EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No.: 2019-CP-10-03131
J. Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Order Denying Plaintiff's Motion for Preliminary Injunction**
	)	
Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.,	)	
	)	
Defendants.	)	

This matter came before the Court for hearing on June 27, 2019, on Plaintiff's Motion for Preliminary Injunction (the "Motion"). The hearing was attended by the Plaintiff, pro se, and the attorneys for all Defendants except Kenneth Craft Design Co. The Court allowed Plaintiff to serve and file a memorandum in support of her motion after the hearing, to respond to the memorandum in opposition presented at the hearing by Defendant Design Review Board of the Town of Sullivans Island (the "DRB").

This is an appeal from a final decision of the DRB approving the plans for construction of a house at 1616 Poe Ave. on Sullivans Island that is owned by Defendant Branco Damjanovic. Plaintiff seeks to halt the construction of the approved house. Plaintiff makes numerous allegations of alleged harm. These assertions are principally that the design is incompatible with the

RMD

surrounding neighborhood and will forever destroy the character of the historic district as well as the character of the area around Fort Moultrie, an historic site of national significance.[1]

Plaintiff put forward her own affidavit that contains sweeping opinions of the harm she perceives will ensue if the approved design is constructed. She has not presented the Court with any affidavits of qualified professionals supporting her personal opinions.

Having fully considered the filings, the arguments of Plaintiff and counsel, and the applicable law, the Court denies the motion.

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Bldrs. of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

Plaintiff has an adequate remedy at law through the statutory appeal process established in S.C. Code §6-29-900 that provides for appeals from decisions of the design review boards of local governments. Courts should reserve their equitable powers for situations when there is no adequate remedy at law. Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The right to appeal provides respondents with an adequate remedy at law . . . ." Strategic Res. Co., 367 S.C. at 545, 627 S.E.2d at 689.

---

[1] The Court has considered all of Plaintiff's allegations of harm but has used this general description of her allegations in the interest of brevity. The Court's failure to describe each one does not mean the ones not mentioned were not considered. The Court took them all into account in deciding the pending motion.

RMD2

Section 6-29-900(A) of the South Carolina Code provides: "(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review."

This statutory appeal process affords Plaintiff with an adequate remedy at law.

The Court further finds and concludes that Plaintiff has failed to make a competent showing of irreparable harm. Plaintiff's affidavit is replete with her personal opinion that this one house, if constructed, will destroy the character and integrity of the historic district, but Plaintiff has failed to submit any competent proof from a qualified historian or preservationist to support her broad assertions of harm. Additionally, her affidavit is mostly full of conclusory contentions without making any competent evidentiary showing of the specific facts that supposedly support Plaintiff's conclusory contentions of irreparable harm. Without the support of a qualified professional and an evidentiary basis for such conclusions, Plaintiff's opinions are entirely speculative.

For instance, our Court of Appeals has found similar testimony of a neighbor that property values will be negatively impacted by a proposed development is not sufficient to support a finding of irreparable harm. See Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 256, 125 S.E.2d 628, 634 (1962) ("There was some testimony as to depreciation in value of the property in the area in the event the supermarket is permitted to operate. This evidence consisted of expressions of opinion by individuals, and it is a matter of speculation as to whether any such depreciation would result."); Wyndham Enterprises, LLC v. City of N. Augusta, 735 S.E.2d 659, 663 (Ct. App. 2012)

RMD3

("At the hearing, residents testified as to their concerns regarding the proposed fireworks business. These concerns included an increase in traffic, a decline in property values, and a detrimental impact on the character of the surrounding area. The testimony proffered was based on speculation and opinion.").

The Court further finds and concludes Plaintiff has failed to establish a likelihood of success on the merits. "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, *that it has a likelihood of success on the merits*, and that there is no adequate remedy at law." Hook Point, LLC v. Branch Banking & Trust Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (emphasis added). "*When the legal right is doubtful*, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." In Interest of Lyde, 284 S.C. 419, 421, 327 S2d 70, 71 (1985) (emphasis added).

This Court's authority to overturn the discretionary decision is extremely limited. The Court may overturn the DRB's decision only if the DRB committed a legal error:

> In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence. Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct.App.1995). Furthermore, our standard of review of a board of architectural review's decision is the same as that of the trial court. Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach, 294 S.C. 475, 479–80, 366 S.E.2d 15, 18 (Ct.App.1988) (holding the appellate court will not reverse the circuit court's affirmance of the board unless the board's findings of fact have no evidentiary support or the board commits an error of law).

Blind Tiger, LLC v. City of Charleston, 621 S.E.2d 361, 362 (Ct. App. 2005).

While Plaintiff does make conclusory allegations of legal errors, Plaintiff has not identified a specific legal error by the DRB that would require this Court to reverse the approval of the

RMDH

application. The law affords boards such as the DRB considerable discretion. In the absence of clear legal error, the courts must defer to local zoning boards:

> The appellate court gives "great deference to the decisions of those charged with interpreting and applying local zoning ordinances." Gurganious v. City of Beaufort, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). This court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support or the board commits an error of law. Charleston Cty. Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

Arkay, LLC v. City of Charleston, 791 S.E.2d 305, 308 (Ct. App. 2016).

Here, Plaintiff has not made a prima facie showing by affidavit that the DRB committed a cleat legal error that would support a determination it is likely to succeed on the merits. A local architectural review board has considerable discretion when it is passing on the aesthetics of a proposed structure, an inherently subjective determination. Plaintiff may disagree with how the DRB used its discretion and may perceive that the design is incompatible with the surrounding community and historic area when the DRB did not perceive that it did, but these differences do not establish reversible legal error.

The Court's findings and conclusions in this Order are merely for purposes of the pending Motion. Plaintiff has failed to make a prima facie showing of all the elements to support a preliminary injunction. These findings and conclusions are not binding on the merits of the appeal which will be determined on the full record and be based on the showing and arguments Plaintiff makes at that time.

Conclusion

For the foregoing reasons, the Court denies Plaintiff's Motion for Preliminary Injunction.

August 13, 2019
Charleston, SC

R. Markley Dennis, Jr.
Circuit Judge

RMDs

EXHIBIT 2-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHAS.)

IN THE COURT OF COMMON PLEAS

J. DOE)
Plaintiff(s))

CIVIL ACTION COVERSHEET

2019 -CP- 10 - 3131

vs.

DESIGN REVIEW BOARD (DRB) ET AL)
Defendant(s))

(Please Print)
Submitted By: J. DOE
Address: C/O HOLMES
POB 187
SI, SC. 29482-0187

SC Bar #:
Telephone #: 843.883.3010
Fax #:
Other:
E-mail: N/A

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
2019 JUN 12 AM 9:58
JULIE ARMSTRONG
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete**

☑ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☑ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript of Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☑ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Commission (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Foreign Subpoenas (650)
- ☐ Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: _____ **Date:** 6/12/19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

EXHIBIT 2-A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 2019-CP-10-3131
J. Doe,	
Petitioner,	
-vs-	NOTICE OF APPEAL
Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.	
Respondents.	

FILED
2019 JUN 12 AM 9:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

John Doe, full-time resident and property owner in the affected Historic District, whose property is in the vicinity and is subject to a decision by the above-named DRB and who has a substantial interest in the decision, hereby appeals the DRB's approval of the application for 1616 Poe Avenue by oral vote on May 15, 2019.

Dated 6/12/19

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

EXHIBIT 2-B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-3131
J. Doe,	)	
Petitioner,	)	APPEAL PETITION, JURY DEMAND, MOTION, AND REQUEST FOR DECLARATORY RELIEF AND MEDIATION
-vs-	)	
Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.	)	
Respondents.	)	

FILED
2019 JUN 12 AM 9:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Petitioner/Appellant, complaining of the above-named Respondents, appeals the decision of the DRB approving the incomplete application for 1616 Poe Avenue, Sullivans Island, South Carolina. Moreover, pursuant to Constitutional, statutory, and governing law, petitioner respectfully makes motion and requests permission to proceed under the current caption as John Doe regarding the appeal. In accordance with South Carolina Code § 6-29-900, other statutes, Constitutional and governing law, notice of appeal, petition, jury demand, motion, request for declaratory relief, and request for mediation are hereby timely filed. Appellant would respectfully show unto the Court as follows:

EXHIBIT 2-B

PARTIES and JURISDICTION

1. Petitioner/Appellant John Doe, full-time resident and property owner in the affected Historic District, whose land in the vicinity is subject to a decision by the above-named DRB and who has a substantial interest in the decision, is adversely impacted by the DRB's approval of the application for 1616 Poe Avenue by oral vote on May 15, 2019.

2. Defendant DRB is an appointed board of architectural review for the Town of Sullivans Island, as defined in South Carolina Code § 6-29-900, et seq., South Carolina Code of Laws, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created pursuant to that legislation.

3. Defendant Alka Construction Co. is, upon information and belief, a South Carolina corporation, and is a necessary party to this action.

4. Defendant Svjetlana Bilic Damjanovic is, upon information and belief, a managing partner and principal of Alka Construction Co., and is a necessary party to this action.

5. Defendant Branko Damjanovic is, upon information and belief, a principal of Alka Construction Co., the owner of 1616 Poe Avenue, and a necessary party to this action.

6. Kenneth Craft, III, is, upon information and belief, architect and principal of Craft Design Studio and is a necessary party to this action.

7. The property at 1616 Poe Avenue on Sullivans Island is located in the Historic District and covers approximately one quarter acre in a block of five quarter acre lots. Four out of the five properties have ground floor residential square footage. Poe Avenue runs parallel to Atlantic Avenue and the property at 1616 Poe Avenue is in the fourth row from the ocean.

8. This Court has personal jurisdiction over the parties due to their location or activities in Charleston County.

9. Venue is proper as the real property involved is situated within Charleston County, the DRB is an appointed board of architectural review for the Town of Sullivans Island, in Charleston County, and the Appellant is a full-time resident and property owner in Charleston County. On information and belief, the individual defendants reside in Charleston County and Alka Construction Co. is, upon information and belief, a South Carolina corporation doing business in Charleston County.

10.This Court has subject matter jurisdiction of this action pursuant to South Carolina Code of Laws, Section 6-29-900, 1976, as amended, and other laws.

STATEMENT OF FACTS

11. Kenneth Craft III d/b/a Craft Design Studio, architect, applied for approval of unnecessary variances for plans for new construction at 1616 Poe Avenue, Sullivans Island, SC.

12. The 1616 Poe Avenue application has come before the DRB four times, specifically in December 2018, March 2019, April 2019, and most recently on May 15, 2019, as set forth below and throughout the petition.

13. Many members of the community attended the meetings in opposition and spoke against the application for reasons including inconsistency with the Comprehensive Land Use Plan, incompatibility with the Historic District and surrounding community in a flood zone, violations of the Zoning Ordinances (ZO's), failure to address stormwater drainage and flooding issues with hard rain events, and public health and safety including flooding of roads with hard rain events and environmental concerns.

14. In December 2018, the DRB denied the application because of, including but not limited to, violations of the Historic District standards in a flood zone, violations of the ZO's, and adverse impact on the neighboring properties and community regarding mass, height, scale, character, and incompatibility.

15. At the March 2019 meeting of the DRB, members of the community attended and presented opposition, including but not limited to, the applicant failed to comply with legal notice by failing to provide a complete application and publishing on the Town's website an incomplete application, thereby denying full and fair notice to the community and the public at large. The application itself provides that "incomplete submittals ... will not be part of the meeting agenda." Further, the applicant, who is the architect, failed to certify the veracity of the application. After considering objections of property owners behind, in front, to either side, contiguous, surrounding, in the vicinity, and in the community, conceptual approval was given with express directions for corrections to the plans. While some minor changes were made thereafter, the DRB's recommendations were materially and substantially ignored. Members of the DRB erroneously stated they believed they could not deny the application which is error of material fact and law. That approval was based on error of law. Moreover, failure to comply with legal notice and/or certification invalidates the approval.

16. That March 2019 DRB meeting began an hour earlier than usual and continued late into the evening until one board member jumped up and walked out stating, "I can't take this anymore." On information and belief, in the history of the DRB over 15 years or more, there has never been a board member who walked out stating, "I can't take this anymore." The integrity of the DRB application process is threatened when applications cannot be given the thorough review and attention each application deserves due to inadequate/unreasonable time constraints. Objection to the "marathon" session was

placed on the record and supports request for rehearing which was unreasonably denied. That objection also supports request herein for remand.

17. In April 2019, members of the community timely submitted information to the DRB prior to the April meeting; that information was not forwarded to the DRB in the usual and customary manner as had been done prior to previous meetings on 1616 Poe Avenue. It is unclear why. Members of the community in attendance were not aware of this material fact until after the meeting. As such, the decision of the DRB was uninformed because the DRB and the community were deprived of material information and opposition at a critical time which could have and should have led to a different result and denial. Despite notice the application was incomplete, the applicant once again failed to provide a complete application. Many members of the community mistakenly believed that the applicant had incorporated the DRB's requested corrections and were in compliance with the ZO's in good faith. Because the applicant published an incomplete and inconsistent application, many members of the community were misled. Failure to comply with legal notice invalidates the decision.

18. On May 15, 2019, members of the community appeared and information was presented to the DRB in opposition. It was explained that because the previous information submitted to the DRB in advance of the April meeting never made it to the DRB without explanation, the copy of additional new information was submitted to each member at the meeting. This time a member of the DRB stated he was dismissing and not considering the community's material opposition because it was not submitted in advance. Under these circumstances, it was arbitrary and/or unreasonable to ignore the neighborhood's and the community's meritorious concerns and proffered evidence. Moreover, lack of transparency and failing to submit property owners' documents to the DRB is unreasonable/arbitrary. Failure to provide advance notice that opposition would be wholly dismissed if not submitted in advance is unreasonable and sets a trap for the unwary. The DRB is negatively reinforcing community input and applying rules in an arbitrary manner without prior notice; objection is hereby entered which supports request for remand. Last minute submissions by applicants have been accepted, considered, and even encouraged while submissions by members of the community have been cavalierly dismissed in violation of equal protection for members of the community and in violation of notice requirements. Appellant asserts prejudicial error.

19. At the May 15, 2019, DRB meeting, a neighboring property owner who had spoken at a previous meeting was out-of-state. His position was entered into the record:

My wife and I are looking forward to meeting our new neighbors. Our hopes and expectation are they respect the setback and height restrictions that are in place and our expectation of the DRB is they do their part to enforce the guidelines so we maintain our great island. My main points are as follows...

i. There are setback requirements in place for a reason. If the homeowner wants to achieve a certain size house, then the DRB should deny their request and encourage

them to find a lot on the island that suits their square footage requirements. There are other lots on the island.

ii. What is the real reason why the homeowners need the variance? The only logical reason I can see is they want more space. If it's not for space purposes, then they should design something in accordance with the building guidelines. It's that simple. If it is for space, the DRB should deny their request and encourage the property owners to obtain a larger property on the island to build their ideal home.

iii. What are the guiding principles that the DRB uses to determine when a setback or height restriction should be granted versus denied? What are the extenuating circumstance for this homeowner where they need to go beyond the setback and height restrictions? Knowing this would be beneficial. I have not heard or read anything that makes this a unique situation. This looks to be a situation where the homeowner is doing this for either (a) an investment / future profit potential via a sale or (b) trying to get the best deal possible by purchasing a smaller lot and building a larger home or (c) disregarding the rules and guidelines that have been established to maintain the historic and consistency of our unique island. If any of these is the case, then the homeowner should be denied and encouraged to re-submit their plans once they have obtained a lot that can support their larger design where setback or height exceptions aren't needed.

iv. Lastly, I'm not a lawyer however does the Town open itself up to potential lawsuits by approving some exceptions and denying others under similar circumstances? It is my understanding that some homeowners have been denied variances similar to this, so if this is approved, are we at at risk?

20. On May 15, 2019, one or more members of the DRB expressed the erroneous belief that the members of the DRB were compelled by law to approve the subject application before it; and such belief was an error of law. The DRB did not adequately consider the requirements of the Historic District standards and the DRB was denied material information timely submitted at a critical point prior to preliminary approval and again prior to final approval. As a result, the DRB was denied the opportunity to adequately consider the best interests of the community at large. Multiple members of the DRB expressed concerns. It was noted for the record there was "a lot of opposition" to this application. It was also noted by members of the DRB for the record that approval of the application for 1616 Poe Avenue would forever mar the Historic District, the mass, scale, density, character, and compatibility, and establish bad precedent out of character for the existing Historic District neighborhood. All done over the timely objections of and to the extreme prejudice of the adversely affected property owners, including those behind, in front, to either side, contiguous, neighboring, and surrounding properties. Some members of the DRB expressed the erroneous belief that they were technically bound to approve the application and that members of the DRB were compelled by law to approve the application before it, thereby changing the Historic District neighborhood in perpetuity on the applicant's incomplete/inconsistent application. The Appellant asserts error of law.

21. Over objections by adjacent, contiguous, and surrounding property owners, despite objections to yet another incomplete application, over objections to failure to comply with notice requirements, and over objections to failure to comply with Historic District standards and the ZO's, the incomplete, inconsistent application was approved. An accurate and complete application creates a record for future property owners, for the Town, and for future reference; that consideration alone supports remand which is hereby requested. After timely request for rehearing was unreasonably denied, timely appeal followed.

22. Jury trial is demanded on taking claims.

STANDARD OF REVIEW

23. The standard of review for statutory interpretation is as follows. "An issue regarding statutory interpretation is a question of law." Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005)). As to questions of law, this court's standard of review is de novo. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

24. The standard of review for declaratory judgment is as follows. "The decision to grant a declaratory judgment is a matter [that] rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse."4 Eargle v. Horry Cty., 344 S.C. 449, 453, 545 S.E.2d 276, 279 (2001) (quoting Garris v. Governing Bd. of S.C. Reinsurance Facility, 319 S.C. 388, 390, 461 S.E.2d 819, 820 (1995)). "An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the [c]ourt's order is based on factual conclusions without evidentiary support." City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000). Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n (S.C. App., 2019)

25. The Court may apply the same standard to appeal of DRB decisions that it would apply to Zoning Board decisions. "A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion."*Peterson Outdoor Advertising v. City of Myrtle Beach*,327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165,173-74, 656 S.E.2d 346, 351(2008)(applying Zoning Board standards). Further, "a decision of a municipal [Z]oning Board will be overturned if it is arbitrary, capricious,

has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*,335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

26. Although a review Court gives deference to those applying local zoning ordinances, ordinances are subject to "a broader and more independent review . . . when the issue concerns the construction of an ordinance." *Eagle Container LLC v. County of Newberry*,379 S.C. 564, 568 666 S.E.2d 892 894 (2008),cited in *Mikell v. County of Charleston*, 386 S.E.2d 326, 687 S.E.2d 326, 329 ((2009).

GROUNDS FOR APPEAL

I. Error of Law

27. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

28. On information and belief, the applicant failed to remit all or part of the required application fee, which is jurisdictional. Accordingly, without the required fees paid in full prior to the hearing, there is no jurisdiction and the decision is invalid.

29. As a threshold matter, the applicant is required to submit a complete application which was not done. The application itself states incomplete submittals <u>WILL NOT BE PART OF THE MEETING AGENDA</u>. As such, no valid decision can be made on an incomplete application. An incomplete application is not a mere technicality because, including but not limited to, it provides notice to members of the DRB and the public and it creates an accurate record for future reference.

30. Moreover, notice requirements were not met because, including but not limited to, the applicant published an incomplete application on the Town's website which is not fair notice to adjacent and neighboring property owners, to the community, or to the public at large.

31. It was error of law for the DRB to deny Appellant's timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO's), and assists the intended beneficiaries of the ZO's, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community. Remand is hereby requested.

32. Significantly and materially, the subject property located at 1616 Poe Avenue, Sullivans Island (SI), SC, is in the Historic District with more stringent guidelines, requirements, and strict compliance under the Historic District.standards and zoning

ordinances in effect. Regrettably, there is material and/or substantial non-compliance to the extreme prejudice of the Historic District, adjacent and neighboring property owners, and the community of Sullivans Island, if not locals, the tourist industry, and the State.

33. Adjacent and neighboring full-time residents, including the petitioner, have a substantial interest in and are adversely affected by non-compliance with, including but not limited to, the Historic District standards, the comprehensive plan, and the zoning ordinances.

34. The applicant requested variances unnecessarily. Requirements for the requested variances have not been met, and there are no obvious obstacles to respecting the Town's zoning ordinances, thoroughly researched, vetted, and voted. Variances beget variances.

35. Moreover, the anticipated change from V to AE Flood Zone has not been sufficiently considered, if at all.

36. The developers and/or their investors refused the Board's reasonable request for the developers to meet with members of the community.

37. The applicant wrongfully characterized the Historic District community as a teardown and for the record, the last application in the neighborhood was not a teardown.

38. The decision of the DRB was based on an error of law, in that some members of the DRB stated they believed they had no legal basis on which they could deny the plans because, including but not limited to, the applicant had been given approval for non-compliance with the Zoning Ordinances (ZO) by the Zoning Administrator (ZA) or the staff and/or the Zoning Administrator (ZA) misconstrued/misrepresented that all the technical requisites of the ZO had been met. The record reflects the requirements of the ZO had not been met, including but not limited to, the requirements for legal notice and the requirements for a complete application prior to the public hearing. The plaintiff is prejudiced thereby.

39. The DRB is the appeal mechanism for ZA and/or staff decisions. Clearly, if the DRB has authority to hear and act on an appeal, it has authority to disagree with a ZA and/or staff decision. The DRB has authority to approve or deny actions or decisions made by the ZA and/or staff.

40.Contrary to the mistaken belief of some or all of the members, the DRB does have authority to deny plans that they believe are not in the best interests of the community.

41.The Comprehensive Land Use Plan. The DRB has authority to deny applications.

a. The Charleston County Comprehensive Land Use Plan is mandated by South Carolina Code of Laws Section 6-29-510, et. seq. and provides that, "All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the

future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners." S. C. Code Section 6-29-510(E).

b. The Comprehensive Plan is adopted by Ordinance and mandated by State law, as S.C. Code Ann. 6-29-510 which provides "the local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its jurisdiction". Pursuant to state law, the DRB has every right to consider the applicable portions of the Comprehensive Plan while deciding matters before it. The Comprehensive Plan is a policy document which contains, including but not limited to, density considerations.

c. The 1616 Poe Avenue property and Appellant's property are located in the Historic District.

d. All of the area concerned with this appeal is designated a V Flood Zone, transitioning to AE.

e. The density is the requirement for maintaining the character of the area and defining potential impacts on the infrastructure. Allowable density is defined by the citizens (property owners) in a zoned area using a legally approved process. The applicant failed to meet the requirements for the requested variances which adversely affect density and, therefore, should be denied.

f. The Plan is a tool to promote and maintain future growth and improve the quality of life for all residents of Charleston County, and serves as a reference guide and a decision making tool for local government officials.

g. The DRB has, in fact, ignored guidelines which would have and should have led to a different outcome with denial of unnecessary variances. Variances beget variances.

42. It was clear from more than one statement from members of the DRB during the hearings that they desired to deny approval of the application, but believed they were compelled by law to approve it; and such belief was an error of law.

43. Moreover, applicants knowingly made material misrepresentations and/or material omissions which were not known until after the approval and which could have and would have led to a different result. The decision is based on error of material fact and/or law and should be reversed.

44. Appellant requests that this Court remand the decision to the DRB with instructions that the DRB can and should consider the policies in the comprehensive plan, Historic District standards, and the ZO's as guidelines for decisions, and the DRB is not bound by the recommendations of the Zoning Administrator (ZA) and/or staff, particularly given that the Applicant has not met the requirements for the variances he requested.

II. Abuse of Discretion

45.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

46.The decision of the DRB giving preliminary approval of the application for 1616 Poe Avenue was an abuse of discretion.

47. The members of the audience in opposition were clearly within the description of "residents of Sullivans Island" for whom the Plan is intended to preserve and promote the quality of life; the developer property owner and architect are registered S.C. corporations. The residents of Charleston County described for the Commission the detriment to their "public health, safety, economy, good order, appearance, convenience, morals, and general welfare" that the application would cause, as stated above, yet the DRB seemingly failed to give consideration to the impact on the Sullivans Island residents behind, in front, to either side, contiguous, and surrounding 1616 Poe Avenue. If the future residents are considered in absentia, their public safety is in jeopardy, including but not limited to, based upon testimony given at the hearings regarding Historic District standards in a flood zone with extreme stormwater drainage issues adversely affecting the adjacent and surrounding full-time residential neighborhood and property owners as well as plaintiff's ingress and egress and motor vehicle access to garage, home, and property along with impaired and/or unsafe navigation of and impaired evacuation via streets, roads, and thoroughfares on the island which flood when there is a hard rain.

48.The DRB ignored a most important part of the Historic District standards. The application is incomplete, including but not limited to, regarding compliance with the Historic District standards. The applicant has not met the requirements for Historic District standards and is materially non-compliant. The DRB failed to comply with the state statute for "the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners."

49. Land development regulations were authorized by state government, among other reasons, "to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties." SC Code 6-29-1120(5), 1976, as amended. Aerial maps shown by the applicant and pointed out by statements of the community demonstrate that this application is out of harmony and incompatible with the existing Historic District, with the smaller lot size, and with the applicable ZO. The applicant has failed to meet the requirements for the requested variances.

i. Evidence was provided that clearly indicated a density and usage out of harmony with the Historic District.

ii. Aerial maps and testimony demonstrated the existing Historic District in a flood zone. Four out of five properties on that block of smaller lot sizes have ground floor living

space; the application is not in harmony with either the comprehensive plan or the current usage. Testimony included adverse impact on the plaintiff and other full-time residents and surrounding property owners resulting in wrongful regulatory taking.

iii. A professional engineer has concluded the following:

1. Impermissible alteration of the historical drainage patterns, including but not limited to, direction and/or flow rate will adversely impact neighboring properties in a flood zone. The neighbors' request for evaluation of the drainage issues fell on deaf ears though such evaluations and certifications have been routinely requested and granted to others.
2. Inadequate stormwater management and excess stormwater discharge in a flood zone causes adverse effects on, including but not limited to, the water supply, water quality, and environmental concerns.
3. It was pointed out that because of the slope, any excess stormwater runoff would exacerbate existing flooding with hard rains, including but not limited to, threatening existing single story, ground floor living space and homes in close proximity and in the vicinity where all are in a flood zone.

50. The application wrongfully claims the established neighborhood of full-time residents is a tear-down. For the record, the last application was not a tear-down and was compatible with the existing scale and character.

51. In failing to, including but not limited to, require a complete application with adequate notice for the benefit of interested parties, the DRB ignored the comprehensive plans, reference guides, and standards for the Historic District in a flood zone, and approved an incompatible application which is inconsistent with Historic District standards, and thereby abused its discretion.

III. Arbitrary

52.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

53. The decision of the DRB in ignoring concerns voiced by property owners behind, in front, on either side, contiguous, surrounding, and in the vicinity of 1616 Poe Avenue ignores the comprehensive plan, Historic District standards in a flood zone, and the ZO's and guidelines and, therefore, is arbitrary.

54. A previous application had been denied. With the next application, the DRB requested changes to mass, size, scale, character, and compatibility. The approval of the incomplete May 15, 2019, application without substantive measures to bring mass, height, scale, character, and compatibility into compliance, all with sustained community opposition, was arbitrary.

55. One or more members of the DRB expressed the false belief and wrongfully stated that the DRB could not or should not deny the application in order to comply with the comprehensive plan, Historic District standards, and/or ZO's.

56.The application as approved is internally inconsistent, incomplete, and includes attributes and elements which were previously denied. The DRB's denial of the neighbors' reasonable request for a complete application was arbitrary and in violation of governing law.

