

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

LOGGED

FOR COMMISSION USE ONLY:

CASE NUMBER

C 2022-109

COMPLAINT FORM

STATE ETHICS COMMISSION
RECEIVED SEPT 18 2022 PM 4:39:10

COMPLAINANT: Tom Hutte

RESPONDENT: Kevin Sutton

ADDRESS: [REDACTED]

ADDRESS: [REDACTED]

TELEPHONE NUMBER: [REDACTED]

TELEPHONE NUMBER: [REDACTED]

TITLE: Property Manager

TITLE: City Council Member

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

- 1) Advocating a position to a Board which as a member of City Council he appoints. This occurred on 11-16-21
Appeal # 2-2021-52
- 2) Advocating a position to a board which as a City Council member he appoints. This occurred on 1-18-22
Appeal # 2-2022-06
- 3) Inaccurate SEI Reports 2021, 2020, 2019, 2018
Attachments

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF York

Personally appeared before me Tom Hutte who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this 16th day of Sept, 2022

[REDACTED SIGNATURE]

Complainant Signature

YEOW LAN VALINSKI
Notary Public, State of South Carolina
My Commission Expires 5/8/2025

Notary Public for South Carolina
My Commission expires 5/8/2025

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192

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C102form

Mr. Williams made the motion to approve the special exception for a Contractor's Office Type A use as presented by staff. Vice Chair Sutton seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

Mr. Williams presented the findings, specifically noting the proposed use was of lesser impact than other surrounding uses, there would be no impact to surrounding properties, and a fenced-in area would be added for overnight vehicle storage.

5. Appeal Z-2021-52: Request by John Kelly "Kel" Grenga Jr. for a special exception to establish a short-term rental at 1058 Eastwood Drive, which is zoned Single-Family Residential-5 (SF-5). Tax map number 628-15-01-011.

Staff member Melody Kears presented the staff report.

Vice Chair Sutton asked the number of bedrooms. Ms. Kears replied two bedrooms for a maximum of six people.

The applicant, Kel Grenga, 6942 Lakeland Drive, Charlotte, stated he had purchased the property as an investment and had completely rehabilitated the property. He stated he believed that short-term rental was the best option, noting specifically that people needed a short-term place to stay when they were looking for a new home or having work done on their existing property. He added that upkeep of short-term rental properties was better in order for hosts to receive good ratings by guests.

Mr. Hawthorne asked what security measures would be in place. Mr. Grenga stated outdoor security cameras would be installed.

Mr. Williams asked if he had met with the neighbors. Mr. Grenga replied that he had spoken with the next door neighbors the previous Sunday.

Mr. Williams asked if they were receptive. Mr. Grenga stated they were not very receptive.

Mr. Johnnie Clark Jr., 1270 Pinewood Road, spoke in opposition to the request, specifically that it was better to have homeowners or long-term renters in the neighborhood. He noted there were plenty of hotels in the area and that the neighborhood was filled with senior citizens and retired residents. He added concern over security and the fact that a police report could not be obtained for short-term renters.

Ms. Amy Hall, 1064 Eastwood Drive, spoke in opposition to the request, specifically because she and her parents are the next-door neighbor to the subject property. She stated her bedroom was approximately 16' from the driveway, so she could hear whenever anyone pulled into the driveway or occupied the side porch. She stated having short-term renters coming in and out of the area would be disturbing to the residents, adding that headlights would shine into their windows. She stated that the neighborhood was composed mainly of families who had owned properties there for many years. She expressed concern that larger gatherings would occur at the house with recreational use of alcohol. She stated property values would go down and would prefer a long-term renter or outright purchase to another homeowner. She added there were twelve hotels along Dave Lyle Boulevard and 133 short-term rentals listed on Airbnb for Rock Hill. She also expressed concern that the owner did not live in Rock Hill and that the host lived in Tega Cay.

Ms. Dorothy Wring, 1071 Eastwood Drive, spoke in opposition to the request, noting that as she works at night, she had concerns that the renters would observe her coming and going from her house. She stated the street was quiet after 8 p.m. and was afraid that there would be issues as no one would know the people staying at the property.

Mr. Frank Myers, 1071 Christopher Circle, president of the Spencer Estates Neighborhood Association, stated the association was in opposition to the request for three reasons, including the property being owned by an absentee landlord, Airbnb did not have a great reputation for guests, and they did not want this to be the first short-term rental in this neighborhood.

