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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-23-03356 (S.C. Ct. App. filed Jan. 30, 2023)
Appellate Case No. 2023-000144

Citizens for Quality Rural Living, Inc., ……Appellant,

v.

LyonJay and the Greenville County Planning Commission, ……Respondents.

RESPONDENT LYONJAY'S MOTION FOR *EN BANC* RECONSIDERATION

Respondent LyonJay (hereinafter "LyonJay"), by and through its undersigned counsel, hereby comes before the Court to respectfully submit this Motion for *en banc* reconsideration per Rules 240(j) and 241(d)(2), SCACR, of the Court's May 2, 2023 Order[1] denying Respondent's Motion requesting the imposition of a bond requirement (hereinafter the "Bond Motion")[2] upon Appellant Citizens for Quality Rural Living, Inc. (hereinafter "Appellant" or "CQRL"). On the grounds set forth below, Respondent respectfully requests that the entire Court reconsider its May 2, 2023 Order, hear argument on the same, and set forth an Order requiring Appellant to post an

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[1] A copy of said Order is attached hereto as "Exhibit A."
[2] A copy of the Bond Motion and all related exhibits thereto are attached hereto collectively as "Exhibit B."

appeal bond per the Court's authority under Rule 241, SCACR and as required by S.C. Code Ann. § 18-7-10.

FACTUAL BACKGROUND

This case arises from CQRL's appeal of the Greenville County Planning Commission's (GCPC) approval of a residential subdivision. LyonJay intends to develop the project, known as River Preserve, and has been under contract to purchase the subject real property, approximately 220 acres in southern Greenville County, for over two years.

Adhering to the schedule and process set forth in the Greenville County Land Development Regulations, GCPC voted on May 25, 2022 to approve the preliminary subdivision plan for River Preserve. CQRL, through its members, submitted written comments on the preliminary plan prior to a public hearing. Also, CQRL members were present at that hearing and spoke in opposition to the project.

On June 24, 2022, CQRL filed a Notice of Appeal with the Greenville County Circuit Court, challenging the GCPC's approval (the "Appeal"). On November 4, 2022, after considerable briefing and procedural argument, the lower court denied CQRL's Appeal, thereby affirming GCPC's approval of River Preserve. The lower court denied CQRL's Motion for Reconsideration on January 18, 2022. Appellant CQRL then appealed to this Court on January 30, 2022. Appellant CQRL sought an extension to file its Initial Brief with this Court, which was granted on March 7, 2023. The parties have now all submitted their respective Initial Briefs. Appellant CQRL has sought an additional extension to submit its Reply Brief.

RELEVANT PROCEDURAL HISTORY

Throughout the lower court proceedings, Respondent LyonJay pointed to the requirement that Appellant CQRL post an appeal bond according to S.C. Code Ann. § 18-7-10. Most recently,

on February 6, 2023 and in the face of GCPC's admitted unwillingness to allow the River Preserve project to proceed in the face of CQRL's protracted appellate litigation, LyonJay again requested an order from the lower court requiring CQRL to post an appeal bond. CQRL filed a memorandum in opposition on March 20, 2023; LyonJay filed a reply memorandum on March 22, 2023. After oral argument, the lower court declined to grant LyonJay's motion under Form 4 Order on March 29, 2023.[3]

Pursuant to the directives of Rule 62, SCRCP and Rule 241, SCACR, LyonJay then applied to this Court for the requisite bond via the Bond Motion on April 6, 2023. CQRL filed a Return to that Motion on April 14, 2023. The Court then denied the Bond Motion via individual review on May 2, 2023. LyonJay now seeks *en banc* reconsideration per Rules 240(j) and 241(d)(2), SCACR.

LEGAL STANDARD

Controlling authority for imposition of a bond in this matter is SC Code Ann. § 18-7-10, which reads, in pertinent part, as follows:

> When a judgment is rendered … by the governing body of a county or by any other inferior … jurisdiction…, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal.

Additionally and as compliment, Rule 62(d), SCRCP provides in its entirety as follows:

> (d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

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[3] All relevant filings were previously attached as exhibits to the Bond Motion, and are hereby incorporated herein by reference along with the Bond Motion itself.

Rule 62(g) directs that while Rule 62 does not limit the power of South Carolina appellate courts, application for a supersedeas bond should "first be made to the trial court." *Accord* Rule 241(d)(1), SCACR; *see also* Rule 205, SCACR (lower court "shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.").

Similarly, Rule 241(c), SCACR provides as follows:

> (c) Supersedeas or Lifting of Automatic Stay.
>
> (1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.
>
> (2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.
>
> (3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

While the Bond Motion was put forward by LyonJay, it is unclear why the burden is not on CQRL to show cause why it should not be required to post the appeal bond specified in SC Code Ann. § 18-7-10, as an appellant typically would in similar contexts. *See, e.g.,* Rule 241(b)(4), SCACR ("Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170," are exceptions to the general rule of an automatic stay); *see also White v. Barbery*, 103 S.C. 223, 88 S.E. 132 (1916) (appeal did not act as a stay or supersedeas without the

defendant giving a bond with sureties to pay the amount of the judgment and costs in the event he should fail to sustain his appeal)

ARGUMENT

I. JUSTICE AND EQUITY REQUIRE THE IMPOSITION OF A BOND.

This Court should require Appellant CQRL post a bond on appeal to restore equitable balance, ensure fair administration of justice, and protect Respondent LyonJay's statutorily vested rights.[4] This matter involves an approved subdivision that Greenville County will not allow to proceed while the appeal is pending.[5] From its initiation, CQRL's Appeal has been honored with an undeserved and unsecured supersedeas, a stay that CQRL desperately desires and from which CQRL alone benefits. Moreover, the delay imposed by CQRL's meritless appeal threatens termination of LyonJay's contract rights to purchase the River Preserve property.

LyonJay requests that this Court consider the impositions of CQRL's Appeal on Respondent and the citizens of Greenville County. Lyonjay has suffered considerable damages because of the delay. During the pendency of the Appeal, the cost of development and financing has risen significantly. With commercial loan rates up some three percent, LyonJay's prospective cost of borrowing has increased approximately $700,000 since July of 2022. Should Respondent's land-acquisition contract (originally signed in April of 2021) expire or be terminated, or if

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[4] Respondent LyonJay is inured with vested rights to development under the South Carolina Vested Rights Act, S.C. Code, § 6-29-1510 *et seq.,* but these rights are subject to a two-year interval of repose.

[5] *See* SC Code Ann. § 6-29-1140 (submission of a subdivision plat for recording without leave of the County constitutes a misdemeanor criminal offense). Indeed, LyonJay does not fault Greenville County for precluding recordation of the River Preserve subdivision plat so long as CQRL's case is pending. After all, CQRL's Notice of Appeal to Greenville County Circuit Court, Paragraph 103(a) requests that this Court "issue an order reversing the decision of the Greenville County Planning Commission." If such a reversal ensues, what would be the fate of County residents who purchased River Preserve lots?

development is otherwise precluded because of the Appeal, Respondent and its construction partners will lose all diligence funds invested as well as anticipated profits. LyonJay's direct loss would exceed $2,000,000, and Greenville County will fall deeper into its current housing dilemma.[6]

LyonJay also asks that the Court to consider CQRL's nonprofit corporate status. Colloquially, CQRL has no "skin in the game." The balance required by S.C. Code Ann. § 18-7-10, Rule 62, SCRCP, and Rule 241, SCACRis missing, and without that balance, meritless appeals like CQRL's corrupt the adversarial process. On the obverse, if CQRL has confidence in the merits of its case, posting a bond presents no hardship. Further, the amount of any bond is within this Court's sound and broad discretion. *E.g., Holmes v. E. Cooper Cmty. Hosp., Inc.,* 408 S.C. 138, 167, 758 S.E.2d 483, 499 (2014) (enjoining litigant from further filings without posting bond); *See e.g., Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.).

Further, LyonJay asks this Court to consider the standard of review at play in the Appeal. The lower court dismissed CQRL's Appeal, noting that the applicable standard of review, "[t]he 'any evidence' standard, is the most deferential standard of review recognized by South Carolina courts, and planning commissions receive this deference because our Supreme Court's recognition of the legislature's intent to grant a planning commission broad discretion..." The point for present purposes is that CQRL's claims are inherently specious in that GCPC's decision need merely rest on *any evidence*. While CQRL has attempted to couch the issues under appeal as questions of law in a vain attempt to circumvent the high bar of the "any evidence" standard, as discussed in greater

[6] LyonJay's losses continue to accrue.

detail in Respondent LyonJay's Initial Brief the operative questions are of fact, not law. Despite the imposing height of this standard, CQRL posts no bond, private rights of contract are trampled, LyonJay's losses compound, and citizens of Greenville County endure diminished housing stock and higher prices. The fundamental injustice of this untenable situation is directly apparent.

