

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2009-CP-34-304

MRR Sandhills, LLC and Z.V. Pate, Inc.,.....Appellants,

v.

Marlboro County, South Carolina,.....Respondent.

**RETURN OF RESPONDENT TO PETITION FOR REHEARING OF
APPELLANTS**

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Pursuant to Rules 221 and 240(e) of the South Carolina Appellate Court Rules, the respondent Marlboro County, South Carolina respectfully submits this brief return to the Petition for Rehearing of Appellants filed on July 11, 2013.

I. **THIS COURT PROPERLY CONSIDERED THE APPELLANTS' ARGUMENTS IN SUPPORT OF THEIR CLAIMS REGARDING THE VALIDITY OF THE MARLBORO COUNTY ZONING ORDINANCE AND RELIED ON APPROPRIATE AUTHORITY IN REACHING THE DECISION TO AFFIRM THE CIRCUIT COURT.**

A. **Background.**

This Court's Order affirming the Circuit Court's decision that the appellants' challenge to the validity of the Marlboro County Zoning Ordinance was time-barred by S.C. Code Ann. § 6-29-760(D)(2004) and laches relied principally upon two authorities: (1) S.C. Code Ann. § 6-29-760(D); and (2) Quail Hill, LLC v. County of Richland, 379 S.C. 314, 665 S.E.2d 194 (Ct. App. 2008), aff'd in part, rev'd in part, 387 S.C. 223, 692 S.E.2d 449 (2010). (Order ¶ 1). The appellants' petition for rehearing unjustifiably attempts to undermine this Court's reliance on those authorities. Contrary to the appellants' petition, the Court's conclusions were proper for the reasons set forth in the respondent's briefs and described in summary below.

B. **This Court Properly Relied on the *Quail Hill* Decision, Which is Controlling Precedent and is Directly Analogous to this Matter.**

In Quail Hill, the plaintiff developer brought a lawsuit in 2002 against Richland County challenging the validity of a 1978 zoning ordinance on the ground that there had been certain alleged irregularities in connection with the enactment of the Richland County zoning ordinance. 379 S.C. at 320-21, 665

S.E.2d at 197. The Circuit Court dismissed the developer's challenge to the validity of the ordinance because the developer brought its challenge long after the 60-day statute of limitations in Section 6-29-760(D) had run. Quail Hill, LLC v. County of Richland, 2006 WL 6651727, *1 (Ct. Com. Pl. June 22, 2006). This Court affirmed. Quail Hill, 379 S.C. at 320-21, 665 S.E.2d at 197. The South Carolina Supreme Court affirmed this Court's decision (the developer did not appeal this Court's holding that the zoning challenge was time-barred so the Supreme Court did not address the statute of limitations issue). Quail Hill, LLC v. County of Richland, 387 S.C. 223, 232 n.5, 692 S.E.2d 499, 504 n.5 (2010).

In their petition for rehearing in the present case, the appellants again attempt to discount the direct applicability of Quail Hill to the present case on the grounds that: (1) "the Court of Appeals' opinion in Quail Hill does not explain the nature of the challenges raised by the appellants other than to say the property owner 'assert[ed] certain irregularities in connection with the approval of the zoning ordinances[.]'" (Appellants' Pet. for Reh'g 2); and (2) that the Quail Hill plaintiffs did not allege that Richland County did not enact a zoning ordinance. (Appellants' Pet. for Reh'g 4). Therefore, the appellants argue, because they do not raise "some generic irregularity in the approval of the statute", "Quail Hill does not decide the issue presented in this appeal, and is largely if not totally irrelevant to the inquiry before the Court." (Appellants' Pet. for Reh'g 2-3). As previously discussed at length in the respondent's Final Appellate Brief, this characterization of Quail Hill is flat wrong. The plaintiff in Quail Hill took the exact position that the appellants are taking in this case -- that Richland County

had “failed to enact a valid zoning ordinance.” Quail Hill, 2006 WL 6651727, at *1. Indeed, the appellants state in their most recent pleading that “the crux of [their] argument is that there was never a valid zoning ordinance enacted.” (Appellants’ Pet. for Reh’g 2).

