehensive Plan was adopted;

RESPONSE:

- d. State the method or procedure by which the Comprehensive Plan is updated or amended; and

RESPONSE:

- e. State the dates on which the Comprehensive Plan has been updated or amended.

RESPONSE:

11. Do you contend that the 500-foot requirement was adopted using the procedures for adopting development regulations as described in N.C.G.S. § 160D-601 *et seq.* (previously N.C.G.S. § 153A-320 *et seq.*)? If so, identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support that contention.

RESPONSE:

12. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's denial of Paragraph 31 of Plaintiff's Complaint.

RESPONSE:

13. Provide a list of all persons, firms, or business entities that have been granted a permit pursuant to Chapter 114, and the locations for which the permits have been granted.

RESPONSE:

14. Provide a list of all applications for a permit or variance under Chapter 114 submitted (including the name of the applicant, the nature of the applicant's business, and the location specified by the applicant), and state whether the permit or variance requested by each application was granted or denied.

RESPONSE:

15. Identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support Defendant's governmental immunity affirmative defense.

RESPONSE:

16. Does Defendant contend that Plaintiff's claims are related to a tort committed by Defendant? If so, identify and state with particularity all reasons for, bases for, and the facts supporting, contentions supporting, and documents that support that contention.

RESPONSE:

17. To the extent that any of your responses to any of Plaintiff's Requests for Admissions is anything other than an unqualified admission, list all facts on

which you based any part of your response that is not an unqualified admission, identify all documents memorializing each such fact, and identify all persons with knowledge of each such fact.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS:

1. Provide any and all documents or things concerning, referred to, or identified in the interrogatories to Defendant served with these requests or Defendant's answers thereto.

RESPONSE:

2. Provide any and all documents relied upon or referenced in preparing your answers to any interrogatories in this action.

RESPONSE:

3. Provide any and all documents or communications concerning Plaintiff's application to operate a wrecker service or for a variance.

RESPONSE:

4. Provide any and all documents or communications from any member of the public to the Haywood County Board of Commissioners (or any member thereof), Haywood County Manager, or Haywood County Development Services concerning Plaintiff's application to operate a wrecker service or for a variance.

RESPONSE:

5. Provide a copy of the minutes from each meeting of the Haywood County Board of Commissioners during which Chapter 114 was adopted or amended.

RESPONSE:

6. Provide a copy of all documents evidencing the public notice (if any) and procedures by which the Haywood County Board of Commissioners' adopted or amended Chapter 114.

RESPONSE:

7. Provide copies of all applications for a permit or variance under Chapter 114 submitted.

RESPONSE:

8. Provide copies of the minutes from each meeting of the Haywood County Board of Commissioners during which an application for a permit or variance under Chapter 114 was heard.

RESPONSE:

9. Provide copies of all documents evidencing permits granted under Chapter 114.

RESPONSE:

10. Provide copies of all documents evidencing permits denied under Chapter 114.

RESPONSE:

11. Provide a copy of the current version of the Comprehensive Plan.

RESPONSE:

12. Provide copies of each version of the Comprehensive Plan that has been adopted or approved by the Haywood County Board of Commissioners.

RESPONSE:

13. Provide copies of the minutes from each meeting of the Haywood County Board of Commissioners during which the Comprehensive Plan was updated or amended within.

RESPONSE:

14. Provide copies of each ordinance adopted in relation to the Comprehensive Plan.

RESPONSE:

REQUESTS FOR ADMISSIONS

1. Admit that the 500-foot requirement is a zoning regulation as defined in N.C.G.S. § 160D-102(35), § 160D-701, and § 160D-702 (formerly N.C.G.S. § 153A-340).

RESPONSE:

2. Admit that the 500-foot requirement is a development regulation as defined in N.C.G.S. § 160D-102(14).

RESPONSE:

3. Admit that the 500-foot requirement regulates the location of buildings and the use of land.

RESPONSE:

4. Admit that the 500-foot requirement “substantially affects land use.”

RESPONSE:

5. Admit that the 500-foot requirement does not “substantially affect land use.”

RESPONSE:

6. Admit that the 500-foot requirement was not adopted using the procedures for adopting development regulations as described in N.C.G.S. § 160D-601 *et seq.* (previously N.C.G.S. § 153A-320 *et seq.*).

RESPONSE:

7. Admit that wrecker services are not detrimental to the health, safety, or welfare of County citizens and the peace and dignity of the County.

RESPONSE:

8. Admit that wrecker services are not defined as nuisances.

RESPONSE:

9. Admit that the 500-foot requirement as applied to wrecker services is not reasonably necessary to promote the accomplishment of a public good.



RESPONSE:

10. Admit that there are significantly less burdensome means than the 500-foot requirement by which Haywood County could achieve its purported purposes.

RESPONSE:

This the 27th day of January, 2021.

ALLEN STAHL & KILBOURNE, PLLC

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Derek J. Allen

N.C. Bar No. 24091

Carolyn P. Small

N.C. Bar No. 55436

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Telephone: (828) 254-4778

Fax: (828)254-6646



CERTIFICATE OF SERVICE

This will certify that I have this day served a copy of this **PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS TO DEFENDANT**, by placing a copy hereof in a first-class, postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

Frank G. Queen, Haywood County Attorney
Haywood County Historic Courthouse, Third Floor
215 N. Main Street
Waynesville, NC 28786

This the 27th day of January, 2021.

Carolyn P. Small

Carolyn P. Small

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