Mr. Kevin Sutton, 636 Atherton Way, spoke on behalf of City Council and his constituents, stating short-term rentals had not originally been allowed in the City at all, but that regulations had been put into place. He stated that while many neighborhoods had an HOA with covenants and restrictions with respect to allowing short-term rentals, many of the older neighborhoods did not have these types of regulations or an HOA to act on their behalf, so this was why the Zoning Board of Appeals was tasked with acting in this role. He added that long-term renters were more likely known by their neighbors, whereas with an Airbnb the tenant is not known. He cited sections of the short-term rental regulations whereas the City meant to protect the residential character of neighborhoods and to prevent the commercialization of neighborhoods, noting that neighborhoods should not be a place with transient occupancy.

Ms. Beverly Nolen, 510 Belleview Road, owner of 1071 Eastwood Drive, spoke in opposition to the request, specifically that she had a long-term renter for her property and had not had any issues, adding that an owner could make as much in rent for a long-term rental as a short-term rental. She added she believed this would be dangerous for the neighborhood.

Chair Crawford allowed for the applicant to respond. Mr. Johnathan Pacilio, 1132 Angelica Lane, Tega Cay, responded on Mr. Grenga's behalf as the host for the property. He stated the neighborhood had valid concerns, but that he currently operated a number of short-term rentals across the United States and had had up to 1000 guests in the past five years with no issues. He noted the long-term rentals did not bring in as much money as short-term rentals, and that in the event of any issues, it was easier to remove a short-term renter than a long-term one due to eviction laws in place. He added that Mr. Grenga would be renting the property either as a short-term or a long-term rental.

Ms. Nolen asked why the applicant had not looked at the short-term rental process before purchasing the property. Chair Crawford stated this was for the applicant to respond to.

Chair Crawford closed the floor for Board discussion.

Discussion by the Board centered around the opposition from the surrounding neighborhood and the difficulty in making all the findings to approve the use.

Mr. Williams made the motion to grant the special exception for a short-term rental use as presented by staff. Vice Chair Sutton seconded, and the motion failed unanimously by a vote of 0-6, with none of the Board members voting in favor of the request (Cullum absent).

Chair Crawford noted for the record that the Board had difficulty in making the findings for compatibility with the surrounding area.

6. Appeal Z-2021-53: Request by Karen Wright for a special exception to establish a short-term rental use at 764 Sumter Avenue, which is zoned Single-Family Residential-4 (SF-4). Tax map number 629-11-02-031.

Staff member Melody Kearse asked the Board for a deferral on this item, citing that staff had been presented with information from a resident that there were restrictions and covenants in place that may prohibit short-term rental uses in the Seventeen Acres neighborhood, and that because of this, the process could not move forward until a definitive answer from the neighborhood was provided.

Mr. Crawford asked if they have met with neighbors. The applicant stated that they have not but they are willing to. She noted that they did talk to some of the neighbors when they were working on the house after it was purchased. Mr. Crawford asked if she told the neighbors that it would be a short-term rental. The applicant stated that they did not because they didn't know at that time.

Chair Crawford opened the floor for public comment.

Frank Meyers, 1071 Christopher Circle, spoke in opposition to the request. He stated that they send out a newsletter eight times a year to all houses in Spencer Estates with his address and phone number. He stated that he has not been approached about this subject at all. Mr. Meyers stated that the application contained several mis-statements.

Kevin Sutton, 636 Atherton Way, spoke in opposition to the request and noted that he has heard from a couple neighbors who are opposed to the application. Spencer Estates has made it clear that they are opposed to short-term rentals. Mr. Sutton stated that he doesn't know anyone who wants to buy a house next to a short-term rental. He stated that the Board shouldn't approve short-term rentals when adjoining neighbors are adamantly opposed.

Mrs. Nguyen (applicant) asked what is considered a short-term rental. Ms. Kearse stated that short-term rentals are less than 30 days. Ms. Nguyen asked if she can still rent the house out on AirBNB if she rents it for 31 days. Ms. Kearse stated that we don't regulate anything over 30 days.

Mr. Williams made a motion to approve the request. The motion was seconded by Mr. Sutton.

Mr. Williams stated that he hasn't heard anything to demonstrate compatibility.

Mr. Crawford stated that the neighbors who are opposed are close-by to the property.