57. A community member noted that the DRB's denial of another applicant's variance requests while granting the developer's unsubstantiated and unnecessary variance requests is arbitrary and contrary to applicable law.

58. It was arbitrary for the DRB to deny Appellant's timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO's), and assists the intended beneficiaries of the ZO's, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community which could have and would have led to a different result. Remand is hereby requested.

TAKING CLAIMS

59.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

60. Jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named Respondents as the trier of fact may deem just and proper.

REQUEST FOR DECLARATORY RELIEF

61.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

62. The Appellant has standing to request a Declaratory Judgment pursuant to S. C. Code Section 15-53-10 et seq. based upon the full-time resident's interests which are adversely affected by the decision of the DRB.

63. The Appellant has standing under the Declaratory Judgment Act to seek a uniform standard for the DRB's application of the comprehensive plan, Historic District standards, ZO's, and applicable law, including but not limited to, design standards under state law for, including but not limited to, roadways.

64. The Appellant requests that this Court make a finding that the DRB has authority to and should take into consideration the comprehensive plan, the Historic District standards, the purposes and intent of the land development regulations, and the ZO's, all as adopted by the governing bodies, when making decisions regarding applications to the DRB. Moreover, the Appellant requests that this Court make a finding that the DRB is not bound to "rubber stamp" the decisions of the ZA and/or staff, but rather to act in the best interests of the Historic District, residents, and community to assure, in general, the prudent and judicious development of the Town.

WHEREFORE, your Appellant requests that this Court:

a. issue its order reversing the decision of the DRB approving the 1616 Poe Avenue application or in the alternative, issue order for remand,

b. issue a declaratory judgment providing relief requested,

c. issue order for good faith mediation,

d. jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named respondents as the trier of fact may deem just and proper, and

e. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Sullivans Island, South Carolina

Dated 6/12/19

EXHIBIT 2-B

2 April 2019

Design Review Board (DRB)
Town of Sullivans Island
Sullivans Island Town Hall
2056 Middle Street
Sullivans Island, SC 29482

Re: 1616 Poe Avenue

Dear Mr. Chairman and Honorable Members of the DRB:

Thank you for your kind deliberation of this worthwhile request. We, the residents and property owners living in the surrounding area, respectfully ask this request be entered into the record when you consider the pending requests for the above property. We believe there is precedent for the DRB acknowledging the existing, more modest scale for houses in our neighborhood. We request that any decisions made with regards to proposed new construction on the above property:

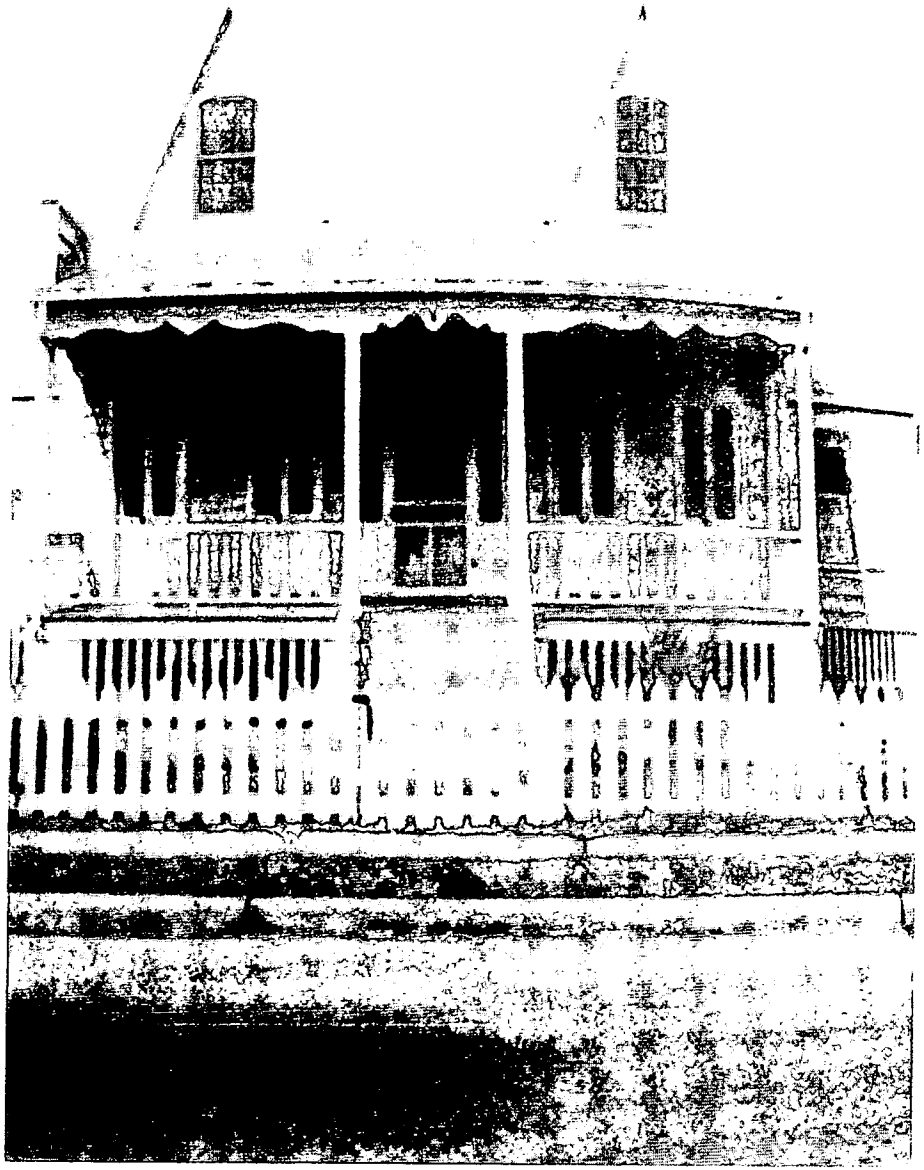
i. respect the stated zoning standards without authorizing changes to accommodate increase;

ii. require strict adherence to existing zoning standards regarding the adding of additional fill to any properties; and

iii. require maintenance of the historical drainage patterns in all respects.

If you have any questions or would like for a representative from the neighborhood to appear and testify in person, please contact us. Again, thank you for your consideration. With best personal regards, we remain

Yours very truly,



2002 Middle Street - built 1885

2673 Atlantic Avenue - built 1889

EXHIBIT 2-B

The design for 1616 Poe does not meet these DRB standards and other DRB guidelines.

Sec. 21-111. Standards of Neighborhood Compatibility

Where this Ordinance grants the Design Review Board discretion to modify a Zoning Standard or a Design Standard, the Board shall determine whether or not the proposed modification is compatible with the neighborhood. In making this determination the Board shall consider, with reference to adjoining lots, lots facing across the street, and lots in the immediate vicinity:

A. The pattern of setback, foundation elevations and building heights;
B. The massing and orientation of structures;
C. Fenestration (windows) and doorway spacing and alignment patterns;
D. The placement and use of porches, decks and patios;
E. The placement and alignment of driveways;
F. The treatment of front and side facades;
G. Where appropriate, the types of roofs, the roof pitches, and other aspects of roof design;
H. Where appropriate, distinctive architectural styles that characterize a street or neighborhood; and
I. Such other factors as the Board may consider relevant to defining the character of the neighborhood.

Does not meet the minimum of standards: A, B, D, F, G, H,

G. Does not meet standards of: Flat roofs, multiple roof styles, incongruous architectural styles, Side facades are not articulated

With all due respect this design needs to go back to the drawing board and we request the DRB to deny the application.

(6) If the Design Review Board finds that the application is inconsistent with one or more of the Zoning Ordinance Standards which it does not have the power to modify, or if the Design Review Board determines that a requested application does not meet the Standards of neighborhood Compatibility as described in Sec. 21-111, the Design Review Board shall

(a) Deny the application accompanied by suggested changes that might be made to the application and/or variances that might be sought that would make the application more appropriate and consistent with the spirit of the Zoning Ordinance; or,

(b) Approve the application subject to a variance being granted by the Board of Zoning Appeals modifying the required standards.

Our neighborhood as stated before is more than happy to work with the applicant in achieving a great design for Sullivan's Island and our historic neighborhood.

91040

EXHIBIT 3-A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

Case No. 20019-CP-10-03131

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

NOTICE OF APPEAL

The Appellant appeals the order entered August 19, 2019, with notice postmarked August 22, 2019.

Dated September 18, 2019.

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Counsel of Record for Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401

GT Walker
66 Hasell St.
Chas., SC 29401

--

EXHIBIT 3-A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

Case No. 20019-CP-10-03131

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 3-A

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 3016 Shiloh Ln., Chas., SC 29414 and 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated September 18, 2019.

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 3-A

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Doe v. Alka Const. et al
Case No. 2019-CP-10-3131

Dear Jenny:

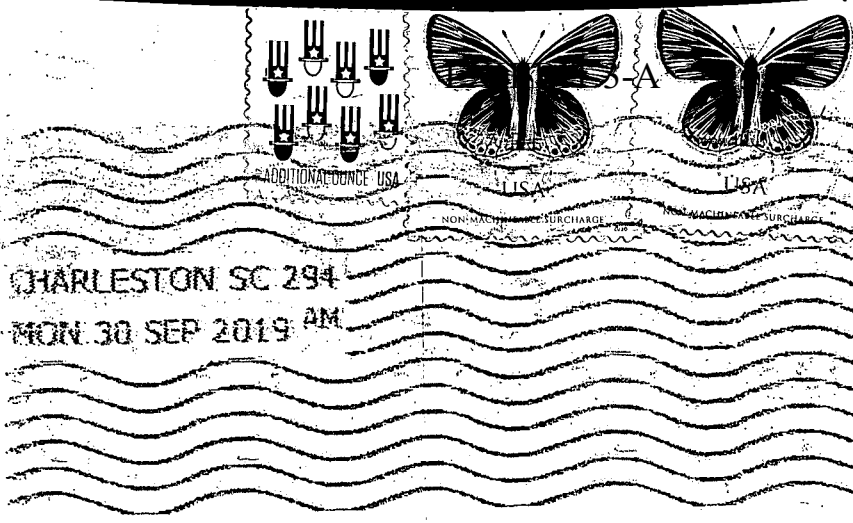
Enclosed for filing is Notice of Appeal in the above case. Also, enclosed are the following:

1) Certificate of Service,
2) Copies,
3) The filing fee of $250.00,
4) Copy of the order, and
5) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Clerk of Court, Charleston County
100 Broad St., Ste. 106
Chas., SC 29401



RECEIVED
OCT 03 2019
SC Court of Appeals

Clerk, SCCOA
1220 Senate St.
Columbia, SC
29201

EXHIBIT 3-A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No.: 2019-CP-10-03131
J. Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Order Denying Plaintiff's Motion for Preliminary Injunction**
	)	
Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.,	)	
	)	
Defendants.	)	

This matter came before the Court for hearing on June 27, 2019, on Plaintiff's Motion for Preliminary Injunction (the "Motion"). The hearing was attended by the Plaintiff, pro se, and the attorneys for all Defendants except Kenneth Craft Design Co. The Court allowed Plaintiff to serve and file a memorandum in support of her motion after the hearing, to respond to the memorandum in opposition presented at the hearing by Defendant Design Review Board of the Town of Sullivans Island (the "DRB").

This is an appeal from a final decision of the DRB approving the plans for construction of a house at 1616 Poe Ave. on Sullivans Island that is owned by Defendant Branco Damjanovic. Plaintiff seeks to halt the construction of the approved house. Plaintiff makes numerous allegations of alleged harm. These assertions are principally that the design is incompatible with the

RMD

surrounding neighborhood and will forever destroy the character of the historic district as well as the character of the area around Fort Moultrie, an historic site of national significance.[1]

Plaintiff put forward her own affidavit that contains sweeping opinions of the harm she perceives will ensue if the approved design is constructed. She has not presented the Court with any affidavits of qualified professionals supporting her personal opinions.

Having fully considered the filings, the arguments of Plaintiff and counsel, and the applicable law, the Court denies the motion.

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Bldrs. of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

Plaintiff has an adequate remedy at law through the statutory appeal process established in S.C. Code §6-29-900 that provides for appeals from decisions of the design review boards of local governments. Courts should reserve their equitable powers for situations when there is no adequate remedy at law. Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The right to appeal provides respondents with an adequate remedy at law . . . ." Strategic Res. Co., 367 S.C. at 545, 627 S.E.2d at 689.

---

[1] The Court has considered all of Plaintiff's allegations of harm but has used this general description of her allegations in the interest of brevity. The Court's failure to describe each one does not mean the ones not mentioned were not considered. The Court took them all into account in deciding the pending motion.

RMD2

Section 6-29-900(A) of the South Carolina Code provides: "(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review."

This statutory appeal process affords Plaintiff with an adequate remedy at law.

The Court further finds and concludes that Plaintiff has failed to make a competent showing of irreparable harm. Plaintiff's affidavit is replete with her personal opinion that this one house, if constructed, will destroy the character and integrity of the historic district, but Plaintiff has failed to submit any competent proof from a qualified historian or preservationist to support her broad assertions of harm. Additionally, her affidavit is mostly full of conclusory contentions without making any competent evidentiary showing of the specific facts that supposedly support Plaintiff's conclusory contentions of irreparable harm. Without the support of a qualified professional and an evidentiary basis for such conclusions, Plaintiff's opinions are entirely speculative.

For instance, our Court of Appeals has found similar testimony of a neighbor that property values will be negatively impacted by a proposed development is not sufficient to support a finding of irreparable harm. See Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 256, 125 S.E.2d 628, 634 (1962) ("There was some testimony as to depreciation in value of the property in the area in the event the supermarket is permitted to operate. This evidence consisted of expressions of opinion by individuals, and it is a matter of speculation as to whether any such depreciation would result."); Wyndham Enterprises, LLC v. City of N. Augusta, 735 S.E.2d 659, 663 (Ct. App. 2012)

RMD3

("At the hearing, residents testified as to their concerns regarding the proposed fireworks business. These concerns included an increase in traffic, a decline in property values, and a detrimental impact on the character of the surrounding area. The testimony proffered was based on speculation and opinion.").

The Court further finds and concludes Plaintiff has failed to establish a likelihood of success on the merits. "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, *that it has a likelihood of success on the merits*, and that there is no adequate remedy at law." Hook Point, LLC v. Branch Banking & Trust Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (emphasis added). "*When the legal right is doubtful*, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." In Interest of Lyde, 284 S.C. 419, 421, 327 S2d 70, 71 (1985) (emphasis added).

This Court's authority to overturn the discretionary decision is extremely limited. The Court may overturn the DRB's decision only if the DRB committed a legal error:

> In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence. Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct.App.1995). Furthermore, our standard of review of a board of architectural review's decision is the same as that of the trial court. Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach, 294 S.C. 475, 479–80, 366 S.E.2d 15, 18 (Ct.App.1988) (holding the appellate court will not reverse the circuit court's affirmance of the board unless the board's findings of fact have no evidentiary support or the board commits an error of law).

Blind Tiger, LLC v. City of Charleston, 621 S.E.2d 361, 362 (Ct. App. 2005).

While Plaintiff does make conclusory allegations of legal errors, Plaintiff has not identified a specific legal error by the DRB that would require this Court to reverse the approval of the

RMDH

application. The law affords boards such as the DRB considerable discretion. In the absence of clear legal error, the courts must defer to local zoning boards:

> The appellate court gives "great deference to the decisions of those charged with interpreting and applying local zoning ordinances." Gurganious v. City of Beaufort, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). This court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support or the board commits an error of law. Charleston Cty. Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

Arkay, LLC v. City of Charleston, 791 S.E.2d 305, 308 (Ct. App. 2016).

Here, Plaintiff has not made a prima facie showing by affidavit that the DRB committed a cleat legal error that would support a determination it is likely to succeed on the merits. A local architectural review board has considerable discretion when it is passing on the aesthetics of a proposed structure, an inherently subjective determination. Plaintiff may disagree with how the DRB used its discretion and may perceive that the design is incompatible with the surrounding community and historic area when the DRB did not perceive that it did, but these differences do not establish reversible legal error.

The Court's findings and conclusions in this Order are merely for purposes of the pending Motion. Plaintiff has failed to make a prima facie showing of all the elements to support a preliminary injunction. These findings and conclusions are not binding on the merits of the appeal which will be determined on the full record and be based on the showing and arguments Plaintiff makes at that time.

Conclusion

For the foregoing reasons, the Court denies Plaintiff's Motion for Preliminary Injunction.

August 13, 2019
Charleston, SC

R. Markley Dennis, Jr.
Circuit Judge

RMDs

EXHIBIT 3-B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

COA No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the order entered August 19, 2019, with notice postmarked and received after August 22, 2019.

Dated September 18, 2019.

John Doe c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

EXHIBIT 3-B

Counsel of Record for Respondent DRB:

GT Walker
66 Hasell St.
Chas., SC 29401
843.727.2200

Pro Se:

K. Craft, III, Individually and d/b/a Craft Design Co.
204 Spooner Lane
Mt. Pleasant, SC 29464
704.408.5501

Counsel of Record for Remaining Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401
843.872.1709

EXHIBIT 3-B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

COA No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Alka Construction Co., Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 3-B

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated September 18, 2019, and October 19, 2019.

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 3-B

C. HOLMES, M.D.
P.O. Box 187
Sullivans Island, SC 29482
843.883.3010

October 18, 2019

Fax: 803.734.1839

Clerk, SCCOA
1220 Senate St.
Columbia, SC 29201

Re: COA # 2019-1671

Dear Madam:

Per discussion today regarding inadvertent misstatement, we are writing to confirm that the notice of appeal is timely filed. Rule 203(d)(1)(B), SCACR, states that the notice of appeal shall be filed with the clerk of the appellate court within ten (10) days after the notice of appeal (NOA) is served. Rule 203(d)(1)(B), SCACR. The record reflects the date of service is September 18, 2019 (see attached copy of confirmation the order was entered on August 19, 2019). September 18, 2019, plus ten (10) days is Saturday, September 28, 2019. The record reflects the NOA is postmarked September 30, 2019. Accordingly, it is timely served and filed.

We apologize for any inconvenience and with best personal regards, we remain

Yours very truly,

EXHIBIT 3-B

cc:

K. Craft, Pro Se
204 Spooner Lane
Mt. Pleasant, SC 29464

Counsel of Record for Respondent DRB:

GT Walker
66 Hasell St.
Chas., SC 29401
843.727.2200

Counsel of Record for Remaining Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401
843.872.1709

EXHIBIT 3-C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

COA No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the order entered August 19, 2019, with notice postmarked and received after August 22, 2019.

Dated September 18, 2019.

John Doe c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Counsel of Record for Respondent DRB:

GT Walker
66 Hasell St.
Chas., SC 29401
843.727.2200

Pro Se:

K. Craft, III, Individually and d/b/a Craft Design Co.
204 Spooner Lane
Mt. Pleasant, SC 29464
704.408.5501

Counsel of Record for Remaining Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401
843.872.1709

EXHIBIT 3-C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

COA No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated September 18, 2019, and October 19, 2019.

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 3-C

C. HOLMES, M.D.
P.O. Box 187
Sullivans Island, SC 29482
843.883.3010

October 18, 2019

Fax: 803.734.1839

Clerk, SCCOA
1220 Senate St.
Columbia, SC 29201

Re: COA # 2019-1671

Dear Madam:

Per discussion today regarding inadvertent misstatement, we are writing to confirm that the notice of appeal is timely filed. Rule 203(d)(1)(B), SCACR, states that the notice of appeal shall be filed with the clerk of the appellate court within ten (10) days after the notice of appeal (NOA) is served. Rule 203(d)(1)(B), SCACR. The record reflects the date of service is September 18, 2019 (see attached copy of confirmation the order was entered on August 19, 2019). September 18, 2019, plus ten (10) days is Saturday, September 28, 2019. The record reflects the NOA is postmarked September 30, 2019. Accordingly, it is timely served and filed.

We apologize for any inconvenience and with best personal regards, we remain

Yours very truly,

cc:

K. Craft, Pro Se
204 Spooner Lane
Mt. Pleasant, SC 29464

Counsel of Record for Respondent DRB:

GT Walker
66 Hasell St.
Chas., SC 29401
843.727.2200

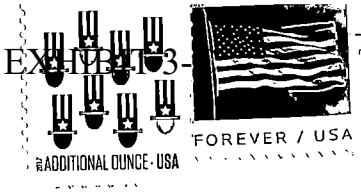
Counsel of Record for Remaining Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401
843.872.1709

27482-0187

Durst Family Medicine
306 Station 22½ Street
Sullivan's Island, South Carolina 29482-9788

EXHIBIT 3



29201$3769 C076

EXHIBIT 3-D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

AMENDED NOTICE OF APPEAL

EXHIBIT 3-D

The Appellant appeals the order entered August 19, 2019, with notice postmarked August 22, 2019, the order entered February 18, 2020, which is postage meter marked February 19, 2020, and the order entered February 21, 2020, which is postage meter marked February 24, 2020, and intermediate orders.

Dated March 21, 2020.

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

EXHIBIT 3-D

Counsel of Record for Respondents:

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401

GT Walker
66 Hasell St.
Chas., SC 29401

EXHIBIT 3-D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.;

Respondents.

PROOF OF SERVICE

EXHIBIT 3-D

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated March 23, 2020.

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 3-D

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Doe v. Alka Const. et al
Case No. 2019-CP-10-3131
App. Case No. 2019-001671

Dear Jenny:

Enclosed for filing is Amended Notice of Appeal in the above case. Per request, please note the enclosed request for transcript. Also, enclosed are the following:

1) Certificate of Service,
2) Copies,
3) Copy of the orders, and
5) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Clerk of Court, Charleston County
100 Broad St., Ste. 106
Chas., SC 29401

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No.: 2019-CP-10-03131
J. Doe,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ORDER CLARIFYING FORM 4 ORDER DATED JANUARY 17, 2020**
	)	
Design Review Board (DRB) of the Town of Sullivan's Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.,	)	
	)	
Respondents.	)	

This matter is before Court upon Respondent Design Review Board of the Town Of Sullivan's Island's ("DRB") motion for an order clarifying or reconsidering portions of the Form 4 Order dated January 17, 2020 ("Order"). The Court grants the Motion as explained below.

On January 17, 2020, the Court issued an Order stating as follows:

> Plaintiff's Motion to Dismiss is denied. Plaintiff's Motion to Recuse is denied. Plaintiff's Motion to Alter or Amend is denied.[1] Defendant's Motion to Dismiss and Strike the Answer is granted.

See Order. The Order also indicated that the it ended the case. The Court hereby amends the Order to make clear that pursuant to the last sentence of the Order, Motion to Dismiss filed by the

[1] This Order does not relate to the first three sentences of the Court's ruling: "Plaintiff's Motion to Dismiss is denied. Plaintiff's Motion to Recuse is denied. Plaintiff's Motion to Alter or Amend is denied."

DRB on July 24, 2019 is granted in full.[2] The Court also makes clear that no Defendants' answer is stricken.

Additionally, the Court issues this order to make clear that the DRB's decision that is on appeal is affirmed. The Court considered all the filings by Petitioner to date and arguments presented at the hearing and has determined the DRB should be affirmed. There is no basis to overturn the decision of the DRB—the decision is fully supported by the record and there was no error of law.

Therefore, DRB's Motion to Dismiss filed on July 24, 2019 is **GRANTED** and the DRB's decision is **AFFIRMED**.

AND IT IS SO ORDERED!

[Judge's electronic signature on the following page]

[2] The DRB's Motion to Dismiss seeks dismissal of the following: Doe's request for mediation, request for declaratory judgment, takings claim, request for actual, special, and compensatory damages, and request for punitive damages. The Court grants that Motion in full.

EXHIBIT 3-D

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON J. Doe, Petitioner, vs. Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft Design Co., and Alka Construction Co., Respondents.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No.: 2019-CP-10-03131 **ORDER CANCELLING LIS PENDENS**

This matter is before the Court on the motion of Respondent Branko Damjanovic ("Respondent"), filed February 10th, 2020, and pursuant to South Carolina Code Section 15-11-10 *et seq*, for cancellation of the *lis pendens* filed in this action by Petitioner on December 10th, 2019. Having reviewed the parties' submissions and having heard oral argument on February 19th, 2020, for which proper notice was given, I find and order as follows:

1. A *lis pendens* is authorized in South Carolina only in conjunction with "an action affecting the title to real property," S. C. Code Section 15-11-10, and only to protect [the litigant's] ownership interest in the property subject to the litigation." *Leibovitz v. Mudd*, 293 S.C. 49, 358 S.E.2d 698 (1987).

2. The property subject to this litigation is residential real estate owned by Respondent, known as 1611 Poe Avenue, Sullivan's Island, South Carolina ("Subject Property"). I find that at no relevant time has Petitioner held an ownership interest in the subject property.

3. I find that in any event this action, an appeal from the Town of Sullivan's Island's Design Review Board, plainly does not qualify as an action "affecting the title to real property." Petitioner has pled no theory, and has cited no authority, under which the outcome of this action could in any way affect the Respondent's title to the Subject Property.

4. Accordingly, I find that Petitioner's filing of the *lis pendens* lacked any legal or factual basis, and it is hereby cancelled and of no legal effect.

IT IS SO ORDERED.

Hon. Bentley D. Price
Circuit Judge

Date

EXHIBIT 3-E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the order entered December 11, 2020, with notice postage meter marked December 14, 2020, and received on December 19, 2020, the order entered August 19, 2019, with notice postmarked August 22, 2019, the order entered February 18, 2020, which is postage meter marked February 19, 2020, and the order entered February 21, 2020, which is postage meter marked February 24, 2020, and intermediate orders.

Dated January 16, 2021

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Respondents/Counsel of Record for Respondents:

Kenneth Craft III
204 Spooner Ln.
Mt. Pleasant, SC 29464

Ben Traywick
171 Church St., Ste. 340
Chas., SC 29401

GT Walker
66 Hasell St.
Chas., SC 29401

EXHIBIT 3-E

RECEIVED
JAN 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (S.I.),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated January 16, 2021

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 3-E

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Doe v. Alka Const. et al
Case No. 2019-CP-10-3131
App. Case No. 2019-001671

Dear Jenny:

Enclosed for filing is Amended Notice of Appeal in the above case and the enclosed request for transcript. Also, enclosed are the following:

1) Certificate of Service and copy,
2) Copy of the additional order, and
3) SASE for return of copies.

Thank you for your kind attention to this matter. With best personal regards, I remain

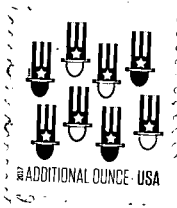
Very truly yours,

cc: Clerk of Court, Charleston County
100 Broad St., Ste. 106
Chas., SC 29401

29482-0187

EXHIBIT 3-E

Durst Family Medicine
306 Station 22½ Street
Sullivan's Island, South Carolina 29482-9788



RECEIVED
JAN 21 2021
SC Court of Appeals

0076

FORM 4

EXHIBIT 3-E

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1003131

J Doe
PLAINTIFF(S)

Design Review Board of the Town of Sullivans Island et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Appellant J.Doe's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/11/2020 .

Craft Design Co
Kenneth Craft, III
J Doe for J Doe
J Doe for J Doe

RECEIVED
JAN 21 2021
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

EXHIBIT 4

RECEIVED
Jan 24 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge
Markley Dennis, Circuit Court Judge

Appellate Case No. 2019-001671

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

RESPONDENTS SVJETLANA BILIC DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., BRANKO DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., AND ALKA CONSTRUCTION CO.'S MOTION TO DISMISS

Respondents Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co, and Alka Construction Co. (collectively, "Alka") respectfully move to dismiss this appeal on the grounds that the only issues properly raised are moot, as set forth in detail below. Alka also respectfully requests that the deadline for Respondents' Initial Brief—currently January 21st, 2022—be delayed until the Court has ruled on this motion, pursuant to Rule 240(b), *SCACR*.

