STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2020-CP-07-02160
	)	
Bay Point Island, LLC,	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
County of Beaufort and Beaufort County Zoning Board of Appeals,	)	**ORDER GRANTING MOTIONS TO INTERVENE**
	)	
Respondents,	)	
	)	
and	)	
	)	
South Carolina Coastal Conservation League, Inc. and Gullah/Geechee Fishing Association,	)	
	)	
Proposed Intervenors.	)	

The South Carolina Coastal Conservation League, Inc. (the "CCL") and the Gullah/Geechee Fishing Association ("GGFA") each filed a Motion to Intervene (the "Motions") in the instant appeal from the Beaufort County Zoning Board of Appeals ("ZBOA"). Appellant Bay Point Island, LLC ("BPI") opposed the Motions. Respondents County of Beaufort (the "County") and the ZBOA did not take a position on the Motions.

On April 12, 2022, the Court held a virtual hearing on the Motions. The CCL, the GGFA, and BPI each submitted briefs supporting their respective positions. Having fully reviewed the parties' positions, the Court GRANTS the Motions.

BACKGROUND

This case arises out of BPI's plans to develop an "ecotourism resort" on Bay Point Island located in the County. Specifically, BPI sought permission "to construct an Ecotourism project on

50 acres of Bay Point Island. The project will include Wellness Centers, 50 room cabins, Restaurants, a Cooking School, an Earth Lab, along with Administrative Offices, and a Reception Lobby totaling 66,125 square feet." (ZBOA Order, p. 1). Pursuant to the Beaufort County Development Code (the "CDC"), the County determined that the ecotourism resort would require a "Special Use Permit" from the ZBOA.

On September 24, 2020, the ZBOA held a hearing on the Special Use Permit. Both the CCL and the GGFA participated in the hearing and provided public comment. The ZBOA unanimously voted to deny the Special Use Permit.

On November 4, 2020, the Appellant filed with this Court a Summons and Notice of Appeal and Request for Pre-Litigation Mediation pursuant to S.C. Code Ann. § 6-29-820 and § 6-29-825. On November 17, 2022, the GGFA moved to intervene. On November 20, 2022, the CCL moved to intervene. On March 15, 2021, the parties entered a Consent Order authorizing the CCL and the GGFA to participate in the mediation. On January 27, 2022, a Proof of ADR was filed, declaring the mediation at an impasse.

A hearing on the merits of BPI's appeal is scheduled for May 10, 2022 at 10:00 a.m.

STANDARD OF REVIEW

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. §§ 6-29-310 *et seq*., (the "Planning Act") comprehensively governs local government planning and zoning functions including, but not limited to, appeals from boards of zoning appeals. S.C. Code Ann. §§ 6-29-820 to -850 governs appeals from the board of zoning appeals to circuit court.

S.C. Code Ann. § 6-29-825(A) provides that "[a] person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals."

Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties. Ex parte Gov't Emples. Ins. Co. v. Goethe, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007).

ANALYSIS

1. Intervention in this zoning appeal is governed by the "substantial interest" test found in S.C. Code Ann. § 6-29-825(A).

S.C. Code Ann. § 6-29-825(A) controls this Court's decision on the Motions.[1] The sole issue for the Court is whether the CCL and the GGFA possess a "substantial interest in the decision of the board of appeals." Id. If the Court finds that this test is met, the "motion must be granted." Id.

The Planning Act does not define "substantial interest" as the phrase is used in S.C. Code Ann. § 6-29-825(A). However, the case law reveals that the CCL's and the GGFA's members readily satisfy this statutory standing test. An organization has standing on behalf of its members if one or more of its members will suffer an individual injury by virtue of the contested act. Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dep't of Nat. Resources, 345 S.C. 594, 550 S.E.2d 287 (2001).

[1] Since a statutory standing provision controls, a discussion of constitutional standing is unnecessary. Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) ("Standing, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception."). Neither the CCL nor the GGFA need demonstrate (1) a concrete and particularized injury, (2) a causal connection between the conduct complained of and the injury, and the (3) possibility of redress if a favorable decision is issued. Id.

