

STATE OF NORTH CAROLINA

File No. 20 CVS 828

Haywood County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Burnette Doyle Sutton
Address: c/o Allen Stahl & Kilbourne, 20 Town Mountain Road, Ste 100
City, State, Zip: Asheville, NC 28801

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Name Of Defendant(s): County of Haywood, acting by and through its Development Services Department and Board of Commissioners

Date Original Summons Issued: September 4, 2020
Date(s) Subsequent Summon(es) Issued:

To Each of The Defendant(s) Named Below:

Name And Address Of Defendant 1: c/o County Manager, Haywood County Historic Courthouse, Third Floor, 215 N. Main St., Waynesville, NC 28786

Name And Address Of Defendant 2:



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales, ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Carolyn Pearce Small, Allen Stahl & Kilbourne, PLLC, 20 Town Mountain Road, Suite 100, Asheville, NC 28801

Date Issued: 12/3/2020 Time: 1:00 PM
Signature: [Handwritten Signature]
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time: AM PM
Signature:
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (*specify*)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	--	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (*specify*)

Defendant WAS NOT served for the following reason:

*Service Fee Paid*

\$

*Signature Of Deputy Sheriff Making Return*

*Date Received*

*Name Of Sheriff (type or print)*

*Date Of Return*

*County Of Sheriff*

STATE OF NORTH CAROLINA  
HAYWOOD COUNTY

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

BURNETTE DOYLE SUTTON,  
Plaintiff,

v.

COUNTY OF HAYWOOD, acting by  
and through its Development  
Services Department and Board of  
Commissioners,  
Defendants.

AFFIDAVIT OF SERVICE

FILED  
2020 DEC 11 AM 11:23  
HAYWOOD COUNTY, N.C.S.C.

NOW COMES the Plaintiff, by and through his undersigned counsel,  
Carolyn P. Small, and says:

That service was obtained on Defendant County of Haywood, by service of a  
copy of the Civil Summons and Complaint in this action as follows:

1. That she is the attorney of record for the Plaintiff in this matter;
2. That a copy of the Civil Summons and Complaint in the above captioned  
matter addressed to County of Haywood, c/o County Manager, Haywood  
County History Courthouse, Third Floor, 215 N. Main St., Waynesville,  
NC 28786, was deposited for mailing via UPS 2<sup>nd</sup> Day Air, which was  
signed for on October 29, 2020, as evidenced by the attached Proof of  
Delivery incorporated herein by reference as Exhibit "A" (Tracking No:  
1ZVY2800A298222133);
3. That Defendant County of Haywood was duly served with a copy of the  
Civil Summons and Complaint in this matter by service of process as  
required by North Carolina General Statutes and North Carolina Rules of  
Civil Procedure.



This the 10<sup>th</sup> day of December, 2020.

ALLEN STAHL & KILBOURNE, PLLC

Carolyn P. Small

Carolyn P. Small  
N.C. Bar No.: 55436  
20 Town Mountain Road, Suite 100  
Asheville, NC 28801  
Telephone: (828) 254-4778  
Fax: (828)254-6646

State of North Carolina  
County of Buncombe

Sworn to and subscribed before  
me this 10 day of December, 2020.

WILLIAM M. YOUNG  
NOTARY PUBLIC  
Buncombe County  
North Carolina  
My Commission Expires 8/28/2024

W. Young  
Notary Public

My commission expires: 8/28/2024



**CERTIFICATE OF SERVICE**

This will certify that I have this day served a copy of this AFFIDAVIT OF SERVICE, 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:

County of Haywood  
c/o County Manager  
Haywood County Historic Courthouse, Third Floor  
215 N. Main Street  
Waynesville, NC 28786

This the 10<sup>th</sup> day of December, 2020.

Carolyn P. Small  
Carolyn P. Small

FILED  
DEC 11 AM 11:29  
HAYWOOD COUNTY, C.S.C.