II. REPLY TO CQRL's ARGUMENTS SEEKING TO AVOID BONDING.

CQRL has previously put forth two straw-grasping arguments to avoid Title 18's bond requirement. *See Ex. B and exhibits thereto*. Initially, CQRL argues that Title 18's bond requirement does not apply because the GCPC did not "render judgment" against it. This argument fails for two reasons. First, Appellant's attempted distinction amounts to asserting that CQRL was not adversely affected by the GCPC decision. If that is the case, mootness and justiciability compel dismissal of CQRL's Appeal. Second, applying Section 18-7-10 in such a manner would create an illogical result: Applicants for planning commission determinations would be forced to post a bond while so-called other parties in interest would be free to impose limitless losses without security.

Appellant should be legally estopped from this non-party argument based on its assertions in a prior case before this Court. *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 112–13, 825 S.E.2d 721, 729 (Ct. App. 2019). In that case, Appellant argued that it had standing to pursue an appeal because its "members' interests [were] being adversely affected by the decision of the [Greenville County] Planning Commission." *Id.* This Court held that "Appellant's rights are affected by the Commission's decision" and granted CQRL standing to litigate planning commission decisions. Appellant has attempted to escape the logical result of this argument by parsing a distinction between parties with standing to appeal and parties against whom judgment was rendered. The ambits of both classifications overlap here, however. Appellant

argues that the GCPC's rendering of its approval decision adversely impacts its members, and therefore gives them standing to sue. *See id.*

Again, CQRL argues that it has standing to appeal and litigate planning commission decisions, but that it should escape the bond requirement of Title 18 because it was not a "party against whom judgment [was] rendered." GCPC did, however, "render judgment," in a practical sense, in a manner adverse to CQRL's interests, even if CQRL's name does not appear on one side of a "*v*" below, else CQRL would not have filed its Appeal—nor would the lower court have allowed it to continue. Yet, the lower court embraced CQRL's non-party argument in its March 29, 2023 Form 4 Order, finding summarily that "no judgment has been rendered against [CQRL]." The lower court acknowledges that the GCPC's decision was adverse to CQRL, but somehow finds "a clear reading of [S.C. Code Ann. § 18-7-10] does not warrant [the] interpretation" that CQRL was a party against whom governmental judgement was rendered.

There is no explanation by the lower court as to how a planning commission decision can be simultaneously adverse to a party in interest and yet not a judgement against that party. GCPC's omission of CQRL by name in its letter approving the River Preserve is unable to support this conclusion, and LyonJay submits that the lack of CQRL's appearance on a subdivision application (before CQRL's opposition could be known) or GCPC's formal letter of determination is immaterial and consistent with practical governmental procedure. After all, it would be impracticable for the GCPC to name on its written determinations every possible party in interest that provides comments or appears at public hearings. That approach would easily exceed economic and administrative capacity. The lower court laments "it is unusual for a non-party to be able to dictate the appellate process and ultimate timing of Planning Commission decisions."

Indeed, CQRL is—in every sense—a party against whom the GCPC River Preserve approval decision was rendered, and of whom a bond should be required.

CQRL also argues that the absence of any supersedeas provisions in S.C. Code Ann. § 6-29-1150 infers that S.C. Code Ann. § 18-7-10 does not apply. Appellant bases this argument on a loose rule of statutory construction, the specific over the general. LyonJay submits that the silence of § 6-29-1150 more likely reflects legislative efficiency. Why would the legislature provide procedures for bonding in the Local Government Planning and Enabling Act, when those procedures already exist in Title 18? To follow CQRL's logic would be to say that, by corollary, the Administrative Procedures Act does not apply in any instance where some facet of appeal is addressed in a state agency enabling statute. CQRL fails to apprehend the distinction between a right of appeal created by constitutional or statutory provision and the procedure for conduct of appeals.

Moreover, to suggest that Title 18 does not apply to planning commission appeals is to deprive litigants of other meaningful procedural provisions of Title 18 — none of which are addressed in the Local Government Planning and Enabling Act. *See Whipper v. Talbird*, 32 S.C. 1, 10 S.E. 578 (1890). ([Prior codification of § 18-7-10] does not confer any *right* of appeal, but only declares to what court an appeal from an inferior court shall be taken, how it may be made to operate as a supersedeas, and how it shall be heard). Title 18 provides rules for service of process, the manner of a return from the lower adjudicative body, rules of pleading, a mechanism for offer of judgment, and guidance on awarding costs. CQRL's argument would void these provisions as well. As discussed above, S.C. Code Ann. § 18-7-10 broadly applies to appeals from lower tribunals, and it applies to the case at bar.

CQRL further claims that our appellate courts have previously decided not to allow amendment of pleadings in the context of appeals from South Carolina planning commissions, and CQRL leaps to the conclusion that these decisions infer Title 18 does not apply to planning commission appeals. Specifically, CQRL cites to *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); *Smith v. South Carolina Dep't. of Social Servs*., 284 S.C. 469, 327 S.E.2d 348 (1985). Despite CQRL's claims, provisions of Title 18 providing that a Circuit Court "*may* allow either party to amend his pleadings upon such terms as shall be just" are not in tension with the *Austin* and *Smith* decisions. Rather, these decisions simply declare that an appellant's assertions of Circuit Court error for refusal to allow new matters to be raised well into the appellate process were not justified amendments. *Smith* was decided on specific statutory language in the South Carolina Administrative Procedures Act (the "APA") (as an appeal from an executive agency decision, not a county government ruling), and *Austin* confronted an assertion that the lower court was without *discretion* to allow amendments, *vis-à-vis* the edict of Rule 15, SCRCP (that amendments "*shall* be freely given"). Neither of these cases even mentions Title 18.[7]

CQRL additionally cites *Bursey v. South Carolina Department of Health and Environmental Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004) as failing support for its argument that Title 18 is inapplicable. The holding of *Bursey*, however, is that Title 18 provides procedural guidelines that *were* statutorily invoked by the South Carolina Mining Act. The Court of Appeals ruled that Title 18 did not, however, supervene the substantive standard for review for

[7] CQRL's argument that Title 18 is inapplicable because it solely concerns money judgments is likewise unavailing. Section 18-7-10 requires a "good and sufficient bond with surety to pay the amount of the judgment *and costs*." CQRL's appeal in the case at bar plainly implicates costs and monetary damages, as it has forced Respondents to engage in protracted and expensive litigation, and prevented Respondent LyonJay from closing on and developing a property which it has been under contract to purchase for over two years.

state agency decisions. *Bursey*, 360 S.C. at 140, 600 S.E.2d at 83. Again, the *Bursey* dispute involved an executive agency, and the Appellate Court resorted to provisions of the South Carolina APA for the substantive standard of review. CQRL's effort to avoid application of Title 18 by pointing to an executive agency decision is misguided.

In addition to the bond requirements of by S.C. Code Ann. § 18-7-10, this Court has independent discretion to impose a bond in the interest of justice pursuant to Rule 241(c)(3), SCACR. This is precisely the sort of case that the broad flexibility of Rule 241(c)(3) envisions. LyonJay stands to suffer considerable damage at the mercy of CQRL's meritless litigation. The lack of security from CQRL, a nonprofit that seeks to climb the nearly insurmountable "any-evidence" hill, creates a profoundly unjust situation. LyonJay asks this Court to restore balance via imposition of a bond.

CQRL has argued in opposition that this Court does not, in fact, have the authority under Rule 241(c)(3) to authorize the imposition of a bond requirement in this case. CQRL cites no authority interpreting this provision of Rule 241, and instead baldly claims that (1) the broad grant of discretion to this Court to fashion appropriate relief as found in Rule 241(c)(3) is rendered inoperative via the general rule of an automatic stay on appeal, and (2) this Court can only afford "other affirmative relief" under Rule 241(c)(3) if the "lifting of a stay. . . [be][sic] insufficient to afford complete relief." *See Appellant's Return to Motion at 13 – 14*. The plain text of Rule 241(c)(3) disagrees with CQRL's interpretation:

> Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief as are deemed appropriate.