Nature of the Appeal and Pertinent Factual and Procedural History

Appellant appeals orders entered by the Circuit Court in the underlying proceedings, which were in exercise of the Circuit Court's appellate jurisdiction granted by S.C. Code Ann. § 6-29-900(A), part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "Act"), over decisions of Boards of Architectural Review. Specifically, Appellant challenged the decision of the Design Review Board ("DRB") of the Town of Sullivan's Island (the "Town") to grant final approval to an application for DRB approval submitted by Respondent Kenneth Craft Design Co. on behalf of Alka to build a single-family residence at 1606 Poe Avenue, Sullivan's Island, South Carolina (the "Property"). DRB granted final approval at its regular meeting on May 15th, 2019, (the "Meeting"); Doe appealed to the Circuit Court on June 12th, 2019. The Circuit Court denied all relief requested by the Appellant, who subsequently filed the appeal at hand.

Since the May 15th, 2019, Meeting at which the DRB voted to approve the design for construction of the house at the Property, the following occurrences have rendered it impossible for this Court to grant meaningful relief on Appellant's claims, which are therefore moot:

- On June 14th, 2019, the Town issued a building permit for construction at the Property (Building Permit p. 10, attached hereto as **Exhibit #1**), and
- On January 30th, 2020, the Town issued a Certificate of Occupancy for the Property (Certificate of Occupancy p. 11, attached hereto as **Exhibit #2**).

Legal Argument and Citation to Authority

Though Appellant asserts entitlement to myriad forms of relief, the only pertinent and material question is whether the DRB's approval of the plans was legally erroneous. Unfortunately for Appellant, this issue is moot: the sole forms of relief which could be granted in these appellate proceedings—reversal of the DRB decision and/or remand to the DRB for reconsideration—would

have no practical legal effect, because the house has been fully and legally constructed and occupied for two years. Accordingly, upon hypothetical reversal or remand, neither the DRB nor the Town would have a viable tool at their disposal to grant meaningful relief- or any relief at all. Because the questions presented are moot, this appeal should be dismissed.

Appellant's demands for relief in the Circuit Court were as follows:

a. Reversing or remanding the matter to the DRB on the basis of DRB's alleged errors of law, arbitrary action, and/or abuse of discretion.

b. An order that the parties engage in mediation.

c. A jury verdict on a takings claim and other claims for damages.

d. A declaratory judgment ordering the DRB to develop uniform standards for its application of the Town's comprehensive plan, historic district standards, and zoning ordinances, and announcing that the DRB has authority to consider all of these sources when considering a matter before it.

e. A declaratory judgment that "the DRB is not bound to 'rubber stamp' the decisions of the zoning administrator] and/or staff" and should instead act in the best interests of the community, "for the judicious development of the Town."

(Circuit Court Appeal Petition, ¶44, 60, 62, 64 and "WHEREFORE" Paragraph, p. 12-30, attached hereto as **Exhibit #3**).

Requests for relief (c)-(e) are manifestly improper and subject to dismissal: these claims were not and could not have been before the DRB, a citizen board of limited authority. *See* S.C. Code Ann. § 6-29-880 (board of architectural review "has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance.") *and see* Town of Sullivan's Island Zoning Ordinance, Article XI. HP Historic Preservation Overlay District, Section 21-92 (DRB "shall be responsible for oversight of the HP Historic Preservation District Overlay.") In exercising its narrow responsibility for "oversight of the HP Historic Preservation District Overlay", the DRB's role in the matter at hand was limited to approving the application, approving

the application with conditions, or denying the application. (Zoning Ordinance, Section 21-97(B)(4)). Clearly the DRB lacked authority to grant declaratory relief or to deliver a takings verdict. (Town of Sullivan's Island Zoning Ordinance, Article XI. HP Historic Preservation Overlay District p. 31-36, attached hereto as **Exhibit #4**).

Neither did the Circuit Court, sitting as here in exercise of its appellate jurisdiction over the DRB decision. The Circuit Court's authority is defined by the Act: "In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-930(A). Having narrowly defined what subject matter falls within the Circuit Court's appellate inquiry, the Act wisely elaborates on the types of matters that fall without: "Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking." Thus, while Appellant may, in a standalone civil action, be able to pursue requests for relief (c)-(e)—i.e., takings and other claims for damages, and various forms of declaratory relief—these claims have not been, and could not have been, properly asserted before any of the three tribunals participating in this matter, who lack subject matter jurisdiction over such claims in these circumstances.

Demands for relief (a) and (b), meanwhile, are moot. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 195 S.E.2d 713 (1973). "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *Sloan*

v. Greenville Cnty., 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).

Issuance of the Building Permit, construction of the house, and issuance of the Certificate of Occupancy are precisely the type of intervening events that justify application of the mootness principle. The simple fact is that reversal or remand to the DRB cannot possibly yield any effectual relief. With the house constructed and occupied, even outright reversal of the DRB's approval of the plans would bear no legally cognizable fruit: DRB cannot order the house demolished, nor can it order revocation of the building permit on which Alka rightly relied when it went forward with construction. The most that Appellant could obtain via remand to the DRB is whatever measure of personal satisfaction that would attend upon DRB issuing a ceremonial reversal of its prior approval. This hypothetical reversal would be a legal nullity, however, necessitating the conclusion that the issue is moot. At barest minimum, the appeal should be dismissed as to Alka, a private actor who has no proverbial dog in whatever sliver of a fight might remain with construction complete.

Strong and clear authority supports this outcome. In *Christ Central Ministries v. City of Columbia Bd. of Zoning Appeals*, the Court of Appeals addressed a conceptually identical situation. 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018). The City, ordered by the Circuit Court to issue a building permit the BZA had initially denied, appealed the order but did not secure a stay of the order pending the outcome of the appellate proceedings. Accordingly, the City's building department issued the building permit as required by the order; as a result, the billboard had been constructed and leased to advertisers by the time the Court of Appeals took up the appeal, and the Court of Appeals found the appeal moot. "[The property owner] has constructed the billboard at significant cost, and has collected rents from a third-party pursuant to a new lease. The City's decision to grant the permit pending appeal has made any grant of effectual relief impossible for

the reviewing court." *Id*. Respectfully, the Court should reach the same conclusion in the matter at hand. The objective of Appellant's dispute, at all levels of this litigation, has been to prevent construction of the house on the Property. With the house lawfully built and long since occupied, any justiciable controversy has ceased to exist.

As an aside, Appellant has only herself to blame for this state of affairs. The Act invested Appellant with a specific procedural opportunity to stay the approval and construction processes while this appeal has played out, but she chose not to avail herself of it. S.C. Code Ann. § 6-29-920(B) states that while appealing to the circuit court "does not ipso facto act as a supersedeas" to stay actions in furtherance of or in reliance on the DRB's approval, "the judge of the circuit court may in his discretion grant a supersedeas" as the Circuit Judge deems it reasonable and proper to do so. A prompt motion under this provision is the standard means of preserving the status quo and of warding off precisely the mootness problem Appellant faces at this time. The consequences of Appellant's failure to seek prompt relief under S.C. Code Ann. § 6-29-920(B) are chargeable solely to Appellant.

The conclusion that Appellant's demand for remand to DRB is moot necessitates the same conclusion regarding request for relief (b): an order that the parties engage in the Act's mediation protocol. We need not dwell, for present purposes, on the entirely obvious fact that Appellant's demand for mediation was rightly denied. The Act gives the mediation right only to "[a] property owner whose land is the subject of a decision" of the DRB. S.C. Code Ann. § 6-29-900(B). As the owner of the land, Alka would have had the right to demand mediation had DRB denied the application. By contrast mere interested persons, the status claimed by Appellant as a concerned resident of the community, do not have the right to demand mediation. Yet even assuming Appellant had a leg to stand on, the demand for mediation is moot for the same reason that remand

to the DRB is moot: with regard to the Property, and to the house constructed thereon, there is no further action that DRB, the Town as a whole, or Appellant can take- there simply are no issues to mediate.

Conclusion

For the reasons set forth herein, Alka respectfully asks that the Court find that the only issues properly before it are now moot, and on that basis dismiss the appeal.

BEN TRAYWICK LAW FIRM, LLC

s/Benjamin A.C. Traywick

Benjamin A. C. Traywick (SC Bar No. 74027)
Alexandra Scott Williams (SC Bar No. 102862)
171 Church Street, Suite 340
Charleston, SC 29401
T: 843-872-1709
F: 843-695-7839
ben@bentraywicklaw.com
ali@bentraywicklaw.com

Attorneys for Respondents Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., and Alka Construction Co.

January 21, 2022
Charleston, South Carolina

EXHIBIT #1

EXHIBIT 4

Town of Sullivan's Island

2056 Middle Street P.O. Box 427 Sullivan's Island SC 29482

Phone: (843) 883-3198 Fax: (843) 883-3009

P19-0338

Building Permit

Issued: 06/14/2019

Expires: 01/29/2021

Type of Construction: **New Construction**

LOCATION	OWNER	APPLICANT
1616 POE AV	Branko Damjanovic	ALKA CONSTRUCTION

Work Description: applying for permit to build a new home on premise.

Stipulations: New construction approved in accordance with the Design Review Board issued Certificate of Appropriateness on May 15, 2019. Relief granted for side setback relief of 13% (25' aggregate side setbacks) and 100% second story side setback on east elevation. No heated square footage increases were granted by the DRB.Swimming pool, fences and all other accessory structures must be permitted separately. Final stormwater plan must be certified by the engineer prior to

Jessi Gress, Permit Technician

THIS PERMIT MUST BE DISPLAYED IN PERMIT BOX IN FRONT OF BUILDING AT THE LOCATION STATED ABOVE.MUST BE PROTECTED FROM WEATHER AND ACCESSIBLE FOR INSPECTION.

EXHIBIT #2

EXHIBIT 4

Town of Sullivan's Island

2056 Middle Street
Sullivan's Island, South Carolina 29482

Certificate of Occupancy

Issued by the Town of Sullivan's Island
Under the Authority of the Town Building Official and Zoning Administrator

Pursuant to the Town of Sullivan's Island Municipal Code Chapters 5, 21 and 25, this certifies that the referenced building, or portion thereof, has been inspected and found to be in compliance with the requirements of said code and with the most recently adopted version of the International Code Council building construction codes. Permission is hereby given for the occupancy of said building in compliance with the various conditions of the Zoning Ordinance in addition to the below specified conditions of use.

Bldg. Permit No. P19-0338

Use Classification: New Construction

Owner Name: Branko Damjanovic

Contractor/Builder: Alka Construction

Owner Address: 1616 Poe Avenue
Sullivans Island SC 29482

Building Address: 1616 POE AV
Sullivans Island, SC 29482

TMS #: 5230800011

Type of Building: Single Family Residential

Map Effective Date: 11/17/2004

Flood Zone: VE 15

DFE: 16'

CSM 17.14

Conditions of Use:

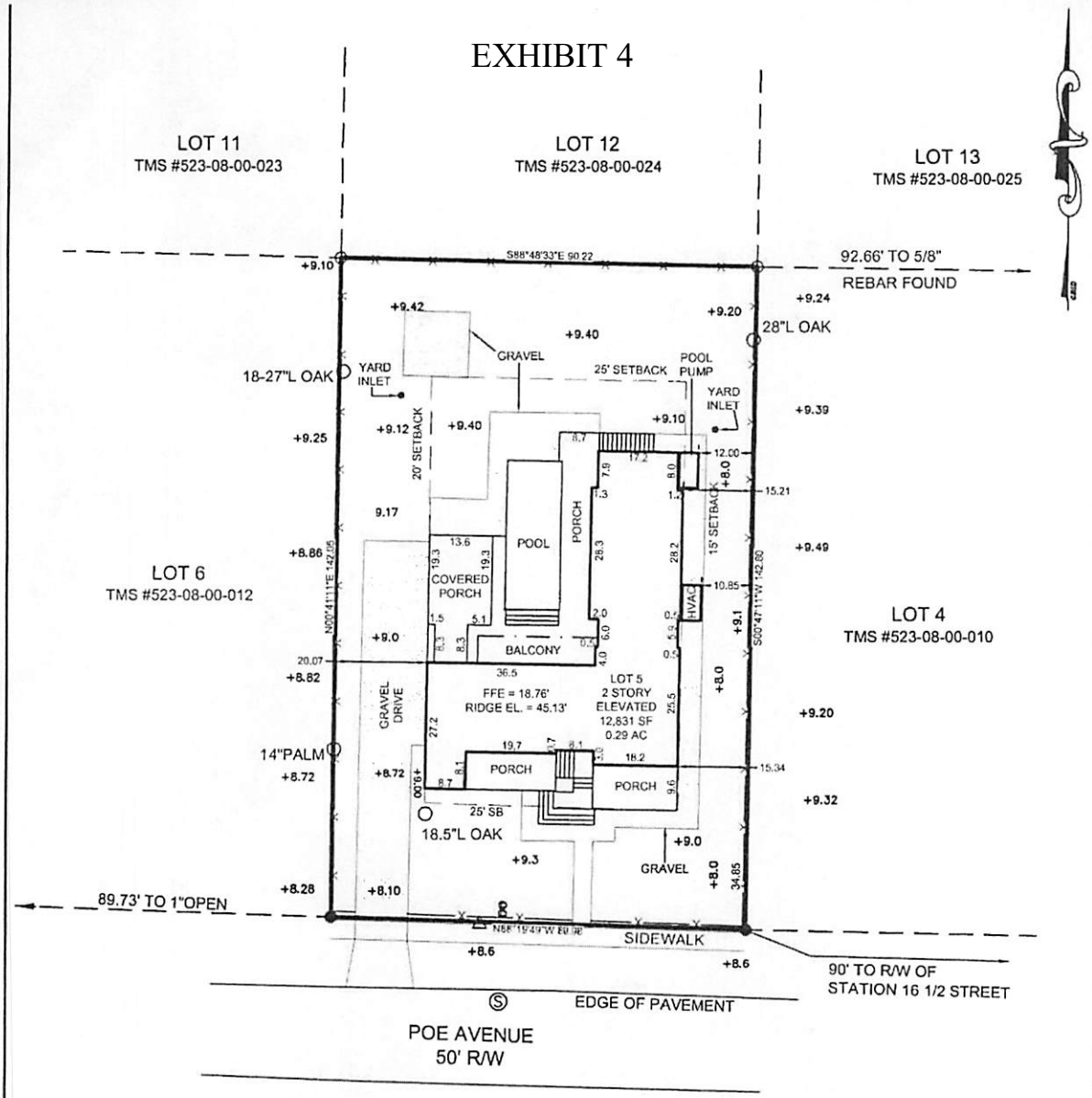
By: Thomas R. Rublein
Building Official

Date: 01/30/2020

By: Joseph R. Henderson
Zoning Administrator

Date: 1/30/2020

EXHIBIT 4



NOTES:
1. PROPERTY IS LOCATED IN FLOOD ZONE VE (EL 15) AS SHOWN OF F.I.R.M. PANEL #45019C0538J. (DATED 11/17/04)
2. ELEVATIONS BASED ON NGVD 1929.

LEGEND:

●	1/2" OPEN TOP
○	5/8" REBAR
Ⓢ	SEWER MANHOLE
—x—	4' WOOD FENCE
+9.3	SPOT ELEVATION
△	WATER METER
⊙	SEWER CLEANOUT

REFERENCES:

PLAT BOOK	PAGE
S	111
H	112

TMS #523-08-00-011

LOT COVERAGE:

HOUSE	1,985 SF	15.4%
PORCHES	655 SF	5.1%
DECK AND STEPS	838 SF	6.5%
POOL	379 SF	2.9%
TOTAL IMPERVIOUS AREA	3,857 SF	29.9%
GRAVEL	2,203 SF	17.1%
LOT TOTAL	12,831 SF	

PERMITTED LOT COVERAGE = 3957 SF

SOUTH CAROLINA — SOUTHEASTERN LAND SURVEYING LLC — C04554 — CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA — PROFESSIONAL LAND SURVEYOR — No.28597 — PHILIP R. BRYAN JR.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

Philip R. Bryan

PHILIP R. BRYAN, JR. S.C.P.L.S. No. 28597

AN ASBUILT SURVEY OF
LOT 5; SECTION G
1616 POE AVENUE
LOCATED IN THE TOWN OF SULLIVANS ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA

SOUTHEASTERN LAND SURVEYING LLC

DATE: 12-19-19
SCALE: 1"= 30'
DRAWN: DH
DWG: 18153
REV:

EXHIBIT 4

U.S. DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
National Flood Insurance Program

OMB No. 1660-0008
Expiration Date: November 30, 2018

ELEVATION CERTIFICATE

Important: Follow the instructions on pages 1–9.

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A – PROPERTY INFORMATION		FOR INSURANCE COMPANY USE
A1. Building Owner's Name Branko Damjanovic		Policy Number:
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue		Company NAIC Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
TMS#: 523-08-00-011; Lot 5, Section G

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) Residential

A5. Latitude/Longitude: Lat. 32°45'30.6" Long. 79°51'03.2" Horizontal Datum: ☐ NAD 1927 ☒ NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 5

A8. For a building with a crawlspace or enclosure(s):

a) Square footage of crawlspace or enclosure(s) N/A sq ft

b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade N/A

c) Total net area of flood openings in A8.b N/A sq in

d) Engineered flood openings? ☐ Yes ☒ No

A9. For a building with an attached garage:

a) Square footage of attached garage N/A sq ft

b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade N/A

c) Total net area of flood openings in A9.b N/A sq in

d) Engineered flood openings? ☐ Yes ☒ No

SECTION B – FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number	B2. County Name	B3. State
Sullivan's Island 455418	Charleston County	South Carolina

B4. Map/Panel Number	B5. Suffix	B6. FIRM Index Date	B7. FIRM Panel Effective/ Revised Date	B8. Flood Zone(s)	B9. Base Flood Elevation(s) (Zone AO, use Base Flood Depth)
45019C 0538	J	11-17-2004	11-17-2004	VE	15

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9:
☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other/Source:

B11. Indicate elevation datum used for BFE in Item B9: ☒ NGVD 1929 ☐ NAVD 1988 ☐ Other/Source:

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No
Designation Date: ☐ CBRS ☐ OPA

ELEVATION CERTIFICATE

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction

*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations – Zones A1–A30, AE, AH, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO. Complete Items C2.a–h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: CJ0162 Vertical Datum: NGVD 1929

Indicate elevation datum used for the elevations in items a) through h) below.

☒ NGVD 1929 ☐ NAVD 1988 ☐ Other/Source: _____

Datum used for building elevations must be the same as that used for the BFE.

		Check the measurement used.	
a) Top of bottom floor (including basement, crawlspace, or enclosure floor)	18.76	☒ feet	☐ meters
b) Top of the next higher floor	30.42	☒ feet	☐ meters
c) Bottom of the lowest horizontal structural member (V Zones only)	17.14	☒ feet	☐ meters
d) Attached garage (top of slab)	N/A	☐ feet	☐ meters
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments)	16.71	☒ feet	☐ meters
f) Lowest adjacent (finished) grade next to building (LAG)	9.30	☒ feet	☐ meters
g) Highest adjacent (finished) grade next to building (HAG)	9.40	☒ feet	☐ meters
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support	9.30	☒ feet	☐ meters

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. *I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.*

Were latitude and longitude in Section A provided by a licensed land surveyor? ☒ Yes ☐ No ☐ Check here if attachments.

Certifier's Name Philip R. Bryan, Jr.	License Number 28597	
Title South Carolina Land Surveyor		
Company Name Southeastern Land Surveying, LLC		
Address 1035-B Jenkins Road		
City Charleston	State South Carolina	ZIP Code 29407

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR No. 28597 Seal Here PHILIP R. BRYAN JR.

Signature	Date	Telephone	Ext.
Philip R. Bryan	12-12-2019	(843) 795-9330	

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (including type of equipment and location, per C2(e), if applicable)

LATITUDE AND LONGITUDE FROM CHARLESTON COUNTY GIS SLAB UNDER HOUSE =9.35' ITEM C2(e) IS AN HVAC PLATFORM PICTURED BELOW.

EXHIBIT 4

ELEVATION CERTIFICATE

BUILDING PHOTOGRAPHS

See Instructions for Item A6.

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.

Photo One

Photo One Caption FRONT VIEW (12-12-2019) Clear Photo One

Photo Two

Photo Two Caption REAR VIEW (12-12-2019) Clear Photo Two

EXHIBIT 4

ELEVATION CERTIFICATE

BUILDING PHOTOGRAPHS

Continuation Page

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

If submitting more photographs than will fit on the preceding page, affix the additional photographs below. Identify all photographs with: date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8.

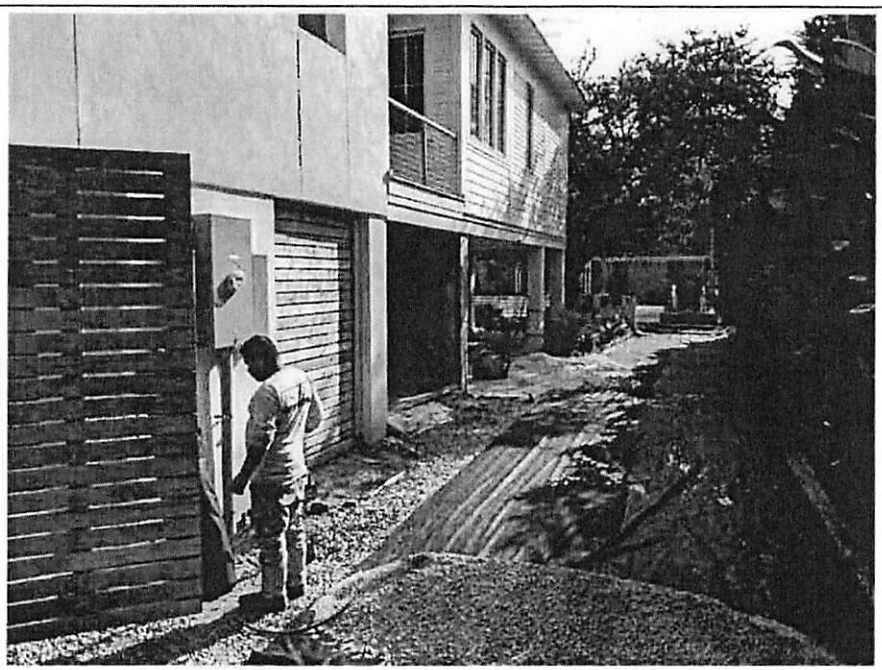


Photo Three

Photo Three Caption LEFT VIEW (12-12-2019)

Clear Photo Three

Photo Four

Photo Four Caption RIGHT VIEW WITH HVAC PLATFORM (07-12-2019)

Clear Photo Four

EXHIBIT 4

070517

S.I. V-ZONE DESIGN CERTIFICATE

PRE-CONSTRUCTION_____ AS-BUILT ✓

Name of Property Owner Branko Damjanovic Permit #_____
Street Address (property) 1611e POE Ave. TMS#_____
City Sullivan Island State SC Zip Code 29482

FLOOD INSURANCE RATE MAP INFORMATION

Community # **455418** Map & Panel # 45019C 0538 Suffix J
Firm Index Date **NOV. 17, 2004**

ELEVATION INFORMATION

Required Base Flood Elevation (BFE) 15 Ft.
Finished first floor 18.76 Ft.
Bottom of lowest horizontal structural member 17.14 Ft.
Elevation of slab below Base Flood Elevation 9.5 Ft.
Lowest Elevation of mechanical/electrical equipment 16.71 Ft.
Elevation of lowest adjacent grade 9.3 Ft. Highest adjacent grade_____ Ft.
Elevation of existing grade (Measured at center of structure) 9.3 Ft. *
Elevation of highest roof ridge _____ Ft.
Datum used: NGVD29 X NGVD88 _____

* ***This elevation must be determined before construction plans are submitted. Building official will determine existing grade using an existing topographic survey supplied by the applicant.***

STRUCTURAL INFORMATION

Building code used to develop and/or review structure 2015 IRC
Basic wind speed 149 mph (ult) Exposure category C

Seismic design category **D2**

Certifiers name ANTHONY M. AUSTIN
Signature

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 19142 ANTHONY M. AUSTIN

SOUTH CAROLINA SOUTHERN CONSULTING & ENGINEERING, INC. No. C03355 CERTIFICATE OF AUTHORIZATION

EXHIBIT 4

070517

S.I. V-ZONE DESIGN CERTIFICATE

PRE-CONSTRUCTION _____ AS-BUILT ✓

Name of Property Owner Branko Domjanovic. **Permit #** _____
Street Address 1611 Poe Ave **TMS #** _____
City Sullivans Island **State** SC **Zip Code** 29482

V-ZONE CERTIFICATION STATEMENT

NOTE: Certificate must be signed and sealed by a registered professional engineer or architect.

I certify that based upon development and/or review of structural design specifications and plans for construction including consideration of the hydrostatic, hydrodynamic, impact and wind loading involved, the design and methods of construction are in accordance with accepted standards of practice for meeting the following provisions:

1. The finished first floor and all mechanical equipment are elevated to or above the base flood elevation.
2. The pile or column foundation and structure is anchored to prevent flotation, or collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values are those associated with the base flood. Wind loading values are those required by the International Residential Code 2015 Edition as adopted by the Town of Sullivan's Island. The potential for scour has been considered for conditions associated with the base flood. The calculated scour depth for this property is _____ feet.

For "As Built" certifications, I am certifying that the construction has been done in accordance with the design parameters indicated above.

Certifiers Name Anthony M. Austin

Signature _____

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 13842 SEAL ANTHONY M. AUSTIN

SOUTH CAROLINA SOUTHERN CONSULTING & ENGINEERING, INC. No. C03355 CERTIFICATE OF AUTHORIZATION

EXHIBIT 4

070517

S.I. V-ZONE BREAKAWAY WALL CERTIFICATION

PRE-CONSTRUCTION_____ AS-BUILT ✓

Name of Property Owner Branko Damjanovic Permit #_____
Street Address 1611 Poe Ave TMS #_____
City Sullivans Island State SC Zip Code 29482

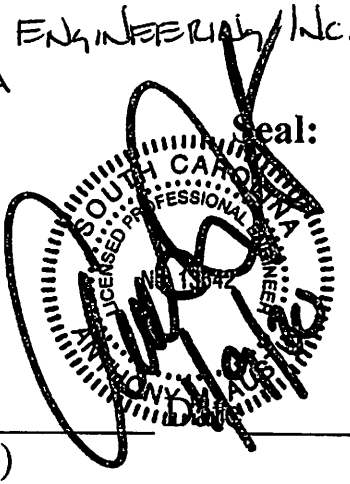
BREAKAWAY WALL CERTIFICATION STATEMENT

I certify that I have developed or reviewed the design, plans and specifications for construction of the breakaway walls for the structure noted above. The design and methods of construction are in accordance with meeting the accepted standards of practice with the following provisions:

1. Breakaway walls have a design safe loading resistance of not less than 10 lbs. and no more than 30 lbs./SQ FT
2. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood.
3. The elevated portion of the structure and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the combined effects of wind and water loads acting simultaneously on all building components, structural and non-structural. Wind loading values used shall be those stated in International Residential Code 2015 Edition. Water loading values shall be those associated with the base flood.