# EXHIBIT A





# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1ZVY2800A298222133

**Weight**

1.00 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

10/28/2020

**Additional Information**

Adult Signature Required

**Delivered On**

10/29/2020 2:37 P.M.

**Delivered To**

ROD (REGISTER OF DEEDS  
215 N MAIN ST  
212  
WAYNESVILLE, NC, 28786, US

**Received By**

MUSE

**Left At**

Office

**Reference Number(s)**

DOYLE'S GARAGE COMPLAINT & SUMMONS

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

**Ask UPS**



Sincerely,

UPS

Tracking results provided by UPS: 12/07/2020 12:02 P.M. EST

[Print this page](#)



NORTH CAROLINA  
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE  
FILED SUPERIOR COURT DIVISION  
File No. 20 CVS 828

NOV 30 2020 P 11:14

Burnette Doyle Sutton,

Plaintiff  
HAYWOOD COUNTY, N.C.

v.

County of Haywood,

Defendant

ORDER EXTENDING TIME TO FILE ANSWER

Upon motion of the defendant and for good cause shown, the time within which the defendant may serve answer or other responsive pleading is extended for 30 days, to and including the 28<sup>th</sup> day of December, 2020.

This 30<sup>th</sup> day of November, 2020.



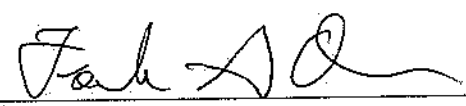
Deputy Assistant Clerk of Superior Court

CERTIFICATE OF SERVICE

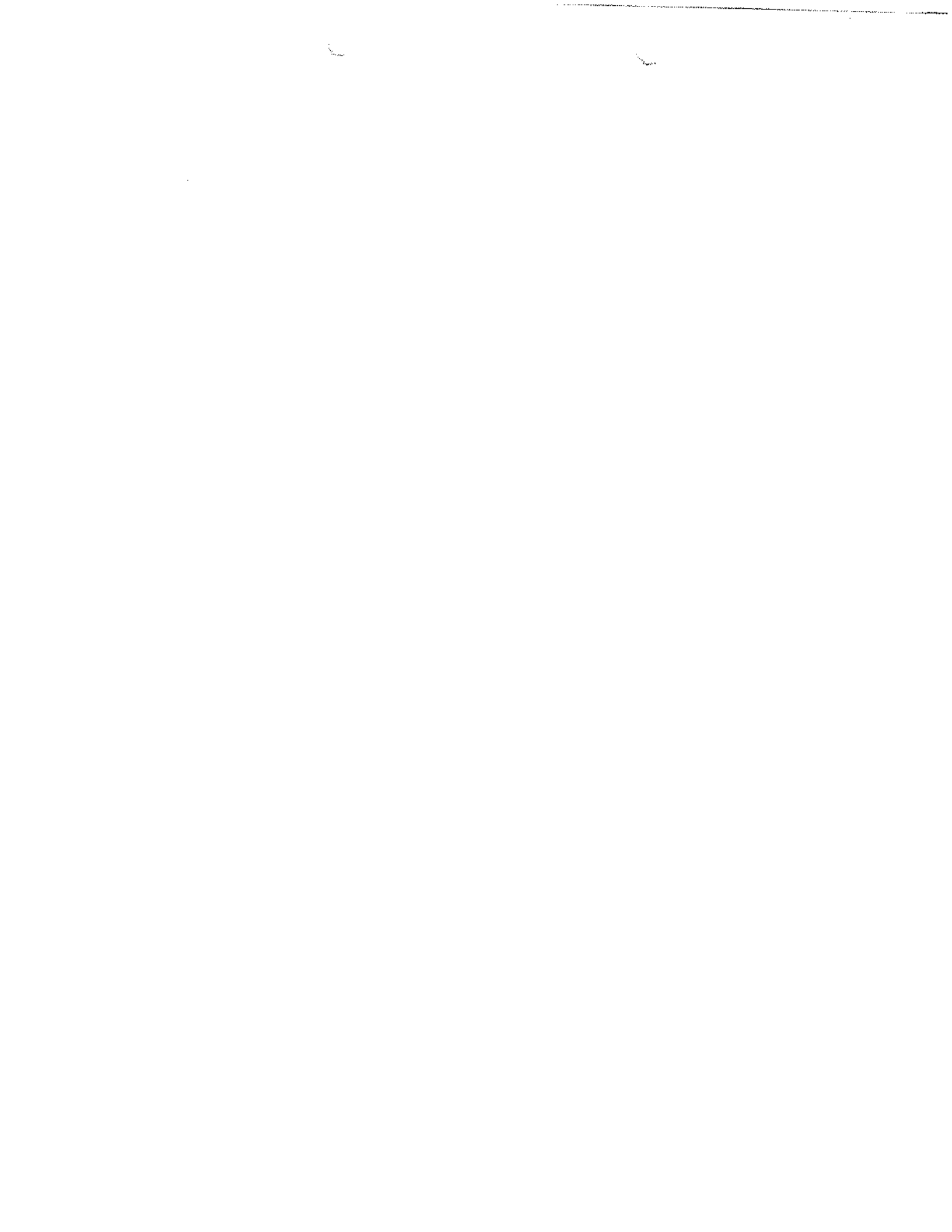
The undersigned hereby certifies that a copy of the foregoing pleading was served on the opposing party or counsel in this matter by depositing a copy, enclosed in a first-class postage paid wrapper into a depository under the exclusive care and custody of the United States Postal Service, addressed as shown below on the date shown near his signature:

Derek J. Allen  
Allen Stahl & Kilburne  
20 Town Mountain Road, Ste 100  
Asheville NC 28801

November 30, 2020



Frank G. Queen, Attorney for  
Defendant





NORTH CAROLINA  
HAYWOOD COUNTY

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2020 NOV 30 PM 1:11 File No. 20 CVS 828

Burnette Doyle Sutton,

HAYWOOD COUNTY, C.S. 1  
Plaintiff

v.

County of Haywood,

Defendant

### MOTION FOR EXTENSION OF TIME TO FILE ANSWER

Now comes the defendant, through its undersigned counsel, moving the court pursuant to Rule 6 of the Rules of Civil Procedure, for an extension of time within which to file answer and saying:

1. The matter was commenced on the 4<sup>th</sup> day of September, 2020 by the filing of a complaint and issuance of summons.
2. The defendant was served on October 29, 2020. The time for filing answer or other pleading has not yet expired.
3. The defendant requires an additional period of time within which to research the law applicable to the claim and to file responsive pleadings.

Wherefore, the defendant moves the court for an extension of time, to and including the 28<sup>th</sup> day of December, 2020, within which to file and serve answer or other responsive pleadings.

This 30<sup>th</sup> day of November, 2020.

Frank G. Queen, PLLC

By: 

Frank G. Queen

Attorney Bar Number 7275

Haywood County Courthouse, 3<sup>rd</sup> Floor

215 N. Main Street

Waynesville NC 28786

Attorney for the defendant



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the opposing party or counsel in this matter by depositing a copy, enclosed in a first-class postage paid wrapper into a depository under the exclusive care and custody of the United States Postal Service, addressed as shown below on the date shown near his signature:

Derek J. Allen  
Allen Stahl & Kilburne  
20 Town Mountain Road, Ste 100  
Asheville NC 28801

November 30, 2020



---

Frank G. Queen



STATE OF NORTH CAROLINA

Haywood County

File No.

