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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

The Honorable Bentley D. Price

C.A. No.: 2022-CP-23-04704

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson dated August 5, 2021 Plaintiff/Respondent,

v.

Greenville County Planning Commission Defendant/Appellant.

INITIAL REPLY BRIEF

HAYNSWORTH SINKLER BOYD, P.A.

Boyd B. Nicholson, Jr., S.C. Bar No. 65387

nnicholson@hsblawfirm.com

Sarah P. Spruill, S.C. Bar No. 68337

sspruill@hsblawfirm.com

P.O. Box 2048 (29602-2048)

ONE North Main, 2nd Floor

Greenville, SC 29601

Telephone: 864.240.3200

Attorneys for Appellant

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ARGUMENTS IN REPLY¹

If the Developer's arguments are accepted, a planning commission has no discretion in considering a subdivision application and a duly enacted comprehensive plan has no practical effect. This result is inconsistent with the legislative intent underlying the South Carolina Local Government Comprehensive Planning Act (the "Act") and the applicable standard of review.²

With respect to decisions made by county planning commissions, the South Carolina Supreme Court has applied the following standard of review:

This Court will not reverse the findings of a county review board unless the board's findings have no evidentiary support or the board has committed an error of law. *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). In the zoning context, a decision of the reviewing body will not be disturbed if there is evidence in the record to support its decision. *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997). Indeed, we will not substitute our judgment for that of the reviewing body, even if we disagree with the decision. *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952). "However, the decision of the zoning board will not be upheld where it is based on errors of law" *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754 (1953). Instead, "a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

Grays Hill Baptist Church v. Beaufort Cnty., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020) (reviewing a decision of the Beaufort County Planning Commission relating to an application for a development permit).

Despite this standard of review, the Developer seeks in section IV of its brief to impose a standard that would require approval of a permit application if "it substantially complies with the applicable land development regulations without seeking a variance, applicable zoning ordinances,

¹ Capitalized terms have the same meaning as that applied in the Brief of Appellant.

² In the spirit of brevity, the Planning Commission does not undertake to reinvent the wheel, but rather to address certain legal and factual points raised by the Developer. To the extent any issue is not addressed here, the Planning Commission rests on its Brief of Appellant.

and state statutes.” Developer cites no law in support of this proposition other than a general citation to the standard of review cited above.

I. The July Application was inconsistent with the Comprehensive Plan, and the Planning Commission was within its discretion in considering the Comprehensive Plan in denying the July Application.

As required by S.C. Code Ann. § 6-29-510(A), “a local planning commission shall develop and maintain a comprehensive plan to guide development in its area of jurisdiction.” *Sinkler v. Cnty. of Charleston*, 387 S.C. 67, 69, 690 S.E.2d 777, 778 (2010). That is precisely what happened here.

The Developer does not and cannot argue that the July Application was consistent with the Comprehensive Plan. As set forth by the County’s planning staff, the “proposed subdivision is located in the Rural Living character area of the Comprehensive Plan.” ((Minutes of July 27, 2022 Planning Commission meeting, R. at ____). The character areas for purposes of the Comprehensive Plan are shown in the Future Land Use Map. (Comprehensive Plan at 99, R. at ____). Under the Comprehensive Plan, the recommended density in a Rural Living area is one dwelling per two acres at a minimum. (Comprehensive Plan at 75, R. at ____). In addition, the July Application required each house to be served by a septic tank, which is inconsistent with one of the goals of the County’s future land use map, which was to reduce septic tank usage by up to 59% and the general goal of preserving water quality and lessening environmental impacts. (Comprehensive Plan at 98, 136, 146-47, R. at ____). The density of the proposed subdivision was 1.06 units per acre, more than double that recommended by the Comprehensive Plan. This increased density would in turn roughly double the number of new septic tanks contemplated by the Comprehensive Plan and the adopted Future Land Use Map.

Instead, the Developer argues without citation that the Planning Commission could not consider the Comprehensive Plan. This is inconsistent with the Act as argued in the Planning

Commission’s Brief of Appellant as well as with case law that considers adherence with the Comprehensive Plan as a factor to guide courts in reviewing planning and zoning decisions. *See Knowles v. City of Aiken*, 305 S.C. 219, 223, 407 S.E.2d 639, 642 (1991); *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 283, 890 S.E.2d 748, 756–57 (2023).

The Developer then attempts to argue that the Comprehensive Plan should not apply because it is too vague. “The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication.” *City of Beaufort v. Baker*, 315 S.C. 146, 152, 432 S.E.2d 470, 473 (1993). “A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001). The established test for vagueness is whether the statute provides “fair notice to those to whom the law applies.” *Id.* at 571-72, 549 S.E.2d at 598.