Even assuming *arguendo* that this case falls under the general rule, and an automatic stay is in effect, Rule 241(c)(3) does not contain a caveat for the method of how such a stay must be

granted in order for this Court to be able to "afford complete relief." A stay is in effect, *de facto* or *de jure*, and CQRL does not dispute this. The problem lies in the fact that complete relief has not been afforded, and indeed such a stay has only operated to Respondent LyonJay's detriment and Appellant CQRL's free benefit. The granting or lifting of a stay would not "afford complete relief" here, as Greenville County will still not allow development because CQRL continues to press its Appeal, and Respondent LyonJay's losses cannot presently be defrayed. The Rule is clear: if a stay or the lifting thereof does not "afford complete relief," this Court can fashion other appropriate relief. It is therefore only appropriate here to order affirmative relief in the form of requiring a bond to provide security.

III. RECONSIDERATION IS WARRANTED.

Respondent LyonJay respectfully seeks some resolution on a possible point of confusion originally stated in the lower court's Form 4 Order denying Respondent's Motion for Bond and then replicated by this Court's Order. Both Courts declare that denial of a bond requirement is justified because "Greenville County will not allow the development to proceed pending appeal." However, this is precisely the problem that warrants the imposition of a bond requirement. This statement recognizes that the present appeal has caused a supersedeas, *de facto* or *de jure*, to CQRL's sole benefit. In other words, LyonJay cannot proceed with acquisition and development of real property because CQRL has filed an appeal.[8] Section 18-7-10 declares that an appeal from a county governmental body warrants supersedeas only if a bond is posted. Here no bond has been posted, and the reviewing courts seem to rely on the fact that a supersedeas exists as reason to deny

[8] As Rule 241(b)(4) recognizes, "Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170," among numerous other categories of cases, are exceptions to the general rule of an automatic stay. Although the judgment on appeal here did not explicitly order the sale or delivery of real property, CQRL's appeal thereof inherently prevents such a sale.

a bond. If not to reverse the lower court and require a bond, LyonJay seeks clarification on the point of denying a supersedeas bond requirement on the basis that a supersedeas exists.

LyonJay further respectfully seeks resolution of a possible misperception as to construction of S.C. Code Ann. § 18-7-10. The lower court and this Court declared as a reason for declining to impose bond that Appellant is not a party "against whom judgment was rendered." Section 18-7-10 allows that an appeal from the governing body of a county or any inferior jurisdiction "shall amount to a supersedeas if the party against whom judgment was rendered shall execute a good and sufficient bond…" It should be noted that county planning commission subdivision determinations are not juridical in nature. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-174, 656 S.E.2d 346, 351 (2008) (The decision to deny subdivision application was discretionary, as opposed to adjudicatory. The Legislature expressly granted this discretionary authority in local planning to the Commission.) The point is that Planning Commissions do not render "judgements," ever; rather, they render discretionary determinations.

In *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n,* 426 S.C. 97, 825 S.E.2d 724, this Court determined that interested citizens who were not parties to a subdivision application have standing to file appeals contesting that discretion of local planning commissions, and as a consequence, private actions have ensued. Respondent agrees it is right and proper for activist litigants to have their day in court. It is not right and proper, however, to empower such activist litigants to litigate *ad infinitum* at the expense of their targets by suggesting such activist litigants are not offended by the decisions they appeal. Appellant here would not have appealed in the first place if they were not a party against whom the discretionary determinations of the planning commission were rendered. Indeed, this Court recognized this effect on Appellant CQRL's members previously: "Some of Appellant's members own or reside on contiguous

property or property in the vicinity of the proposed subdivision and will be impacted by the additional traffic generated by the subdivision." *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n,* 426 S.C. at 113, 825 S.E.2d at 730. To find otherwise not only ignores the non-judicial nature of planning commission decisions, but is so much parsing of the word "judgment" as to defeat the entire purpose of § 18-7-10.[9] Such a result is manifestly unjust and must be avoided.

CONCLUSION

Respondent LyonJay respectfully requests *en banc* reconsideration of its Motion for Bond, hearing of argument on the same, and the granting of an order requiring Appellant Citizens for Quality Rural Living, Inc. to post a bond in an amount sufficient to provide security.

Respectfully submitted,

Dated: June 1, 2023

Greenville, South Carolina

FOX ROTHSCHILD LLP

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ATTORNEYS FOR RESPONDENT LYONJAY

[9] Moreover, judgment has now clearly been "rendered against" Appellant in the form of the lower court's order dismissing the Appeal.

The South Carolina Court of Appeals

Citizens for Quality Rural Living, Inc., Appellant,

v.

LyonJay and the Greenville County Planning Commission, Respondents.

Appellate Case No. 2023-000144

ORDER

After careful consideration, the motion for bond is denied. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."); Rule 241(c)(1), SCACR ("After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule."); Rule 241(c)(3), SCACR ("The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate."); S.C. Code Ann. § 18-7-10 ("When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal."). We decline to impose a supersedeas bond upon Appellant, against whom no judgment was rendered, and where Greenville County will not allow the development to proceed pending appeal.

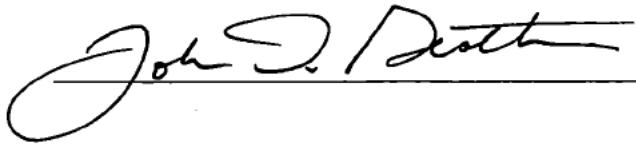

EXHIBIT
A

FOR THE COURT

Columbia, South Carolina

FILED
May 02 2023

cc:
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Anne Ross Culbreath, Esquire
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v.

LyonJay and the Greenville County Planning Commission, ……Respondents.

RESPONDENT LYONJAY'S MOTION FOR BOND

Respondent LyonJay (hereinafter "LyonJay"), by and through its undersigned counsel, comes now before the Court and submits its Motion for Bond pursuant to Rule 240, SCACR. More particularly and on the grounds set forth below, Respondent urges that this Court enter an Order requiring Appellant Citizens for Quality Rural Living, Inc. (hereinafter "CQRL") to post an appeal bond under authority of Rule 241, SCACR and as required by S.C. Code Ann. § 18-7-10. Respondent respectfully requests a hearing.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from CQRL's appeal of the Greenville County Planning Commission's (GCPC) approval of a residential subdivision. LyonJay intends to develop the project, known as River Preserve, and is under contract to purchase the subject real property, approximately 220 acres in southern Greenville County.

EXHIBIT B

Adhering to the schedule and process set forth in the Greenville County Land Development Regulations, GCPC voted on May 25, 2022 to approve the preliminary subdivision plan for River Preserve. CQRL, through its members, submitted written comments on the preliminary plan prior to a public hearing. Also, CQRL members were present at that hearing and spoke in opposition to the project.

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Throughout the lower court proceedings, LyonJay has pointed to the requirement that CQRL post an appeal bond according to S.C. Code Ann. § 18-7-10. Most recently, on February 6, 2023 and in the face of GCPC's unwillingness to allow the River Preserve project to proceed in the face of CQRL's Appeal, LyonJay again requested an order from the lower court requiring CQRL to post an appeal bond.[2] CQRL filed a memorandum in opposition on March 20, 2023;[3] LyonJay filed a reply memorandum on March 22, 2023.[4] After oral argument, the lower court declined to grant LyonJay's motion under Form 4 Order on March 29, 2023.[5] Pursuant to the

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[1] Order Affirming Decision of Greenville County Planning Commission dated November 4, 2022, Case No. 2022-CP-23-03356, Judge Edward W. Miller.
[2] Motion attached hereto as "Exhibit 1."
[3] Attached hereto as "Exhibit 2."
[4] Attached hereto as "Exhibit 3."
[5] Attached hereto as "Exhibit 4." LyonJay has requested a transcript of the hearing, and offers to supplement this Motion to incorporate relevant portions for this Court's consideration, as or if warranted.

directives of Rule 62, SCRCP and Rule 241, SCACR, LyonJay now applies to this Court for the requisite bond.

CONTROLLING AUTHORITY/STANDARD FOR REVIEW

Controlling authority for imposition of a bond in this matter is SC Code Ann. § 18-7-10, which reads, in pertinent part, as follows:

> When a judgment is rendered … by the governing body of a county or by any other inferior … jurisdiction…, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal.

Additionally and as compliment, Rule 62(d), SCRCP provides in its entirety as follows:

> (d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Rule 62(g) directs that while Rule 62 does not limit the power of South Carolina appellate courts, application for a supersedeas bond should "first be made to the trial court." *Accord* Rule 241(d)(1), SCACR; *see also* Rule 205, SCACR (lower court "shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.").