Certifier's Name: Anthony M. Austin
Company Name Southern Consulting & Engineering, Inc.
Certifier's Address 105 Central Ave 100-A
City Goose Creek State SC Zip 29445
Zip Code 29445
Telephone (843) 718-2525
Email 2020@scIEMAIL.com
License # 13542

Seal:



Signature _____ Date _____

EXHIBIT 4

BP0854266

PGS: 3

TOWN OF SULLIVAN'S ISLAND
NONCONVERSION AGREEMENT
FOR CERTAIN STRUCTURES IN THE FLOOD PLAIN

Whereas, BRANKO DAMJANOVIC is the owner of lot 5, Block 9 on a survey by SW SURVEYING recorded in the RMC office for having address 1616 POE AVENUE and TMS# 523-08-00-011. The owner of this property has been issued Permit # P19-0338 to construct, improve, or repair the property indicated above in the Town of Sullivan's Island, South Carolina; and

Whereas, the permitted building has the lowest floor elevated and/or the lowest structural member and all equipment servicing the building above the (*design flood elevation/ base flood elevation plus one (1) foot*), and the design and construction of the building meets current building code and flood damage prevention ordinance requirements; and

Whereas, as a condition of a Certificate of Occupancy, the owner must agree to not alter the building at a later date so as to violate the building code or flood damage prevention ordinance requirements; and

Whereas, the owner places these restrictions on its property for the benefit of the Town of Sullivan's Island and its residents; and

Now, therefore, the undersigned owner of said property hereby agrees to the following:

1. That the enclosed area below the lowest floor shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the flood damage prevention ordinance in effect at the time of conversion. An allowable use list is available from the Town of Sullivan's Island.

2. That all interior walls, ceilings, and floors below the *(design flood elevation/base flood elevation plus one (1) foot)* shall be unfinished or constructed of class four (4) or five (5) flood-resistant materials.

3. That mechanical, electrical, or plumbing devices that service the building shall not be installed below the *(design flood elevation/base flood elevation plus one (1) foot)* unless specifically approved and permitted by the floodplain administrator.

4. That the openings in the walls of the enclosed area below the lowest floor shall not be blocked, obstructed, or otherwise altered to reduce the size of the openings or restrict the automatic entry and exit of floodwater.

5. That any breakway wall will not be altered or obstructed by attaching electrical devices or wires, plumbing pipes, irrigation pipes, mechanical equipment or ductwork and any other item or fixture that would impede the breakway capacity of such wall.

6. That the owner and subsequent owners agree to allow a representative of the Town of Sullivan's Island on the premises to verify compliance with this agreement at least once a year. The Town representative will provide at least forty-eight (48) hours' notice of such visit and will provide prompt notice of any violations discovered.

7. These restrictions shall be covenants running with the land and shall be binding on the owners and their heirs, successors or assigns forever.

8. That this agreement shall be recorded with the deed to the above property so that subsequent owners are made aware of these restrictions, and the same may not be modified or cancelled except with the written consent of the Town of Sullivan's Island and recorded in the RMC office for Charleston County, South Carolina.

Town of Sullivan's Island Nonconversion Agreement

ADDRESS: 1616 POE AVENUE **TMS#:** 523-08-00-011

WITNESS the Grantor's hand(s) and seal(s) this 16 day of January 2020

SIGNED, sealed and delivered in the presence of:

(WITNESS #1)

(WITNESS #1)

BRANKO DAMJANOVIC

Name: (property owner)

Branko Damjanovic

Name: (property owner)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 16 day of January 2020 by The Grantor, who, executed the within written agreement and is a person known to me.

Notary Public for South Carolina
My Commission Expires: ABIGAIL PAULUS
Notary Public, State of South Carolina
My Commission Expires 12/11/2025

This space is reserved for deed

Definition of "lowest floor"- the top of the slab if concrete slab construction or top of wood flooring if wood framing construction of all interior portions of a building.
NOTE: For V-Zone construction, lowest floor is the bottom of lowest horizontal supporting member.

1. Electric meters should be located at the highest elevation possible to accomplish the requirement of "minimizing or eliminating flood damage". And still meet the utility company's requirement to service the meter. See Electrical Requirements and suggestions.

2. If breakaway walls are utilized for enclosure, the answer is "yes". All materials below base flood elevation must be treated lumber or Class 4 or 5 materials.

2A Two hundred (200) square foot maximum. Must have venting no more than twelve (12) inches from grade. Venting must equal one (1) square inch for every square foot of floor area minimum two hundred (200) square inches, Minimum two (2) vents on opposite walls.

2B No plumbing, electrical or mechanical equipment or lines may be attached to breakaway walls. Exterior showers and hose bibs below BFE must have cutoffs above BFE.

I have read the above and agree to abide by these restrictions Pertaining to the Town of Sullivan's Island Flood Damage Prevention Ordinance.

OWNER: (Finished Construction BRANKO DADOANOVIC

Contractor: (Pre Construction) _____

STREET ADDRESS: 1616 POE AVENUE SI 29482

DATE: 1/6/20

Special Flood Hazard Areas Zone V-1 thru 30

	YES	NO
1) Garage, residential (see note 2B)	X	
2) Unfinished storage (see note 2,2A&2B)	X	
3) Breakaway walls for enclosing items #1&#2	X	
4) Flood proof walls (non-breakaway)		X
5) Electrical outlets (see note 2B) (SEE Electrical Requirements)		X
6) Electrical meters (see note 1 & 2B) (see Electrical Requirements)	X	
7) Automatic washer		X
8) Dryers		X
9) Air conditioning equipment & Ductwork		X
10) Heating Equipment & Ductwork		X
11) Water heater or tank		X
12) A second refrigerator in storage areas or garage for cold storage		X
13) Bathrooms, including sinks & showers		X
14) Central vacuums		X
15)Elevator Equipment and Hydraulic Tanks		X

ALLOWABLE USES
BELOW BASE FLOOD ELEVATION
TOWN OF SULLIVAN'S ISLAND

The following is a list of items that may or may not be permitted below the base flood level. A check mark has been placed in the appropriate blank. These items will be strictly enforced.

Pre-Construction_____ Finished Construction_____ ✓

Special Flood Hazard Areas Zone A-1 thru 30

	YES	NO
1) Garage, residential (see note 2B)	X	
2) Unfinished storage (see note 2, 2A, 2B)	X	
3) Breakaway walls for enclosing items #1&#2	X	
4) Flood proof walls (non breakaway, non-Residential only)	X	
5) Electrical outlets (see note 2B) (see Electrical Requirements		X
6) Electrical meters (see note 1 and 2B) (see Electrical Requirements)	X	
7) Automatic washer		X
8) Dryers		X
9) Air Conditioning equipment & Ducts		X
10) Heating equipment & Ducts		X
11) Water heater or tank		X
12) A second refrigerator in storage area or garage for cold storage.		X
13) Bathrooms, including sinks & showers		X
14) Central vacuums		X
15) Elevator Equipment or Hydraulic Tanks		X

EXHIBIT 4

EARTHSOURCE ENGINEERING

CIVIL ENGINEERING | SITE PLANNING | LANDSCAPE DESIGN | LEED DESIGN

January 20, 2020

Town Staff
Sullivan's Island

Re: **Engineer's Certification**
1616 Poe Ave, Sullivans Island SC

Please accept this as my certification for the above referenced project in the Town's jurisdiction. The storm system including the roof collection and subsurface french drains appear to have been completed and constructed to provide necessary storage to meet the Town and SCDHEC stormwater ordinances for the residential construction. It is my opinion that the contractor used acceptable construction practices and any deviations between the system as constructed and the original design plans and specifications do not appear to impact capacity or capability of the system. If there is any further information needed from our office, please let me know.

Respectfully Submitted,

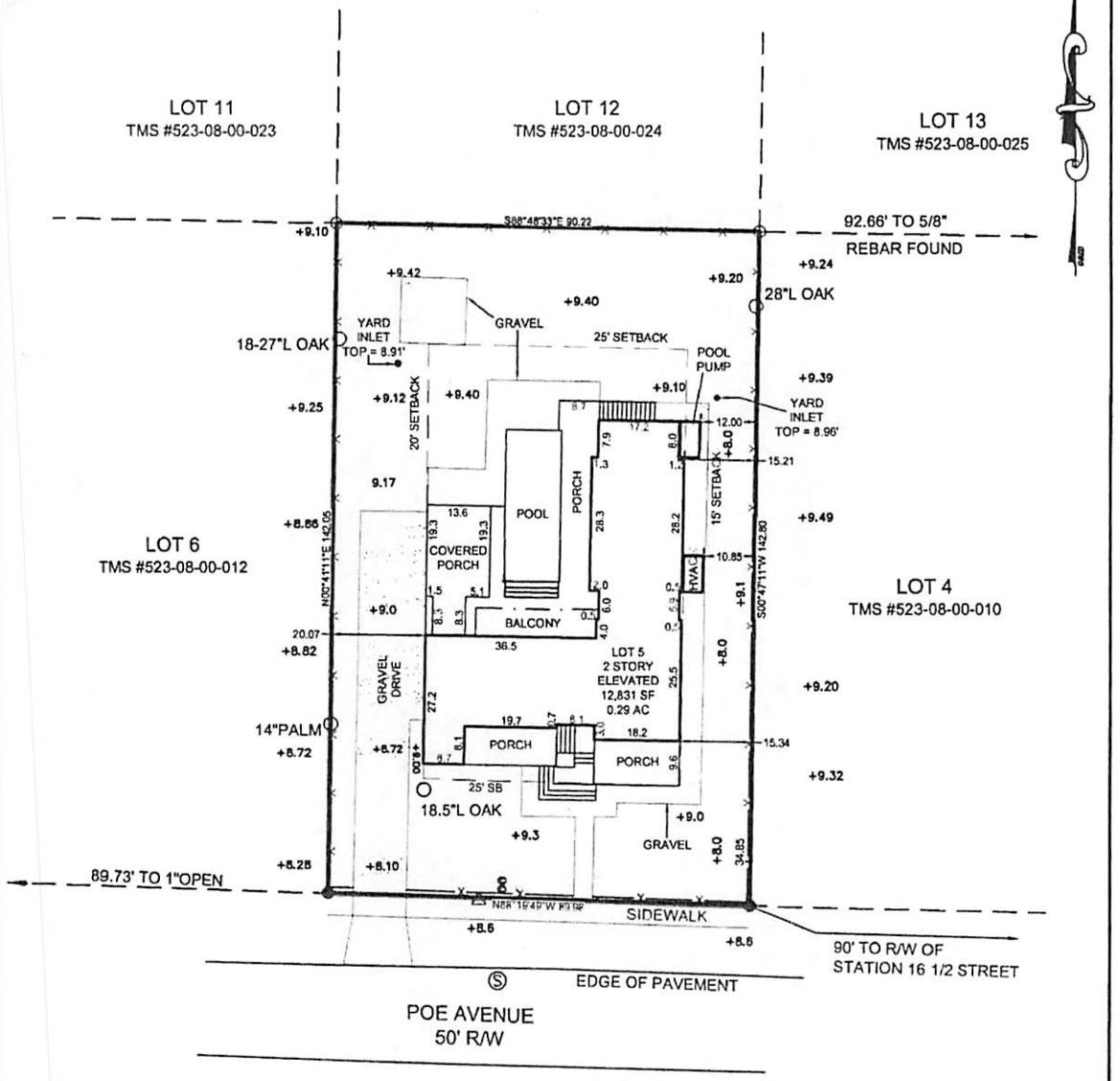
Giles N Branch, P.E.
Civil Engineer-SC#26148

1-20-2020

962 Houston N.Cutt Boulevard
Sulte 220
Mt. Pleasant, SC 29464

Telephone (843)881-0525
Fax (843)881-2477
www.EarthSourceEng.com

EXHIBIT 4



NOTES:
1. PROPERTY IS LOCATED IN FLOOD ZONE VE (EL 15) AS SHOWN OF F.I.R.M. PANEL #45019C0538J. (DATED 11/17/04)

REVISION:
1. 01-13-2020 ADDED YARD INLETS

LEGEND:

●	1/2" OPEN TOP
○	5/8" REBAR
Ⓢ	SEWER MANHOLE
—x—	4' WOOD FENCE
+9.3	SPOT ELEVATION
△	WATER METER
ⓒ	SEWER CLEANOUT

REFERENCES:

PLAT BOOK	PAGE
S	111
H	112

TMS #523-08-00-011

LOT COVERAGE:

HOUSE	1,985 SF	15.4%
PORCHES	655 SF	5.1%
DECK AND STEPS	838 SF	6.5%
POOL	379 SF	2.9%
TOTAL IMPERVIOUS AREA	3,857 SF	29.9%
LOT TOTAL	12,831 SF	

PERMITTED LOT COVERAGE = 3957 SF

SOUTH CAROLINA SOUTHEASTERN LAND SURVEYING LLC C04554 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR No.28597 PHILIP R. BRYAN JR.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

Philip R. Bryan

PHILIP R. BRYAN, JR. S.C.P.L.S. No. 28597

AN ASBUILT SURVEY OF
LOT 5; SECTION G
1616 POE AVENUE
LOCATED IN THE TOWN OF SULLIVANS ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA

SOUTHEASTERN LAND SURVEYING LLC

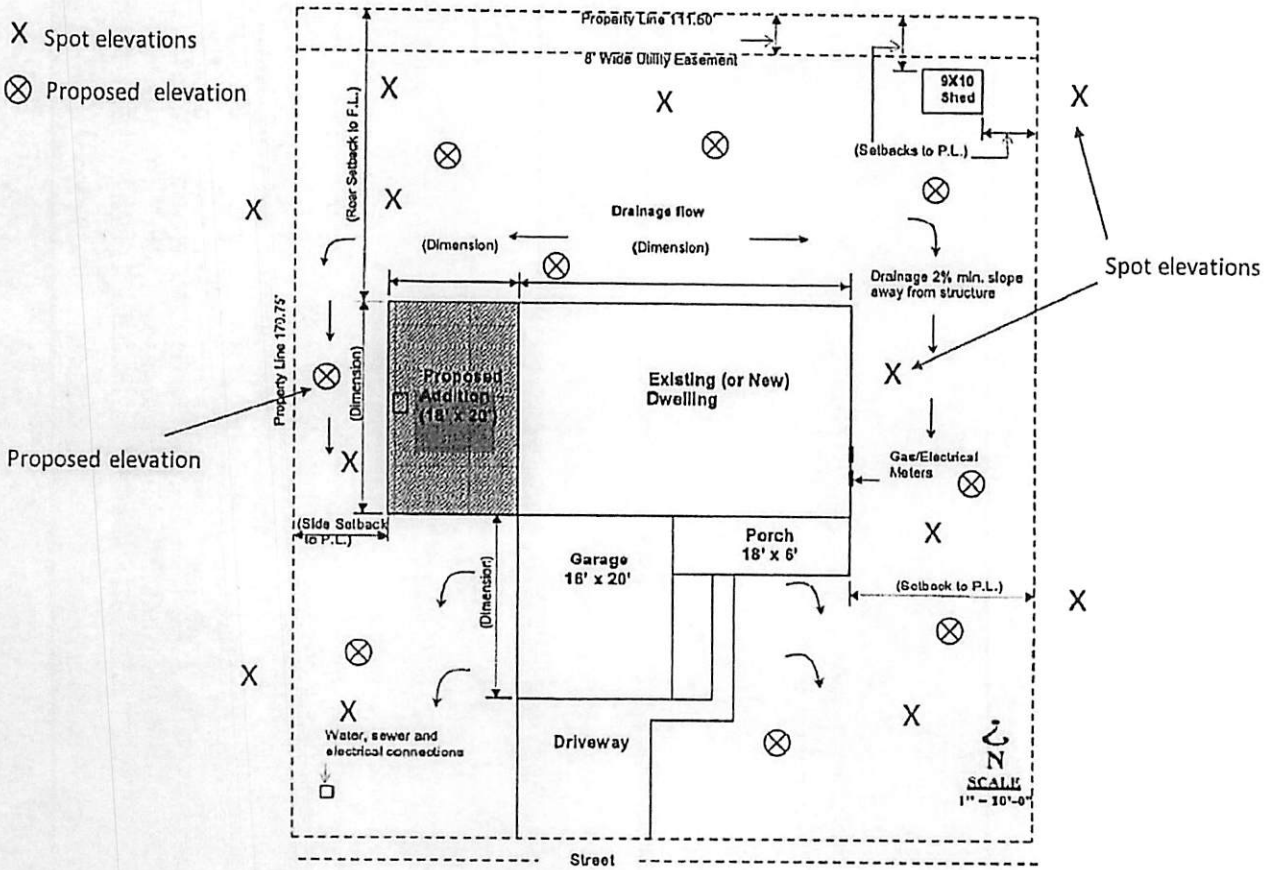
DATE: 12-19-19	
SCALE: 1"= 30'	
DRAWN: DH	
DWG: 18153	
REV: 1. 01-13-2020	

EXHIBIT 4

SITE PLAN
(Sample Only)

X Spot elevations

⊗ Proposed elevation



Owner's Name Branko Damjanovic Building Permit # P19-0338

Project Address 1611 Poe Avenue Sullivan's Island, SC 29482 TMS# 523-08-00-011

Contractor Name ALKA Construction Inc.

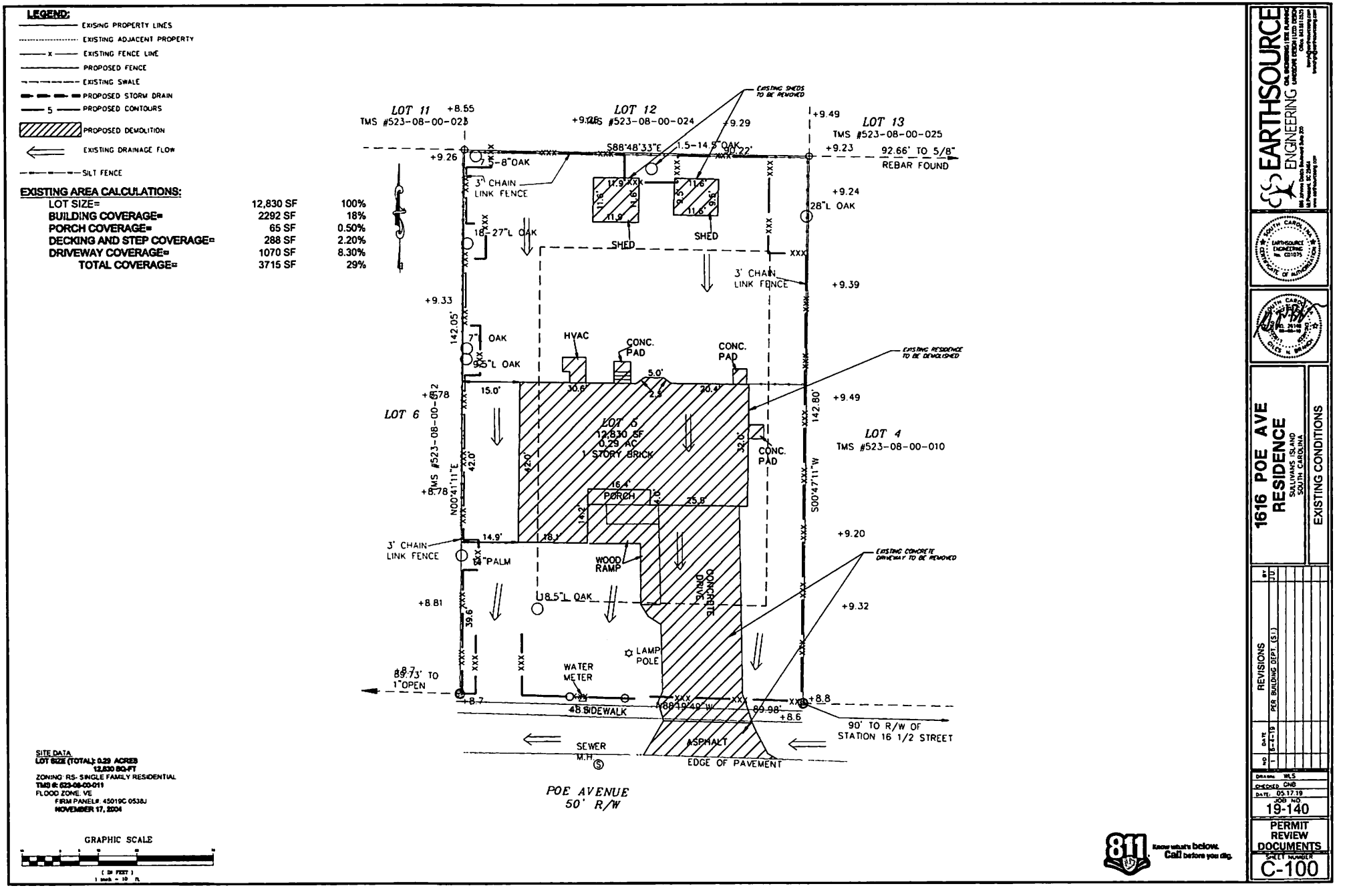
Under my credentials as a licensed professional engineer, or SC registered landscape architect, I hereby certify that the stormwater control measures, and the final grading for this project, will be completed in accordance with the plan and specifications detailed. I further certify that a post-development as-built survey will confirm compliance with the approved stormwater management plan prior to receiving a ***Certificate of Completion*** or prior to the issuance of a ***Certificate of Occupancy***.

Property Owner's Signature _____ Date: 1/24/2020

Professional Engineer/ RLA Signature: _____ Giles N. Brandon Date: May 2019

Professional Engineer/ RLA Signature: _____ Giles N. Brandon Completion Date: 1.1.2020

EXHIBIT 4


LEGEND:
EXISING PROPERTY LINES
EXISTING ADJACENT PROPERTY
EXISTING FENCE LINE
PROPOSED FENCE
EXISTING SWALE
PROPOSED STORM DRAIN
PROPOSED CONTOURS
PROPOSED DEMOLITION
EXISTING DRAINAGE FLOW
SILT FENCE
EXISTING AREA CALCULATIONS:
LOT SIZE= 12,830 SF 100%
BUILDING COVERAGE= 2292 SF 18%
PORCH COVERAGE= 65 SF 0.50%
DECKING AND STEP COVERAGE= 288 SF 2.20%
DRIVEWAY COVERAGE= 1070 SF 8.30%
TOTAL COVERAGE= 3715 SF 29%
LOT 11 TMS #523-08-00-023
LOT 12 TMS #523-08-00-024
LOT 13 TMS #523-08-00-025
LOT 6 TMS #523-08-00-022
LOT 4 TMS #523-08-00-010
LOT 6 12,830 SF 0.29 AC 1 STORY BRICK
EXISTING SHEDS TO BE REMOVED
EXISTING RESIDENCE TO BE DEMOLISHED
EXISTING CONCRETE DRIVEWAY TO BE REMOVED
S88°48'33"E 92.22'
92.66' TO 5/8" REBAR FOUND
3' CHAIN LINK FENCE
7-8" OAK
28"L OAK
18-27"L OAK
SHED
HVAC
CONC. PAD
7" OAK
9.5"L OAK
N00°41'11"E 142.05'
S00°47'11"W 142.80'
PORCH
WOOD RAMP
CONCRETE
14" PALM
18.5"L OAK
LAMP POLE
WATER METER
89.73' TO 1" OPEN
4ft SIDEWALK
N88°19'49"W 69.98'
90° TO R/W OF STATION 16 1/2 STREET
SEWER M.H.
ASPHALT
EDGE OF PAVEMENT
POE AVENUE
50' R/W
SITE DATA
LOT SIZE (TOTAL): 0.29 ACRES
12,830 SQ-FT
ZONING: RS- SINGLE FAMILY RESIDENTIAL
TMS #: 523-08-00-011
FLOOD ZONE: VE
FIRM PANEL#: 45019C 0538J
NOVEMBER 17, 2004
GRAPHIC SCALE
(IN FEET)
1 inch = 10 ft.
811 Know what's below. Call before you dig.
EARTHSOURCE ENGINEERING
1616 POE AVE RESIDENCE
SULLIVANS ISLAND SOUTH CAROLINA
EXISTING CONDITIONS
REVISIONS
NO 1 DATE 05-14-19 BY JLD PER BUILDING DEPT. (S.I.)
DRAWN WLS
CHECKED CNB
DATE: 05.17.19
JOB NO. 19-140
PERMIT REVIEW DOCUMENTS
SHEET NUMBER C-100

LEGEND:

- EXISING PROPERTY LINES
- EXISTING ADJACENT PROPERTY
- SILT FENCE
- PROPOSED FENCE
- PROPOSED STORM DRAIN
- 9 — PROPOSED CONTOURS
- 9.00 PROPOSED SPOT ELEVATION
- PROPOSED DRAINAGE FLOW
- PROPOSED PERVIOUS PLANTATION MIX

GENERAL PAVING AND GRADING NOTES:

- CONTRACTOR TO VERIFY ALL ELEVATIONS, GRADES, AND DRAINAGE STRUCTURES PRIOR TO CONSTRUCTION. IF THERE ARE ANY DISCREPANCIES, PLEASE CONTACT THE ENGINEER.
- A CLEARING AND GRADING PERMIT PROVIDED BY THE LOCAL MUNICIPALITY SHALL BE REQUIRED PRIOR TO COMMENCEMENT OF CONSTRUCTION.
- WATER ENCOUNTERED WHILE TRENCHING FOR UTILITIES MUST BE FILTERED TO REMOVE ANY SEDIMENTS BEFORE DISCHARGING OFF SITE. PUMP INTAKES SHOULD HAVE A FLOAT OR SIT ON A BED OF ROCK TO PREVENT DREDGING AND THE DISCHARGE SHOULD BE THROUGH AN ENERGY DISSIPATER AND/OR SEDIMENT TRAP.
- CONTRACTOR SHALL ENSURE THAT ALL EXISTING DRAINAGE STRUCTURES WITHIN THE ADJACENT RIGHT-OF-WAYS AND INGRESS/EGRESS EASEMENTS SHALL CONTINUE TO FUNCTION DURING ALL PHASES OF CONSTRUCTION.
- GRADING AROUND ANY PROTECTED TREE SHALL BE KEPT TO A MINIMUM.
- CONTRACTOR SHALL ENSURE POSITIVE DRAINAGE AWAY FROM ALL BUILDINGS.
- ALL EXISTING DRAINAGE STRUCTURES ARE TO BE CLEANED AND MAINTAINED AND SHALL REMAIN OPERATIONAL THROUGHOUT ALL PHASES OF CONSTRUCTION.
- POST-CONSTRUCTION MAINTENANCE OF THE ON-SITE STORMWATER SYSTEM SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.