Mr. Cullum stated that the Sumter Avenue application was approved although there was neighborhood opposition and asked what's the difference. Mr. Williams stated that staff recommended approval of that one and the adjoining neighbors didn't have any problems with it and didn't know it was operating. Mr. Hawthorne stated that the neighbors didn't know this one was operating either. Mr. Williams noted that staff couldn't find compatibility in this case. Mr. Cullum stated that the two cases seem similar in that both had opposition. Mr. Crawford stated he didn't support the other one, but it is owner-occupied. Mr. Williams noted that the fact that the Sumter Avenue property is owner-occupied, and the owner is present when it is rented is another difference.

Mr. Crawford called for the vote and the motion failed by a vote of 2 in favor (Hawthorne & Cullum) and 4 opposed (Reeves absent).

11. Appeal Z-2022-07: Request by Josh Whitmore for a special exception to establish a short-term rental use at 1654 Eagles Place, H202, which is zoned Multi-Family 15 (MF-15). Tax map number 632-13-01-028.

Chair Crawford noted that this item was withdrawn by the applicant prior to the meeting and that no action is necessary.

12. Appeal Z-2022-08: Request by Gail Nathan for a special exception to establish a short-term rental use at 1038 S Jones Ave Ext., which is zoned Single-Family Residential-5 (SF-5). Tax map number 625-12-04-012.

Staff member Melody Kearse presented the staff report.

Gail Nathan, 1038 S. Jones Avenue Extension (applicant) was available for questions.

Ms. Brown asked the applicant how long she has owned the property and how many guests she has had. Ms. Nathan stated that she bought the property in December and hasn't rented it yet.

SEI Information

Kevin Sutton

K. Sutton has not filed complete SEI forms for 2021, 2020, 2019, or 2018. In each one he only lists his salary from the city; no private salary. According to the city website, he is employed in the wood industry. According to this article (<https://www.woodworkingnetwork.com/news/woodworking-industry-news/wood-product-giant-arauco-appoints-kevin-sutton-account-manager>) from 2017, he was named a national accounts manager at Arauco. No salary is ever listed for this position. According to the online tax website for York County, he pays \$1,046.73 in property tax annually, which doesn't seem feasible if his only income was the \$17,844.32 salary he's paid by the city.

Woodworking Industry News

Arauco names Kevin Sutton national accounts manager

By Robert Dalheim April 4, 2017 | 11:51 am CDT



MARKHAM, On. - Arauco North America's Kevin Sutton has accepted the position of national accounts manager.

Sutton joined Arauco in 2001, and has successfully held several sales positions during his tenure with the organization.

Arauco says the national accounts manager position is newly created. Sutton will provide a dedicated level of service to a selected number of accounts across the country. Sutton will begin his new role on May 1, and will be reporting to Arauco's VP of Sales & Marketing Kevin Shotbolt, who is based in the Marham, Ontario office.

Arauco is a global producer of wood products; supplying pulp, lumber, plywood, composite panels, and molding for architecture, design, construction, packaging and remodeling applications. Recent acquisitions of manufacturing plants in the U.S. and Canada, and recently in Europe and South Africa, has established the company as the second largest producer worldwide, reaching a capacity of 10.3 million m³. In 2015, wood business sales were \$2.6 billion, equivalent to 51 percent of consolidated sales.

Ward 3 - Kevin Sutton



Councilmember Kevin Sutton, is serving his seventh term as Ward 3 Council member on the Rock Hill City Council. Councilmember Sutton is a member of the Boards and Commissions Appointments Committee and Court Review Board. Councilmember Sutton is an 1992 graduate of Winthrop University with a Bachelor's Degree in Business Administration (Concentration: Sales and Marketing).

Councilmember Sutton is a Regional Sales Manager in the wood products industry. Councilmember Sutton is a lifelong resident of Rock Hill and at age 23, became the youngest member ever elected to the Rock Hill City Council.

Kevin Sutton

P.O. Box 3163 CRS

Rock Hill, SC 29732

Phone: 803-328-1428

Kevin.Sutton@cityofrockhill.com (mailto:Kevin.Sutton@cityofrockhill.com)

SC Ethics Act

From: Brian S. McCoy (bmccoy@mccoylawfirm.com)

To: tom.hutto@yahoo.com

Date: Wednesday, March 30, 2022 at 01:17 PM EDT

Hi Tom,

I found the following on the municipal association of South Carolina web site. If RH City Council has appointment authority over the Board of Zoning Appeals, then it would be a violation for a city council member to appear before the BZA.