20 CVS 828

FILED

In The General Court Of Justice

District Superior Court Division

Name Of Plaintiff

Burnette Doyle Sutton

Address

1691 South Main Street

City, State, Zip

Waynesville NC 28786

VERSUS

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

County of Haywood, acting by and through its Development Services Department and Board of Commissioners

Date Original Summons Issued

09/04/2020

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

c/o County Manager
Haywood County Historic Courthouse, Third Floor
215 N. Main St.
Waynesville, NC 28786

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
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Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Carolyn Pearce Small, Allen Stahl & Kilbourne PLLC
20 Town Mountain Rd., Suite 100
Asheville, NC 28801

Date Issued

9-4-2020

Time

10:13

AM PM

Signature

[Handwritten Signature]

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	-------------	---	-------------------

- By delivering to the defendant named above a copy of the summons and complaint.
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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

FILED  
2020 SEP -4 AM 10:12  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. 20 CV S 828

BURNETTE DOYLE SUTTON,

Plaintiff,

v.

COUNTY OF HAYWOOD, acting by  
and through its Development Services  
Department and Board of  
Commissioners,

Defendants.

**COMPLAINT**  
**[JURY TRIAL DEMANDED]**

Pursuant to Rules 3, 7 and 8 of the North Carolina Rules of Civil Procedure, Plaintiff Burnette Doyle Sutton ("Plaintiff"), complains of Defendant County of Haywood, acting by and through its Development Services Department and Board of Commissioners, and alleges and avers as follows:

**JURISDICTION, VENUE, PARTIES, AND STANDING**

1. Plaintiff is a citizen of resident of Waynesville, Haywood County, North Carolina.

2. Plaintiff is the owner and sole proprietor of Doyle's Garage and Wrecker Services, a wrecking business in Waynesville, NC.

3. Plaintiff has standing to bring this lawsuit because on or about September 5, 2019, Plaintiff received a notice from Haywood County Development Services stating that his application for a wrecker service permit at 3039 Crabtree Road was denied because the facility did not comply with Chapter 114 of the County's ordinance regarding Junkyards and Other Facilities. Plaintiff has a specific personal and legal interest in the subject





matter affected by Chapter 114 and is directly and adversely affected thereby.

4. Defendant County of Haywood ("County") is a county and body politic, organized and existing under the laws of the state of North Carolina pursuant to chapter 153A of the North Carolina General Statutes. The County, through its Development Services Department, acts upon applications for permits to establish, operate, or maintain a wrecker service under Chapter 114 of the Haywood County Ordinances. The County also acts through its Board of Commissioners to hear appeals for a variance from the requirements of Chapter 114 of the Haywood County Ordinances.

5. Under G.S. § 153A-11, the County is capable in law of being sued.

6. This court has subject matter jurisdiction in this action pursuant to N.C. Gen. Stat. §§ 1-253, 160D-1401, and 160D-1403.1.

7. Venue is proper in this Court.

8. This Court has personal jurisdiction over the parties.

#### **FACTUAL BACKGROUND**

9. Plaintiff is the sole owner of a property located at 3039 Crabtree Road (PIN 8628-33-4271), Waynesville, NC, 28785 ("the Property").

10. Plaintiff has owned the property since February 2019 as shown on that general warranty deed recorded with the Officer of the Register of Deeds of Haywood County, North Carolina in Book 968, Page 1138.

11. The Property is located within Haywood County.

12. In or about August 2019, Plaintiff applied to Haywood County Development Services for a permit to operate a wrecker service at the Property.

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13. On or about September 5, 2019, Plaintiff received a letter stating that his planned facility does not comply with Section 114.04 of the Haywood County Ordinances. A copy of that letter and its tracking information is attached hereto as Exhibit A, and incorporated herein by reference as if fully set forth. A copy of Chapter 114 is attached to that letter, and is incorporated herein by reference as if fully set forth.

14. Plaintiff contested that determination in September 2019 by giving notice of his appeal ("the First Appeal") to the County and requested a variance of the ordinance.

15. On October 21, 2019, the Haywood County Board of Commissioners, acting as a quasi-judicial body, considered evidence for and against the Plaintiff's requested variance.