STANDARD SCDHEC EROSION CONTROL NOTES:

- STABILIZATION MEASURES SHALL BE INITIATED AS SOON AS PRACTICABLE IN PORTIONS OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE TEMPORARILY OR PERMANENTLY CEASED, BUT IN NO CASE MORE THAN FOURTEEN (14) DAYS AFTER WORK HAS CEASED EXCEPT AS STATED BELOW.
  - WHERE CONSTRUCTION ACTIVITY ON A PORTION OF THE SITE IS TEMPORARILY CEASED BY EARTH-DISTURBING ACTIVITIES WILL BE RESUMED WITHIN 14 DAYS, TEMPORARY STABILIZATION MEASURES DO NOT HAVE TO BE INITIATED ON THAT PORTION OF THE SITE.
- ALL SEDIMENT AND EROSION CONTROL DEVICES SHALL BE INSPECTED EVERY SEVEN (7) DAYS. IF SITE INSPECTIONS IDENTIFY BMP's THAT ARE DAMAGED OR ARE NOT OPERATING EFFECTIVELY, MAINTENANCE MUST BE PERFORMED AS SOON AS PRACTICAL OR AS REASONABLY POSSIBLE AND BEFORE THE NEXT STORM EVENT WHENEVER PRACTICAL.
- PROVIDE SILT FENCE AND/OR OTHER CONTROL DEVICES, AS MAY BE REQUIRED, TO CONTROL SOIL EROSION DURING UTILITY CONSTRUCTION. ALL DISTURBED AREAS SHALL BE CLEANED, GRADED, AND STABILIZED WITH GRASSING IMMEDIATELY AFTER THE UTILITY INSTALLATION. FILL, COVER, AND TEMPORARY SEEDING AT THE END OF EACH DAY ARE RECOMMENDED. IF WATER IS ENCOUNTERED WHILE TRENCHING, THE WATER SHOULD BE FILTERED TO REMOVE ANY SEDIMENTS BEFORE BEING PUMPED BACK INTO ANY WATERS OF THE STATE.
- ALL EROSION CONTROL DEVICES SHALL BE PROPERLY MAINTAINED DURING ALL PHASES OF CONSTRUCTION UNTIL COMPLETION OF ALL CONSTRUCTION ACTIVITIES AND ALL DISTURBED AREAS HAVE BEEN STABILIZED. ADDITIONAL CONTROL DEVICES MAY BE REQUIRED DURING CONSTRUCTION IN ORDER TO CONTROL EROSION AND/OR OFF SITE SEDIMENTATION. ALL TEMPORARY CONTROL DEVICES SHALL BE REMOVED ONCE CONSTRUCTION IS COMPLETED AND THE SITE IS STABILIZED.
- THE CONTRACTOR MUST TAKE NECESSARY ACTION TO MINIMIZE TRACKING OF MUD/SOIL ONTO PAVED ROADWAY FROM CONSTRUCTION AREAS. THE CONTRACTOR SHALL DAILY REMOVE MUD/SOIL FROM THE PAVEMENT, AS MAY BE REQUIRED.
- TEMPORARY DIVERSION BERMS AND/OR DITCHES WILL BE PROVIDED AS NEEDED DURING CONSTRUCTION TO PROTECT WORK AREAS FROM UPSLOPE RUNOFF AND/OR TO DIVERT SEDIMENT-LADEN WATER TO APPROPRIATE TRAPS OR STABLE OUTLETS.
- LITTER, CONSTRUCTION DEBRIS, OIL, FUELS, BUILDING PRODUCTS WITH SIGNIFICANT POTENTIAL FOR IMPACT (SUCH AS STOCKPILES OF FRESHLY TREATED LUMBER) AND CONSTRUCTION CHEMICALS THAT COULD BE EXPOSED TO STORM WATER MUST BE PREVENTED FROM BECOMING A POLLUTANT SOURCE IN STORM WATER DISCHARGES.
- STORMWATER POLLUTION PREVENTION PLAN MUST BE KEPT ONSITE OR WITHIN THIRTY (30) MINUTES OF THE SITE AT ALL TIMES, AND IN A DESIGNATED AREA THAT IS ACCESSIBLE TO THE INSPECTORS.

PROPOSED AREA CALCULATIONS:

LOT SIZE=	12,830 SF	100%
BUILDING COVERAGE=	2022 SF	16%
PORCH COVERAGE=	**479 SF**	3.70%
DECKING AND STEP COVERAGE=	1200 SF	9.40%
PERVIOUS WALK COVERAGE=	140 SF	1.10%
PERVIOUS DRIVEWAY COVERAGE=	1050 SF	8.20%
TOTAL COVERAGE=	4891 SF	**38%**

*I, GILES N. BRANCH, P.E., AM A REGISTERED PROFESSIONAL ENGINEER, #26148, IN THE STATE OF SOUTH CAROLINA DO CERTIFY THAT THE DESIGN OF THE DRAINAGE FACILITIES FOR THE **1616 POE AVENUE PROJECT** DATED **05.16.19** HAVE BEEN UNDERTAKEN UNDER MY DIRECTION. I HEREBY CERTIFY THAT THE CONSTRUCTION PROJECT, ACCORDING TO THE PLANS PRESENTED **1616 POE AVENUE**, WILL NOT INCREASE STORMWATER RUNOFF FROM THE SITE FOR THE **2-, 10-, 25- AND 100-YEAR** STORM FREQUENCIES.*

NAME:

DATE:

PROFESSIONAL SEAL: SOUTH CAROLINA ... NO. 26148 ... 05-17-19 ... GILES N. BRANCH

SITE NOTES:

1. PERVIOUS PLANTATION MIX TO CONSIST OF A 50/50 MIXTURE OF GRAVEL & SHELL, IN ACCORDANCE WITH SEC. 21-26 A.(3)

CERTIFICATION STATEMENT:

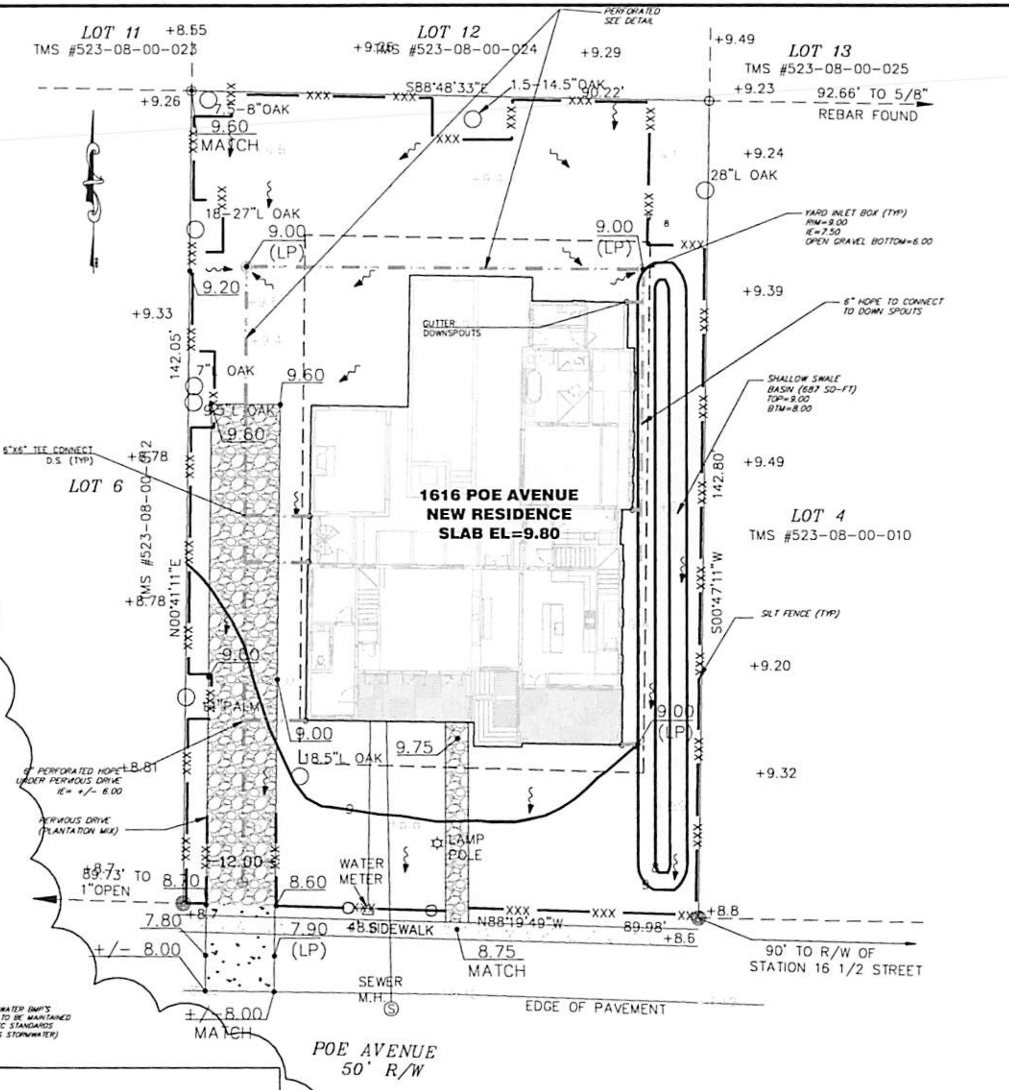
IN ACCORDANCE WITH THE Z.O. SECTION 21-17(STORMWATER ORDINANCE), I CERTIFY THE MEANS AND MEHODS PROPOSED BY THIS PLAN WILL PREVENT ANY ADVERSE IMPACTS TO ADJACENT PROPERTIES AS A RESULT OF THE DEVELOPMENT.

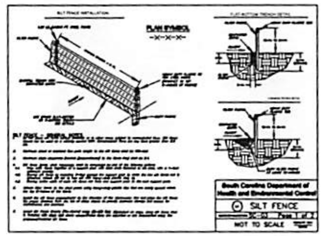
GROUNDWATER:

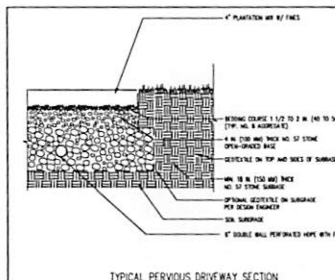
ALL DEWATERING OR PUMPING OF GROUND WATER ON SITE CONSTRUCTION MAY NOT IMPACT ADJACENT OR DOWNSTREAM PROPERTIES. PUMPING WATER OFF SITE MUST BE AUTHORIZED BY THE APPROPRIATE GOVERNING ENTITY (SCDOT, DHEC OCRM, TOWN OF S.I., ETC.)

SITE DATA:
LOT SIZE (TOTAL): 0.29 ACRES
12,830 SQ-FT
ZONING: RS- SINGLE FAMILY RESIDENTIAL
TMS #: 523-08-00-011
FLOOD ZONE: VE
FIRM PANEL#: 45019C 0538J
NOVEMBER 17, 2004

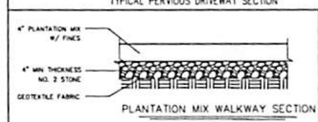
GRAPHIC SCALE
(IN FEET)
1 inch = 10 ft.





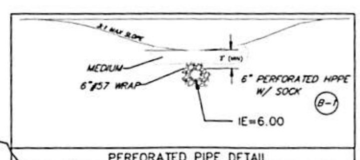


TYPICAL PERVIOUS DRIVEWAY SECTION

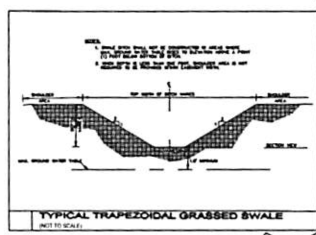


PLANTATION MIX WALKWAY SECTION

NTS



PERFORATED PIPE DETAIL



TYPICAL TRAPEZOIDAL GRASSED SWALE

(NOT TO SCALE)

Know what's below. Call before you dig.

EARTHSOURCE ENGINEERING
CIVIL ENGINEERING | SITE PLANNING | LANDSCAPE DESIGN | LEED DESIGN
886 Johnnie Dodds Boulevard Suite 200
Mt Pleasant, SC 29464
www.earth-sourceeng.com

SOUTH CAROLINA EARTHSOURCE ENGINEERING No. C01075 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA NO. 26148 06-05-19 GILES N. BRANCH

1616 POE AVE RESIDENCE
SULLIVANS ISLAND
SOUTH CAROLINA

PROPOSED CONDITIONS

REVISIONS

NO.	DATE	REVISIONS	BY
1	6-4-19	PER BUILDING DEPT. (S.I.)	J.U.

DRAWN: WLS
CHECKED: GNB
DATE: 05.17.19
JOB NO.
19-140

PERMIT REVIEW DOCUMENTS

SHEET NUMBER
C-200

EXHIBIT 4

EXHIBIT #3

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2019-CP-10-3131
	)	
J. Doe,	)	
	)	
Petitioner,	)	APPEAL PETITION, JURY DEMAND, MOTION, AND REQUEST FOR DECLARATORY RELIEF AND MEDIATION
-vs-	)	
Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.	)	
Respondents.	)	

FILED
2019 JUN 12 AM 9:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Petitioner/Appellant, complaining of the above-named Respondents, appeals the decision of the DRB approving the incomplete application for 1616 Poe Avenue, Sullivans Island, South Carolina. Moreover, pursuant to Constitutional, statutory, and governing law, petitioner respectfully makes motion and requests permission to proceed under the current caption as John Doe regarding the appeal. In accordance with South Carolina Code § 6-29-900, other statutes, Constitutional and governing law, notice of appeal, petition, jury demand, motion, request for declaratory relief, and request for mediation are hereby timely filed. Appellant would respectfully show unto the Court as follows:

EXHIBIT 4

PARTIES and JURISDICTION

1. Petitioner/Appellant John Doe, full-time resident and property owner in the affected Historic District, whose land in the vicinity is subject to a decision by the above-named DRB and who has a substantial interest in the decision, is adversely impacted by the DRB's approval of the application for 1616 Poe Avenue by oral vote on May 15, 2019.

2. Defendant DRB is an appointed board of architectural review for the Town of Sullivans Island, as defined in South Carolina Code § 6-29-900, et seq., South Carolina Code of Laws, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created pursuant to that legislation.

3. Defendant Alka Construction Co. is, upon information and belief, a South Carolina corporation, and is a necessary party to this action.

4. Defendant Svjetlana Bilic Damjanovic is, upon information and belief, a managing partner and principal of Alka Construction Co., and is a necessary party to this action.

5. Defendant Branko Damjanovic is, upon information and belief, a principal of Alka Construction Co., the owner of 1616 Poe Avenue, and a necessary party to this action.

6. Kenneth Craft, III, is, upon information and belief, architect and principal of Craft Design Studio and is a necessary party to this action.

7. The property at 1616 Poe Avenue on Sullivans Island is located in the Historic District and covers approximately one quarter acre in a block of five quarter acre lots. Four out of the five properties have ground floor residential square footage. Poe Avenue runs parallel to Atlantic Avenue and the property at 1616 Poe Avenue is in the fourth row from the ocean.

8. This Court has personal jurisdiction over the parties due to their location or activities in Charleston County.

9. Venue is proper as the real property involved is situated within Charleston County, the DRB is an appointed board of architectural review for the Town of Sullivans Island, in Charleston County, and the Appellant is a full-time resident and property owner in Charleston County. On information and belief, the individual defendants reside in Charleston County and Alka Construction Co. is, upon information and belief, a South Carolina corporation doing business in Charleston County.

10.This Court has subject matter jurisdiction of this action pursuant to South Carolina Code of Laws, Section 6-29-900, 1976, as amended, and other laws.

EXHIBIT 4

STATEMENT OF FACTS

11. Kenneth Craft III d/b/a Craft Design Studio, architect, applied for approval of unnecessary variances for plans for new construction at 1616 Poe Avenue, Sullivans Island, SC.

12. The 1616 Poe Avenue application has come before the DRB four times, specifically in December 2018, March 2019, April 2019, and most recently on May 15, 2019, as set forth below and throughout the petition.

13. Many members of the community attended the meetings in opposition and spoke against the application for reasons including inconsistency with the Comprehensive Land Use Plan, incompatibility with the Historic District and surrounding community in a flood zone, violations of the Zoning Ordinances (ZO's), failure to address stormwater drainage and flooding issues with hard rain events, and public health and safety including flooding of roads with hard rain events and environmental concerns.

14. In December 2018, the DRB denied the application because of, including but not limited to, violations of the Historic District standards in a flood zone, violations of the ZO's, and adverse impact on the neighboring properties and community regarding mass, height, scale, character, and incompatibility.

15. At the March 2019 meeting of the DRB, members of the community attended and presented opposition, including but not limited to, the applicant failed to comply with legal notice by failing to provide a complete application and publishing on the Town's website an incomplete application, thereby denying full and fair notice to the community and the public at large. The application itself provides that "incomplete submittals ... will not be part of the meeting agenda." Further, the applicant, who is the architect, failed to certify the veracity of the application. After considering objections of property owners behind, in front, to either side, contiguous, surrounding, in the vicinity, and in the community, conceptual approval was given with express directions for corrections to the plans. While some minor changes were made thereafter, the DRB's recommendations were materially and substantially ignored. Members of the DRB erroneously stated they believed they could not deny the application which is error of material fact and law. That approval was based on error of law. Moreover, failure to comply with legal notice and/or certification invalidates the approval.

16. That March 2019 DRB meeting began an hour earlier than usual and continued late into the evening until one board member jumped up and walked out stating, "I can't take this anymore." On information and belief, in the history of the DRB over 15 years or more, there has never been a board member who walked out stating, "I can't take this anymore." The integrity of the DRB application process is threatened when applications cannot be given the thorough review and attention each application deserves due to inadequate/unreasonable time constraints. Objection to the "marathon" session was

placed on the record and supports request for rehearing which was unreasonably denied. That objection also supports request herein for remand.

17. In April 2019, members of the community timely submitted information to the DRB prior to the April meeting; that information was not forwarded to the DRB in the usual and customary manner as had been done prior to previous meetings on 1616 Poe Avenue. It is unclear why. Members of the community in attendance were not aware of this material fact until after the meeting. As such, the decision of the DRB was uninformed because the DRB and the community were deprived of material information and opposition at a critical time which could have and should have led to a different result and denial. Despite notice the application was incomplete, the applicant once again failed to provide a complete application. Many members of the community mistakenly believed that the applicant had incorporated the DRB's requested corrections and were in compliance with the ZO's in good faith. Because the applicant published an incomplete and inconsistent application, many members of the community were misled. Failure to comply with legal notice invalidates the decision.

18. On May 15, 2019, members of the community appeared and information was presented to the DRB in opposition. It was explained that because the previous information submitted to the DRB in advance of the April meeting never made it to the DRB without explanation, the copy of additional new information was submitted to each member at the meeting. This time a member of the DRB stated he was dismissing and not considering the community's material opposition because it was not submitted in advance. Under these circumstances, it was arbitrary and/or unreasonable to ignore the neighborhood's and the community's meritorious concerns and proffered evidence. Moreover, lack of transparency and failing to submit property owners' documents to the DRB is unreasonable/arbitrary. Failure to provide advance notice that opposition would be wholly dismissed if not submitted in advance is unreasonable and sets a trap for the unwary. The DRB is negatively reinforcing community input and applying rules in an arbitrary manner without prior notice; objection is hereby entered which supports request for remand. Last minute submissions by applicants have been accepted, considered, and even encouraged while submissions by members of the community have been cavalierly dismissed in violation of equal protection for members of the community and in violation of notice requirements. Appellant asserts prejudicial error.

19. At the May 15, 2019, DRB meeting, a neighboring property owner who had spoken at a previous meeting was out-of-state. His position was entered into the record:

My wife and I are looking forward to meeting our new neighbors. Our hopes and expectation are they respect the setback and height restrictions that are in place and our expectation of the DRB is they do their part to enforce the guidelines so we maintain our great island. My main points are as follows...

i. There are setback requirements in place for a reason. If the homeowner wants to achieve a certain size house, then the DRB should deny their request and encourage

them to find a lot on the island that suits their square footage requirements. There are other lots on the island.

ii. What is the real reason why the homeowners need the variance? The only logical reason I can see is they want more space. If it's not for space purposes, then they should design something in accordance with the building guidelines. It's that simple. If it is for space, the DRB should deny their request and encourage the property owners to obtain a larger property on the island to build their ideal home.

iii. What are the guiding principles that the DRB uses to determine when a setback or height restriction should be granted versus denied? What are the extenuating circumstance for this homeowner where they need to go beyond the setback and height restrictions? Knowing this would be beneficial. I have not heard or read anything that makes this a unique situation. This looks to be a situation where the homeowner is doing this for either (a) an investment / future profit potential via a sale or (b) trying to get the best deal possible by purchasing a smaller lot and building a larger home or (c) disregarding the rules and guidelines that have been established to maintain the historic and consistency of our unique island. If any of these is the case, then the homeowner should be denied and encouraged to re-submit their plans once they have obtained a lot that can support their larger design where setback or height exceptions aren't needed.

iv. Lastly, I'm not a lawyer however does the Town open itself up to potential lawsuits by approving some exceptions and denying others under similar circumstances? It is my understanding that some homeowners have been denied variances similar to this, so if this is approved, are we at at risk?

20. On May 15, 2019, one or more members of the DRB expressed the erroneous belief that the members of the DRB were compelled by law to approve the subject application before it; and such belief was an error of law. The DRB did not adequately consider the requirements of the Historic District standards and the DRB was denied material information timely submitted at a critical point prior to preliminary approval and again prior to final approval. As a result, the DRB was denied the opportunity to adequately consider the best interests of the community at large. Multiple members of the DRB expressed concerns. It was noted for the record there was "a lot of opposition" to this application. It was also noted by members of the DRB for the record that approval of the application for 1616 Poe Avenue would forever mar the Historic District, the mass, scale, density, character, and compatibility, and establish bad precedent out of character for the existing Historic District neighborhood. All done over the timely objections of and to the extreme prejudice of the adversely affected property owners, including those behind, in front, to either side, contiguous, neighboring, and surrounding properties. Some members of the DRB expressed the erroneous belief that they were technically bound to approve the application and that members of the DRB were compelled by law to approve the application before it, thereby changing the Historic District neighborhood in perpetuity on the applicant's incomplete/inconsistent application. The Appellant asserts error of law.

21. Over objections by adjacent, contiguous, and surrounding property owners, despite objections to yet another incomplete application, over objections to failure to comply with notice requirements, and over objections to failure to comply with Historic District standards and the ZO's, the incomplete, inconsistent application was approved. An accurate and complete application creates a record for future property owners, for the Town, and for future reference; that consideration alone supports remand which is hereby requested. After timely request for rehearing was unreasonably denied, timely appeal followed.

22. Jury trial is demanded on taking claims.

STANDARD OF REVIEW

23. The standard of review for statutory interpretation is as follows. "An issue regarding statutory interpretation is a question of law." Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005)). As to questions of law, this court's standard of review is de novo. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

24. The standard of review for declaratory judgment is as follows. "The decision to grant a declaratory judgment is a matter [that] rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse."4 Eargle v. Horry Cty., 344 S.C. 449, 453, 545 S.E.2d 276, 279 (2001) (quoting Garris v. Governing Bd. of S.C. Reinsurance Facility, 319 S.C. 388, 390, 461 S.E.2d 819, 820 (1995)). "An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the [c]ourt's order is based on factual conclusions without evidentiary support." City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000). Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n (S.C. App., 2019)

25. The Court may apply the same standard to appeal of DRB decisions that it would apply to Zoning Board decisions. "A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion."*Peterson Outdoor Advertising v. City of Myrtle Beach*,327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165,173-74, 656 S.E.2d 346, 351(2008)(applying Zoning Board standards). Further, "a decision of a municipal [Z]oning Board will be overturned if it is arbitrary, capricious,

has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*,335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

26. Although a review Court gives deference to those applying local zoning ordinances, ordinances are subject to "a broader and more independent review . . . when the issue concerns the construction of an ordinance." *Eagle Container LLC v. County of Newberry*,379 S.C. 564, 568 666 S.E.2d 892 894 (2008),cited in *Mikell v. County of Charleston*, 386 S.E.2d 326, 687 S.E.2d 326, 329 ((2009).

GROUNDS FOR APPEAL

I. Error of Law

27. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

28. On information and belief, the applicant failed to remit all or part of the required application fee, which is jurisdictional. Accordingly, without the required fees paid in full prior to the hearing, there is no jurisdiction and the decision is invalid.

29. As a threshold matter, the applicant is required to submit a complete application which was not done. The application itself states incomplete submittals WILL NOT BE PART OF THE MEETING AGENDA. As such, no valid decision can be made on an incomplete application. An incomplete application is not a mere technicality because, including but not limited to, it provides notice to members of the DRB and the public and it creates an accurate record for future reference.

30. Moreover, notice requirements were not met because, including but not limited to, the applicant published an incomplete application on the Town's website which is not fair notice to adjacent and neighboring property owners, to the community, or to the public at large.

31. It was error of law for the DRB to deny Appellant's timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO's), and assists the intended beneficiaries of the ZO's, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community. Remand is hereby requested.

32. Significantly and materially, the subject property located at 1616 Poe Avenue, Sullivans Island (SI), SC, is in the Historic District with more stringent guidelines, requirements, and strict compliance under the Historic District.standards and zoning

ordinances in effect. Regrettably, there is material and/or substantial non-compliance to the extreme prejudice of the Historic District, adjacent and neighboring property owners, and the community of Sullivans Island, if not locals, the tourist industry, and the State.

33. Adjacent and neighboring full-time residents, including the petitioner, have a substantial interest in and are adversely affected by non-compliance with, including but not limited to, the Historic District standards, the comprehensive plan, and the zoning ordinances.

34. The applicant requested variances unnecessarily. Requirements for the requested variances have not been met, and there are no obvious obstacles to respecting the Town's zoning ordinances, thoroughly researched, vetted, and voted. Variances beget variances.

35. Moreover, the anticipated change from V to AE Flood Zone has not been sufficiently considered, if at all.

36. The developers and/or their investors refused the Board's reasonable request for the developers to meet with members of the community.

37. The applicant wrongfully characterized the Historic District community as a teardown and for the record, the last application in the neighborhood was not a teardown.

38. The decision of the DRB was based on an error of law, in that some members of the DRB stated they believed they had no legal basis on which they could deny the plans because, including but not limited to, the applicant had been given approval for non-compliance with the Zoning Ordinances (ZO) by the Zoning Administrator (ZA) or the staff and/or the Zoning Administrator (ZA) misconstrued/misrepresented that all the technical requisites of the ZO had been met. The record reflects the requirements of the ZO had not been met, including but not limited to, the requirements for legal notice and the requirements for a complete application prior to the public hearing. The plaintiff is prejudiced thereby.

39. The DRB is the appeal mechanism for ZA and/or staff decisions. Clearly, if the DRB has authority to hear and act on an appeal, it has authority to disagree with a ZA and/or staff decision. The DRB has authority to approve or deny actions or decisions made by the ZA and/or staff.

40.Contrary to the mistaken belief of some or all of the members, the DRB does have authority to deny plans that they believe are not in the best interests of the community.

41.The Comprehensive Land Use Plan. The DRB has authority to deny applications.

a. The Charleston County Comprehensive Land Use Plan is mandated by South Carolina Code of Laws Section 6-29-510, et. seq. and provides that, "All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the

future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners." S. C. Code Section 6-29-510(E).

b. The Comprehensive Plan is adopted by Ordinance and mandated by State law, as S.C. Code Ann. 6-29-510 which provides "the local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its jurisdiction". Pursuant to state law, the DRB has every right to consider the applicable portions of the Comprehensive Plan while deciding matters before it. The Comprehensive Plan is a policy document which contains, including but not limited to, density considerations.

c. The 1616 Poe Avenue property and Appellant's property are located in the Historic District.

d. All of the area concerned with this appeal is designated a V Flood Zone, transitioning to AE.

e. The density is the requirement for maintaining the character of the area and defining potential impacts on the infrastructure. Allowable density is defined by the citizens (property owners) in a zoned area using a legally approved process. The applicant failed to meet the requirements for the requested variances which adversely affect density and, therefore, should be denied.

f. The Plan is a tool to promote and maintain future growth and improve the quality of life for all residents of Charleston County, and serves as a reference guide and a decision making tool for local government officials.

g. The DRB has, in fact, ignored guidelines which would have and should have led to a different outcome with denial of unnecessary variances. Variances beget variances.

42. It was clear from more than one statement from members of the DRB during the hearings that they desired to deny approval of the application, but believed they were compelled by law to approve it; and such belief was an error of law.

43. Moreover, applicants knowingly made material misrepresentations and/or material omissions which were not known until after the approval and which could have and would have led to a different result. The decision is based on error of material fact and/or law and should be reversed.

44. Appellant requests that this Court remand the decision to the DRB with instructions that the DRB can and should consider the policies in the comprehensive plan, Historic District standards, and the ZO's as guidelines for decisions, and the DRB is not bound by the recommendations of the Zoning Administrator (ZA) and/or staff, particularly given that the Applicant has not met the requirements for the variances he requested.