Similarly, Rule 241(c), SCACR provides as follows:

> (c) Supersedeas or Lifting of Automatic Stay.
>
> (1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where

> a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.
>
> (2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.
>
> (3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

While the present Motion for bond is put forward by LyonJay, it is unclear why the burden is not on CQRL to show cause why it should not be required to post the appeal bond specified in SC Code Ann. § 18-7-10; *see also White v. Barbery*, 103 S.C. 223, 88 S.E. 132 (1916) (appeal did not act as a stay or supersedeas without the defendant giving a bond with sureties to pay the amount of the judgment and costs in the event he should fail to sustain his appeal).

ARGUMENT

I. JUSTICE AND EQUITY REQUIRE THE IMPOSITION OF A BOND.

This Court should require Appellant CQRL post a bond on appeal to restore equitable balance, ensure fair administration of justice, and protect Respondent LyonJay's statutorily vested rights.[6] This matter involves an approved subdivision that Greenville County will not allow to proceed while the appeal is pending.[7] From its initiation, CQRL's Appeal has been honored with

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[6] Respondent LyonJay is inured with vested rights under the South Carolina Vested Rights Act, S.C. Code, § 6-29-1510 *et seq.,* but these rights are subject to a two-year interval of repose.

[7] *See* SC Code Ann. §6-29-1140 (submission of a subdivision plat for recording without leave of the County constitutes a misdemeanor criminal offense). Indeed, LyonJay does not fault Greenville County for precluding recordation of the River Preserve subdivision plat so long as CQRL's case is pending. After all, CQRL's Notice of Appeal to Greenville County Circuit Court, Paragraph

an undeserved and unsecured supersedeas, a stay that CQRL desperately desires and from which CQRL alone benefits. Moreover, the delay imposed by CQRL's meritless appeal threatens termination of LyonJay's contract rights to purchase the River Preserve property.

Appellant CQRL is a serial litigant with no employees or legitimate business activity. It is a shell meant to guard its members from liability as they pursue personal environmental objectives. Since its incorporation in July of 2016, CQRL has filed at least five cases in the Greenville County Court of Common Pleas, in each instance employing protracted litigation tactics against developers/GCPC and depriving Greenville County of much-needed housing stock. *See, e.g.,* 2016CP2304248 (dismissed Aug. 7, 2016); 2016CP2305425 (dismissed July 30, 2021); 2018CP2305907 (dismissed Apr. 9, 2019); and 2021CP2305916 (pending). CQRL and its attorneys at the South Carolina Environmental Law Project have publicly expressed the goal of preventing development in Greenville County through litigation on numerous occasions.[8] In sum, CQRL is a tool used for elevating the environmental ideals of a very few above the well being of the remainder citizens and residents of Greenville County.

LyonJay requests that this Court consider the impositions of CQRL's Appeal on Respondent and the citizens of Greenville County. Lyonjay has suffered considerable damages because of the delay. During the Appeal, the cost of development and financing has risen significantly. With commercial loan rates up some three percent, LyonJay's prospective cost of borrowing has increased approximately $700,000 since July of 2022. Should Respondent's land-acquisition contract (originally signed in April of 2021) expire or be terminated, or if development

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103(a) requests that this Court "issue an order reversing the decision of the Greenville County Planning Commission." If such a reversal ensues, what would be the fate of County residents who purchased River Preserve lots?

[8] *See, e.g.,* Appellant Facebook posts attached and incorporated as "Exhibits A and B" to Exhibit 3 appended hereto.

is otherwise precluded because of the Appeal, Respondent and its construction partners will lose all diligence funds invested as well as anticipated profits. LyonJay's direct loss would exceed $2,000,000, and Greenville County will fall deeper into its current housing dilemma.[9]

LyonJay also asks that the Court to consider CQRL's nonprofit corporate status. CQRL has no apparent means of compensating LyonJay for its losses. Colloquially, CQRL has no "skin in the game." The balance required by SC Code Ann. §18-7-10 is missing, and without that balance, meritless appeals like CQRL's corrupt the adversarial process. On the obverse, if CQRL has confidence in the merits of its case, posting a bond presents no hardship. Further, the amount of any bond is within this Court's sound and broad discretion. *E.g., Holmes v. E. Cooper Cmty. Hosp., Inc.,* 408 S.C. 138, 167, 758 S.E.2d 483, 499 (2014) (enjoining litigant from further filings without posting bond); *See e.g., Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.).

Further, LyonJay asks this Court to consider the standard of review at play in the Appeal. The lower court dismissed CQRL's Appeal, noting that the applicable standard of review, "[t]he 'any evidence' standard, is the most deferential standard of review recognized by South Carolina courts, and planning commissions receive this deference because our Supreme Court's recognition of the legislature's intent to grant a planning commission broad discretion..." The point for present purposes is that CQRL's claims are inherently specious in that GCPC's decision need merely rest on *any evidence*. Despite the imposing height of this standard, CQRL posts no bond, private rights of contract are trampled, LyonJay's losses compound, and citizens of Greenville County endure

[9] LyonJay's losses continue to accrue.

diminished housing stock and higher prices. The fundamental injustice of this untenable situation is directly apparent.

II. REPLY TO CQRL's ARGUMENTS SEEKING TO AVOID BONDING.

CQRL has previously put forth two straw-grasping arguments to avoid Title 18's bond requirement. *See Ex. 2*. Initially, CQRL argues that Title 18's bond requirement does not apply because the GCPC did not "render judgment" against it. This argument fails for two reasons. First, Appellant's attempted distinction amounts to asserting that CQRL was not adversely affected by the GCPC decision. If that is the case, mootness and justiciability compel dismissal of CQRL's Appeal. Second, applying Section 18-7-10 in such a manner would create an illogical result: Applicants for planning commission determinations would be forced to post a bond while so-called other parties in interest would be free to impose limitless losses without security.

Appellant should be legally estopped from this non-party argument based on its assertions in a prior case before this Court. *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 112–13, 825 S.E.2d 721, 729 (Ct. App. 2019). In that case, Appellant argued that it had standing to pursue an appeal because its "members' interests [were] being adversely affected by the decision of the [Greenville County] Planning Commission." *Id.* This Court held that "Appellant's rights are affected by the Commission's decision" and granted CQRL standing to litigate planning commission decisions.

Again, CQRL argues that it has standing to appeal and litigate planning commission decisions, but that it should escape the bond requirement of Title 18 because it was not a "party against whom judgment [was] rendered." GCPC did, however, "render judgment" in a manner adverse to CQRL's interests, else CQRL would not have filed its Appeal. Yet, the lower court embraced CQRL's non-party argument in its March 29, 2023 Form 4 Order, finding summarily

that "no judgment has been rendered against [CQRL]." The lower court acknowledges that the GCPC's decision was adverse to CQRL, but somehow finds "a clear reading of [S.C. Code Ann. § 18-7-10] does not warrant [the] interpretation" that CQRL was a party against whom governmental judgement was rendered. There is no explanation by the lower court as to how a planning commission decision can be simultaneously adverse to a party in interest and yet not a judgement against that party. GCPC's omission of CQRL by name in its letter approving the River Preserve is unable to support this conclusion, and LyonJay submits that the lack of CQRL's appearance on a subdivision application (before CQRL's opposition could be known) or GCPC's formal letter of determination is immaterial and consistent with practical governmental procedure. After all, it would be impracticable for the GCPC to name on its written determinations every possible party in interest that provides comments or appears at public hearings. That approach would easily exceed economic and administrative capacity. The lower court laments "it is unusual for a non-party to be able to dictate the appellate process and ultimate timing of Planning Commission decisions." Indeed, CQRL is—in every sense—a party against whom the GCPC River Preserve was rendered of whom a bond should be required.

CQRL also argues that the absence of any supersedeas provisions in S.C. Code Ann. § 6-29-1150 infers that S.C. Code Ann. § 18-7-10 does not apply. Appellant bases this argument on a loose rule of statutory construction, the specific over the general. LyonJay submits that the silence of § 6-29-1150 more likely reflects legislative efficiency. Why would the legislature provide procedures for bonding in the Local Government Planning and Enabling Act, when those procedures already exist in Title 18? To follow CQRL's logic would be to say that, by corollary, the Administrative Procedures Act does not apply in any instance where some facet of appeal is addressed in a state agency enabling statute. CQRL fails to apprehend the distinction between a

right of appeal created by constitutional or statutory provision and the procedure for conduct of appeals.

Moreover, to suggest that Title 18 does not apply to planning commission appeals is to deprive litigants of other meaningful procedural provisions of Title 18 — none of which are addressed in the Local Government Planning and Enabling Act. *See Whipper v. Talbird*, 32 S.C. 1, 10 S.E. 578 (1890). ([Prior codification of § 18-7-10] does not confer any *right* of appeal, but only declares to what court an appeal from an inferior court shall be taken, how it may be made to operate as a supersedeas, and how it shall be heard). Title 18 provides rules for service of process, the manner of a return from the lower adjudicative body, rules of pleading, a mechanism for offer of judgment, and guidance on awarding costs. CQRL's argument would void these provisions as well. As discussed above, S.C. Code Ann. § 18-7-10 broadly applies to appeals from lower tribunals, and it applies to the case at bar.