The Planning Act's statutory standing rules were most recently discussed by our appellate courts in Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm*'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). There, the South Carolina Court of Appeals reversed a circuit court order that dismissed, on standing grounds, a non-profit entity's appeal of a planning commission subdivision approval. The planning commission is a quasi-judicial zoning board governed by the Planning Act just like the ZBOA.

In Citizens for Quality Rural Living, Inc., the Court of Appeals held that S.C. Code Ann. § 6-29-1150(D), the statutory standing provision governing appeals from the planning commission to the circuit court, "provides Appellant the right appeal . . . to the circuit court." Id. at 105. The Court reached this result even though a strict reading of S.C. Code Ann. § 6-29-1150(D)(2) limits the universe of potential appellants to "[a] property owner whose land is the subject of a decision of the planning commission." Reading the Planning Act as a whole, the Court concluded that since "any party in interest" could appeal a staff decision to the Planning Commission, the General Assembly intended to similarly allow "any party in interest" to appeal decisions of the Planning Commission to circuit court – not just the property owner whose land was at issue in the decision. *Id*.

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Assembly intended to similarly allow "any party in interest" to appeal decisions of the Planning Commission to circuit court – not just the property owner whose land was at issue in the decision. Id.

The Court went onto explain that the language "any party in interest," as used in the Planning Act, "clearly contemplates an organization such as Appellant." Id. (citing Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) (defining a real party in interest for purposes of standing as "a party with a real, material, or **substantial interest** in the outcome of the litigation" (quoting Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010))). (Emphasis added). Put simply, the Court held that for the purposes of the Planning Act "party in interest" and "substantial interest" are synonymous.

As demonstrated by Citizens for Quality Rural Living, Inc., our appellate courts have signaled a willingness to read the Planning Act as a consistent, cohesive statutory framework. 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. (citation omitted) (alterations in original) (quoting State v. Sweat, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008)).

Reading the Planning Act as a whole calls for a comparison of the "substantial interest" statutory standing test with other statutory standing provisions in the Act. For instance, statutory standing to *enforce* zoning ordinances, generally, is found in S.C. Code Ann. § 6-29-950(A). This statute limits standing to "an *adjacent or neighboring property owner* who would be *specially damaged*." (Emphasis added). The Supreme Court of South Carolina in Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, held that S.C. Code Ann. § 6-29-950(A) amounts to a two-part test to determine standing in the context of claims based on alleged zoning violations. 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014). First, a plaintiff must be "specially damage" and second, a plaintiff must be "an adjacent or neighboring property owner." Id. A plaintiff is "specially damaged" when it has suffered a particularized injury distinct from that suffered by the public generally. Id. A particularized harm occurs when the allegations "affect the [p]laintiff in a personal and individual way." Id. at 75, 753 S.E.2d at 850.

S.C. Code Ann. § 6-29-825(A) requires only a "substantial interest" to establish standing for intervention purposes. There is no adjacency or special damage requirement. Had the General Assembly intended for there to be such exacting requirements for the purposes of intervening in a board of zoning appeals decision, it clearly could have done so.

Contrary to BPI's arguments, the holding in Beaufort Realty Co. v Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001) does not support denial of the Motions. In that case, the Court of Appeals held that the CCL lacked standing to appeal a subdivision approval regarding Bay Point Island. However, *this case was decided entirely on constitutional standing principals* – not the "substantial interest" test or any statutory standing provision for that matter. Id. at 302 ("The League has not alleged that it or its members have suffered or will suffer an individualized injury as the result of the filing of the subdivision plats. Although the League alleges its members

will suffer injury if the islands are developed, the injury is purely conjectural and hypothetical. There is no evidence in the record that either the League or its members have suffered any actual injury by the filing of the subdivision plats.") As previously discussed, under the facts and law applicable here, the CCL and the GGFA need only meet the "substantial interest" test established by S.C. Code Ann. § 6-29-825(A). The more exacting constitutional standing test, upon which the decision in Beaufort Realty Co. v Beaufort County hinged, is simply inapplicable here.