Quail Hill could hardly be more similar to the instant case; the alleged irregularities at issue in Quail Hill were nearly identical to the alleged irregularities the appellants raise in the present case. The appellants claim that no public hearing was held on Ordinance 545, just as the Quail Hill plaintiff claimed that no public hearing was held on Richland County’s zoning ordinance or zoning maps. See Quail Hill, LLC v. County of Richland, Appellant’s Final Brief, 2007 WL 4592515, *12-13 (Ct. App. Aug. 15; 2007). The appellants claim that the zoning map was incomplete because it was not signed or dated, just as the Quail Hill plaintiff claimed that the zoning maps were incomplete and did not include the subject property. See id. The appellants claim that the Planning Board did not recommend Ordinance 545 to the County Council, just as the Quail Hill plaintiff claimed that the zoning maps were never adopted or approved. See Quail Hill, 379 S.C. at 321, 665 S.E.2d at 198. Finally, as highlighted in their petition for rehearing, the appellants claim that the County Council did not give the 2002 Zoning Ordinance three readings, just as the Quail Hill plaintiff claimed that the County Council did not vote on the zoning maps at third reading. Quail Hill, Appellant’s Final Brief, 2007 WL 4592515, at *13.

In Quail Hill, the third reading on the zoning maps at issue was recorded to have taken place on December 20, 1978. The plaintiff in that case argued,

however, that “a close reading of the purported minutes indicate that Council neither considered nor voted upon the zoning maps.” Id. This claim that the zoning maps were not considered or voted upon on third reading is virtually identical to the appellants’ argument in this case that there was no third reading on the Zoning Ordinance.

The appellants argue that, “at most,” Quail Hill “demonstrates the possible universe of claims that may fall within the limitations period of [§ 6-29-760(D)], and very clearly does not include an allegation that a putative ordinance did not receive three readings”. (Appellants’ Pet. for Reh’g 4). To the contrary, the adequacy of the public hearing, third reading, and adoption of the zoning maps in Quail Hill were squarely before this Court in determining whether the plaintiff’s challenge to the validity of the zoning ordinance in that case was barred by S.C. Code Ann. § 6-29-760(D). This Court correctly applied Quail Hill’s directly analogous reasoning to this case in determining that the appellants’ claims are barred by the applicable statute of limitations.

Plain and simple – the appellants in this case and the plaintiff in Quail Hill both: (1) challenged the exact same types of alleged irregularities in the zoning ordinance enactment process; and (2) argued that the zoning ordinances in question were never enacted as a result of these alleged irregularities. This Court correctly affirmed the Circuit Court’s dismissal of the appellants’ challenge to the validity of the 2002 Zoning Ordinance in this case just as this Court affirmed the Circuit Court’s dismissal of the plaintiff’s challenge to the 1978 zoning ordinance in Quail Hill.

II. THIS COURT PROPERLY CONSIDERED THE APPELLANTS' ARGUMENTS IN SUPPORT OF THEIR REMAINING CLAIMS AND RELIED UPON APPROPRIATE AUTHORITY IN REACHING THE DECISION TO AFFIRM THE CIRCUIT COURT.

The respondent will not restate here its arguments in support of the dismissal of the remainder of the appellants' claims before this Court since the appellants themselves spent little time discussing their remaining claims. Rather, the respondent respectfully refers this Court to the respondent's previously-filed briefs and asserts that this Court properly considered all of the appellants' arguments, and all appropriate authorities, in reaching the Court's decision to affirm the Circuit Court on the appellants' remaining claims.

CONCLUSION

For the reasons described above and in the respondent's prior briefing, the respondent respectfully requests that this Court deny the appellants' petition for rehearing of this matter.

This 18th day of July, 2013.

Respectfully submitted,



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July 18, 2013

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *MRR Sandhills, LLC et al. v. Marlboro County*, 2009-CP-34-304 (Appellate Case No. 2011-192941)

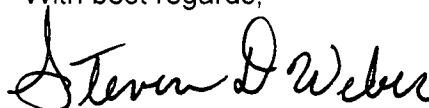
Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return of Respondent to Petition for Rehearing of Appellants in the above-referenced matter. Also enclosed please find the original Proof of Service. Please return a filed-stamped copy of each to my courier.

By copy of this letter with enclosures, I am serving one copy on counsel for Appellants via United States Mail.

Thank you for your time and assistance with this matter.

With best regards,


Steven D. Weber *by PAB*

Enclosures

cc: Richard Harpootlian, Esq.
John J. Pringle, Jr., Esq.

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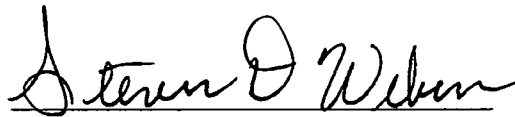
PROOF OF SERVICE

I hereby certify that a copy of the foregoing was served this day via First
Class United States mail, postage prepaid upon the following:

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This 18th day of July, 2013.


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