CQRL further claims that our appellate courts have previously decided not to allow amendment of pleadings in the context of appeals from South Carolina planning commissions, and CQRL leaps to the conclusion that these decisions infer Title 18 does not apply to planning commission appeals. Specifically, CQRL cites to *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); *Smith v. South Carolina Dep't. of Social Servs*., 284 S.C. 469, 327 S.E.2d 348 (1985). Despite CQRL's claims, provisions of Title 18 providing that a Circuit Court "*may* allow either party to amend his pleadings upon such terms as shall be just" are not in tension with the *Austin* and *Smith* decisions. Rather, these decisions simply declare that an appellant's assertions of Circuit Court error for refusal to allow new matters to be raised well into the appellate process were not justified amendments. *Smith* was decided on specific statutory language in the South Carolina Administrative Procedures Act (the "APA") (as an appeal from an

executive agency decision, not a county government ruling), and *Austin* confronted an assertion that the lower court was without *discretion* to allow amendments, *vis-à-vis* the edict of Rule 15, SCRCP (that amendments "*shall* be freely given"). Neither of these cases even mentions Title 18.

CQRL additionally cites *Bursey v. South Carolina Department of Health and Environmental Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004) as failing support for its argument that Title 18 is inapplicable. The holding of *Bursey*, however, is that Title 18 provides procedural guidelines that *were* statutorily invoked by the South Carolina Mining Act. The Court of Appeals ruled that Title 18 did not, however, supervene the substantive standard for review for state agency decisions. *Bursey*, 360 S.C. at 140, 600 S.E.2d at 83. Again, the *Bursey* dispute involved an executive agency, and the Appellate Court resorted to provisions of the South Carolina APA for the substantive standard of review. CQRL's effort to avoid application of Title 18 by pointing to an executive agency decision is misguided.

In addition to the bond requirements of by SC Code Ann. §18-7-10, this Court has independent discretion to impose a bond in the interest of justice pursuant to Rule 241(c)(3), SCACR:

> Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

This is precisely the sort of case that the broad flexibility of Rule 241(c)(3) envisions. LyonJay stands to suffer considerable damage at the mercy of CQRL's meritless litigation. The lack of security from CQRL, a nonprofit that seeks to climb the nearly insurmountable "any-evidence" hill, creates a profoundly unjust situation. LyonJay asks this Court to restore balance via imposition of a bond.

CONCLUSION

The imposition of an appeal bond best serves the interests of justice and equity. For the foregoing reasons, Respondent LyonJay respectfully requests that the Court impose such a requirement and remit the matter to the lower court for determination of bond particulars.

Dated: April 6, 2023

Greenville, South Carolina

Respectfully submitted,

FOX ROTHSCHILD LLP

/s/William Swent

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ATTORNEYS FOR RESPONDENT LYONJAY

EXHIBIT 1

STATE OF SOUTH CAROLINA **COUNTY OF GREENVILLE**	**IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT**
Citizens for Quality Rural Living, Inc., Appellant, v. LyonJay and the Greenville County Planning Commission, Respondents.	Case No. 2022-CP-23-03356 **RESPONDENT LYONJAY'S MOTION FOR REQUIREMENT OF SUPERSEDEAS BOND ON APPEAL** **(expedited hearing requested)**

TO: MICHAEL G. MARTINEZ, ESQ., ATTORNEY FOR APPELLANT AND TO THE APPELLANT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that Respondent LyonJay (hereinafter "Respondent"), by and through its undersigned counsel, will move before a presiding judge for the Greenville County Court of Common Pleas on the tenth (10^{th}) day after service thereof, or as soon thereafter as may be heard, for an Order requiring Appellant Citizens for Quality Rural Living, Inc.(hereinafter "Appellant CQRL") to post a supersedeas bond. Respondent so moves pursuant to Rule 62, SCRCP, Rule 241, SCACR, Rule 205, SCACR, S.C. Code Ann. § 18-7-10, and any other relevant supporting authority. This Motion may be further supported by a subsequent memorandum of law that may include any and all evidentiary material which has been revealed in this matter.

~ Signature Page to Follow ~

Dated: February 6, 2023

Greenville, South Carolina

Respectfully submitted,

FOX ROTHSCHILD LLP

/s/William A. Neinast

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ATTORNEYS FOR RESPONDENT LYONJAY

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Citizens for Quality Rural Living, Inc.	)	Case No. 2022CP2303356
	)	
Appellant,	)	
	)	
vs.	)	**RESPONSE TO MOTION FOR SUPERSEDEAS BOND**
	)	
LyonJay and the Greenville County Planning Commission	)	
	)	
Respondents.	)	
_____	)	

Appellant Citizens for Quality Rural Living (CQRL) submits this brief in opposition to Respondent LyonJay's Motion for Supersedeas Bond.

INTRODUCTION

This matter arises out of CQRL's appeal of the Greenville County Planning Commission's approval of a preliminary subdivision plat submitted by LyonJay. This Court affirmed the Planning Commission's approval. On January 30, 2023, CQRL filed its Notice of Appeal with the South Carolina Court of Appeals.

LyonJay now seeks an order from this Court requiring CQRL to post a supersedeas bond during the course of the appeal. LyonJay's request lacks any merit because no legal authority exists for the relief it seeks under these circumstances.

I. This Court should deny LyonJay's motion for the imposition of a supersedeas bond.

LyonJay contends that this Court should order CQRL to post a supersedeas bond pursuant to Rule 62, SCRCP; Rules 205 and 241, SCACR; and section 18-7-10 of the South

Carolina Code.[1] LyonJay is misguided on the applicability of each source of authority and ignores the plain language contained in both the Rules and the statute.

a. Rule 62, SCRCP is irrelevant under these circumstances.

Rule 62 governs stays of the enforcement or execution of a judgment. Specifically, the Rule establishes an automatic stay for ten days after entry of a judgment before any execution of the judgment or any proceedings "taken for [the judgment's] enforcement." Rule 62(a), SCRCP; *see also Haselden v. Haselden*, 347 S.C. 48, 63, 552 S.E.2d 329, 337 (Ct. App. 2001) ("Moreover, while Rule 62(a), SCRCP automatically stays enforcement of a judgment, the automatic stay expires 10 days after judgment is entered."). Beyond the ten-day automatic stay, "when an appeal is taken, a party, by giving a supersedeas bond, *may* obtain a stay *subject to* the exceptions contained in subdivision (a) of this rule and *the South Carolina Appellate Court Rules*." Rule 62(d), SCRCP (emphases added); *see also Haselden*, 347 S.C. at 63, 552 S.E.2d at 337 (noting further stays are available under Rule 62 but they "must be ordered by the court").

Yet, CQRL has not sought a stay of the enforcement of a judgment here, making Rule 62(d), SCRCP simply inapplicable to this case. Instead, the service of the notice of appeal here implicates the general rule of Rule 241, SCACR. Specifically, the Rule governs stays and the issuance of supersedeas in civil actions, providing:

> As a general rule, the service of a notice of appeal in a civil matter *acts to automatically stay matters* decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. *This automatic stay continues in effect* for the duration of the appeal *unless lifted by order* of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

[1] LyonJay already unsuccessfully sought the imposition of a supersedeas bond before the merits hearing in this case, asserting both section 18-7-10 and Rule 62, SCRCP. This Court denied the request in a Form 4 order on August 24, 2022.

Rule 241(a), SCACR (emphases added). Importantly, no bond requirement exists for a case to fall within the "general rule." *See* Rule 241(a), SCACR.

Although "exceptions to the general rule"—that the service of a notice of appeal automatically stays matters decided in the order—may exist in statutes, court rules, and case law, LyonJay has not identified a statute, court rule, or case that it claims establishes such an applicable exception, and none of the examples included in subsection (b) apply here. Rule 241(b), SCACR. LyonJay's reliance on Rule 62, SCRCP is misplaced because this type of case falls within Rule 241(a), SCACR, which takes precedence. *See* Rule 62(d), SCRCP (noting a party *may* obtain a stay "subject to the South Carolina Appellate Court Rules").

