

CLIENT'S COPY

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF DOUGLAS

FIRST JUDICIAL CIRCUIT

<p>GORDON HEBER, Petitioner,</p> <p>v.</p> <p>DOUGLAS COUNTY BOARD OF ADJUSTMENT and DOUGLAS COUNTY PLANNING COMMISSION</p> <p>Respondents.</p>	<p>Civ. 05-</p> <p>AFFIDAVIT OF GORDON HEBER</p>
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STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

Comes now Gordon Heber, after being first duly sworn upon oath, and deposes and states as follows:

1. I am the rightful owner of the Douglas County property at issue in this case.
2. With the help of various local, state and federal officials, I have developed conservation plans for two of my Douglas County properties. These plans contemplate the planting of a riparian buffer along creeks running through my properties, which buffers consist of newly planted trees, shrubs and grasses.
3. The plans have been approved by the Natural Resources Conservation Service, the Farm Service Agency and the Douglas County Conservation District, and federal funding for the conservation plans has been secured. The goal of this project (and the federal program under which it is authorized) is to enhance the conservation of soil and water. Other permits have been issued for the same federal program in Douglas County and there has been no suspension of such permits except my own.

4. I applied for building permits for two riparian buffers in early 2005, and such permits (Permit # 424 & Permit #425) were issued by the Douglas County Zoning Administrator on February 2, 2005.

5. I have never been notified of an appeal from the Zoning Administrator's decision to issue the permits.

6. On or about March 30, 2005, either the Douglas County Planning Commission or the Douglas County Board of Adjustment (collectively and individually referred to hereinafter as the "County") voted to suspend the building permits. The Planning Commission and the Drainage Board were to review my building permits.

7. Without ever agreeing that there was jurisdiction or authority to make such suspensions, I cooperated with the County and provided them with further information about the plans in the hopes of easing their concerns getting them to lift the suspension, thereby avoiding any costly and time consuming formal proceedings. The Drainage Board voted to terminate any further suspension of the building permits. The Planning Commission refused and has continued to ask for more information from me.

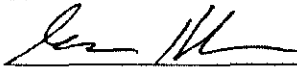
8. Despite my providing various detailed information concerning the conservation plans and my further efforts to cooperate with the County, in addition to my continuing assertion of its lack of authority to act, on October 13, 2005 the County voted to delay any action on terminating the suspension of my building permits.

9. My attorney wrote to the Planning Commission and demanded to know what authority they had to continue to insist on more information, and pointed out that the detailed site plan they now sought was previously provided to the Zoning Administrator and deemed acceptable. In response, the Planning Commission voted to continue suspension of the permits. Attached Exhibits A and B are true and correct copies of the letter from my attorney and the response from the Planning Commission. To date, no citations to law or clarification of the authority of the Planning Commission to ask for such additional information or review of the permits have ever been provided to me or my attorneys.

10. Continued delay of the implementation of the conservation plan threatens to cause the limited planting season to be missed and may cause me to lose the substantial federal funding for the project.

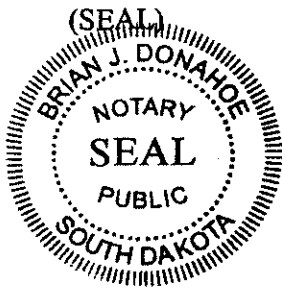
Further your Affiant sayeth naught.

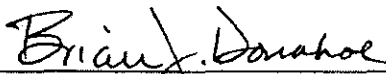
Dated this 12th day of November, 2005.



Gordon Heber

Subscribed and sworn to before me this 12th day of November, 2005.





Notary Public South Dakota
My Commission Expires: 7/24/2010