II. Abuse of Discretion

45.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

46.The decision of the DRB giving preliminary approval of the application for 1616 Poe Avenue was an abuse of discretion.

47. The members of the audience in opposition were clearly within the description of "residents of Sullivans Island" for whom the Plan is intended to preserve and promote the quality of life; the developer property owner and architect are registered S.C. corporations. The residents of Charleston County described for the Commission the detriment to their "public health, safety, economy, good order, appearance, convenience, morals, and general welfare" that the application would cause, as stated above, yet the DRB seemingly failed to give consideration to the impact on the Sullivans Island residents behind, in front, to either side, contiguous, and surrounding 1616 Poe Avenue. If the future residents are considered in absentia, their public safety is in jeopardy, including but not limited to, based upon testimony given at the hearings regarding Historic District standards in a flood zone with extreme stormwater drainage issues adversely affecting the adjacent and surrounding full-time residential neighborhood and property owners as well as plaintiff's ingress and egress and motor vehicle access to garage, home, and property along with impaired and/or unsafe navigation of and impaired evacuation via streets, roads, and thoroughfares on the island which flood when there is a hard rain.

48.The DRB ignored a most important part of the Historic District standards. The application is incomplete, including but not limited to, regarding compliance with the Historic District standards. The applicant has not met the requirements for Historic District standards and is materially non-compliant. The DRB failed to comply with the state statute for "the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners."

49. Land development regulations were authorized by state government, among other reasons, "to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties." SC Code 6-29-1120(5), 1976, as amended. Aerial maps shown by the applicant and pointed out by statements of the community demonstrate that this application is out of harmony and incompatible with the existing Historic District, with the smaller lot size, and with the applicable ZO. The applicant has failed to meet the requirements for the requested variances.

i. Evidence was provided that clearly indicated a density and usage out of harmony with the Historic District.

ii. Aerial maps and testimony demonstrated the existing Historic District in a flood zone. Four out of five properties on that block of smaller lot sizes have ground floor living

space; the application is not in harmony with either the comprehensive plan or the current usage. Testimony included adverse impact on the plaintiff and other full-time residents and surrounding property owners resulting in wrongful regulatory taking.

iii. A professional engineer has concluded the following:

1. Impermissible alteration of the historical drainage patterns, including but not limited to, direction and/or flow rate will adversely impact neighboring properties in a flood zone. The neighbors' request for evaluation of the drainage issues fell on deaf ears though such evaluations and certifications have been routinely requested and granted to others.
2. Inadequate stormwater management and excess stormwater discharge in a flood zone causes adverse effects on, including but not limited to, the water supply, water quality, and environmental concerns.
3. It was pointed out that because of the slope, any excess stormwater runoff would exacerbate existing flooding with hard rains, including but not limited to, threatening existing single story, ground floor living space and homes in close proximity and in the vicinity where all are in a flood zone.

50. The application wrongfully claims the established neighborhood of full-time residents is a tear-down. For the record, the last application was not a tear-down and was compatible with the existing scale and character.

51. In failing to, including but not limited to, require a complete application with adequate notice for the benefit of interested parties, the DRB ignored the comprehensive plans, reference guides, and standards for the Historic District in a flood zone, and approved an incompatible application which is inconsistent with Historic District standards, and thereby abused its discretion.

III. Arbitrary

52.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

53. The decision of the DRB in ignoring concerns voiced by property owners behind, in front, on either side, contiguous, surrounding, and in the vicinity of 1616 Poe Avenue ignores the comprehensive plan, Historic District standards in a flood zone, and the ZO's and guidelines and, therefore, is arbitrary.

54. A previous application had been denied. With the next application, the DRB requested changes to mass, size, scale, character, and compatibility. The approval of the incomplete May 15, 2019, application without substantive measures to bring mass, height, scale, character, and compatibility into compliance, all with sustained community opposition, was arbitrary.

55. One or more members of the DRB expressed the false belief and wrongfully stated that the DRB could not or should not deny the application in order to comply with the comprehensive plan, Historic District standards, and/or ZO's.

56.The application as approved is internally inconsistent, incomplete, and includes attributes and elements which were previously denied. The DRB's denial of the neighbors' reasonable request for a complete application was arbitrary and in violation of governing law.

57. A community member noted that the DRB's denial of another applicant's variance requests while granting the developer's unsubstantiated and unnecessary variance requests is arbitrary and contrary to applicable law.

58. It was arbitrary for the DRB to deny Appellant's timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO's), and assists the intended beneficiaries of the ZO's, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community which could have and would have led to a different result. Remand is hereby requested.

TAKING CLAIMS

59.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

60. Jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named Respondents as the trier of fact may deem just and proper.

REQUEST FOR DECLARATORY RELIEF

61.The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

62. The Appellant has standing to request a Declaratory Judgment pursuant to S. C. Code Section 15-53-10 et seq. based upon the full-time resident's interests which are adversely affected by the decision of the DRB.

63. The Appellant has standing under the Declaratory Judgment Act to seek a uniform standard for the DRB's application of the comprehensive plan, Historic District standards, ZO's, and applicable law, including but not limited to, design standards under state law for, including but not limited to, roadways.

64. The Appellant requests that this Court make a finding that the DRB has authority to and should take into consideration the comprehensive plan, the Historic District standards, the purposes and intent of the land development regulations, and the ZO's, all as adopted by the governing bodies, when making decisions regarding applications to the DRB. Moreover, the Appellant requests that this Court make a finding that the DRB is not bound to "rubber stamp" the decisions of the ZA and/or staff, but rather to act in the best interests of the Historic District, residents, and community to assure, in general, the prudent and judicious development of the Town.

EXHIBIT 4

WHEREFORE, your Appellant requests that this Court:

a. issue its order reversing the decision of the DRB approving the 1616 Poe Avenue application or in the alternative, issue order for remand,

b. issue a declaratory judgment providing relief requested,

c. issue order for good faith mediation,

d. jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named respondents as the trier of fact may deem just and proper, and

e. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Sullivans Island, South Carolina

Dated 6/12/19

EXHIBIT 4

2 April 2019

Design Review Board (DRB)
Town of Sullivans Island
Sullivans Island Town Hall
2056 Middle Street
Sullivans Island, SC 29482

Re: 1616 Poe Avenue

Dear Mr. Chairman and Honorable Members of the DRB:

Thank you for your kind deliberation of this worthwhile request. We, the residents and property owners living in the surrounding area, respectfully ask this request be entered into the record when you consider the pending requests for the above property. We believe there is precedent for the DRB acknowledging the existing, more modest scale for houses in our neighborhood. We request that any decisions made with regards to proposed new construction on the above property:

i. respect the stated zoning standards without authorizing changes to accommodate increase;

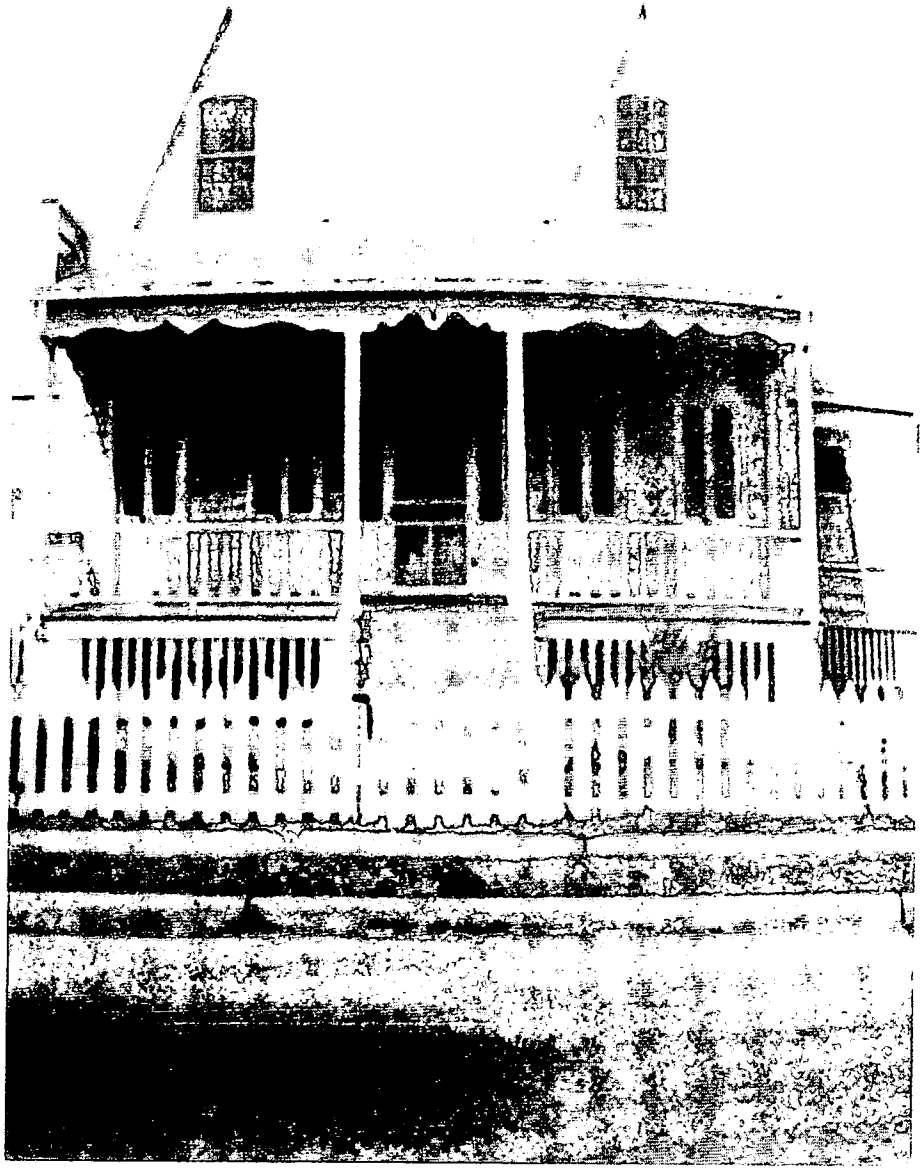
ii. require strict adherence to existing zoning standards regarding the adding of additional fill to any properties; and

iii. require maintenance of the historical drainage patterns in all respects.

If you have any questions or would like for a representative from the neighborhood to appear and testify in person, please contact us. Again, thank you for your consideration. With best personal regards, we remain

Yours very truly,

EXHIBIT 4



2002 Middle Street - built 1885

2673 Atlantic Avenue - built 1889

EXHIBIT 4

The design for 1616 Poe does not meet these DRB standards and other DRB guidelines.

Sec. 21-111. Standards of Neighborhood Compatibility

Where this Ordinance grants the Design Review Board discretion to modify a Zoning Standard or a Design Standard, the Board shall determine whether or not the proposed modification is compatible with the neighborhood. In making this determination the Board shall consider, with reference to adjoining lots, lots facing across the street, and lots in the immediate vicinity:

A. The pattern of setback, foundation elevations and building heights;
B. The massing and orientation of structures;
C. Fenestration (windows) and doorway spacing and alignment patterns;
D. The placement and use of porches, decks and patios;
E. The placement and alignment of driveways;
F. The treatment of front and side facades;
G. Where appropriate, the types of roofs, the roof pitches, and other aspects of roof design;
H. Where appropriate, distinctive architectural styles that characterize a street or neighborhood; and
I. Such other factors as the Board may consider relevant to defining the character of the neighborhood.

Does not meet the minimum of standards: A, B, D, F, G, H,

G. Does not meet standards of: Flat roofs, multiple roof styles, incongruous architectural styles, Side facades are not articulated

With all due respect this design needs to go back to the drawing board and we request the DRB to deny the application.

(6) If the Design Review Board finds that the application is inconsistent with one or more of the Zoning Ordinance Standards which it does not have the power to modify, or if the Design Review Board determines that a requested application does not meet the Standards of neighborhood Compatibility as described in Sec. 21-111, the Design Review Board shall

(a) Deny the application accompanied by suggested changes that might be made to the application and/or variances that might be sought that would make the application more appropriate and consistent with the spirit of the Zoning Ordinance; or,

(b) Approve the application subject to a variance being granted by the Board of Zoning Appeals modifying the required standards.

Our neighborhood as stated before is more than happy to work with the applicant in achieving a great design for Sullivan's Island and our historic neighborhood.

EXHIBIT #4

ARTICLE XI. HP Historic Preservation Overlay District

Sec. 21-90. Statement of purpose and findings.

A. The HP Historic Preservation Overlay District is designed to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town of Sullivan's Island, South Carolina. The Town Council finds that the historic, architectural, cultural, and aesthetic features of the Town represent valuable resources of the Town. Therefore, it is hereby declared that the purpose of this Article to be known as the HP Historic Preservation Overlay District shall be as follows:

(1) To promote the designation of historic properties, landmarks, and contributing structures and the creation of historic overlay districts for the educational, cultural, economic and general welfare of the public;

(2) To preserve, protect and enhance those structures and area that reflect outstanding elements of the Town's cultural, architectural, historic or other heritage;

(3) To promote the Island's outstanding historic or architectural structures by providing civic pride on the history and accomplishment of the past;

(4) To promote the sound and orderly preservation of historic areas as a whole, and of the individual properties therein for the education, pleasure and enrichment of all citizens; and

(5) To enhance property values within historic areas.

B. It is the Town of Sullivan's Island desire that by encouraging a general harmony of style, form, proportion and material between buildings of historic design and those of contemporary design, the Town's historic buildings and historic area will continue to be a distinctive aspect of the Town of Sullivan's Island and will serve as visible reminders of its significant historical and cultural heritage and that of the State of South Carolina.

Sec. 21-91. HP Overlay District applicability.

The HP Historic Preservation Overlay District is intended to be an overlay zoning district, and the regulations imposed by such district shall be in addition to the regulations of the underlying zoning district applicable to the subject Lot or area. All provisions of this Article, including the definitions contained therein shall be applicable to this district.

Sec. 21-92. Role of design review board.

A. In accordance with SC Title 6, Chapter 29-870, local governments that enact a Zoning Ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board to oversee these responsibilities.

B. The Design Review Board shall be responsible for oversight of the HP Historic Preservation Overlay District.

C. The Design Review Board shall work with the Planning Commission and the Town Council to effect the creation and maintenance of HP Overlay Districts.

Sec. 21-93. Definitions.

For the purpose of this Article, the following terms shall have the meaning as indicated.

Board. The Design Review Board of the Town of Sullivan's Island.

Certificate of Appropriateness. The official document issued by the Design Review Board, approving and/or concurring in any application for permit for erection, demolition, moving, reconstruction, restoration or alteration of any structure designated historic property.

Historic District: An area, designated by the Town Council pursuant to the provisions of this Article. The District may contain one or more significant historic structures and landmarks and may have within its boundaries other property or structures that are not of such historic and/or architectural significance to be designated as landmarks, nevertheless, contribute to the overall visual characteristics of the District.

Historic Property. Any place (including an archaeological site or the location of a significant historical event), building, structure, work of art, fixture or similar object that has been individually designated by the Town

Council of Sullivan's Island, within or without an Historic District, or designated as a contributing property within a historic district.

National Register of Historic Places. The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, or culture, maintained by the Secretary of the Interior under authority of the National Historic Preservation Act, as amended.

Ordinary Maintenance and Repairs. Any work on which a Building Permit or any other Town permit or certificate is not required and where the purpose is stabilization, and further, where such work will not noticeably change the exterior appearance of the resource. Any work not satisfying all of the above requirements shall not be considered ordinary maintenance and repair.

Sec. 21-94. Historic property designation criteria

A. Upon the effective date of this ordinance, historic properties shall be those so designated previously by chapter 21 of the Town Ordinance as in effect immediately prior to the effective date of this Ordinance including Articles XI and XII as adopted on August 17, 2004 subject to any appropriate changes approved by the Design Review Board subsequent thereto. Those historic properties were those depicted as "Sullivan's Island Landmarks" and "Traditional Island Resources" on the map entitled "Historic Resources of Sullivan's Island South Carolina Field Evaluation Map", revised 30 June 2003, and also those identified on a list of properties entitled "Sullivan's Island Historic Resource Designation Study List", dated September 24, 2003, as Number One "Sullivan's Island Landmarks" and Number Two "Traditional Island Resources", both map and list prepared by Schneider Historic Preservation, LLC, and which are specifically incorporated herein by reference.

B. The Town Council, Planning Commission, the Design Review Board or owners of one or more Lots of land within an area may propose additions to or deletions from the list of designated historic properties. If initiated by the property owners, the application shall be made upon forms or pursuant to standards set by the Design Review Board for this purpose.

C. The Design Review Board shall determine whether a property shall be designated an historic property or shall no longer be considered an historic property.

1. If the Town Council, Planning Commission or Design Review Board proposes an addition to the list of historic properties, the property proposed shall be subject to and controlled by the Town's ordinances governing designated historic properties from the time of such proposal until final determination by the Design Review Board. (3-18-08)

2. The final determination provided above will be accomplished within a reasonable timeframe. (3-18-08)

D. In determining whether a property should be designated an historic property, it should be considered whether the property:

(1) Has significant inherent character, interest, or value as part of the development or heritage of the Town, state, or nation;

(2) Is the site of an event significant in history;

(3) Is associated with a person or persons who contributed significantly to the culture and development of the Town, state, or nation;

(4) Exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the Town, state, or nation;

(5) Individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering;

(6) Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation;

(7) Represents an established and familiar visual feature of a neighborhood or the Town; or

(8) Has yielded, or may be likely to yield, information important in pre-history or history.

E. Owner notification.

Owners of property proposed to be designated as historic or to be no longer designated as historic shall be notified in writing thirty (30) days prior to consideration by the Design Review Board. Owners may appear before the Design Review Board to voice approval or opposition to such designation and inclusion. Objections shall be based on procedural nonconformities in the designation process or on the misapplication of the criteria for designation as specified in this Ordinance.

Sec. 21-95. Creation or modification of HP Overlay District.

A. Upon the effective date of this Ordinance, the districts shall be those so designated previously by Chapter 21 of the Town Ordinance as in effect immediately prior to the effective date of this Ordinance including Articles XI and XII as adopted on August 17, 2004 subject to any appropriate changes approved by the Design Review Board subsequent thereto. The initial boundaries of the district were those shown as "Potential National Register or Local Historic District" on the map entitled "Historic Resources of Sullivan's Island South Carolina Field Evaluation Map", revised 30 June 2003, prepared by Schneider Historic Preservation, LLC, and which is specifically incorporated herein by reference. Upon the effective date of Article XI and Article XII, the Design Review Board will be vested with the authority to make recommendations to add or delete districts or to change the boundaries of districts.

B. The Town Council, Planning Commission, the Design Review Board or owners of one or more Lots of land within an area may propose the creation or modification of an HP Overlay District. If initiated by the property owners, the application shall be made upon forms or pursuant to standards set by the Design Review Board for this purpose.

C. The procedure for creating or amending an HP Overlay District applicable to an area of the Sullivan's Island shall be the same as for any other zoning amendment, provided that, if the proposal for creating a HP Overlay District does not originate with the Design Review Board, the proposal shall be forwarded to the Design Review Board for its review and comment prior to the holding of a public hearing by the Planning Commission.

D. The proposal shall include a rationale for the designation or modification of the proposed HP Overlay District related, to the maximum extent practicable, to the Historic Property Designation Criteria as set forth in Section 21-94.

E. Findings

In recommending the application of the HP Overlay District to an area of Sullivan's Island, the Design Review Board or other recommending body shall express findings regarding the specific structures, landscapes or other physical aspects of the proposed HP Overlay District on which it bases the determination required by the criteria in Section 21-94. Where the designation is made based on the general character of the proposed district, these findings may include, but shall not necessarily be limited to:

(1) Height, scale or mass of buildings and structures typical of the area;

(2) Architectural style(s) and periods typical of the area;

(3) Building materials and colors typical of the area;

(4) Landscapes typical of the area;

(5) Typical relationships of buildings to the landscapes or to the streets in the area;

(6) Setbacks and other physical patterns of building in the area;

(7) Typical patterns of rooflines of buildings in the area; and/or

(8) Typical patterns of porch and entrance treatments of buildings in the area or height and mass of the buildings.

F. The proposal for creation or amending of the HP Overlay District shall include a map and legal description of the area and addresses of properties to be included.

G. Owners of property proposed to be included in or removed from an HP Overlay District shall be notified in writing thirty (30) days prior to consideration by the Design Review Board. Owners may appear before the Design Review Board to voice approval or opposition to such changes. Objections shall be based on procedural nonconformities or to misapplication of the criteria specified in this ordinance.

H. The Design Review Board shall complete its review of the HP Overlay District and shall forward its recommendation regarding any proposed deletion, addition or change to the HP Overlay District to the Planning Commission.

I. The Design Review Board shall hold an open meeting or public hearing on the proposed HP Overlay District. The process for notice and public hearing shall be the same as that for notice and a hearing before the Planning Commission.

J. The Design Review Board shall recommend to the Planning Commission that:

(1) The proposal to create the HP Overlay District for the proposed area of the Town be approved;

(2) The proposal be approved subject to specified conditions; or,

(3) The proposal be denied.

K. Maintenance of inventory and map.

Where a HP Overlay District is created, it shall be given a unique name that shall include the words "Historic Preservation" and shall be used to identify it on the map and in the Zoning Ordinance.

Sec. 21-96. Effect of creation of HP Overlay District.

The creation of a HP Overlay District shall have the following effects:

A. The regulations of the HP Overlay District shall be applicable to all designated properties within and without the district;

B. Because it is an overlay district, the regulations for the underlying zoning district shall remain in effect, except as provided in the next paragraph;

C. In case of any conflict between the regulations applicable in the underlying district and the regulations of the HP Overlay District, the regulations of the HP Overlay District shall apply, even where the applicable regulation may not be the higher standard;

D. The findings adopted by the Town Council, in accordance with the previous section, shall define the scope of the Town's interest in protecting the historic resource and shall provide the guidelines to be used by the Design Review Board, along with the applicable regulations, in considering whether to grant or deny a Certificate of Appropriateness within the district; and,

E. Nothing in this Article shall be construed as reason for an increased evaluation of property for purposes of ad valorem taxation because of historic designation.

Sec. 21-97. Certificate of appropriateness.

A. When Required.

(1) A Certificate of Appropriateness shall be required before the commencement of work upon any historic property or on any building or structure located within the HP Overlay District.

(2) A Certificate of Appropriateness for such work includes the erection, reconstruction, restoration or alteration of the exterior of any structure or site, except when such work satisfies all the requirements of ordinary maintenance and repair as defined in this Article.

(3) Neither a Certificate of Zoning Compliance nor a Building Permit shall be issued within the HP Overlay District until the Design Review Board has approved a Certificate of Appropriateness.

B. Procedures.

(1) An application shall be completed for a Certificate of Appropriateness in accordance with the Design Review Board's submittal requirements. An application shall not be considered complete until all the required data have been submitted. The application for a Certificate of Appropriateness shall be filed with the Zoning Administrator. The Zoning Administrator shall forward to the Design Review Board the complete application for a Certificate of Appropriateness, accompanied by an application for a Certificate of Zoning Compliance.

(2) The applicant shall be informed of the hearing date at which the applications for a Certificate of Appropriateness shall be considered. The applicant shall have the right to be heard and may be accompanied or represented by counsel and/or one or more construction or design professionals at the hearing.

(3) After hearing the applicant, and any others wishing to speak, the Board shall take one of the following actions:

(a) Approve the application for a Certificate of Appropriateness;

(b) Place conditions on the application and approve a Conditional Certificate of Appropriateness; or

(c) Deny the application for Certificate of Appropriateness.

(4) In the case of the disapproval of plans by the Design Review Board, the Board shall state in writing the reasons for such disapproval and may include suggestions in regard to actions the applicant might take to secure the approval of the Board concerning future issuance of a Certificate of Appropriateness.

(5) Work performed pursuant to the issuance of a Certificate of Appropriateness shall conform to the requirements of such Certificate, if any. It shall be the duty of the Building Official to inspect from time to time any work performed pursuant to a Certificate of Appropriateness to assure such compliance.

(6) It shall be the responsibility of the Zoning Administrator to issue the actual Certificate of Appropriateness, with any designated conditions, and to maintain a copy of the Certificate of Appropriateness, together with the proposed plans. These shall be public documents for all purposes.

C. Criteria for certificate of appropriateness. (6/20/17)

The Board shall determine whether to grant a Certificate of Appropriateness based on the following:

(1) Consistency of the proposed work with the applicable HP Overlay District regulations;

(2) Consistency of the proposed work with the regulations of the underlying zoning district;

(3) Consistency of the proposed work with the findings adopted by the Town Council in designating HP Overlay District;

(4) For an historic property, consistency of the proposed work with the findings in designating it a historic structure, or comparable record of findings from a state or federal listing; and

(5) For an historic property, consistency with the following ten preservation standards, and the most recent version of the Secretary of Interior's Standards for the Treatment of Historic Properties: Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings:

(a) Using a property as it was used historically or giving a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships;

(b) Retaining and preserving the historic character of a property; avoidance of the removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property;

(c) Avoiding changes that create a false sense of historical development, such as adding conjectural features or elements from other buildings;

(d) Retaining and preserving changes to a property that have acquired historic significance in their own right;

(e) Preserving distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property;

(f) Repairing rather than replacing deteriorated historic features; or where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials;

(g) Utilizing the gentlest means of chemical or physical treatments;

(h) Protecting and preserving the archeological resources in place, and if disturbing, mitigation measures will be undertaken;

(i) Not destroying historic materials, features, and spatial relationships that characterize the property; differentiating the new work from the old and making it compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment; and,

(j) Undertaking new construction in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

D. Notification of affected property owners.

Prior to the issuance of an approval or denial of a Certificate of Appropriateness, the Board shall inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

E. Staff Approval of Minor Refinements (7/21/09)

Notwithstanding provisions to the contrary in this chapter, the Zoning Administrator or his/her designee may modify Certificates of Appropriateness previously approved by the Design Review Board for minor refinements, as allowed in Section 21-109(F)(9 and 10). (7/21/09)

Sec. 21-98. Certificate of appropriateness for moving, demolition or removal.

No designated historic property within or without any HP Overlay District shall be demolished, moved or removed unless such demolition, moving or removal shall be approved by the Design Review Board and a Certificate of Appropriateness for Demolition, Moving or Removal shall be granted. The procedure for issuance of a Certificate of Appropriateness for Demolition, Moving or Removal shall be the same as for the issuance of other Certificates of Appropriateness with the following modifications:

A. After the hearing, the Design Review Board may approve the Certificate of Appropriateness for Demolition, Moving or Removal thereby authorizing the demolition moving or removal, or the Board may deny the Certificate of Appropriateness for Demolition Moving or Removal, or postpone the demolition or removal for a period not to exceed sixty (60) days.

B. In determining whether to issue a Certificate of Appropriateness, the Board shall consider the following criteria, in addition to the other criteria above:

(1) The contribution which the structure makes to the historic and architectural nature of the town, individually and/or in its relation to other structures and properties in the area.

(2) The condition of the structure from the standpoint of structural integrity and the extent of work necessary to stabilize the structure; and,

(3) The economically viable alternatives available to the demolition.

Sec. 21-99. Property owned by public agencies.

The requirements, provisions, and purposes of this Article apply to all property owned by the Town or any other public agency; provided, however, designation pursuant to this Article shall not affect the validity of prior actions of the Town Council approving plans, programs, or authorizations for public trusts, agencies or authorities of the Town without an express amendment of such plan, program or authority.

Sec. 21-100. Maintenance, repair, and interior projects.

A. Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of structures designated as historic when that repair does not involve a change in design, material, or outer appearance of the structure.