Because this case falls within the "general rule" and imposed an automatic stay upon CQRL's service of the notice of appeal, Rule 62(d), SCRCP is simply inapplicable. Accordingly, LyonJay's motion under Rule 62(d), SCRCP should be rejected.

b. A Motion for Supersedeas under Rules 205 and 241, SCACR, is similarly inapplicable under these circumstances.

LyonJay presumably relies on Rule 241(c) to support its request for the imposition of a supersedeas bond, but the plain language of the Rule demonstrates such relief is inapplicable here because this case involves the general rule and is not subject to an exception. "*In a case subject to an exception*, any party may move for an order imposing a supersedeas of matters decided in the order." Rule 241(c)(1) (emphasis added). A writ of supersedeas is naturally only available in cases falling *outside* the general rule (i.e., cases where the notice of appeal does *not* automatically stay matters decided in the order on appeal) because the writ accomplishes the stay that *is* automatically available in cases subject to the general rule. *See* Rule 205, SCACR (noting the lower court has jurisdiction to entertain writs of supersedeas as provided by Rule 241). As

this case falls within the general rule outlined in Rule 241(a), the Rule does not authorize the granting of a supersedeas when the matter is already automatically stayed.

Finally, although the Court may condition the issuance of a writ of supersedeas on the filing of a bond, the writ of supersedeas must first be available under the circumstances. *See* Rule 241(c)(3) ("The granting of supersedeas . . . under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond . . . ."). As this Court recently concluded in remarkably similar circumstances, "[w]here there is no supersedeas, there can be no supersedeas bond allowed under Rule 241(c)(3)." *See Alliance to Preserve the Old White Horse Corridor, LLC and Mary Jean Horney v. RP&L, LLC and the Greenville Cnty. Planning Comm'n*, Case No. 2021-CP-23-03048, Order (Oct. 24, 2022) (**Exhibit A**).

Accordingly, LyonJay's motion for supersedeas under Rule 241, SCACR should be rejected because it does not authorize a supersedeas bond when the matter does not require a writ of supersedeas and instead falls within the general rule's automatic stay.

c. Title 18 is inapplicable to appeals of planning commission decisions and does not authorize supersedeas bonds under these circumstances

First, the plain language of the statutory provision demonstrates it is inapplicable to appeals from decisions of a planning commission pursuant to Section 6-29-1150. Section 18-7-10 provides:

> When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if *the party against whom judgment is rendered* shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal . . . .

Id. (emphasis added). Section 18-7-10 does not apply for the simple reason that CQRL is not a "party against whom judgment [was] rendered" because it was not a party to the Planning Commission's consideration or approval of River Preserve. *See Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 116-17, 719 S.E.2d 282, 284 (Ct. App. 2011) (noting the Board of Zoning Appeals' argument "overlooks . . . the non-adversarial nature of administrative proceedings"). The illogical application of this section to these circumstances demonstrates that the South Carolina Comprehensive Local Government Planning Enabling Act, S.C. Code Ann. § 6-29-310 *et. seq.*, is the sole statutory authority for appeals from local planning commissions or zoning boards.[2]

Further supporting the fact that Title 18 is inapplicable to appeals from decisions of a planning commission, contrary to LyonJay's assertion, the grant of general jurisdiction under Title 18 does not apply when the circuit court is granted jurisdiction by a separate, more specific statute. Instead, section 6-29-1150 is the sole statutory basis for the procedures governing appeals from the administrative decision.[3] Significantly, section 6-29-1150 is the more recent, and more specific statutory provision, and "[i]t is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." *Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996).

[2] Even if the provision applied, the provision simply authorizes the appeal to constitute a supersedeas—or stay of the judgment—if the losing party executes a bond. Section 18-7-10 does not *mandate* the execution of a bond to pursue an appeal; the payment of a bond simply acts as a stay of the judgment during the pendency of the appeal. As noted above, CQRL has not sought a stay of any execution of a judgment, and the matter is instead automatically stayed pursuant to Rule 241(a), SCACR.

[3] The fact that numerous court decisions have concluded that appeals to the circuit court from planning commission decisions may not be amended past the time for filing while ignoring section 18-1-140's grant of discretion to "permit amendment on such terms as may be just" in order to perfect the appeal bolsters the notion that Title 18 does not apply to such appeals. *See Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); *Smith v. South Carolina Dep't. of Social Servs.*, 284 S.C. 469, 327 S.E.2d 348 (1985).

The Court of Appeals' decision in *Bursey v. South Carolina Department of Health and Environmental Control* supports this reading. 360 S.C. 135, 140, 600 S.E.2d 80, 83 (Ct. App. 2004). In *Bursey*, the Court of Appeals rejected the argument that the South Carolina Mining Act was governed by the standard of review found in Title 18. *Id.* at 139-41, 600 S.E.2d at 83. The court reasoned that the "standard of review in section 18-7-170 is meant only to apply in appeals over which the Circuit Court gains jurisdiction *solely* by the jurisdictional grant of section 18-7-10, and not appeals where the court's jurisdiction is, by virtue of a separate statute, otherwise provided for 'by law.'" *Id.* (emphasis added). The court therefore held that the circuit court's "jurisdiction over decisions of the Mining Council is granted by the Mining Act and not section 18-7-10." *Id.*

Notably, the *Bursey* court reached this conclusion despite the fact that the Mining Act even provided that appeals could be taken "in the manner provided by Chapter 7 of Title 18"; in contrast, the Planning Enabling Act lacks any comparable language. The absence of an explicit reference in the Planning Enabling Act to Chapter 7 of Title 18, as was present in the Mining Act at issue in *Bursey*, further demonstrates that Title 18 is not relevant to appeals of decisions of a planning commission. Accordingly, Title 18 does not govern appeals from decisions of a planning commission whatsoever.

As further indication that appeals of planning commission decision fall under Rule 241's general rule, Article 7 of Title 6, which governs approvals of subdivision plans by a planning commission and appeals from such decisions, lacks any reference to a supersedeas bond. *See* S.C. Code Ann. §§ 6-29-1110 to 1210. In contrast, another section of the Planning Enabling Act governing appeals from decisions of a board of zoning appeals *does* authorize the circuit court to grant supersedeas. *See* S.C. Code Ann. § 6-29-830(B) ("The filing of an appeal in the circuit

court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper."). The presence of this plain language in Article 5—but not Article 7—demonstrates the General Assembly's intent that supersedeas are not available in appeals from planning commission decisions.

LyonJay ignored the plain language in the statutes and rules it cites to support its request for a supersedeas bond. Because CQRL has not sought a stay and because the statutes and rules cited by LyonJay do not authorize the imposition of a supersedeas bond under these circumstances, this Court should deny its motion.

CONCLUSION

This Court should deny LyonJay's Motion for Supersedeas Bond. No applicable statute or rule authorizes the imposition of a bond under these circumstances. Accordingly, LyonJay's motion should be rejected.

Respectfully submitted,

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March 20, 2023

EXHIBIT 3

STATE OF SOUTH CAROLINA **COUNTY OF GREENVILLE**	**IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT**
Citizens for Quality Rural Living, Inc., Appellant, v. LyonJay and the Greenville County Planning Commission, Respondents.	Case No. 2022-CP-23--03356 **RESPONDENT LYONJAY'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR APPEAL BOND**

Respondent LyonJay, LLC ("LyonJay"), by and through its undersigned counsel, hereby submits this Reply Memorandum in Support of its Motion Requirement of Supersedeas Bond on Appeal. LyonJay filed said Motion on February 6, 2023, requesting that this Court enter an Order requiring Appellant Citizens for Quality Rural Living, Inc. (hereinafter "CQRL") to post an appeal bond pursuant to Rule 62, SCRCP, Rule 241, SCACR, Rule 205, SCACR, and S.C. Code Ann. § 18-7-10. On the grounds set forth below, LyonJay respectfully requests that this Court grant its Motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from Defendants' contest of Greenville County Planning Commission's (GCPC) preliminary approval of a subdivision that LyonJay plans to develop. LyonJay intends to develop the project, known as River Preserve, as a residential community and is under contract to purchase the land in question, approximately 220 acres in southern Greenville County.

Adhering to the schedule and process set forth in the Greenville County Land Development Regulations, GCPC voted on May 25, 2022 to approve the preliminary subdivision plan for River

Preserve. Members of Appellant CQRL not only submitted written comments on the preliminary plan prior to the hearing, but were present at that hearing and spoke in opposition to the project.