Rules for Councilmembers Appearing Before Boards

The [SC Ethics Act](#) prohibits municipal elected officials from representing a person in front of a body over which the elected official has official responsibility. "Represent," under the law, means to make "an appearance, whether gratuitous or for compensation, before ... a local or regional government office, department, division, bureau, board, or commission." And "official responsibility" means "the direct administrative or operating authority ... to approve, disapprove, or otherwise direct government action." The [SC Ethics Commission](#) has interpreted this term to include the authority to appoint members.

The general rule is that elected officials should not appear before boards or commissions over which their council has the appointment authority. It does not matter whether the elected official is being paid for the representation, or even whether the official has discussed the matter with the involved parties.

There are some limitations and exceptions. The technical term "appear" means to actively speak on an issue under consideration, and likely doesn't prohibit the elected official from simply attending the meeting. Elected officials can represent themselves in purely personal affairs or those of immediate family. Finally, the elected official can appear before a subordinate board or commission in performing his official duties. That is, if the elected official is appearing as required by law or official function, the Ethics Act does not apply.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF:)

Complaint C2022-109)

Tom Hutto)
Complainant.)

Kevin Sutton)
Respondent.)

NOTICE OF HEARING

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 15, 2024 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(2) S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, did in Richland County, fail to report Respondent's private source of income on his 2019, 2020, 2021, and 2022 Statements of Economic Interests, in violation of Section 8-12-1120(A)(2).

COUNT TWO
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a November 16, 2021 meeting, in violation of Section 8-13-740.

COUNT THREE
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a January 18, 2022 meeting, in violation of Section 8-13-740.

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics Commission.

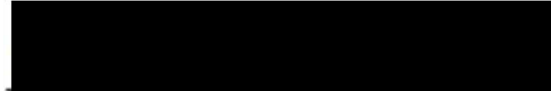


Meghan Walker Dayson, Executive Director
State Ethics Commission

Dated this 22nd day,
of May 2023.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on W. Mark White, Esquire, P.O. Box 790, Rock Hill, SC 29731 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 5th day of June 2023, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Rachael O'Bryan, Administrative Assistant
State Ethics Commission

Columbia, South Carolina

(803) 253-4192

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
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IN THE MATTER OF:)
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Complaint C2022-109)
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)
Tom Hutto)
Complainant.)
)
)
Kevin Sutton)
Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

**AMENDED
NOTICE OF HEARING**

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, October 17, 2024 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

**COUNT ONE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(2) S.C. CODE ANN., 1976, AS AMENDED**

That Kevin Sutton, Rock Hill City Councilmember, did in Richland County, fail to report Respondent's private source of income on his 2019, 2020, 2021, and 2022 Statements of Economic Interests, in violation of Section 8-12-1120(A)(2).

COUNT TWO
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

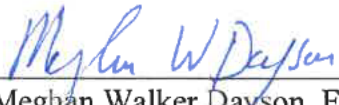
That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a November 16, 2021 meeting, in violation of Section 8-13-740.

COUNT THREE
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a January 18, 2022 meeting, in violation of Section 8-13-740.

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics Commission.



Meghan Walker Dayson, Executive Director
State Ethics Commission

Dated this 6th day,
of March 2024.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **AMENDED NOTICE OF HEARING** was duly served on W. Mark White, Esquire, P.O. Box 790, Rock Hill, SC 29731 by depositing said **AMENDED NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 11th day of March 2024, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Rachael O'Bryan, Administrative Assistant
State Ethics Commission

(803) 253-4192

Columbia, South Carolina

STATE OF SOUTH CAROLINA)	
COUNTY OF RICHLAND)	BEFORE THE STATE ETHICS COMMISSION
)	
)	
IN THE MATTER OF:)	
)	
Complaint C2022-109)	
)	
)	SECOND AMENDED
Tom Hutto)	NOTICE OF HEARING
Complainant.)	
)	
Kevin Sutton)	
Respondent.)	
_____)	

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 20, 2025 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(2) S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, did in Richland County, fail to report Respondent’s private source of income on his 2019, 2020, 2021, and 2022 Statements of Economic Interests, in violation of Section 8-12-1120(A)(2).

COUNT TWO
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a November 16, 2021 meeting, in violation of Section 8-13-740.

