

BENTLEY, BENTLEY & BENTLEY

Attorneys at Law

241 WASHINGTON AVENUE
MARIETTA, GEORGIA 30060
(770) 422-2300
THEBENTLEYFIRM.COM

FRED D. BENTLEY, JR.*
R. RANDALL BENTLEY, SR.

ESTABLISHED 1948

FACSIMILE No.:
(770) 424-5820

*ADMITTED TO PRACTICE IN
LOUISIANA AND TEXAS

**ADMITTED TO PRACTICE IN
CALIFORNIA

FRED D. BENTLEY, SR.
(1926 - 2019)

OF COUNSEL

SAM R. HENSLEY, JR.
JAMIE S. WINGLER
LAUREN L. MCKENZIE
STAN D. BABB
COLEEN D. HOSACK
LINDA W. BRUNT
NIK ERRAMILLI**

August 15, 2022

Steve Welsh
VIA E-MAIL: stevewelsh@rocketmail.com

Dear Steve Welsh:

The City of Kennesaw has received numerous complaints and opposition to the business located at 2879 Main Street (hereinafter the "Subject Property"). Upon information and belief, Wildman's Civil War Surplus is owned by Dent Myers Enterprises, Inc., which is controlled by the Dennis Alvah Myers Revocable Living Trust, with Marjorie K. Lyon named as the Trustee.

The City of Kennesaw received an Application for Occupational Tax Certificate from Marjorie K. Lyon on March 31, 2022. In the application, Ms. Lyon claimed to be the 100% owner of Dent Myers Enterprises. There is no mention of Mr. Myers, the Estate of Mr. Myers, or the Dennis Alvah Myers Revocable Living Trust having an ownership interest in the property. According to a letter dated April 20, 2022, from attorney Glen Stinson, Mr. Myers was the previous owner, and according to the application dated March 31, 2022, Marjorie K. Lyon was the new 100% owner. An amended application was subsequently presented to the City by Ms. Lyon. Pursuant to our letter dated May 11, 2022, Ms. Lyon undertook the required inspections detailed in the letter. When performing a business license inspection for a Certificate of Occupancy of an existing structure with no change in the use or occupancy of the structure, the Building Official inspects all accessible areas. Where there is a change in ownership only, there is no requirement that the structure be brought up to current building code standards. See, Kennesaw Code of Ordinances (hereinafter "KCO"), Sec. 18-25 *et seq.* After inspections by the Cobb County Fire Marshal and Kennesaw Building Department, a Building and Fire Certificate of Occupancy was issued.

Subsequent to the issuance of the Certificate of Occupancy, a request was received from "at least five residents of the city for inspection" of the Subject Property pursuant to the KCO, Sec. 62-9(d)(1)(a)(1), asserting that the property was maintained in a blighted condition. Under the ordinance, blight means any urbanized or developed property that:

- a. Presents two or more of the following conditions:
 1. Uninhabitable, unsafe, or abandoned structures, or

2. Inadequate provisions for ventilation, light, air, or sanitation, or
 3. An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe that the Governor has declared a state of emergency under the state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm, or
 4. A site identified by the Federal Environmental Protection Agency as a superfund site pursuant to 42 U.S.C. Section 9601, et seq. or environmental contamination to the extent that requires remedial investigation or a feasibility study, or
 5. Repeated illegal activity on the individual property of which the property owner knew or should have known; or
 6. The maintenance of the property is below state, county, or municipal codes for at least one year after written notice of the code violation to its owner; and
- b. Is conducive to ill health, transmission of disease, infant mortality or crime in the immediate proximity of the property.
 - c. Property shall not be deemed blighted solely because of esthetic conditions. KCO, Sec. 62-9(b).

The City Building Official conducted an inspection pursuant to the ordinance and the residents' request and issued a report attached hereto as Exhibit A. The Building Official determined that the Subject Property did not meet the criteria set forth above, and therefore, was not blighted. Generalized accusations regarding alleged flood damage and the lack of evidence did not support a finding that building permits were required over the years, and therefore, appear to be without merit.

The City has received numerous complaints and opposition to the flags that are being flown on the Subject Property in violation of the City's sign ordinance. There are Constitutional protections regarding freedom of speech, as well as state law which addresses an individual's right to display certain historical flags, including the flags displayed at the Subject Property.

