

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 John’s Marine Service, Inc., Frances J.)
 Ratliff, Edward J. Ratliff, Jr., James L.)
 Ratliff, Lucretia B. Morgan, Sherri Akers)
 Crisp, Amy Cawthon,)
)
 Petitioners/Appellants,)
 v.)
)
 Oconee County Board of Zoning Appeals,)
 Ridgewater Engineering & Surveying, LLC,)
)
 Defendants/Respondents,)
)
 And)
)
 Globe, a South Carolina Limited)
 Partnership, and Farnes, a South Carolina,)
 Limited Partnership,)
)
 Defendants/Respondents-)
 Intervenor.)
)
 _____)

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-37-00396

RECEIVED
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SC Court of Appeals

ORDER

The Petitioners/Appellants (“Ratliff”) filed an Amended Summons and Notice of Appeal as well as an Amended Complaint against the Oconee Board of Zoning Appeals (“BOZA”) and Ridgewater Engineering & Surveying, LLC (“Ridgewater”) appealing the BOZA decision of May 11, 2022 granting road variance application #VA21-011. In addition, Globe, a South Carolina Limited Partnership (“Globe”) and Farnes, a South Carolina Limited Partnership (“Farnes”) also filed a Motion to Intervene as Defendants/Respondents in these matters subsequent to the BOZA decision. This Court granted the Motion to Intervene by Order dated August 23, 2022.

The Ratliff pleadings challenge the BOZA decision in question dated May 11, 2022 which is based upon evidence and testimony gathered over the course of three public hearings held

November 30, 2021, January 24, 2022, and April 25, 2022. Each of those hearings pertained to variance application #VA21-011 that requested “a variance of 18.1’ from the 50’ right-of-way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way.”

A hearing was held before this Court on August 16, 2022. Present at the hearing were David L. Paavola and Keith M. Babcock of Lewis Babcock, LLP, attorneys for Ratliff, James W. Logan, Jr. of Logan & Jolly, LLP, attorneys for BOZA, Larry C. Brandt of Larry C. Brandt, PA, R. Boatner “Bo” Bowman of Boatner Bowman Law, and Andrew Holliday of Derrick Ritter Williams and Morris, PA, attorneys for Ridgewater, Globe, and Farnes. In addition to the Record on Appeal pertaining to all three hearings, a transcript of the April 25, 2022 hearing before BOZA was also filed and made a part of the Record on Appeal before this Court. Based upon this Court’s review of this record, the pleadings and memoranda filed by the parties, as well as oral arguments from all parties at the hearing on August 16, 2022 referenced above, it is the Court’s opinion that the relief sought by Ratliff in their pleadings should be denied.

FINDINGS OF FACT

1. Ridgewater submitted variance application #VA21-011 requesting an 18.1’ variance from the 50’ right-of-way for the entrance of the subdivision because the end of the existing road did not grant full access into the property. TMS #150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Road, Seneca, South Carolina 29672. This application was submitted by Ridgewater on behalf of Globe and Farnes.

2. Globe and Farnes jointly own an undeveloped 15-acre tract or peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as “Arrowhead Point”), with the trunk section of this track being adjacent to 585 Ellenburg and 599 Ellenburg. Globe and Farnes purchased Arrowhead

Point in 2008 (Deed Book 1695 at page 87, Oconee County Records) and have entered into a contract for the development of Arrowhead Point for a nineteen-home subdivision. Further, the area of property affected by the variance request is solely on Globe and Farnes' real property. Therefore, as defined by the application, the variance requested is located at the end of Ellenburg Road and the beginning of the Globe/Farnes property line where the width of their property line pinches down to a short narrow strip of land. Accordingly, the variance requested and granted by BOZA does not directly involve the Ratliff's property.

3. During the BOZA hearing on November 30, 2021, the following information was furnished by the Ratliff family:

a. While Ratliff has used access to all of Ellenburg Road from 585 Ellenburg Road, it was admitted that Ratliff only owns approximately one-half of the old Ellenburg Road right-of-way at the point where it abuts the property line of the Globe and Farnes property, that Globe and Farnes own approximately the remaining half of the old Ellenburg Road right-of-way in that area, and that Ratliff was, in fact, using some of the old Ellenburg Road right-of-way located on the Globe and Farnes property in the conduct of its business interests;