16. At the conclusion of the hearing, the Haywood County Board of Commissioners found that the evidence failed to allow for a variance.

17. Plaintiff filed a timely appeal of that decision via a writ of certiorari in this Court. *See Sutton v. County of Haywood*, No. 19-CVS-1282 (Haywood County). No hearing on the merits of that appeal has been held.

**FIRST CAUSE OF ACTION  
DECLARATORY JUDGMENT –  
INVALID EXERCISE OF POLICE POWER**

18. The allegations set forth in Paragraphs 1 through 17 of this Complaint are hereby incorporated by reference and realleged in this claim for relief as if set out herein in their entirety.

19. Under N.C. Gen. Stat. § 153A-121(a), "[a] county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances."

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20. The County's general police power is limited to the powers defined in § 153A-121(a).

21. Chapter 114—and in particular, its specific requirement that wrecker services cannot be located closer than 500 feet of a residence, school, or business (hereinafter, "500-foot requirement")—is an improper exercise of the County's police powers for the following reasons:

- a. Wrecker services are not detrimental to the health, safety, or welfare of County citizens and the peace and dignity of the County;
- b. Wrecker services are not defined as nuisances;
- c. The 500-foot requirement in Chapter 114 does not purport to "regulate, prohibit, or abate acts, omissions, or conditions" of wrecker services, but rather is essentially a zoning ordinance that regulates where such services can be located by prohibiting those services from being located within 500 feet of a residence, school, or business;
- d. The means chosen to regulate wrecker services under Chapter 114 are unreasonable because the 500-foot requirement, as applied, is not reasonably necessary to promote the accomplishment of a public good and the interference with the owner's right to use his property as he deems appropriate is not reasonable in degree;
- e. There are significantly less burdensome means than the 500-foot requirement by which Haywood County could achieve its purported purposes;

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f. The 500-foot requirement contained in the ordinance is an unreasonable, arbitrary, and unequal exercise of power as applied to wrecker services.

22. Accordingly, the 500-foot requirement as applied to wrecker services is an improper exercise of Madison County's police power and is invalid and inapplicable to Plaintiff's wrecker service.

**SECOND CAUSE OF ACTION**  
**DECLARATORY JUDGMENT -**  
**INVALID LAND USE ORDINANCE**

23. The allegations set forth in Paragraphs 1 through 22 of this Complaint are hereby incorporated by reference and realleged in this claim for relief as if set out herein in their entirety.

24. The 500-foot requirement in Chapter 114 is essentially a zoning ordinance that regulates where wrecker services can be located by prohibiting those services from being located within 500 feet of a residence, school, or business. See N.C. Gen. Stat. § 160D-702 (effective June 19, 2020) (zoning regulations regulate "the location and use of buildings, structures, and land"); § 153A-340(a) (repealed June 19, 2020) (same). Because the 500-foot requirement regulates the location of buildings and use of the land, it "substantially affects land use" and it is considered a zoning ordinance under North Carolina law. See *Vulcan Materials Co. v. Iredell Cty.*, 103 N.C. App. 779, 782, 407 S.E.2d 283, 285-86 (1991) (moratorium on building permits is essentially a zoning ordinance); *Thrash Ltd. P'ship v. Cty. of Buncombe*, 195 N.C. App. 727, 733, 673 S.E.2d 689, 693 (2009) ("determination of whether an ordinance is a zoning ordinance . . . is whether the ordinance 'substantially affects land use'").





25. Zoning regulations shall be made in accordance with a comprehensive plan. N.C. Gen. Stat. § 160D-701 (effective June 19, 2020); § 153A-341(a) (repealed June 19, 2020).

26. Upon information and belief, the 500-foot requirement in Chapter 114 is not in accordance with a comprehensive plan for Haywood County.

27. Upon information and belief, the 500-foot requirement in Chapter 114 was not adopted using the appropriate procedures for adopting development regulations. *See* N.C. Gen. Stat. § 160D-601 *et seq.* (effective June 19, 2020); § 153A-320 *et seq.* (repealed June 19, 2020).