Per the affidavits on file with the Court, both the CCL's and the GGFA's members satisfy the "substantial interest" test for intervention, especially considering the liberal standard of review courts must apply on intervention motions. Ex parte Gov't Emples. Ins. Co. v. Goethe, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.)

2. The CCL and its members satisfy the "substantial interest" test and have standing to intervene in the instant ZBOA appeal.

The CCL is a nonprofit membership organization headquartered in Charleston, and with offices in Beaufort, Georgetown and Columbia. The CCL is a conservation organization dedicated to the conservation, protection, and preservation of natural resources.

Regarding Bay Point Island, one or more CCL members have a personal and direct interest in this pristine barrier island. According to the Affidavits of Gerald H. Schulze, Billy Keyserling, and Kay Grinnell filed with this Court, these interests include, but are not limited to, photographing wildlife such as endangered and threatened birds, sea turtles and other species; recreating on the public beach; and fishing the island's abundant marshes. The CCL's members also have a direct relationship to the unique cultural and historic features of Bay Point Island.

The CCL and its membership actively participated in the ZBOA hearing at issue in this case. For instance, the CCL submitted an eleven (11) page letter in opposition to the Special Use

Permit prior to the hearing. This letter was filed with the Court in support of the CCL's motion to intervene. Moreover, CCL members submitted approximately one hundred (100) e-mails in opposition prior to the hearing. These items are in the record filed by Beaufort County in this proceeding. This further supports the CCL's and its membership's "substantial interest" and standing in this matter for intervention purposes.

In zoning appeals dealing with matters of great local, regional, and state-wide public importance, such as Bay Point Island,[2] public interest groups – especially those who participated at the hearing level on behalf of its members like the CCL – must be allowed to intervene and participate in mediation and this zoning appeal. The General Assembly has recognized the value of mediating these cases, and expressly provided for third-party intervention to ensure the public remains engaged in what is fundamentally a public process.

3. The GGFA and its members satisfy the "substantial interest" test and have standing to intervene in the instant ZBOA appeal.

The GGFA's mission is to advocate for the members of the Gullah/Geechee Nation whose livelihoods depend on the ocean's resources, in particular the fish and shellfish populations along our coast and in particular in and around Port Royal Sound where the proposed project is located. According to the Affidavit of Ricky Wright, the GGFA's Vice President, its members consist of businesses whose profits derive from harvesting various types of seafood around the Sea Island region including oysters, fish, shrimps, and crabs. Many members also provide interactive educational demonstrations to groups concerning Gullah/Geechee fishing traditions.

Specific to Bay Point, the Association's members rely on access to the public lands surrounding Bay Point Island and the ecosystem there to harvest fish and shellfish, which supports

[2] None other than the Governor of the State of South Carolina, Henry McMaster, and U.S. Representative Joe Cunningham submitted letters in opposition to the Appellant's request for a Special Use Permit. So did several other local, regional, and state-wide elected officials, organizations, and members of the public.

their businesses and their families. The members also rely on the healthy, clean waters and habitat surrounding Bay Point, which provide the high quantity and quality of fish and shellfish needed for their businesses to be successful.

The GGFA alleges that increased boat traffic to ferry tourists to Bay Point will degrade water quality, damage the available fish population in and around Port Royal Sound, and interfere with the Association's members' ability to harvest fish and shellfish.

Like the CCL, the GGFA participated extensively in the ZBOA hearing and submitted written and oral comments. Based on the above evidence submitted, I find the GGFA has a substantial interest and standing to intervene in this appeal.

CONCLUSION

For the foregoing reasons, the Motions are GRANTED. The CCL and the GGFA are hereby granted intervention. The CCL and the GGFA shall be permitted to participate in the instant ZBOA appeal to include, but not be limited to, participating in the merits hearing. The CCL and the GGFA shall have all appellate rights provided by law.

IT IS SO ORDERED.

_____

Marvin H. Dukes, III
Circuit Court Judge

Dated: _____
Beaufort, South Carolina

Beaufort Common Pleas

Case Caption: Bay Point Island Llc VS Beaufort County Of , defendant, et al

Case Number: 2020CP0702160

Type: Order/Intervene

So Ordered:

s/Marvin H. Dukes III #3069