b. Ratliff described the history of Ellenburg Road in Oconee County as running all the way from Knox Road and along the lakebed of what is now Lake Keowee; that a portion of that roadbed continuing under Lake Keowee was a tar and gravel road; and that, at a point about where the Globe/Farnes property line is located, Ellenburg Road split and a dirt road went along the lakebed toward High Falls but that Route 1 Ellenburg continued along the edge of the shoreline of the Globe/Farnes property which is now flooded but can still be seen as a tar and gravel road under the water;

c. Finally, Ratliff stated that Ellenburg Road was a State road when the address of his mother's house was Route 1 Box 258 Ellenburg Road; that he "guessed" the State of South Carolina later transitioned all such roads, including Ellenburg Road, to local governments, in this case, Oconee County, and thus Ellenburg Road would have become an Oconee County Road.

4. The Record on Appeal also reveals that Oconee County representatives furnished the following information regarding the "institutional knowledge" of Oconee County concerning Ellenburg Road:

a. Kyle Reid, Oconee County Road Supervisor, testified regarding County work on Ellenburg Road in 2012 and explained that the 2012 paving repairs did not go all the way to the end of the prior pavement; that his road supervisor at that time, Matt Kelly, instructed him to stop short of the end of the road as they were merely trying to patch the "cracked up and alligatored" part of the road past the subdivision up the hill (Harbor Oaks); that he was instructed to get the worst of it and then pull back; that there was no evidence that the road was ever turned over to the adjoining property owners; that the "institutional knowledge" of Oconee County is that Ellenburg Road is a County road that runs all the way to the Globe and Farmes property line; that a photograph in the record shows a County sign at the edge of the Globe/Farmes property line stating "County Maintenance ENDS Here" with a date stamp of January 16, 2015, and, that Oconee County maintains the right-of-way for that road to the end of the existing pavement.

b. Both Reid and David Root, Oconee County Attorney, as well as counsel for Ridgewater stated that there is no "institutional knowledge" of any abandonment procedure ever being brought pursuant to S.C. Code § 57-9-10, et seq. pertaining to Ellenburg Road

but that said road is shown as being in the Oconee County inventory with the number WA42.

5. In addition to the “institutional knowledge” referenced above, several plats in the Record on Appeal specifically refer to and/or show the right-of-way for Ellenburg Road running along the Ratliff property in question to the property of Globe and Farmes, in particular, a plat prepared for James L. Ratliff and Lucretia B. Morgan referenced in Deed Book 2633 at page 1 and recorded in Plat Book B754 at page 6, Oconee County records. This plat is also shown on page 283 of the Transcript of Record. This plat was prepared for James L. Ratliff and Lucretia B. Morgan (two (2) of the Ratliff Petitioners/Appellants) and recorded on December 4, 2020 in the Oconee County records. Another deed and plat in the Record on Appeal also show the continuation of that Ellenburg Road right-of-way past the above referenced Ratliff and Morgan property to the property of Globe and Farmes. That deed is recorded in Deed Book 14-I at page 102 and references a plat recorded on August 30, 1974 in Volume P-39 at page 61, and is contained in the Record on Appeal at P. 293-294, Oconee County records. Accordingly, the right-of-way for Ellenburg Road at these two critical sections involved in this case is shown, as a matter of public record, as a right-of-way that affects both the Ratliff property and the Globe/Farmes property and the deeds for these properties refer to the conveyances as being subject to “...easements or rights-of-way for roadways...”

6. The Record on Appeal also establishes that the area of the real property for which this variance is requested is solely located on the real property owned by Globe and Farmes. BOZA clearly defined the variance area as located beginning at Globe/Farmes’ property line where the width of their property pinches down to a short narrow strip of land for which the variance was

requested. Therefore, BOZA correctly found that the variance granted does not directly involve the property of Ratliff.

7. The Record on Appeal also establishes that the tract of land owned by Globe and Farms containing 15.35 acres was conveyed to them by Special Warranty Deed from Crescent Communities S.C., LLC, recorded in Deed Book 1695 at page 87 (Oconee County Records) subject to exceptions contained therein including, but not limited to, “(6) easements, covenants, restrictions and conditions of record and rights-of-way of public and private streets and roads, including, but not limited to, the right-of-way shown on the plat as Ellenburg Road.” Exhibit A to that deed refers to a plat dated December 8, 2008 and recorded in Plat Book B291 at page 1, Oconee County Records. That Deed and Plat are contained in the Record on Appeal on pp. 20 – 35 and p. 46, respectively.