B. The Board shall not consider the interior arrangements or alterations to the interior of a building unless they have an impact on the exterior appearance of the building or unless the interior of a public building or the public space of a private building is specifically described and designated as historic.

C. The Board may authorize a Town staff or a Board member or subcommittee to approve minor projects involving repairs and ordinary maintenance that do not alter design, materials, or the outer appearance of a structure or interior projects not subject to design review.

Sec. 21-101. Fines and penalties.

The system of fines applied by the Town of Sullivan's Island for violation of the building code will apply to violations of this Article or other relevant sections of this Zoning Ordinance.

Sec. 21-102. Reserved

Sec. 21-103. Reserved.

Sec. 21-104. Reserved.

Sec. 21-105. Reserved

EXHIBIT 4

RECEIVED
Jan 24 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge
Markley Dennis, Circuit Court Judge

Appellate Case No. 2019-001671

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

PROOF OF SERVICE

I certify that I have served **RESPONDENTS SVJETLANA BILIC DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., BRANKO DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., AND ALKA CONSTRUCTION CO.'S MOTION TO DISMISS** on all parties of record as follows:

Via U.S. Mail on Appellant, J Doe, by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2022, addressed as follows:

J. Doe
c/o C. Holmes, P.O. Box 187, Sullivan's Island, SC 29482-0187

Via Email, on Respondent, Design Review Board (DRB) of the Town of Sullivans Island (S.I.), addressed as follows:

John Phillips Linton, Jr. (SC Bar No. 79130)
G. Trenholm Walker (SC Bar No. 5777)
Walker Gressette Freeman & Linton, LLC, PO Box 22167, Charleston, SC 29413
linton@wgfllaw.com
walker@wgfllaw.com

s/Alexandra Scott Williams

Attorney for Respondents Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., and Alka Construction Co.

The South Carolina Court of Appeals

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

Appellate Case No. 2019-001671

ORDER

First, Appellant's motion for a panel to reconsider the single-judge order denying her motion to exceed the page limit is denied. *See* Rule 240(i), SCACR ("The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.").

Second, Respondents have filed a motion to dismiss this appeal based on mootness. Here, Appellant has appealed an order of the circuit court denying her motion for a preliminary injunction in 2019. The underlying issue involved a final decision of the Design Review Board approving plans for construction of a house. Appellant had sought the preliminary injunction to halt the construction of the approved house. Respondents have now informed this court that the building permit for construction of the house was issued in 2019, and a certificate of occupancy for the house was issued in 2020. The house has been fully built and occupied for two years. Because any judgment by this court will have no practical legal effect, Respondents' motion to dismiss is granted. *See Curtis v. State,* 345 S.C. 557, 549 S.E.2d 591 (2001), *cert. denied,* 535 U.S. 926, 122 S.Ct. 1295, 152 L.Ed.2d 208 (2002) (case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy); *Waters v. South Carolina Land*

Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996) (justiciable controversy is real and substantial controversy appropriate for judicial determination, as opposed to dispute or difference of contingent, hypothetical or abstract character). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

FILED
Mar 31 2022

cc:
Cynthia Holmes
Benjamin Alexander Crute Traywick, Esquire
Alexandra Scott Williams, Esquire
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

EXHIBIT 6

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

RETURN

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

EXHIBIT 6

Appellant timely enters objection to respondents' motion to dismiss (MTD) and respectfully submits the motion should be denied or deferred for consideration after filing of the record on appeal (ROA) and all final briefs. To date, the record reflects respondents have had more than sufficient time including months of delay for filing their initial brief. Now, respondents elect to file a MTD at the eleventh hour consistent with lack of meritorious defense. Accordingly, appellant respectfully requests the MTD be denied.

As a threshold matter, appellant objects to respondents' MTD including, but not limited to, its misstatements, mischaracterizations, and Exhibits attached to the MTD which are incomplete and/or inaccurate. They should be disregarded. Accordingly, the MTD should be denied or deferred until the ROA and all final briefs have been filed.

As a threshold matter, the issue of jurisdiction can be raised on appeal. A ruling regarding a jurisdictional question, as in this case, based on facts requires review of the record on appeal (ROA) which will be filed with the final briefs. When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). Accordingly, the MTD should be denied.

Moreover, the appeal is not moot. The zoning ordinances (ZO) speak to this issue loud and clear. If an owner elects to proceed prior to the expiration of the appeal period or prior to resolution of an appeal filed within the appeal period, whichever is later, the owner shall do so at the risk of reversal. TOSI ZO, Art. XII, Sec. 21-109(F)(10). On page 2 of their MTD, respondents admit that appellant timely filed appeal before issuance of the building permit. Thereafter, developer knowingly elected to proceed. If developer proceeds after appellant files the notice of appeal, developer proceeds at his own risk. Respondent's argument would nullify the appeal process, would make the Legislative enactments

superfluous, and would lead to an absurd, if not unconstitutional, result. It is respectfully submitted the Legislature is presumed to enact Legislation that is not absurd. Developer's interpretation would lead to an unconstitutional result, including but not limited to, denial of meaningful judicial review. Developer could have requested relief from the lower court but did not. He has only himself to blame. Accordingly, the MTD should be denied.

Respondents' MTD cites outmoded, inapposite case law and fails to even mention recent controlling precedent in *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019). A discerning review of that case as well as others finds that the Legislature intended to and did statutorily provide that the Circuit Court has no jurisdiction to summarily dismiss until and unless the herein timely requested **pre-litigation** mediation is unsuccessful. Accordingly, the MTD should be denied.

Further, Professional Civil Engineer (PE) reports document no other drainage along the affected block of Poe Avenue on Sullivans Island. PE reports to be included in the ROA. Statutory rights regarding roadway drainage include but are not limited to, S.C. Code § 5-31-450:

SECTION 5-31-450. Drains for surface water.

Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

HISTORY: 1962 Code Section 59-224; 1952 Code Section 59-224; 1942 Code Section 7301; 1932 Code Section 7301; Civ. C. '22 Section 4449; Civ. C. '12 Section 3026; 1902 (23) 1038; 1953 (48) 272.

EXHIBIT 6

See also *South Carolina Law of Torts* (4th Ed. 2011), Hubbard and Felix state that an owner can sue the municipality for an on-going nuisance caused by an affirmative act based on, including but not limited to, statutory authority. *Id.*, pp. 245-270; S.C. Code 5-31-450; S.C. Code 15-43-20; South Carolina Constitution, Art. I, Sec. 13; U.S. Const, 5th Amendment. The PE reports/surveys document the developer's property is at a higher elevation with his stormwater drainage adversely affecting the neighboring property owners in the immediate vicinity including, but not limited to, appellant at a lower elevation in a flood zone and causing flooding/aggravation of flooding and on-going nuisance with damages. The Zoning Ordinances provide that existing property owners are not allowed to add fill, in this case to relieve the ponding and flooding. In order to add fill, the Zoning Ordinances require that the existing home be demolished. Fill is only allowed with new construction; however, it is strictly limited to no more than one foot in this flood zone. TOSI, ZO, Art. II, Sec. 21-13. Unfortunately, one foot of fill would not be enough. Accordingly, the MTD should be denied.

EXHIBIT 6

CONCLUSION

For the reasons stated and for substantial justice affecting substantial rights, appellant respectfully requests denial of respondents' MTD.

Respectfully submitted,

Dated 1/30/2022

C. Holmes
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010

EXHIBIT 6

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 6

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated 1/30/2022

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 6

Hard copy
available
on request -

Thank You!

EXHIBIT 6

Fax Cover:

C. Holmes, M.D.
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010

EXHIBIT 7

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

Rule 240(j), SCACR, *De Novo* Panel Appeal and Motion to Hold All Time Limits in Abeyance

---

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

EXHIBIT 7

Without being disagreeable, there is disagreement. For good cause, appellant timely enters this request for *De Novo* Panel Appeal pursuant to S.C. Code § 14-8-220 appeal of order by a single government employee dismissing meritorious appeal after the initial brief is filed but before filing of the Record on Appeal (ROA). That statute is set forth as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute forms the basis and statutory authority for Rule 240(j), SCACR, *De Novo* Panel Appeal which is respectfully requested. Moreover, the rule of lenity supports this appeal. Significantly and materially, there is no record on appeal (ROA), no affidavit, and no factual basis or adequate record for the March 31, 2020, order on appeal herein. Appellant respectfully requests deferral for ROA, including but not limited to, full, fair, and adequate record for meaningful review. Appellant's Return confirms defendants' incomplete/inaccurate exhibits without response from the other side. Appellant respectfully requests deferral for adequate record. Moreover and by analogy, the Federal Rules of Court, on which the State Rules of Court are based, are loud and clear on this issue in Rule 27(c), FRAP:

(c)Power of a Single Judge to Entertain a Motion.

A circuit judge may act alone on any motion, but **may not dismiss** or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge. Rule 27(c), FRAP (emphasis supplied).

Further, even assuming mootness which is denied, the Rules require motion to dismiss based on mootness must be filed as soon as allegedly moot, not at the eleventh hour on the eve of the due date

for defendants' initial brief, suggesting lack of meritorious response to appellant's brief and/or lack of diligence. Accordingly, the order dated March 31, 2022, by a single individual overlooks or misapprehends material facts and law, is internally inconsistent, fails to comply with the SCACR, and is unsustainable lacking factual basis with full, fair, and adequate record.

FACTS

As a threshold matter, the issue of jurisdiction has been raised. The facts pertinent to the *De Novo* Panel Appeal pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, include the following. The issue of jurisdiction can be and has been raised in this appeal. A ruling regarding a jurisdictional question, as in this case, based on facts requires review of the record on appeal (ROA) which has not been filed. When deciding a jurisdictional question based on facts, a reviewing court has the power and the **duty to review the entire record**, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975) (emphasis supplied). There is no affidavit, factual basis, or ROA supporting the order on appeal. Moreover, the case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), and others establish governing precedent which controls ruling that the Legislature intended to and did statutorily vest jurisdiction in the DRB for the hearing and pre-litigation mediation. The Circuit Court has no jurisdiction to summarily dismiss unless and until **pre-litigation** mediation, timely requested herein, is unsuccessful and mediation "must be granted." S.C. Code § 6-29-900 et seq.

EXHIBIT 7

DISCUSSION

I. Rule 240(j), SCACR, grants *de novo* panel appeal of an order by a single judge.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or judge may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Moreover, Rule 240(j), SCACR, stands on its own and is independent of and not restricted by Rule 240(i), SCACR. Accordingly, the Legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220 such that, "Any party aggrieved by an order of an individual judge or judge may seek review of that order by the appellate court or a panel thereof," and the standard of review is *de novo* (not the same standard as a Rule 221, SCACR, petition for rehearing). See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the

principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970). Moreover, the rule of lenity supports this appeal.

This Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the Legislature, so the plain language of the statute should not be disregarded. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C. 2000). The Legislature intended to and expressly did provide appeal for orders by a single individual as, including but not limited to, protection of that individual and the court from exploitation, compromise, and/or targeting. "In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). A discerning review reveals

that Rule 240(j), SCACR, appeal would not be needed if the only time it applied is dismissal or final decision, since Rule 221, SCACR, addresses that instance. Otherwise, Rule 240(j), SCACR, would be rendered superfluous and "the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *Id.* The March 31, 2022, order on appeal is internally inconsistent and based on error of material fact and law because, including but not limited to, it renders S.C. Code § 14-8-220 and Rule 240(j), SCACR, superfluous and leads to an absurd result. Rule 240(j), SCACR, *De Novo* Panel Appeal should be granted.

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, appeal is *de novo* review by panel which does not include the individual judge who signed the order that is the subject of the Rule 240(j), SCACR, panel appeal. Appellant filed the appeal pursuant to Rule 240(j), SCACR, for appeal of a single judge's order, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an Order that he or she authored. The judge will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the

trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the Rule 240(j), SCACR, panel for appeal of his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978). Moreover, in consideration of Legislative intent and the overarching principles incorporated in the State Constitution by its framers, due process requires that the appellate court judge who individually signed the dismissal order not participate, directly or indirectly, on appeal of the decision which is the subject of the Rule 240(j), SCACR, *de novo* panel appeal. Ambiguity regarding the requirement of non-participation on Rule 240(j), SCACR, appeal is a denial of due process. Accordingly, Rule 240(j), SCACR, *de novo* panel appeal and due process require non-participation by the individual judge who signed the order which is the subject of Rule 240(j), SCACR, panel appeal.

Former Justice Sandra Day O'Connor warned the public about the importance of judicial independence. She wrote "... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." *Judicial Independence and 21st Century Challenges*, Sandra Day O'Connor, The Bencher, July/August 2012. As she explained, "The reason

why judicial independence is so important is because **there has to be a safe place** where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences." *Id.* (emphasis supplied). Public policy, legislative intent, statutory authority, governing case law, State and Federal Constitutional law, the Rules of Court, the SCACR, and fundamental fairness support Rule 240(j), SCACR, *de novo* panel appeal herein.

II. The standard of review at Rule 240(j), SCACR, panel appeal is *de novo*.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Significantly and materially, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal pursuant to S.C. Code § 14-8-220, which is different than the standard of review for Rule 221, SCACR, rehearing. Ambiguity regarding the proper legal standard pursuant to Rule 240(j), SCACR, panel appeal is a denial of due process. Rule 240(j), SCACR, is a S.C. Code § 14-8-220 panel appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Rule 27(c), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single

judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Importantly in that case, the denial of a transfer motion does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, appeal is that the order is signed by a single judge. Accordingly, the legal standard of review under these circumstances for Rule 240(j), SCACR, panel appeal is *de novo*.

III. Denial of the request for Rule 240(j), panel appeal of then Chief Justice Lockemy's denial of motion to exceed page limits should be reversed.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. As a threshold matter, the March 31, 2022, order states the request for Rule 240(j), panel appeal of then Chief Justice Lockemy's denial of motion to exceed page limits is denied. The order overlooks or misapprehends the fact that then Chief Justice Lockemy failed to address the accompanying motion to hold all time limits in abeyance pending resolution of the motion to exceed page limits. Due to Chief Justice Lockemy's inadvertent oversight, there is no provision for the opportunity to re-file a document which complies with the page limits which is hereby requested.

Moreover, because there is no provision for the opportunity to re-file a document which complies with page limits, denial of the motion to exceed page limits essentially finally decides the case through improper default, thereby complying with Rule 240(i), SCACR, referenced in the March 31, 2022, order. Accordingly, appellant respectfully requests reversal of then Chief Justice Lockemy's denial of motion to exceed page limits or opportunity to re-file a document which complies with page

limits.

Further, as set forth above, Rule 240(j), SCACR, panel appeal is independent of and not restricted by Rule 240(i), SCACR. A discerning review reveals that Rule 240(j), SCACR, panel appeal would not be needed if the only time it applied is dismissal or final decision, since Rule 221, SCACR, addresses that instance. Otherwise, Rule 240(j), SCACR, would be rendered superfluous and "the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The March 31, 2022, order on appeal is internally inconsistent and reversible as a matter of law based on error of material fact and law because, including but not limited to, it renders S.C. Code § 14-8-220 and Rule 240(j), SCACR, superfluous and leads to an absurd result. Accordingly, Rule 240(j), SCACR, *De Novo* Panel Appeal should be granted for review of then Chief Justice Lockemy's denial of motion to exceed page limits.

IV. Defendants have failed to comply with Rule 240, SCACR.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. There is no affidavit, factual basis, or ROA supporting the dismissal order on appeal because defendants have failed to comply with Rule 240, SCACR. Rule 240(c), SCACR. The record reflects defendant failed to meet the burden pursuant to the Rules of Court of submitting sufficient factual support for the motion. Accordingly, the March 31, 2022, order is unsustainable.

EXHIBIT 7

V. Pursuant to the statute, S.C. Code § 6-29-900 et seq., the lower court had no jurisdiction to summarily dismiss until and unless **pre-litigation** mediation, timely requested herein, is unsuccessful.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The issue of jurisdiction can be raised on appeal. A ruling regarding a jurisdictional question, as in this case, based on facts requires review of the record on appeal (ROA) which has not been filed. When deciding a jurisdictional question based on facts, a reviewing court has the power and the **duty to review the entire record**, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975) (emphasis supplied). There is no affidavit, factual basis, or ROA supporting the order on appeal. Moreover, the case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), and others establish controlling precedent which provides that the Legislature intended to and did statutorily provide that the Circuit Court has no jurisdiction to summarily dismiss until and unless **pre-litigation** mediation, timely requested herein, is unsuccessful.

The DRB hearing on the merits vests jurisdiction in the DRB at the pre-litigation stage; statutory authority provides property owners in the immediate vicinity whose property is adversely affected by a decision of the DRB with the right to appeal and to request mediation after the DRB hearing; pursuant to the statute, appellant timely filed notice of appeal and mediation; the lower court erred because, pursuant to S.C. Code § 6-29-900 et seq., the request for mediation "must" be granted. The lower court erred because it only has jurisdiction to order good faith mediation at the pre-litigation stage. There is no jurisdiction to dismiss until and unless mediation is unsuccessful. In this case, the lower court opinion is reversible for failure to comply with the unambiguously expressed legislative intent pursuant to S.C. Code § 6-29-900 et seq., which provides that the requested mediation "must be granted." S.C. Code § 6-29-900 et seq.

At the pre-litigation stage, it is reversible error for the lower court to summarily dismiss the case. A property owner whose land is the subject of a decision of the board of appeals may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with section 6-29-900 et seq. If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted. S.C. Code § 6-29-900 et seq. When interpretation of a statute is required, "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Blackmon*, 304 S.C. 270, 273, 403S.E.2d 660, 662 (1991).

As per the case of *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (S.C. App. 2011), the parallel statute, S.C. Code § 6–29–820(B), is designed to encourage **pre-litigation** mediation by **NOT** requiring the filing of a petition until and unless pre-litigation mediation is unsuccessful. In *Newton*, the Court made clear, "This procedure **does not allow for issue identification, or even party identification, pr ior to the filing of a petition** with the circuit court." *Id.*, p. 284 (emphasis supplied). In the instant case, the lower court erred as a matter of law in summarily dismissing the case at the **pre-litigation** stage before mediation. Accordingly, the lower court order should be reversed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

VI. Mediation "must be granted." S.C. Code § 6-29-900 et seq.

Our State's barrier islands and beaches are a precious public resource for the people of

South Carolina. While the islands are a finite resource, a bevy of competing environmental, economic, and social uses seek to lay claim to them. The legislative branch has made policy decisions as to how those uses should be balanced in order to maximize the benefit to the people of South Carolina and enacted statutes to fulfill those policy decisions. The task falls to the courts to ensure that those statutes and regulations are correctly applied. *Klawah Devt. Partners v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 766 S.E.2d 707, 710 (S.C. 2014).

A. The plain language of the statute supports standing to request pre-litigation mediation under S.C. Code § 6-29-900 et seq.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. "Notably, the parties agree that Appellant had standing to appear before the *Design Review Board.* In fact, Developer has admitted that Appellant's members include persons who own property and live in the immediate vicinity." *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), fn. 6 (emphasis supplied). The record reflects the petitioner herein owns property, resides in the immediate vicinity, and has a substantial interest in the Fort Moultrie Historic District where the property is located. As an example, zoning ordinances establishing impervious surface limitations are enacted for the benefit of adjacent and neighboring property owners in order to protect them from damages caused by excessive stormwater runoff. The intended beneficiaries of zoning ordinances which establish impervious surface limitations herein are surrounding property owners who could and would be adversely affected. Respondents' interpretation would render the zoning ordinances which establish impervious surface limitations superfluous because the intended beneficiaries, such as the surrounding property owners including the appellant, would be unable to obtain that benefit. Accordingly, the plain language of the statute supports pre-litigation mediation herein.

B. The statutory scheme as a whole supports standing to request pre-litigation mediation.

EXHIBIT 7

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Specifically, S.C. Code § 6-29-900 *et seq.* provides for mediation herein as outlined in the recent case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019) (COA Case No. 2017-000170 with remittitur filed in the Circuit Court on June 12, 2019). LUDRA (*South Carolina Land Use Dispute Resolution Act enacted June 2, 2003*) amends the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 by allowing a property owner whose land is the subject of a decision by the board of zoning appeals, board of architectural review (DRB), or planning commission to file a notice of appeal with the circuit court, accompanied by a request for mediation. The statute could have been limited to the applicant property owner, but instead included property owners whose land is the subject of such a decision including surrounding property owners such as the appellant. Pursuant to S.C. Code § 6-29-900 *et seq.*, mediation must be granted:

> Subsection (D)(2) carves out the subclass of property owners and gives this subclass the option of seeking pre-litigation mediation in addition to an appeal....Hence, LUDRA amended existing provisions governing appeals from a board of architectural review (section 6-29-900) by adding the option for pre-litigation mediation. *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019).

Accordingly, the statutory scheme as a whole supports appellant's standing to request pre-litigation mediation and to appeal.

C. The lower court's interpretation of the statute, S.C. Code § 6-29-900 et seq., erroneously limits the right to request pre-litigation mediation to the applicant property owner instead of the subclass of affected property owners in the immediate vicinity with a substantial interest who are given the option of seeking pre-litigation mediation in addition to an appeal as intended by the Legislature.

Each assertion set forth in this document that is consistent with the following is incorporated

herein by reference as if here set forth verbatim. The case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), provides:

Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) (citation omitted). Further, "[t]he intention of the legislature must be gleaned from the entire section and not simply clauses taken out of context." *Singletary v. S.C. Dep't of Educ.*, 316 S.C. 153, 162, 447 S.E.2d 231, 236 (Ct. App. 1994). A statute "must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). "We therefore should not concentrate on isolated phrases within the statute." *Id.* "Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* **"In that vein, we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,'for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'** *Id." Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019) (alterations in original) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008)) (emphasis supplied)).

The Legislature could have limited pre-litigation mediation to the applicant property owner before the DRB but did not. Impervious surface limitations are an example of ZO's with neighboring property owners as the intended beneficiaries. Public policy supports the request for pre-litigation mediation after DRB decision which adversely affects the property owner appellant herein whose land is thereby the subject of a decision of the DRB. Limiting pre-litigation mediation to the applicant property owner leads to impermissible unequal treatment and/or absurd results. The statute and case law support appellant's request for pre-litigation mediation herein.

"Notably, the parties agree that Appellant had standing to appear before the *Design Review Board*. In fact, Developer has admitted that Appellant's members include persons who own property and live in the immediate vicinity." *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), fn. 6 (emphasis supplied). The record reflects the appellant herein owns property and lives in the immediate vicinity within the Fort Moultrie Historic District

EXHIBIT 7

linking the Officer's Quarters with Fort Moultrie and Battery Logan. Moreover, that case confirms petitioner's right to request mediation as follows:

In its brief, Developer argues that in LUDRA, the legislature drew a distinction between appeals from a *DRB* and appeals from a planning commission by allowing appeals from a *DRB* decision by a "person who may have a substantial interest in" the decision (*section 6-29-900*) while declining to expressly authorize anyone other than a property owner to appeal in section 6-29-1150(D). However, the standing provision in section 6-29-820 was in place before LUDRA was enacted. Further, prior to the enactment of LUDRA in 2003, the provision in section 6-29-1150 allowing an appeal to circuit court, then located in subsection (C), did not specifically mention property owners. Following Developer's logic, even property owners did not have standing to appeal prior to LUDRA's enactment, which would render the appeal language meaningless due to the lack of standing for any class of persons wishing to appeal. Such a result is unacceptable. See *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [l]egislature or would defeat the plain legislative intention."); *State v. Long*, 363 S.C. 360, 364,610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something.").

In fact, LUDRA also added the language found in subsection (D)(2), specifically mentioning property owners, to sections 6-29-820 and *6-29-900* (governing appeals from decisions of boards of zoning appeals and *boards of architectural review like the DRB*). See 2003 Act No. 39, §§ 3, 8(amending sections 6-29-820 and *6-29-900 to allow property owners the option of adding a request for pre-litigation mediation to the notice of appeal*). Both of these statutes included an appellate standing provision before LUDRA amended these statutes in 2003, and the **addition** of LUDRA's pre-litigation mediation option for property owners did not result in a corresponding reduction in the class of possible appellants in these statutes—the appellate standing provisions in both statutes remained intact.

Therefore, it is unlikely that in enacting LUDRA, the legislature intended to diminish the class of potential appellants seeking review of a planning commission *(or DRB)* decision when it added the pre-litigation mediation option for property owners to section 6-29-1150 *(and S.C. Code § 6-29-900 et seq.)*. Rather, it left the existing provisions in *all three statutes* intact. *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019), p. 11 (emphasis supplied) (bold in original).

Accordingly, the legislature intended to provide the appellant, a property owner who lives in the immediate vicinity in the Fort Moultrie Historic District with a substantial interest who is adversely affected, standing and the statutory right to timely request pre-litigation mediation and to appeal.

EXHIBIT 7

D. The statutory scheme as a whole and/or comparison of parallel statutory schemes compels a broader interpretation of property owner as a party with standing to request pre-litigation mediation.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. A parallel statutory scheme, also under the Comprehensive Planning Enabling Act (CPEA), may be found at S.C. Code Ann. § 6-29-820 regarding appeals from the zoning board. The statutory scheme there has undergone parallel changes. The original § 6-29-820 under the 1994 Act read as follows:

Section 6-29-820, A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(Compare the original § 6-29-900 et seq. appeal provision at South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Act 355, 1994 Acts). Amendments in 2003 changed the section parallel to the section at issue regarding the DRB (S.C. Code § 6-29-900 et seq. (2019)), as follows:

Section 6-29-820. Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:
(1) as provided in subsection (A); or
(2) by filing a notice of appeal and request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

It is noted appellant timely filed a petition and notice of appeal with mediation request within the 30 days herein.

The Legislature went on to provide similar mediation guidelines, in a similar form to the section at issue herein, in a new subsection S.C. Code § 6-29-900 et seq. At least two cases have been filed with this Court under this statutory language, and neither challenged the appeal on the basis that the appellants were not property owners. This Court has noted that under this scheme, non-property owner appellants (as opposed to property owner appellants herein) who challenged whether the decision was correct as a matter of law had standing, even though their positions had not been presented at the public hearing or communicated to the Board prior to filing the appeal petition with the circuit court; non-property owner appellants (as opposed to the appellant property owner herein) had standing merely by filing their issues on appeal in a written petition before the thirty-day filing period had expired. *Newton v. Zoning Board of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011), reh'g denied; *Bevivino v. Town of Mt. Pleasant Bd. Of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013). Appellant who is a property owner timely filed the petition and has standing to appeal.

In a similar situation under the prior statutory scheme, this Court found that a community group, Spanish Wells Property Owners Association (POA), had standing to appeal a planning commission's grant of a development permit under the "any person who may have a substantial interest" standard in the old S.C. Code § 6-7-750: "Spanish Wells and its members, **as the owners of property adjacent to and in the near vicinity** of the Calibogue development, are persons with a substantial interest in the Board's decision. The statute, therefore, gives Spanish Wells standing to appeal." *Spanish Wells Property Owner"s Ass'n, Inc., v. Board of Adjustment of Town of Hilton Head Island*, 292 542, 357 487 (Ct. App. 1987) (emphasis supplied), (overruled on other grounds, *Spanish Wells Property Owner"s Ass'n, Inc., v. Board of Adjustment of Town of Hilton Head Island, 295 67, 367 160 (1988). See also Bevivino v. Town of Mt. Pleasant Bd. Of Zoning Appeals*, 402 S.C. 57, 737 S.E.2d 863, 867 (Ct. App. 2013) (finding standing under the S.C. Code § 6-29-820 language "any person who may have a

substantial interest in the zoning board decision" for individuals who lived in proximity to the approved project in order to appeal a Board of Zoning Appeals decision even when they never attended a Board hearing.) It is respectfully submitted the statutory scheme as a whole and/or comparison of parallel statutory schemes compels a broader interpretation of property owner as a party with standing to request pre-litigation mediation, not a narrower interpretation limited to the applicant property owner.