O.C.G.A. § 1-4-20 states as follows:

- (a) The General Assembly hereby finds and determines that tourism is a great economic resource in Georgia; and historical, heritage, and cultural inheritance are among the tourism industry's most popular attractions. Georgia's Confederate heritage, physical artifacts and battle sites, and historic events and persons not only attract visitors, they are potentially of even greater importance and benefit to our state's economy. Increased development of our state's Confederate history and heritage as part of the tourism industry will be enhanced through recognizing, celebrating, and advertising that heritage and history.

- (b) The month of April of each year is hereby designated as Confederate History and Heritage Month and shall be set aside to honor, observe, and celebrate the Confederate States of America, its history, those who served in its armed forces and government, and all those millions of its citizens of various races and ethnic groups and religions who contributed in sundry and myriad ways to the cause which they held so dear from its founding on February 4, 1861, in Montgomery, Alabama, until the Confederate ship CSS Shenandoah sailed into Liverpool Harbor and surrendered to British authorities on November 6, 1865.
- (c) Officials and departments of state, county, and municipal governments, boards of education, elementary and secondary schools, colleges and universities, businesses, and all citizens are encouraged to participate in programs, displays, and activities that commemorate and honor our shared history and cultural inheritance throughout each April during Confederate History and Heritage Month.

O.C.G.A. § 12-3-194.1, (d), which requires that the “Stone Mountain Memorial Association shall continue the practice of stocking, restocking, and sales of confederate memorabilia.” Other examples of these protective state laws include: O.C.G.A. § 50-3-1 (protection for confederate monuments); O.C.G.A. § 50-3-5 (confederate flags “preserved for all time in the capitol as priceless”); and O.C.G.A. § 50-3-9 (abuse of confederate flag or emblem unlawful).

More specific to the flag issue on the Subject Property, O.C.G.A. § 50-3-10 states that:

Nothing in this article shall be construed to prevent the use of the flag of the United States or any flag, standard, color, shield, ensign, or other insignia of the State of Georgia or of the Confederate States of America for decorative or patriotic purposes, either inside or outside of any residence, store, place of business, public building, or school building.

The Subject Property lies within a General Commercial District (GC). Under the UDC, 5.03.18(C)(9), “[e]ach lot may display no more than three flags and/or flagpoles.” However, this ordinance (and any ordinance restricting the display of a confederate flag) is preempted by O.C.G.A. § 50-3-10.

In *Faulkner v. Crumbley*, 357 Ga. App. 594 (2020), the Georgia Court of appeals explained preemption as follows:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws. Ga. Const. of 1983, Art. III, Sec. VI, Par. IV (a).

The doctrine of state preemption is based on the concept that statutes of the state legislature control over county [or city] ordinances. Generally, preemption is based

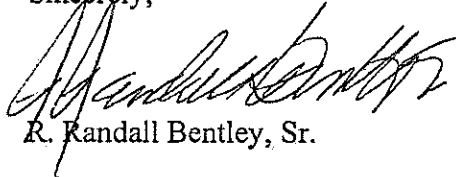
on legislative intent... . [S]tate law may preempt local law expressly, by implication, or by conflict. [A]n exception to the general rule of preemption [applies] when [the] general law authorizes the local government to act and the local ordinance does not conflict with general law. We have concluded that there was no conflict when the local law did not impair the general law's operation but rather augmented and strengthened it. [Internal citations and punctuation omitted].

Here, we have a general state law that protects the right to fly any flag, standard, color, shield, ensign, or other insignia of the Confederate States of America for decorative or patriotic purposes, either inside or outside of any place of business. Applying the test set forth above, the general law does not authorize the City to restrict the flying of confederate flags and the ordinance limiting the flags to three, conflicts with the general state law. Therefore, preemption would apply.

Likewise, any general state law authorizing the City to regulate signs and flags would still be subject to the exceptions carved out by O.C.G.A. § 50-3-10. A canon of statutory construction is that a "specific provision of law prevails over a more general one." *Jcs Enters. v. Vanliner Ins.*, 227 Ga.App. 371 (1997). Therefore, the more specific O.C.G.A. § 50-3-10 would take precedence over both the general state law authorizing the City to regulate flags and the City's sign ordinance.

Given the decision by the Cobb County Fire Marshal and the Building Official to issue the Certificate of Occupancy, and absent other properly grounded evidence of violations of law, no further inspections will be initiated based on any of the previously alleged claims or violations. New violations will be addressed pursuant to the Kennesaw Code of Ordinances, federal, and state law.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Randall Bentley, Sr.", written over the printed name.