Appellant CQRL filed a Notice of Appeal challenging the GCPC's approval in this Court on June 24, 2022 (the "Appeal"). After considerable briefing and several hearings, this Court denied CQRL's Appeal, affirming GCPC's approval of River Preserve on November 4, 2022. This Court denied CQRL's Motion for Reconsideration of that decision on January 18, 2022. Defendant CQRL then appealed to the South Carolina Court of Appeals on January 30, 2022. LyonJay filed the Motion at bar on February 6, 2023, requesting that this Court order CQRL to post an appeal bond. CQRL filed a memorandum in opposition on March 20, 2023. This Memorandum follows.

CONTROLLING AUTHORITY/STANDARD FOR REVIEW

Controlling authority for imposition of a bond in this matter is SC Code Ann. § 18-7-10, which reads, in pertinent part, as follows:

> When a judgment is rendered … by the governing body of a county or by any other inferior … jurisdiction…, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal.

Additionally and as compliment, Rule 62(d), SCRCP provides in its entirety as follows:

> (d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Rule 62(g) directs that while Rule 62 does not limit the power of South Carolina appellate courts, application for a supersedeas bond should "first be made to the trial court." *Accord* Rule 241(d)(1),

SCACR; *see also* Rule 205, SCACR (lower court "shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.").

Similarly, Rule 241(c), SCACR provides as follows:

> (c) Supersedeas or Lifting of Automatic Stay.
>
> (1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.
>
> (2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.
>
> (3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

While the present Motion for bond is put forward by LyonJay, it is unclear why the burden is not on CQRL to show cause why it should not be required to post the appeal bond specified in SC Code Ann. § 18-7-10; *see also White v. Barbery*, 103 S.C. 223, 88 S.E. 132 (1916) (appeal did not act as a stay or supersedeas without the defendant giving a bond with sureties to pay the amount of the judgment and costs in the event he should fail to sustain his appeal).

ARGUMENT

I. JUSTICE AND EQUITY REQUIRE THE IMPOSITION OF A BOND.

This Court should require Appellant CQRL to post a bond on appeal to restore equitable balance, ensure fair administration of justice, and protect Respondent LyonJay's statutorily vested rights.[1] This matter involves an approved subdivision that Greenville County will not allow to proceed while the appeal is pending.[2] From its initiation, CQRL's Appeal has amounted to a de facto supersedeas, a stay that CQRL pointedly desires and from which CQRL benefits. Moreover, the delay imposed by CQRL's meritless appeal threatens termination of LyonJay's contract rights to purchase the River Preserve property.

Appellant CQRL is a non-profit serial litigant, with no apparent corporate assets, employees, or legitimate business activity. Since its incorporation in July of 2016, CQRL has filed at least five cases, in each instance employing protracted litigation tactics against developers and the GCPC and depriving Greenville County of much-needed housing. *See, e.g.,* 2016CP2304248 (dismissed Aug. 7, 2016); 2016CP2305425 (dismissed July 30, 2021); 2018CP2305907 (dismissed Apr. 9, 2019); and 2021CP2305916 (pending). CQRL and its affiliate, the South Carolina Environmental Law Project, have publicly expressed the goal of preventing development in Greenville County through such litigation on numerous occasions.[3]

Respondent LyonJay requests that this Court take stock of the impositions of CQRL's Appeal on Respondent and the citizens of Greenville County. Respondent has already suffered

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[1] Respondent LyonJay is inured with vested rights under the South Carolina Vested Rights Act, S.C. Code, § 6-29-1510 *et seq.,* but these rights are subject to a two-year interval of repose.

[2] *See* SC Code Ann. §6-29-1140 (submission of a subdivision plat for recording without leave of the County constitutes a misdemeanor criminal offense). Indeed, LyonJay does not fault Greenville County for precluding recordation of the River Preserve subdivision plat so long as CQRL's case is pending. After all, CQRL's Notice of Appeal to Greenville County Circuit Court, Paragraph 103(a) requests that this Court "issue an order reversing the decision of the Greenville County Planning Commission." If such a reversal ensues, what would be the fate of County residents who purchased River Preserve lots?

[3] *See, e.g.,* Appellant Facebook posts attached and incorporated as Exhibits A and B.

considerable damages because of the delay. During the Appeal, the cost of development and financing has risen significantly. With commercial loan rates up some three percent, LyonJay's prospective cost of borrowing has increased approximately $700,000 since July of 2022. Should Respondent's land-acquisition contract (originally signed in April of 2021) expire or be terminated, or if development is otherwise precluded because of delay from CQRL's appeal, Respondent and its construction partners will lose all diligence funds invested as well as anticipated profits. LyonJay's direct loss would exceed $2,000,000, and Greenville County will fall deeper into its current housing dilemma.[4] LyonJay also asks that the Court account for CQRL's nonprofit corporate status. CQRL has no apparent means of compensating LyonJay for its losses. Colloquially, CQRL has no "skin in the game." The balance required by SC Code Ann. §18-7-10 is missing, and without that balance, meritless appeals corrupt the adversarial process.

Respondent merely asks this Court to require Appellant to provide some degree of security. If CQRL has confidence in the merits of its case, posting a bond should be no particular hardship. The amount of any bond is within this Court's sound and broad discretion. *E.g., Holmes v. E. Cooper Cmty. Hosp., Inc.,* 408 S.C. 138, 167, 758 S.E.2d 483, 499 (2014) (enjoining litigant from further filings without posting bond); *See e.g., Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.).

II. REPLY TO CQRL's ARGUMENTS SEEKING TO AVOID BONDING.

CQRL has put forth two straw-grasping arguments to avoid Title 18's bond requirement. Initially, CQRL argues that Title 18's bond requirement does not apply because the GCPC did not "render judgment" against it. This argument fails for two reasons. First, Appellant's attempted

[4] These figures continue to accrue.

distinction amounts to asserting that CQRL was not adversely affected by the GCPC decision. If that is the case, mootness and justiciability compel dismissal of CQRL's Appeal. Second, applying § 18-7-10 in such a manner would create an illogical result, in that parties to the GCPC's decisions would be forced to post a supersedeas bond while non-party appellants with no "skin in the game" would not. Ironically, Appellant has taken the exact opposite position in a prior case to the South Carolina Court of Appeals. *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 112–13, 825 S.E.2d 721, 729 (Ct. App. 2019). In that case, Appellant argued that it had standing to pursue an appeal because its "members' interests [were] being adversely affected by the decision of the [Greenville County] Planning Commission." *Id.* The Court of Appeals unequivocally held that "Appellant's rights are affected by the Commission's" decision" and granted CQRL standing to challenge planning commission decisions.

Essentially, Appellant CQRL argues that it has standing to appeal and litigate planning commission decisions without actually being a party thereto, but that it should escape the bond requirement of Title 18 because it was not a "party against whom judgment [was] rendered." In fact, however, the GCPC did "render judgment" in a manner adverse to CQRL's interests, else CQRL would not have appealed the decision. The fact that CQRL's name did not appear on a subdivision application is immaterial given the procedure of planning commission appeals. Even more clearly, this Court has now rendered judgment against CQRL by denying its appeal. Appellant's desired result would be illogical and unjust, and this Court should reject it.

Second, Appellant CQRL argues that the absence of a bond requirement in S.C. Code Ann. § 6-29-1150 means that this Court cannot impose a bond in the present case. This argument also fails. Appellant bases this argument on a grasping rule of statutory construction, the specific over the general. LyonJay submits that the silence of § 6-29-1150 more likely reflects legislative

efficiency. Why would the legislature provide procedures for bonding in the Local Government Planning and Enabling Act, when those procedures already exist in Title 18? To follow CQRL's logic would be to say that, by corollary, the Administrative Procedures Act does not apply in any instance where some facet of appeal is addressed in a state agency enabling statute. Moreover, to suggest that Title 18 does not apply to planning commission appeals is to deprive litigants of other meaningful procedural provisions of Title 18 — none of which are addressed in the Local Government Planning and Enabling Act. *See Whipper v. Talbird*, 32 S.C. 1, 10 S.E. 578 (1890). ([Prior codification of § 18-7-10] does not purport to confer the right of appeal in any case, but simply to provide to what court such appeal shall be made and procedures for hearing it). Title 18 provides rules for service of process, the manner of a return from the lower adjudicative body, rules of pleading, a mechanism for offer of judgment, and awarding costs. CQRL's argument would void these provisions as well. As discussed *supra,* § 18-7-10 broadly applies to appeals from lower tribunals, and it applies to the case at bar.