The Municipal Association of South Carolina (MASC) has published a guide for its constituents on the application of the Comprehensive Land Development Enabling Act (CLDEA). The MASC guide describes the parallel provisions of the enabling statute governing boards of zoning appeals, DRB's, and planning commissions, and how the 2003 amendments provided additional remedies for a property owner, but did not ameliorate any rights of non-property owners to appeal decisions impacting their communities. Municipal Association of South Carolina, *2018 Comprehensive Planning Guide for Local Governments*. Accordingly, consistent and uniform interpretation of the ZO's, Legislative intent, and express statutory language grant the property owner appellant herein, who resides in the immediate vicinity in the Fort Moultrie Historic District, who has a substantial interest, and who is specially damaged, the right to appeal and to timely request pre-litigation mediation as appellant herein did. S.C. Code § 6-29-900 et seq. (2019).

VII. There is no jurisdiction for another circuit court judge to rule on the Rule 59(e), SCRCP, motion.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Respondents have admitted that "Holmes' Rule 59(e) Motion should not be ruled upon at this time because it seeks reconsideration of an order by another circuit court judge." Defendants' Memo (1/17/20). Jurisdiction vests with the judge who signed the order which is the subject of the Rule 59(e), SCRCP, motion, and there is no jurisdiction for another circuit court judge to rule on the pending Rule 59(e), SCRCP, motion for reconsideration of the PI

order. Significantly and materially, that order ruled that the PI order is not binding on the merits of the appeal which is to be determined on the full record. Accordingly, the dismissal order on appeal is reversible as a matter of law for, including but not limited to, remand on pending Rule 59(e), SCRCP, for reconsideration by the judge who signed the order.

VIII. The appeal is not moot.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The appeal is not moot. The March 31, 2022, order on appeal is reversible based on these and other errors of material fact and law including but not limited to, the request for pre-litigation mediation which must be granted. Per the statutes, appellant filed the petition in the lower court well before the PI motion, and the petition includes arbitrary and capricious failure to comply with the Fort Moultrie Historic District regulations, guidelines, and zoning ordinances, arbitrary and capricious failure to comply with S.C. Code § 5-31-450 (roadway drainage), declaratory relief pursuant to S.C. Code §§ 15-53-130, 15-53-30, and15-53-60, and/or other. *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n* (S.C. App., February 27, 2019). *See* S.C. Code § 6-29-900 et seq. (2019). Accordingly, defendants' lack of compliance with the Rules of Court including but not limited to, lack of affidavit or ROA, supports *de novo* panel appeal of the dismissal order which is hereby requested.

EXHIBIT 7

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests this Court grant Rule 240(j), SCACR, *de novo* panel appeal with abeyance pending resolution. Due to then Chief Justice Lockemy's inadvertent oversight, motion for abeyance and opportunity to re-file the document so that it complies with the page limits was overlooked and is hereby requested. For the reasons stated and for good cause, motion to dismiss appeal should be denied/deferred.

Respectfully submitted,

C. Holmes
PO Box 187
SI, SC 29482
843.883.3010
For Petitioner

EXHIBIT 7

App. Case No. 2019-001671

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

1. I am the appellant, of legal age, and competent to state the matters herein. This affidavit is based on personal knowledge and on information and belief. It is submitted in support of the attached.

2. The appellant is a property owner who is adversely affected, who has a substantial interest in the Fort Moultrie Historic District where the property is located, who resides in the immediate vicinity, and whose property is the subject of a decision of the board of architectural review, the DRB.

3. The record reflects Defendant's Memo filed January 17, 2020, in which defendants admit that "Holmes' Rule 59(e) Motion should not be ruled upon at this time because it seeks reconsideration of an order by another circuit court judge." Defendant's Memo (1/17/20). Jurisdiction vests with the judge who signed the preliminary injunction (PI) order which is the subject of the Rule 59(e), SCRCP, motion, however, the motion was inadvertently before a different circuit court judge. See attached clerk of court's letter. There is no jurisdiction for another circuit court judge to rule and remand is requested on the pending Rule 59(e), SCRCP, motion for reconsideration of the PI order.

4. Per the statute, appellant timely filed DRB appeal in the lower court well before the PI motion. *See* S.C. Code § 6-29-900 et seq. (2019).

5. Pursuant to S.C. Code § 6-29-900 et seq. (2019), non-property owner appellants and property owner

appellants have standing to challenge and appeal whether the DRB decision is correct as a matter of law. The appellant timely filed appeal which challenges whether the DRB decision is correct as a matter of law. The appellant also timely filed mediation request.

6. Defendant filed no affidavit, factual basis, record on appeal (ROA), or sufficient factual record for the motion to dismiss and failed to meet defendant's burden pursuant to the Rules of Court of submitting sufficient factual support for the motion.

7. The March 31, 2022, order of dismissal by a single individual overlooks or misapprehends material facts and law, is internally inconsistent, fails to comply with the SCACR, and is unsustainable lacking sufficient factual basis with full, fair, and adequate record.

8. The issue of jurisdiction has been raised in this appeal which requires full ROA review.

9. The dismissal order overlooks timely appeal of multiple orders.

10. The dismissal order overlooks timely appeal which challenges whether the DRB decision is correct as a matter of law.

11. Under these facts, a reasonable factual basis exists for doubting the judge's impartiality when that judge participates in Rule 240(j), SCACR, panel appeal of his own individual dismissal order dated March 31, 2022. Appellant is prejudiced thereby. Appellant reasonably questions that judge's impartiality.

12. Accordingly, appellant respectfully requests Rule 240(j), SCACR, *de novo* panel appeal and respectfully requests defendant's motion be deferred or denied.

EXHIBIT 7

C. Holmes
PO Box 187
Sullivans Isd., SC 29482-0187

SWORN to before me this

8 day of April, 2022

Notary Public for South Carolina
Comm. Expires: 8/29/24

CATHERINE MAGWOOD
MY COMMISSION
EXPIRES
8/29/2024
NOTARY PUBLIC
SOUTH CAROLINA

EXHIBIT 7

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www3.charlestoncounty.org

CHARLESTON
COUNTY
SOUTH CAROLINA

FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2263
(843) 958-4400
(843) 958-4434 FAX
www3.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

June 25, 2015

C. Holmes, M.D.
P.O. Box 187
Sullivans Island, SC 29482

Dear Ms. Holmes,

Thank you very much for your letter of June 19, 2015 regarding Rule 59(e). In reading the rule, I believe you might be referring to 59(f) which addresses any motion filed under this rule to be heard by the judge who issued the order. My office does follow Rule 59; however, it may be that a motion is scheduled inadvertently before the incorrect judge and in those instances; the motion is removed and rescheduled with the appropriate judge.

Thank you again for your kind words and please let me know if I can be of further assistance.

Sincerely,

Julie J. Armstrong

Julie J. Armstrong
Charleston County Clerk of Court

EXHIBIT 7

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 7

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated 4/14/2022

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 7

Hard copy available on request —

Thank you!

EXHIBIT 7

Fax Cover:

C. Holmes, M.D.
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010

The South Carolina Court of Appeals

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

Appellate Case No. 2019-001671

ORDER

Appellant has filed a motion for panel review and motion to hold time limits in abeyance, which we construe as a petition to rehear the dismissal of this appeal. After careful consideration of the petition, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paula A. Thomas J.

Stephanie P. McDonald J.

J.

Columbia, South Carolina

FILED
Jun 23 2022

cc:
Cynthia Holmes
Benjamin Alexander Crute Traywick, Esquire
Alexandra Scott Williams, Esquire
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

EXHIBIT 9

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

Rule 221, SCACR, Petition for Rehearing With Suggestion for Rehearing En Banc

---

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

EXHIBIT 9

Without being disagreeable, there is disagreement. The appellant timely submits Rule 221, SCACR, petition for rehearing with abeyance request and suggestion for rehearing en banc for the June 23, 2022, opinion. For the reasons stated and for substantial justice affecting substantial rights, appellant respectfully requests this Honorable Court grant Rule 221, SCACR, Petition for Rehearing En Banc regarding matters of great public importance including but not limited to, the June 23, 2022, opinion misconstrues and/or misapplies improper legal standard. Moreover, there is no affidavit, factual basis, or ROA supporting the June 23, 2022, opinion. In addition, the case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019), and others establish governing precedent which controls and which ruled that the Legislature intended to and did statutorily vest jurisdiction in the DRB for the hearing on the merits and pre-litigation mediation. The Circuit Court has no jurisdiction to summarily dismiss unless and until **pre-litigation** mediation, timely requested herein, is unsuccessful and mediation "must be granted." S.C. Code § 6-29-900 et seq. Public policy and Legislative intent mandate ADR (alternative dispute resolution) and pre-litigation mediation herein.

I. The June 23, 2022, opinion misconstrues the Rule 240(j), SCACR, Motion for De Novo Panel Review.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The opinion is reversible as a matter of law because it conflates appellant's Rule 240(j), SCACR, Motion for De Novo Panel Review with Rule 221, SCACR, Petition for Rehearing. "***Subject to the statutory law***, the Supreme Court shall make rules governing the practice and procedure" in all courts of the state. S.C Const. art. V § 4 (emphasis supplied). In this case, Rule 240(j) ,SCACR, Motion for De Novo Panel Review is subject to the underlying statutory law in S.C. Code § 14-8-220. That statute, S.C. Code § 14-8-220, provides for de novo panel appeal of

the order by a single government employee dismissing meritorious appeal after appellant's initial brief is filed but before filing of the Record on Appeal (ROA). That statute provides as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute forms the basis for and statutory authority of Rule 240(j), SCACR, *De Novo* Panel Appeal which is respectfully requested. Significantly and materially, there is no record on appeal (ROA), no affidavit, and no factual basis or adequate record herein. Appellant respectfully requests deferral for ROA, including but not limited to, full, fair, and adequate record for meaningful review. Moreover and by analogy, the Federal Rules of Court, on which the State Rules of Court are based, are loud and clear on this issue in Rule 27(c), FRAP:

(c) Power of a Single Judge to Entertain a Motion.

A *court of appeals* judge may act alone on any motion, but **may not dismiss** or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. **The court may review the action of a single judge.** Rule 27(c), FRAP (emphasis supplied).

Further, even assuming mootness which is denied, respondents' motion is untimely because the Rules require motion to dismiss based on mootness must be filed as soon as allegedly moot, not at the eleventh hour on the eve of the due date for defendants' initial brief, suggesting defendants lack a meritorious response to appellant's brief and/or lack of diligence. Accordingly, the dismissal by a single government employee overlooks or misapprehends material facts and law, it is internally inconsistent, it fails to comply with the statutory authority and with Rule 240(j), SCACR, it violates the letter and spirit of the underlying statutory authority in S.C. Code § 14-8-220 as well as Legislative intent, and it is unsustainable without ROA and/or full, fair, and adequate record for meaningful review. "The

EXHIBIT 9

touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

II. The improper legal standard was applied.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

Statutory authority mandates, " An appeal **shall** be allowed from decision of any one judge to a panel of the Court." S.C. Code § 14-8-220 (emphasis supplied). Appellant has requested a S.C. Code § 14-8-220 de novo panel appeal of the decision of one government employee which "shall be allowed."

Accordingly, the proper legal standard is de novo and the June 23, 2022, opinion is reversible as a matter of law for, including but not limited to, failure to apply the proper legal standard. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

III. Ambiguity regarding the proper legal standard is arbitrary and capricious and constitutes a denial of due process and substantial rights.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. To the extent there is ambiguity regarding the proper legal standard, the rule of lenity supports appellant's position. Ambiguity regarding, including but not limited to, the proper legal standard is arbitrary and capricious and it constitutes a denial of due process and substantial rights. Arbitrary taking of a **statutory appeal which shall be allowed** from decision of any one judge to a panel of the Court is a denial of due process. S.C. Code § 14-8-220 (emphasis supplied). The appellant is prejudiced thereby, and but for the wrongful denial of due process including but not limited to, misconstruing and misapplying the improper legal standard, the outcome should and would be different in appellant's favor. "The touchstone of due process is protection of the individual

against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

IV. Lack of Record on Appeal to support the June 23, 2022, opinion is reversible as a matter of law.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The issue of jurisdiction can be raised at any time. A ruling regarding a jurisdictional question, as in this case, based on facts requires review of the record on appeal (ROA) which will be filed with the final briefs. When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). Moreover, lack of Record on Appeal to support the June 23, 2022, opinion is reversible as a matter of law including but not limited to, denial of adequate record for meaningful review. Accordingly, the petition for rehearing en banc should be granted. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the

EXHIBIT 9

procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

V. There is no Constitutional and/or statutory authority for an individual government employee to dismiss appeal and Legislative intent as well as the letter and spirit of S.C. Code § 14-8-220 and Rule 240(j), SCACR, mandate de novo panel appeal under the facts.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff. July 1, 1985.

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Moreover, Rule 240(j), SCACR, is independent of Rule 240(i), SCACR. "The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Rule 240(i), SCACR. Accordingly, the legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220 and the standard of review is *de novo* (not the same standard as a Rule 221, SCACR, petition for rehearing). See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not

specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

This Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the legislature, so the plain language of the statute should not be disregarded. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C., 2000).

"In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, appeal should be *de novo* review by the court or panel which does not include the individual who signed the order that is the subject of the Rule 240(j), SCACR, appeal. Appellant filed the motion under Rule 240(j), SCACR, for appeal of an individual government employee's order, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality.

Rice v. McKenzie, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). In that case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the appeal panel for his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978) (emphasis supplied). Moreover, in consideration of legislative intent and the overarching principles incorporated in the State Constitution by its framers, due process requires the appellate court judge who individually signed the order not participate, directly or indirectly, on appeal of the decision which is the subject of the Rule 240(j), SCACR, appeal. Accordingly, pursuant to Rule 240(j), SCACR, the appeal and due process provide for non-participation of the individual judge who signed the order which is the subject of a Rule 240(j) appeal.

EXHIBIT 9

Materially, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal pursuant to S.C. Code § 14-8-220, which is different than the standard of review for Rule 221, SCACR, rehearing. The Rule 240(j), SCACR, motion is an appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially in that case, the denial of a transfer motion does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, review is that the order is signed by a single judge. Accordingly, the legal standard of review under these circumstances for Rule 240(j), SCACR, appeal is *de novo:* The Order dated June 23, 2022, should be reversed/vacated for good cause and for the reasons stated herein. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*,

EXHIBIT 9

376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests this Honorable Court grant Rule 221, SCACR, petition for rehearing with abeyance request and suggestion for rehearing en banc.

Respectfully submitted,

C. Holmes
PO Box 187
SI, SC 29482
843.883.3010
For Appellant

EXHIBIT 9

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 9

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated 7/7/2022

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 9

Hard copy available on request -

EXHIBIT 9

Fax Cover:

C. Holmes
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010

EXHIBIT 10

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 15, 2022

Cynthia Holmes
Post Office Box 187
Sullivans Island SC 29482

Re: J. Doe v. Design Review Board
Appellate Case No. 2019-001671

Dear Ms. Holmes:

We received your petition for rehearing and suggestion for rehearing en banc from this Court's June 23, 2022 order. We construed your prior motion filed April 14, 2022, as a petition for rehearing of our March 31, 2022 dismissal order. Accordingly, we cannot entertain your second petition for rehearing pursuant to Rule 221(c), SCACR. No further action will be taken on your filing.

Very truly yours,

CLERK

cc: Benjamin Alexander Crute Traywick, Esquire
Alexandra Scott Williams, Esquire
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

EXHIBIT 11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

Amended Rule 221, SCACR, Petition for Rehearing With Suggestion for Rehearing En Banc With Abeyance

---

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

EXHIBIT 11

Without being disagreeable, there is disagreement. It is respectfully requested that the attached copy of the clerk's correspondence confirms that the clerk is not authorized to interpret the law as she has not been nominated, vetted, and voted by the Legislature for judicial nomination. Her ministerial duties require that she comply with the South Carolina Rules of Court which mandate that she not misconstrue or misinterpret the law or parties' filings and that she comply with Rule 221, SCACR. The clerk overlooks or misapprehends the material fact that the record reflects no prior Rule 221, SCACR, petition. The current petition includes, but is not limited to, challenge to misconstruing Rule 240, SCACR. To the extent there is ambiguity, the rule of lenity supports this Amended Rule 221, SCACR, Petition for Rehearing en Banc and supports appellant's position. The required filing fee is timely paid and we are requesting that the Amended Rule 221, SCACR, Petition for Rehearing en Banc be forwarded to the Court for the Court's considered disposition and interpretation of the law regarding important public matters.

Pursuant to our cherished Constitutions, Clerks of Court, by and through the people, are tasked with upholding the South Carolina Rules of Court and with providing even-handedness, fundamental fairness, transparency, and due process in facilitating filings for resolution through the judicial system. In the oncoming storm of Covid-19 affiliated economic emergencies, there is nothing fair, equitable, or legal about a clerk arbitrarily and capriciously refusing to perform her ministerial duties. See the South Carolina Rules of Court. See Clerk of Court Manual. Moreover, the *Miller* case provides as follows:

> The Clerk of Court's duty is not discretionary. The Clerk of Court should not construe a *filing*.... it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely. 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court cannot ordinarily determine questions of law [or] render judgments."). *Miller v. State*, 659 S.E.2d 492, 377 S.C. 99 (S.C. 2008) (emphasis supplied).

In this case, refusal to file effectively determines questions of law and/or impermissibly renders judgment by denying meaningful opportunity to be heard at a meaningful time for full and fair record

and meaningful JUDICIAL review, thereby arbitrarily and capriciously denying substantial rights and meaningful appellate review. Accordingly, the Amended Rule 221, SCACR, Petition for Rehearing en Banc is respectfully submitted for the Court's interpretation of the law. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

INTRODUCTION

Before he passed, the Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in *2022*, what did we do to make sure we kept our democracy intact?" (Emphasis supplied.) Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of unremitting bravery and courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our State and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government. They deliberately crafted both State and Federal Constitutions to foreclose those abuses here. The framers did not need computers, tablets, or cell phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses.

EXHIBIT 11

The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. **As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official, shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review.** The inscription over the Charleston County Judicial Center reads, "Where the rule of law ends, tyranny begins." Judge J. Waties Waring, the renowned crafter of divine dissents lying in repose in Charleston, must be turning over in his grave at the historically persistent lawlessness. It is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, computers, and extraordinary, unprecedented public health and affiliated economic emergencies surrounding us and still unfolding.

ARGUMENT

The appellant timely submits Rule 221, SCACR, petition for rehearing with abeyance request and suggestion for rehearing en banc for the June 23, 2022, opinion. For the reasons stated and for substantial justice affecting substantial rights, appellant respectfully requests this Honorable Court grant Rule 221, SCACR, Petition for Rehearing En Banc regarding matters of great public importance including but not limited to, the June 23, 2022, opinion misconstrues and/or misapplies improper legal standard. Moreover, there is no affidavit, factual basis, or ROA supporting the June 23, 2022, opinion. In addition, the case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019), and others establish governing precedent which controls and which ruled that the Legislature intended to and did statutorily vest jurisdiction in the DRB for the

EXHIBIT 11

hearing on the merits and pre-litigation mediation. The Circuit Court has no jurisdiction to summarily dismiss unless and until **pre-litigation** mediation, timely requested herein, is unsuccessful and mediation "must be granted." S.C. Code § 6-29-900 et seq. Public policy and Legislative intent mandate ADR (alternative dispute resolution) and pre-litigation mediation herein.

I. The June 23, 2022, opinion misconstrues the Rule 240(j), SCACR, Motion for De Novo Panel Review.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The opinion is reversible as a matter of law because it conflates appellant's Rule 240(j), SCACR, Motion for De Novo Panel Review with Rule 221, SCACR, Petition for Rehearing. "***Subject to the statutory law***, the Supreme Court shall make rules governing the practice and procedure" in all courts of the state. S.C Const. art. V § 4 (emphasis supplied). In this case, Rule 240(j) ,SCACR, Motion for De Novo Panel Review is subject to the underlying statutory law in S.C. Code § 14-8-220. That statute, S.C. Code § 14-8-220, provides for de novo panel appeal of the order by a single government employee dismissing meritorious appeal after appellant's initial brief is filed but before filing of the Record on Appeal (ROA). That statute provides as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal**.

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

That statute forms the basis for and statutory authority of Rule 240(j), SCACR, *De Novo* Panel Appeal which is respectfully requested. Significantly and materially, there is no record on appeal (ROA), no affidavit, and no factual basis or adequate record herein. Appellant respectfully requests deferral for

ROA, including but not limited to, full, fair, and adequate record for meaningful review. Moreover and by analogy, the Federal Rules of Court, on which the State Rules of Court are based, are loud and clear on this issue in Rule 27(c), FRAP:

(c) Power of a Single Judge to Entertain a Motion.

A *court of appeals* judge may act alone on any motion, but **may not dismiss** or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. **The court may review the action of a single judge.** Rule 27(c), FRAP (emphasis supplied).

Further, even assuming mootness which is denied, respondents' motion is untimely because the Rules require motion to dismiss based on mootness must be filed as soon as allegedly moot, not at the eleventh hour on the eve of the due date for defendants' initial brief, suggesting defendants lack a meritorious response to appellant's brief and/or lack of diligence. Accordingly, the dismissal by a single government employee overlooks or misapprehends material facts and law, it is internally inconsistent, it fails to comply with the statutory authority and with Rule 240(j), SCACR, it violates the letter and spirit of the underlying statutory authority in S.C. Code § 14-8-220 as well as Legislative intent, and it is unsustainable without ROA and/or full, fair, and adequate record for meaningful review. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

EXHIBIT 11

II. The improper legal standard was applied.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

Statutory authority mandates, " An appeal **shall** be allowed from decision of any one judge to a panel of the Court." S.C. Code § 14-8-220 (emphasis supplied). Appellant has requested a S.C. Code § 14-8-220 de novo panel appeal of the decision of one government employee which "shall be allowed." Accordingly, the proper legal standard is de novo and the June 23, 2022, opinion is reversible as a matter of law for, including but not limited to, failure to apply the proper legal standard. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W.

EXHIBIT 11

4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

III. Ambiguity regarding the proper legal standard is arbitrary and capricious and constitutes a denial of due process and substantial rights.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. To the extent there is ambiguity regarding the proper legal standard, the rule of lenity supports appellant's position. Ambiguity regarding, including but not limited to, the proper legal standard is arbitrary and capricious and it constitutes a denial of due process and substantial rights. Arbitrary taking of a **statutory appeal which shall be allowed** from decision of any one judge to a panel of the Court is a denial of due process. S.C. Code § 14-8-220 (emphasis supplied). The appellant is prejudiced thereby, and but for the wrongful denial of due process including but not limited to, misconstruing and misapplying the improper legal standard, the outcome should and would be different in appellant's favor. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). Accordingly, the petition for rehearing en banc should be granted.

EXHIBIT 11

IV. Lack of Record on Appeal to support the June 23, 2022, opinion is reversible as a matter of law.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The issue of jurisdiction can be raised at any time. A ruling regarding a jurisdictional question, as in this case, based on facts requires review of the record on appeal (ROA) which will be filed with the final briefs. When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). Moreover, lack of Record on Appeal to support the June 23, 2022, opinion is reversible as a matter of law including but not limited to, denial of adequate record for meaningful review. Accordingly, the petition for rehearing en banc should be granted. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

EXHIBIT 11

V. There is no Constitutional and/or statutory authority for an individual government employee to dismiss appeal and Legislative intent as well as the letter and spirit of S.C. Code § 14-8-220 and Rule 240(j), SCACR, mandate de novo panel appeal under the facts.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. The underlying statutory authority, S.C. Code § 14-8-220, and Rule 240(j), SCACR, expressly provide for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff. July 1, 1985.

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Moreover, Rule 240(j), SCACR, is independent of Rule 240(i), SCACR. "The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Rule 240(i), SCACR. Accordingly, the legislative intent and underlying statutory authority remain the same in S.C. Code §

14-8-220 and the standard of review is *de novo* (not the same standard as a Rule 221, SCACR, petition for rehearing). See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

This Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the legislature, so the plain language of the statute should not be disregarded. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C., 2000).

"In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to

have some efficacy, or the legislature would not have enacted it into law." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, appeal should be *de novo* review by the court or panel which does not include the individual who signed the order that is the subject of the Rule 240(j), SCACR, appeal. Appellant filed the motion under Rule 240(j), SCACR, for appeal of an individual government employee's order, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR.* Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). In that case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's

impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the appeal panel for his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978) (emphasis supplied). Moreover, in consideration of legislative intent and the overarching principles incorporated in the State Constitution by its framers, due process requires the appellate court judge who individually signed the order not participate, directly or indirectly, on appeal of the decision which is the subject of the Rule 240(j), SCACR, appeal. Accordingly, pursuant to Rule 240(j), SCACR, the appeal and due process provide for non-participation of the individual judge who signed the order which is the subject of a Rule 240(j) appeal.

Materially, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal pursuant to S.C. Code § 14-8-220, which is different than the standard of review for Rule 221, SCACR, rehearing. The Rule 240(j), SCACR, motion is an appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*,

280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially in that case, the denial of a transfer motion does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, review is that the order is signed by a single judge. Accordingly, the legal standard of review under these circumstances for Rule 240(j), SCACR, appeal is *de novo:* The Order dated June 23, 2022, should be reversed/vacated for good cause and for the reasons stated herein. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 9, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

EXHIBIT 11

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests this Honorable Court grant Rule 221, SCACR, petition for rehearing with abeyance request and suggestion for rehearing en banc.

Respectfully submitted,

C. Holmes
PO Box 187
SI, SC 29482
843.883.3010
For Appellant

EXHIBIT 11

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 15, 2022

Cynthia Holmes
Post Office Box 187
Sullivans Island SC 29482

Re: J. Doe v. Design Review Board
Appellate Case No. 2019-001671

Dear Ms. Holmes:

We received your petition for rehearing and suggestion for rehearing en banc from this Court's June 23, 2022 order. We construed your prior motion filed April 14, 2022, as a petition for rehearing of our March 31, 2022 dismissal order. Accordingly, we cannot entertain your second petition for rehearing pursuant to Rule 221(c), SCACR. No further action will be taken on your filing.

Very truly yours,

CLERK

cc: Benjamin Alexander Crute Traywick, Esquire
Alexandra Scott Williams, Esquire
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

EXHIBIT 11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.

App. Case No. 2019-001671

J. Doe,

Appellant,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svjetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PROOF OF SERVICE

EXHIBIT 11

I certify that a true copy of the above was served upon the respondents by regular first class mail postage pre-paid on this date at this address: Ben Traywick, 171 Church St., Ste. 340, Chas., SC 29401; GT Walker, 66 Hasell St., Chas., SC 29401; and Kenneth Craft III, 204 Spooner Ln., Mt. Pleasant, SC 29464.

Dated 7/23/2022

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

EXHIBIT 11

Hard copy available on request -

Thank You!

EXHIBIT 11

Fax Cover:

C. Holmes
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010

The South Carolina Court of Appeals

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

Appellate Case No. 2019-001671

ORDER

Because this court has already denied Appellant's petition for rehearing, this court will not entertain the subsequent petitions for rehearing. No further action will be taken on those filings.

FOR THE COURT

Columbia, South Carolina

cc:
Cynthia Holmes
Benjamin Alexander Crute Traywick, Esquire
Alexandra Scott Williams, Esquire
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

FILED
Aug 11 2022