R. Randall Bentley, Sr.

Enclosure

BLIGHT REPORT
(2879 Main Street)

This Blight Report is made pursuant to the Kennesaw Code of Ordinances (hereinafter "KCO"), Sec. 62-9, based on a report by at least five residents of the City asserting that the property located at 2879 Main Street was maintained in a blighted condition. An inspection was conducted to determine if the property was maintained in a blighted condition as defined by KCO Sec. 62-9(b)(1). Under the ordinance, blight means any urbanized or developed property that:

- a. Presents two or more of the following conditions:
 - 1. Uninhabitable, unsafe, or abandoned structures, or
 - 2. Inadequate provisions for ventilation, light, air, or sanitation, or
 - 3. An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe that the Governor has declared a state of emergency under the state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm, or
 - 4. A site identified by the Federal Environmental Protection Agency as a superfund site pursuant to 42 U.S.C. Section 9601, et seq. or environmental contamination to the extent that requires remedial investigation or a feasibility study, or
 - 5. Repeated illegal activity on the individual property of which the property owner knew or should have known; or
 - 6. The maintenance of the property is below state, county, or municipal codes for at least one year after written notice of the code violation to its owner;
- and
- b. Is conducive to ill health, transmission of disease, infant mortality or crime in the immediate proximity of the property.
- c. Property shall not be deemed blighted solely because of esthetic conditions. KCO, Sec. 62-9(b).

Based upon the criteria set forth in KCO Sec. 62-9(b)(1)(a)(1-6) above, the Building Official makes the following findings:

- (a)(1) The property is habitable, not unsafe as defined in KCO Sec. 18-28, and is not abandoned.
- (a)(2) Ventilation, light, air, and sanitation are adequate per section 403 of the 2018 IPMC and KCO Sec. 18-27.
- (a)(3) The property is in compliance. No written notice to the property owner regarding specific harm caused by the property has been issued.
- (a)(4) The property is not a superfund site. See, Exhibit 1 attached.
- (a)(5) Not applicable. See, Exhibit 2 attached.
- (a)(6) No written notices for violations have been outstanding for greater than one year.

EXHIBIT

"A"

To be designated as a blighted property, two or more of the conditions set forth in sections (a)(1-6) above must be present. The inspection confirmed that none of the six criteria are present. Therefore, the property is not maintained in a blighted condition.

Scott Banks, Building Official
City of Kennesaw, Georgia

Region	City	County	State	Zip Code	Site Name
04	AUGUSTA	RICHMOND	Georgia	30904	<u>ALTERNATE ENERGY RESOURCES INC.</u>
04	MACON	BIBB	Georgia	31206	<u>ARMSTRONG WORLD INDUSTRIES</u>
04	BRUNSWICK	GLYNN	Georgia	31520	<u>BRUNSWICK WOOD PRESERVING</u>
04	CAMILLA	MITCHELL	Georgia	31730	<u>CAMILLA WOOD PRESERVING COMPANY</u>
04	CEDARTOWN	POLK	Georgia	30125	<u>CEDARTOWN INDUSTRIES, INC.</u>
04	CEDARTOWN	POLK	Georgia	30125	<u>CEDARTOWN MUNICIPAL LANDFILL</u>
04	CEDARTOWN	POLK	Georgia	30125	<u>DIAMOND SHAMROCK CORP. LANDFILL</u>
04	ALBANY	DOUGHERTY	Georgia	31701	<u>FIRESTONE TIRE & RUBBER CO. (ALBANY PLANT)</u>

EXHIBIT

1

04	BRUNSWICK	GLYNN	Georgia	31521	<u>HERCULES 009</u> <u>LANDFILL</u>
04	BRUNSWICK	GLYNN	Georgia	31520	<u>LCP CHEMICALS</u> <u>GEORGIA</u>
Region	City	County	State	Zip Code	Site Name