28. The County may not evade these requirements by labeling this zoning act as an exercise of police power.

**THIRD CAUSE OF ACTION**  
**EQUAL PROTECTION VIOLATION**

29. The allegations set forth in Paragraphs 1 through 28 of this Complaint are hereby incorporated by reference and realleged in this claim for relief as if set out herein in their entirety.

30. The County's actions in passing Chapter 114's 500-foot requirement for wrecker services, service stations, garages, used car lots, or motor vehicle storage area is not rationally related to a legitimate government interest and is unconstitutional.

31. Upon information and belief, Plaintiff has been intentionally treated differently from other similarly situated persons or businesses in Haywood County, and there is no rational basis for the difference in treatment.

32. The 500-foot requirement is invalid and violates Plaintiff's equal protection rights.

33. As a result, Plaintiff has been damaged in an amount exceeding \$25,000.



**PRAYER FOR RELIEF**

WHEREFORE the reasons herein set forth, Plaintiff respectfully prays:

1. That the Court invalidate the 500-foot requirement of Chapter 114 as applied to wrecker services;
2. For damages in an amount to be determined at trial;
3. For attorneys fees' and costs pursuant to N.C. Gen. Stat. § 6-21.7;
4. For a jury trial for all issues so triable;
5. And, for such other relief as the Court deems fair and just.

This the 4<sup>th</sup> day of September, 2020.

**ALLEN STAHL & KILBOURNE,  
PLLC**



Derek J. Allen  
N.C. State Bar No. 24091  
Carolyn Small  
N.C. State Bar No. 55436  
20 Town Mountain Rd. Suite 100  
Asheville, NC 28801  
828-254-4778  
828-254-6646 fax  
[dja@asklawnc.com](mailto:dja@asklawnc.com)  
[csmall@asklawnc.com](mailto:csmall@asklawnc.com)





215 North Main Street  
Waynesville, North Carolina 287

CERTIFIED MAIL



7016 3010 0000 4048 3519

NEOPOST  
08/22/2019  
US POSTAGE \$006.80  
ELECTRONIC MAIL SERVICE  
ZIP 28786  
041M11290633

closed  
8/22/19

Mr. Burnette Doyle Sutton  
1691 South Main St.  
Waynesville, NC 28786

LH  
9/13

RECEIVED  
SEP 26 2019



COPY







## Haywood County Development Services

157 Paragon Parkway, Suite 200  
Clyde, NC 28721  
Phone: 828-452-6632  
Fax: 828-452-6798

August 22, 2019

Mr. Burnette Doyle Sutton  
1691 South Main Street  
Waynesville, NC 28786

Mr. Sutton,

I am in receipt of your plan submission for a wrecker service permit at 3039 Crabtree Road (8628-33-4271) as required by Haywood County Code of Ordinances: Chapter 114 Junkyards and Other Facilities section 114.11.

After review for compliance, it is determined the facility does NOT comply with Section 114.04 General Standards A (3) "not be located closer than 500 feet of a residence, school, or business". Your proposed facility is located closer than 500 feet of residences owned by David L. Harp (PIN 8628-33-0607 & 8628-33-2658).

Your request for a permit to operate a wrecker service at 3039 Crabtree Road is denied based on the above paragraph.

Pursuant to Chapter 114 Junkyards and Other Facilities section 114.14 Appeals and Variances, you may appeal this decision to the Haywood County Board of Commissioners within 10 days of receipt of this action. I have included a copy of Chapter 114 Junkyards and Other Facilities for your convenience.

The attached original letter was mailed certified to the address listed in the tax records because the submitted plan did not have names or addresses as required by the Ordinance. The new mailing address was provided by Randy Best on August 21<sup>st</sup>, 2019.

Kris R. Boyd

A handwritten signature in blue ink that reads "Kris R. Boyd".