COUNT THREE
**REPRESENTATION OF ANOTHER BY A PUBLIC OFFICIAL BEFORE A
GOVERNMENTAL ENTITY**
SECTION 8-13-740, S.C. CODE ANN., 1976, AS AMENDED

That Kevin Sutton, Rock Hill City Councilmember, represented constituents opposed to requests for short-term rental exceptions before the Rock Hill Zoning Board of Appeals during a January 18, 2022 meeting, in violation of Section 8-13-740.

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

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A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics Commission.



Meghan Walker Dayson, Executive Director
State Ethics Commission

Dated this 13th day,
of November 2024.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **SECOND AMENDED NOTICE OF HEARING** was duly served on W. Mark White, Esquire, P.O. Box 790, Rock Hill, SC 29731 by depositing said **SECOND AMENDED NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 13th day of November 2024, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Rachael O'Bryan, Administrative Assistant

State Ethics Commission

(803) 253-4192

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
COMPLAINT C2022-109)
Tom Hutto,)
Complainant,)
Kevin Sutton,)
Respondent.)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

This matter comes before the State Ethics Commission (Commission) by way of a Complaint filed on September 16, 2022. Pursuant to Section 8-13-320(10)(i) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Complaint against Kevin Sutton (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing. Prior to the call of the case, Respondent and the Commission agreed to the following:

STATEMENTS OF FACT

1. At all times relevant, Respondent served on Rock Hill City (City) Council (Council).
2. City councilmembers, in relevant part, are tasked with enacting ordinances, including zoning ordinances, for the City's "promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare."¹
3. The City enacted its Zoning Ordinance pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, currently codified at S.C. Code Ann. §§ 6-29-310 et seq. (the "Enabling Act"). The Enabling Act authorizes the City to establish a board of zoning appeals (ZBA) "[a]s a part of the administrative mechanism designed to enforce the zoning ordinance." S.C. Code Ann. § 6-29-780(A) (authorizing a zoning ordinance to provide for the

¹ See S.C. Code Ann. § 6-7-10 (1976).

JX #1

creation of a board of zoning appeals). Pursuant to S.C. Code Ann. § 6-27-780, the ZBA consists of seven (7) members, all of whom are appointed by Council, hold terms that are set at the discretion of Council, and subject to removal for-cause by Council.

4. On November 16, 2021, Respondent attended a duly called meeting of the ZBA wherein the ZBA was considering a zoning request made by John Kelly "Kel" Grenga for a special exception to establish a short-term rental. According to the ZBA meeting minutes, Respondent appeared during public comment and stated that he was opposing the request "on behalf of City Council and his constituents." Respondent stated that the City's short-term rental ordinances were intended "to protect the residential character of neighborhoods and prevent the commercialization of neighborhoods." Respondent further stated that "neighborhoods should not be a place with transient occupancy." Five (5) other parties appeared during public comment to oppose the zoning request. The ZBA unanimously denied the zoning request.
5. On January 18, 2022, Respondent attended a subsequent duly called meeting of the ZBA wherein the ZBA was considering a zoning request made by Cuong Nguyen for a special exception to establish a short-term rental. According to the ZBA meeting minutes, Respondent appeared during public comment and stated that he had "heard from a couple neighbors who [were] opposed to the application" and that the ZBA "shouldn't approve short-term rentals when adjoining neighbors are adamantly opposed." One (1) other party appeared during public comment to oppose the zoning request. The ZBA denied the zoning request in a 4 - 2 vote.
6. The Commission's investigation did not reveal any evidence to suggest that Respondent's appearances caused the ZBA to vote against the zoning requests in either of the aforementioned ZBA meetings.
7. The Commission's investigation revealed that Respondent lived at least two (2) miles from the

JX #2

residential addresses subject to the special exceptions requested during the ZBA's November 16, 2021 and the January 18, 2022 meetings.

8. Respondent timely filed his Statements of Economic (SEI) Interests in 2019, 2020, 2021, and 2022 but failed to disclose any private sources of income therein. Following the filing of the Complaint, Respondent amended each of these SEIs to properly disclose his private sources of income and is now in compliance.²

CONCLUSIONS OF LAW

Based upon the Statements of Fact, the Commission concludes, as a matter of law:

1. At all times relevant, Respondent was a "public official" pursuant to Section 8-13-100(27). Therefore, the Commission has personal and subject matter jurisdiction.