04	ATHENS	CLARKE	Georgia	30622	<u>LUMINOUS PROCESSES, INC.</u>
04	MACON	BIBB	Georgia	31206	<u>MACON NAVAL ORDNANCE PLANT</u>
04	ALBANY	DOUGHERTY	Georgia	31704	<u>MARINE CORPS LOGISTICS BASE</u>
04	TIFTON	TIFT	Georgia	31794	<u>MARZONE INC./CHEVRON CHEMICAL CO.</u>
04	KENSINGTON	WALKER	Georgia	30728	<u>MATHIS BROTHERS LANDFILL (SOUTH MARBLE TOP ROAD)</u>
04	AUGUSTA	RICHMOND	Georgia	30906	<u>MONSANTO CORP. (AUGUSTA PLANT)</u>
04	AUGUSTA	RICHMOND	Georgia	30906	<u>PEACH ORCHARD RD PCE GROUNDWATER PLUME SITE</u>
04	BYRON	PEACH	Georgia	31008	<u>POWERSVILLE SITE</u>
04	HOUSTON COUNTY	HOUSTON	Georgia	31098	<u>ROBINS AIR FORCE BASE (LANDFILL #4/SLUDGE LAGOON)</u>

04	ALBANY	DOUGHERTY	Georgia	31707	<u>T.H.</u> <u>AGRICULTURE &</u> <u>NUTRITION CO.</u> <u>(ALBANY PLANT)</u>
Region	City	County	State	Zip Code	Site Name

Region	City	County	State	Zip Code	Site Name
04	BRUNSWICK	GLYNN	Georgia	31520	<u>TERRY CREEK</u> <u>DREDGE SPOIL</u> <u>AREAS/HERCULES</u> <u>OUTFALL</u>
04	ATLANTA	FULTON	Georgia	30318	<u>WESTSIDE LEAD</u>
04	FORT VALLEY	PEACH	Georgia	31030	<u>WOOLFOLK</u> <u>CHEMICAL WORKS,</u> <u>INC.</u>
Region	City	County	State	Zip Code	Site Name