LEGAL ANALYSIS

The history of Ellenburg Road presented to BOZA during the hearings regarding this matter support a determination that Ellenburg Road was once a state-maintained road running from Knox Road across and now under what is now the lakebed for Lake Keowee. At some point in the past, the State abandoned that road and Ellenburg Road became an Oconee County road. Further, the absence of any evidence that an abandonment procedure was ever brought to terminate the public right-of-way for Ellenburg Road requires a determination that, as a matter of law, Ellenburg Road remains an Oconee County maintained road. See *Wessinger v. Goza*, 231 S.C. 607, 99 S.E.2d 395 (Sup.Ct. 1957), *Sloan v. State Highway Department*, 150 S.C. 337, 148 S.E. 183, S.C. Code §57-9-10, *S.C. DOT v. Hinson Family Holdings, LLC*, 361 S.C. 649, 505 S.E.2d 781 (Sup.Ct. 2004), and *Bancohio National Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (Sup.Ct. 1993). This determination is certainly in line with the “institutional knowledge” established by the testimony

of the Oconee County representatives and the plats referenced above on file in the Office of the Register of Deeds for Oconee County showing the existence of Ellenburg Road and its right-of-way. These plats clearly show the existence of the right-of-way in question extending past the Ratliff property to the real property owned by Globe and Farmes.

South Carolina law provides, in essence, in S.C. Code § 57-5-120, that if the State abandons a portion of a road, that portion of that road reverts to the local government, in this case, Oconee County, and is subject to an abandonment procedure brought to terminate the public right-of-way pursuant to S.C. Code § 57-9-10, et seq. As previously stated, there is no history/evidence of such an abandonment procedure having ever being brought.

Under South Carolina law, “the findings of fact by the Board of Appeals must be treated in the same manner as the findings of fact by a jury, and the Court may not take additional evidence.” S.C. Code Ann. § 6-29-840(A). Further, “a jury’s factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the jury’s findings.” *Boehm v. Town of Sullivan’s Island Bd. Of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citing *Austin v. Bd. Of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004)). In addition, “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. § 6-29-840(A). It is well settled that the Court may look to written documents as well as records of proceedings to determine whether the record is sufficient and in proper format for final decisions, i.e., the format of the final decision is immaterial as long as the substance of the decision is sufficiently detailed in the record so as to allow the reviewing Court to determine if the decision is supported by the facts *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct.App. 2004).

The decision in *Venture Engineering, Agent for DT, LLC v. Horry County Zoning Board of Appeals*, 433 S.C. 419, 858 S.E.2d 638 (Ct.App. 2/2021) holds that a decision by the Board must not be disturbed if there is supporting evidence in the record. (S.C. Code Ann. §6-29-840). That court also held that a court must not substitute its judgment for that of the Board of Zoning Appeals even if it disagrees with the decision and also holds that a court reviewing the Board's decision may rely on uncontroverted facts that appear in the record. Certainly, the history of the right-of-way of Ellenburg referenced in the transcripts in the Record on Appeal and the facts giving rise to that right-of-way claim are uncontroverted facts that do appear in the record. In addition, the record establishes that BOZA was provided the final location of the road in question. It is only reasonable and proper that BOZA received that information and considered it.

Therefore, the Record on Appeal is supportive of the facts/conclusions as determined by BOZA in its written decision in this case which complies with the statutory obligations of BOZA pursuant to S.C. Code 6-29-800 (A)(2), i.e.:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance will not be of substantial detriment to adjacent users or to the public good, and that the character of the district will not be harmed by the granting of the variance.

Accordingly, this Court finds that the decision of BOZA was not arbitrary and capricious, that those facts and decisions have a reasonable relation to a lawful purpose, and that BOZA did not abuse its discretion as the decision of BOZA is clearly supported by the evidence presented to it.

It is therefore Ordered, Adjudged, and Decreed that the Ratliff Appeal of the BOZA decision is denied, and the Ratliff Summons and Complaint against BOZA and Ridgewater be, and the same are hereby, dismissed, with prejudice.

It is so ORDERED. This _____ day of _____, 2022.

Honorable Presiding Judge
Tenth Judicial Circuit

September 9, 2022



Oconee Common Pleas

Case Caption: Johns Marine Service Inc , plaintiff, et al VS Oconee County Board
Of Zoning Appeals
Case Number: 2022CP3700396
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.