2. Section 8-13-740(A) provides, in relevant part:

...

(5) A [public official] of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the [public official] has official responsibility except as required by law.

...

(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:

(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the [public official] is appearing;

(b) representation by a [public official] in the course of the [public official's] official duties;

(c) representation by the [public official] in matters relating to the [public official's] personal affairs or the personal affairs of the [public official's] immediate family.

3. Section 8-13-100(23) defines "official responsibility" as the direct administrative or operating

² The Complaint alleged, in part, that Respondent failed to disclose his private sources of income on his 2018 SEI. However, the Commission is bound by the four (4) year statute of limitations set forth in Section 8-13-320(9)(d). Accordingly, no actions occurring prior to September 16, 2018 are considered herein.

JL #3

authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

4. On November 16, 2021 and January 18, 2022, Respondent appeared and spoke on behalf of "City Council and his constituents." Accordingly, Respondent appeared on behalf of a "person," as defined in Section 8-13-100(24):

. . . an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

5. Respondent appeared for public comment during the November 16, 2021 and January 18, 2022 ZBA meetings and advocated for a position on behalf of others, thereby engaging in "representation," as defined in Section 8-13-100(28):

. . . making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

6. Section 8-13-1120(A)(10) of the Act requires public officials to disclose, in relevant part:

a listing of the private sources of income received in the previous year by the filer or a member of his immediate family.

7. Section 8-13-320(10)(l) allows the Commission to require a public official to pay a civil penalty of up to \$2,000.00 for each violation of the Ethics Act.

8. Section 8-13-130 allows the Commission to "levy an enforcement or administrative fee on a person who is in violation" of the Ethics Act.

DISCUSSION

The Commission found probable cause to charge Respondent with one (1) count of violating Section 8-13-740 for improper representation at the November 16, 2021 ZBA meeting; one (1) count of violating Section 8-13-740 for improper representation at the January 18, 2022 ZBA meeting; and

JSA #4

one (1) count of violating Section 8-13-1120(A)(10) for failing to disclose private sources of income on his 2019, 2020, 2021, and 2022 SEIs. In mitigation with regard to the violations of Section 8-13-740, Respondent argues his official duties compelled him to appear at the November 16, 2021 and January 18, 2022 ZBA meetings to speak on behalf of his constituents and Council. However, the Commission disagrees with this argument, finding it to be unsupported by the City ordinances. See Rock Hill Zoning Ordinances §§ 2.10.2A. (disqualifying councilmembers from ZBA membership) and 2.12.6E. (charging the ZBA with interpreting zoning ordinances).

Additionally, Respondent asserts that he believed he could participate in the ZBA meetings after receiving legal advice from the City's general counsel. Despite this position, Respondent concedes that, if the matter proceeded to a hearing, the Commission would likely find such participation violative of Section 8-13-740. While Respondent believes the Commission's finding would be reversed on appeal, Respondent prefers to avoid that process and enter into this Consent Order. Further, he has agreed that he will not make future appearances before the ZBA in his official capacity. The Commission disagrees that a court would reverse its finding and accepts that this Consent Order is the most efficient and effective outcome.

Finally, Respondent asserts that his failure to include his private sources of income was an oversight based on his understanding of the prior statute and that he quickly took action to correct his filings. The Commission acknowledges that Respondent amended his SEIs to disclose his private sources of income shortly after receiving the Complaint. In light of this mitigation and of Respondent's acknowledgments as set forth above, the Commission declines to proceed on the charged violation of Section 8-13-1120(A)(10).

DISPOSITION

The Commission hereby adopts the Statements of Fact, Conclusions of Law, Discussion, and

JAS #5

Disposition as agreed upon by the Respondent and finds Respondent in violation of two (2) counts of Section 8-13-740.

THEREFORE, the Commission hereby assesses Respondent a reduced civil penalty of \$400.00 (\$200.00 for each violation) and an administrative fee of \$600.00, for a total of \$1,000.00.³

AND IT IS SO ORDERED THIS 20th DAY OF February 2025.

STATE ETHICS COMMISSION



F. XAVIER STARKES, CHAIR



KEVIN SUTTON
RESPONDENT



W. MARK WHITE
RESPONDENT'S ATTORNEY

³ Respondent has remitted the total of \$1,000.00 to the Commission as of the full execution of this Consent Order. Respondent notes that he has remitted payment despite his disagreement with the Commission's finding.