Record List - Total:50

Incident	Nature	Area	Agency	Reported	Disposition	Incident address
2207-0207	VANDALISM/DAMAG	A	KENN	08:50:00 07/03/22	INA	2879 N MAIN ST
2206-1927	HARASSING/OBSCE	A	KENN	14:27:23 06/28/22	ACT	2879 N MAIN ST; WILDMAN'S
2206-1716	HARASSING/OBSCE	A	KENN	11:40:47 06/25/22	UNF	2879 N MAIN ST
2206-1715	HARASSING/OBSCE	A	KENN	11:14:51 06/25/22	ACT	2879 N MAIN ST
2206-1664	HARASSING/OBSCE	A	KENN	14:23:00 06/24/22	ACT	2879 N MAIN ST; WILDMANS
2206-1593	HARASSING/OBSCE	A	KENN	12:35:18 06/23/22	ACT	2879 N MAIN ST
2206-1265	CONTACT PERSON	A	KENN	11:16:54 06/18/22	CLO	2879 N MAIN ST; WILDMAN
2203-1662	SUSPICIOUS AUTO	A	KENN	00:12:31 03/28/22	CLO	2879 N MAIN ST NW; WILDMAN'S
2203-1121	THREATS	A	KENN	20:53:09 03/19/22	ACT	2879 N MAIN ST NW
2202-0278	SUSPICIOUS PERS	A	KENN	13:42:05 02/06/22	CLO	2879 N MAIN ST NW; WILDMAN'S
2201-0993	BUSINESS DISPUT	A	KENN	15:04:20 01/21/22	CLO	2879 N MAIN ST NW; WILDMAN'S
2112-0818	THEFT	A	KENN	11:41:39 12/17/21	ACT	2879 N MAIN ST NW; WILDMAN'S; WILDMANS
2111-0928	SUSPICIOUS AUTO	A	KENN	22:11:58 11/16/21	CLO	2879 N MAIN ST NW; WILDMAN'S
2109-1689	SUSPICIOUS PERS	A	KENN	22:50:22 09/29/21	ACT	2879 N MAIN ST NW
2108-0963	ALARM-AUDIBLE	A	KENN	19:18:25 08/17/21	CNL	2879 N MAIN ST NW; WILDMAN'S
2108-0923	ALARM-AUDIBLE	A	KENN	20:51:34 08/16/21	CLO	2879 N MAIN ST NW; WILDMAN'S
2108-0430	VANDALISM/DAMAG	C	KENN	09:41:01 08/08/21	CLO	2879 N MAIN ST NW
2107-1611	ALARM-AUDIBLE	C	KENN	21:28:57 07/25/21	CNL	2879 N MAIN ST NW; WILDMAN'S
2107-0387	VANDALISM/DAMAG	C	KENN	12:11:24 07/06/21	ACT	2879 N MAIN ST
2104-0241	CONTACT PERSON	A	KENN	09:54:20 04/04/21	CLO	2879 N MAIN ST NW; IFO WILDMAN'S
2102-1326	VANDALISM/DAMAG	A	KENN	09:12:54 02/20/21	CNL	2879 N MAIN ST NW; WILDMAN'S; WILDMANS
2009-1498	ALARM-AUDIBLE	A	KENN	10:42:05 09/28/20	UNF	2879 N MAIN ST NW; WILDMAN'S
2009-1224	THEFT	A	KENN	11:15:59 09/24/20	CLO	2879 N MAIN ST NW; WILDMAN'S
2009-0384	THEFT	A	KENN	16:52:16 09/08/20	ACT	2879 N MAIN ST NW; WILDMAN'S
2007-0572	CONTACT PERSON	A	KENN	11:34:44 07/11/20	UNF	2879 N MAIN ST NW; WILDMAN'S
2006-1415	WELFARE CHECK	A	KENN	13:14:27 06/30/20	CLO	2879 N MAIN ST NW; ACROSS FROM WILDMAN'S
2006-1098	CONTACT PERSON	A	KENN	10:48:34 06/24/20	INA	2879 N MAIN ST NW; WILDMANS
2006-0918	AUTO ACCIDENT	A	KENN	16:48:38 06/20/20	CLO	2879 N MAIN ST NW; WILDMAN'S
2006-0576	DISORDERLY PERS	A	KENN	14:18:54 06/13/20	CLO	2879 N MAIN ST NW
2006-0458	SUSPICIOUS PERS	A	KENN	11:17:50 06/11/20	ACT	2879 N MAIN ST NW
2006-0335	WELFARE CHECK		KENN	09:58:20 06/08/20	CLO	2879 N MAIN ST NW; WILDMAN'S
2006-0313	VANDALISM/DAMAG		KENN	18:40:53 06/07/20	UNF	2879 N MAIN ST NW; WILDMAN'S
2006-0195	Found Property	A	KENN	14:17:37 06/05/20	ACT	2879 N MAIN ST NW
2005-1730	PERSON ARMED	A	KENN	17:38:00 05/31/20	CAA	2879 N MAIN ST NW
2003-0821	THREATS	A	KENN	13:14:17 03/25/20	ACT	2879 N MAIN ST NW; WILDMANS
2002-0634	THREATS	A	KENN	12:07:49 02/18/20	CLO	2879 N MAIN ST NW; WILDMAN
1911-0979	ALARM-AUDIBLE	A	KENN	04:39:23 11/26/19	ACT	2879 N MAIN ST NW; WILDMAN'S
1908-0716	CONTACT PERSON		KENN	13:05:34 08/19/19	CLO	2879 N MAIN ST NW; WILDMANS
1907-0126	CONTACT PERSON		KENN	23:54:38 07/03/19	CLO	2879 N MAIN ST NW; IFO WILDMANS SHOP
1903-0339	ALARM-AUDIBLE	A	KENN	18:29:37 03/11/19	ACT	2879 N MAIN ST NW; WILDMANS
1807-0889	ILLEGAL DRUGS	A	KENN	11:33:34 07/23/18	CLO	2879 N MAIN ST NW; WILDMANS
1807-0170	THREATS	A	KENN	11:16:11 07/05/18	ACT	2879 N MAIN ST NW; WILDMANS
1806-1109	THEFT		KENN	14:26:08 06/28/18	ACT	2879 N MAIN ST NW; WILDMAN'S
1804-0191	ALARM-AUDIBLE	A	KENN	23:22:17 04/05/18	ACT	2879 N MAIN ST NW; WILDMAN'S
1802-0817	RAPE		KENN	11:32:06 02/23/18	UNF	2879 N MAIN ST NW; WILDMANS
1802-0062	CONTACT PERSON	A	KENN	10:31:36 02/02/18	ACT	2879 N MAIN ST NW; WILDMANS
1712-0207	SUSPICIOUS PERS		KENN	13:29:10 12/05/17	CLO	2879 N MAIN ST NW
1712-0202	THEFT	A	KENN	14:00:00 12/03/17	ACT	2879 N MAIN ST NW; WILDMANS
1708-0694	THEFT	A	KENN	11:19:52 08/16/17	INA	2879 N MAIN ST NW; CITY PARK ACROSS FROM TRACKS
1707-0676	THEFT	A	KENN	10:42:14 07/15/17	ACT	2879 N MAIN ST NW; WILDMANS