CQRL further claims that our appellate courts have previously decided not to allow amendment of pleadings in the context of appeals from South Carolina planning commissions, and CQRL leaps to the conclusion that these decisions infer Title 18 does not apply to planning commission appeals. Specifically, CQRL cites to *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); *Smith v. South Carolina Dep't. of Social Servs*., 284 S.C. 469, 327 S.E.2d 348 (1985). Despite CQRL's claims, provisions of Title 18 providing that a Circuit Court "*may* allow either party to amend his pleadings upon such terms as shall be just" are not in tension with the *Austin* and *Smith* decisions. Rather, these decisions simply declare that an appellant's assertions of Circuit Court error for refusal to allow new matters to be raised well into the appellate process were not justified amendments. *Smith* was decided on specific statutory

language in the South Carolina Administrative Procedures Act (the "APA") (as an appeal from an executive agency decision, not a county ruling), and *Austin* confronted an assertion that the lower court was without discretion to allow amendments, *vis-à-vis* the edict of Rule 15, SCRCP (that amendments "*shall* be freely given"). Neither of these cases even mentions Title 18.

Finally, CQRL cites *Bursey v. South Carolina Department of Health and Environmental Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004) as failing support for its argument that Title 18 is inapplicable. The holding of *Bursey*, however, is that Title 18 provides procedural guidelines that *were* statutorily invoked by the South Carolina Mining Act. The Court of Appeals ruled that Title 18 did not, however, supervene the substantive standard for review for state agency decisions. *Bursey*, 360 S.C. at 140, 600 S.E.2d at 83. Again, the *Bursey* dispute involved an executive agency, and the Appellate Court resorted to provisions of the South Carolina APA for the substantive standard of review. CQRL's effort to avoid application of Title 18 by pointing to an executive agency decision is misguided.

CONCLUSION

The imposition of an appeal bond as required by SC Code Ann. §18-7-10 best serves the interests of justice and equity. For the foregoing reasons, Respondent LyonJay respectfully requests that the Court impose such a requirement in a sufficient amount.

~ Signature Page to Follow ~

Respectfully submitted,

FOX ROTHSCHILD LLP

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Attorneys for Respondent LyonJay

Greenville, South Carolina

March 22, 2022

EXHIBIT A

Hi folks,

If you're receiving this email, it means that we've worked together in some capacity to stop high density subdivisions in the rural parts of the County. I'm a non-profit environmental lawyer, and my work covers the entire Upstate. As you might expect, there are many environmental issues I could be involved with, but I have chosen as one of the largest components of my work the objective of stopping subdivision intrusion in rural Greenville County. We've had successes in that work, most recently including the great outcome on Crestfield Farm that many of us worked hard to accomplish. Other battles continue to escalate, like Ethan Richard Estates in Tigerville (two appeals pending). And new issues are constantly emerging -- I will be spending this Thursday evening at a community meeting on yet another bad rural subdivision.

Most of you know that this cause is about more than any single subdivision -- my objective is to hold the County accountable and shape it's thinking as to the entire issue of rural subdivision development. That's no easy task.

I'm sure some of you don't know that my work and time is funded through donations and grants. Many other parts of my work generate a great deal of such support. But, so far, the support for my work on rural development doesn't nearly match the amount of time I'm committing to the issue, and that can be tough to justify to my organization. **If you relish our past successes in defeating subdivisions and promoting sound policy, and support my continued work on this issue, please consider donating in any amount**. Thanks so much, and I promise this will not be a solicitation you hear again for a very long time, if ever.

https://scelp.org/payments

--

Michael Corley
Upstate Coordinator and Attorney
South Carolina Environmental Law Project
(864) 412-7921

Citizens For Quality Rural Living

Timeline photos · Feb 13, 2020 ·

View Full Size

Julie Kallam Turner and **2 others** like this.

1 share

EXHIBIT A

EXHIBIT B

Citizens For Quality Rural Living

Feb 12 ·

Hi, I hope you are doing well. The annual Citizens for Quality Rural Living Membership and Community Meeting is scheduled for Monday February 20, 2023 at 7:00 pm at the Ornan Lodge, 1029 McKelvey Road in Fork Shoals. Members of the community are welcome to attend.

The group has been busy in the last several months addressing proposed subdivisions in our area. The agenda for the meeting is as follows:
Status of the Atlas Acres subdivision on McKelvey and Berry Roads
Status of the River Preserve subdivision on Wasson Way and Woodside Roads
Review the status of the Law Suit filed against CQRL and the Board of Directors by a developer.
Review the efforts by a developer to rezone property on McKittrick Bridge Road.
Review the County's effort to rewrite all their ordinances into the Unified Development Ordinance.
Recognize the CQRL Board of Directors
CQRL is an all volunteer 501c.3 organization (all contributions are tax deductible) and all funds are used to support the CQRL law suits. Now CQRL is fighting a law suit against it's efforts to encourage the County to follow their regulations. The Atlas Acres and River Preserve subdivisions are still approved by the county but tied up in court proceedings. The only thing keeping them from being built is your support in our efforts to maintain the rural character of South Greenville county.

If you would like to become a member, applications will be available at the meeting. Mark your calendar to attend the meeting. See you there.

Jim Moore
President, Citizens for Quality Rural Living

4

EXHIBIT B

7 shares

Like Comment Share

EXHIBIT 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303356

Citizens For Quality Rural Living Inc
PLAINTIFF(S)

Lyonjay 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:

See page 2.

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 03/29/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter comes before the Court upon Respondent LyonJay's ("LyonJay") Motion to require supersedeas bond for Appellant in this Appeal. First, the Court agrees that it is unusual for non-party to be able dictate the appellate process and ultimate timing of the implementation of the Planning Commission's decisions. But the South Court of Appeals has found that S.C. Code §6-29-1150 allows for an appeal to be initiated by "any party in interest" which includes this Appellant. See Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n, 426 S.C. 97 (Ct App. 2019).

Although general appellate procedures allows for a prevailing party to request a supersedeas bond of an adverse party during the pendency of an appeal, unfortunately, this Court does not find any authority to support Respondent's argument that such a bond could be required in this case. The relevant statute, S.C. Code §18-7-10, provides, in pertinent part, as follows:

When a judgment is rendered … by the governing body of a county or by any other inferior … jurisdiction…, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fails to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal. (emphasis added)

In the case before this court, the Appellant, although a "party in interest" under §6-29-1150, is not a party "against whom judgment [has been] rendered" as required by §18-7-10. LyonJay argues that since the ruling by the Planning Commission was adverse to Appellant's position, then it should be deemed to be a judgment against it. But, the clear reading of this statute does not warrant such an interpretation. In interpreting a statute, the Court must ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mutual Auto Insurance Co., 297 S.C. 520 (1989). Further, S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n, 388 S.C. 486, 491(2010) states the following:

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.

The Court finds that the language of §18-7-10 is clear and unambiguous and since no judgment has been rendered against the Appellant, this Court finds that §18-7-10 does not apply. Further, the bond is not necessary for a stay because as LyonJay's Counsel argued, Greenville County will not allow the project to go forward during the pendency of an appeal.

LyonJay also argues that Rule 62, SCRCP supports its argument for the requirement of a bond; but that provision applies when a party is requesting a stay, which as indicated, is not the case here.

The Court finds no authority to support the requirement of a supersedeas bond for the Appellant, therefore Respondent LyonJay's Motion is respectfully denied.

Greenville Common Pleas

Case Caption: Citizens For Quality Rural Living Inc VS Lyonjay , defendant, et al

Case Number: 2022CP2303356

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

RECEIVED
Apr 06 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-23-03356 (S.C. Ct. App. filed Jan. 30, 2023)
Appellate Case No. 2023-000144

Citizens for Quality Rural Living, Inc., ...Appellant,

v.

LyonJay and the Greenville County Planning Commission, ...Respondents.

PROOF OF SERVICE

The undersigned staff of Fox Rothschild LLP hereby certifies that on the date indicated below she served counsel for Appellant and Respondent Greenville County Planning Commission with copies of the Response to Appellant's Request for Extension by e-mailing copies of the same to the following addresses registered in the South Carolina Attorney Information System (AIS):

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-23-03356 (S.C. Ct. App. filed Jan. 30, 2023)
Appellate Case No. 2023-000144

Citizens for Quality Rural Living, Inc., ……Appellant,

v.

LyonJay and the Greenville County Planning Commission, ……Respondents.

CERTIFICATE OF SERVICE

I, the undersigned counsel for Respondent LyonJay, hereby certify that on June 1, 2023, I served counsel for Appellant Citizens for Quality Rural Living, Inc. and Respondent Greenville County Planning Commission with copies of Respondent LyonJay's foregoing Motion for *En Banc* Reconsideration by emailing copies of the same to the following email addresses registered in the South Carolina Attorney Information System (AIS):

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Respectfully submitted,

Dated: June 1, 2023

FOX ROTHSCHILD LLP

Greenville, South Carolina

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