Development and Facilities Services Director

cc: Bryant Morehead  
Frank Queen  
Randy Best  
Kevin Ensley  
Jodie Ferguson







## Haywood County Development Services

157 Paragon Parkway, Suite 200  
Clyde, NC 28721  
Phone: 828-452-6632  
Fax: 828-452-6798

August 16, 2019

Mr. Burnette Doyle Sutton  
474 Balsam Ridge Road  
Waynesville, NC 28786

Mr. Sutton,

I am in receipt of your plan submission for a wrecker service permit at 3039 Crabtree Road (8628-33-4271) as required by Haywood County Code of Ordinances: Chapter 114 Junkyards and Other Facilities section 114.11.

After review for compliance, it is determined the facility does NOT comply with Section 114.04 General Standards A (3) "not be located closer than 500 feet of a residence, school, or business". Your proposed facility is located closer than 500 feet of residences owned by David L. Harp (PIN 8628-33-0607 & 8628-33-2658).

Your request for a permit to operate a wrecker service at 3039 Crabtree Road is denied based on the above paragraph.

Pursuant to Chapter 114 Junkyards and Other Facilities section 114.14 Appeals and Variances, you may appeal this decision to the Haywood County Board of Commissioners within 10 days of receipt of this action. I have included a copy of Chapter 114 Junkyards and Other Facilities for your convenience.

Kris R. Boyd

A handwritten signature in blue ink, appearing to read "Kris R. Boyd".

Development and Facilities Services Director

cc: Bryant Morehead  
Frank Queen  
Randy Best  
Kevin Ensley  
Jodie Ferguson



## CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

### Section

- 114.01 Definitions
  - 114.02 Findings, Purposes and Objectives
  - 114.03 Geographic Coverage
  - 114.04 General Standards
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- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

**ACTIVITY.** The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**AUTOMOBILE GRAVEYARD.** More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**BUILDING.** Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.



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**ENCLOSED BUILDING.** A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.

**ENFORCEMENT OFFICER.** Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

**ESTABLISHMENT.** Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity.

**FACILITY.** A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**FARM OR BONAFIDE FARM.** One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

**FENCE.** A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

**GARAGE.** An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

**GATE.** A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

**HEALTH NUISANCE OR SAFETY HAZARD VEHICLE.** A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or
- (2) A point of collection of pools or ponds of water; or
- (3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or



(4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or

(5) So located that there is a danger of the vehicle falling or turning over; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term danger of environmental degradation.

**HOUSING UNIT.** A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

**JUNK.** Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

**JUNK MOTOR VEHICLE.** A motor vehicle or other motorized equipment or parts thereof that:

(1) Is fully or partially dismantled or wrecked; or

(2) Cannot be self-propelled in its present condition; or

(3) Does not display a current license plate.

**JUNKYARD.** Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

**JUNKYARD CONTROL ACT.** G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

**LAND PARCEL.** A tract of land which is separately described by the Haywood County Land Records/GIS Office.

**MOTOR VEHICLE.** Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**MOTOR VEHICLE STORAGE AREA.** One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

**OPAQUE.** Impervious to light.

**RECYCLING FACILITY.** A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and





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moved off site or kept on site in enclosed buildings, storage bins, solid waste containers, truck trailers or other rolling stock.

**SERVICE STATION.** An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

**USED CAR LOT.** An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

**VECTOR.** An organism that carries pathogens from one host to another.

**VEGETATION.** All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

**WIRE FENCE.** A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

**WRECKER SERVICE.** A land parcel which is used for the purpose of storing motor vehicles.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.02 FINDINGS, PURPOSES AND OBJECTIVES.

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
  - (2) To protect citizens and residents;
  - (3) To promote or enhance the protection of property values throughout the county;
  - (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
  - (5) To protect surface and groundwater quality; and
  - (6) To preserve and protect the natural environment in Haywood County.
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