The void-for-vagueness doctrine is primarily a criminal doctrine. As generally stated, the void for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. . . .

The Supreme Court has held the void-for-vagueness doctrine is also applicable to civil matters where the rule or standard is so vague and indefinite as to really be no rule or standard at all. . . .

A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. . . . The requirement that statutory language must be reasonably certain is satisfied by the use of ordinary terms which find adequate interpretation in common usage and understanding, or if the term can be given meaning by reference to other definable sources.

The [United States] Supreme Court has observed that [t]he precise point of differentiation in some instances is not easy of statement, but as a general rule, decisions upholding statutes as having sufficient certainty have rested upon the

conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, or a well-settled common-law meaning, notwithstanding an element of degree in the definition as to which estimates might differ, or, . . . that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded.

S.C. Hum. Affs. Comm’n v. Zeyi Chen, 430 S.C. 509, 529, 846 S.E.2d 861, 871 (2020) (internal quotation marks and citations omitted).

Here, the two provisions of the Comprehensive Plan at issue (density for Rural Living areas as shown on the Future Land Use Map and reduction in septic tank use) are plainly presented. For example, the characteristics of a Rural Living area are shown here:



RT RURAL LIVING

Place Type Characteristics

Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses.

Primary Uses	Greenhouses and nurseries, agriculture, single-family residential, open space, parks
Secondary Uses	Low-intensity neighborhood commercial, low-intensity warehouse and industrial
Gross Density	1 dwelling per 2+ acres
Transportation	Automobile-oriented, large blocks, rural routes, gravel roads
Parking	Private driveways and garages
Open Space	Farmland and natural areas, large undeveloped parks

(Comprehensive Plan at 75, R. at ____). And the section of the Comprehensive Plan choosing a Future Land Use Map includes this graphic:



(Comprehensive Plan at 98, R. at ____). Thus, there should not have been any surprise to the Developer when the Planning Commission articulated the reasons for its decision at the July 27, 2022 Planning Commission meeting. The proposal did not match the density requirements and would have resulted in increased septic tank use over and above that contemplated by the Future Land Use Map.

Nor does the consideration of the Comprehensive Plan result in “unlawful rezoning.” Nothing about the use or allowed uses of the property has changed as contemplated by zoning ordinances and/or zoning maps. Instead the Planning Commission has denied this specific subdivision request because it was inconsistent with the Comprehensive Plan, among other reasons.

Without question, evidence supported the Planning Commission’s decision to deny the application based on its findings that the application was “inconsistent with the Comprehensive Plan” and concerns about the proposed septic tank use. As such, Judge Price erred in overturning that decision. This Court may reverse on this basis alone without considering the arguments surrounding the other reasons provided for the denial of the July Application. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018); *Futch v. McAllister Towing of*

Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

II. Nothing barred the Planning Commission from considering the earlier applications for Langford Hills and Judge Verdin’s order affirming an earlier denial based on density and septic tank concerns.

Given the history of these applications as set forth in the Brief of Appellant, the Planning Commission did not err in including Judge Verdin’s order and the reasons underlying the previous denials as grounds for the denial of the July Application. There is evidence in the record supporting the Planning Commission’s finding that the July Application was substantially similar to the three earlier applications and the denial of the July Application for the same reasons underlying those previous denials.

Of particular note given the arguments in the Developer’s brief is the fact that John Beeson appeared at the April 27 Planning Commission meeting as “the developer.” (Minutes of April 27, 2022 Planning Commission meeting, R. at ____). As of the date of that meeting, the property had been transferred to the Beeson Trust; thus, the ownership was the same as of the time the April Application was considered. (Deed, R. at ____). As shown in the minutes, Beeson had notice and was heard at that time.

Interestingly, Developer argues the July Application was independent of the earlier applications, but at the same time argues in section III of his brief that the application process “worked” because “Respondent received feedback from previous applications and addressed the concerns of the Planning Commission in this Application, abating all of the issues that caused previous objections.” The July Application did not, however, address the density and septic concerns that contributed to the earlier denials.

In addition, Respondent appears to take the position that the inconsistency with the Comprehensive Plan as to density and septic tank use was not litigated and decided by Judge Verdin.

This is simply untrue. Her order addresses these points and affirms the Planning Commission's determination. (Order, R. at ____).

CONCLUSION

Judge Price's order requires reversal. The Planning Commission's decision was supported by the evidence, was not based on any error of law, was not arbitrary or unreasonable, did not constitute an abuse of discretion, and should not have been overturned.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill _____

Boyd B. Nicholson, Jr., S.C. Bar No. 65387
nnicholson@hsblawfirm.com
Sarah P. Spruill, S.C. Bar No. 68337
sspruill@hsblawfirm.com
P.O. Box 2048 (29602-2048)
ONE North Main, 2nd Floor
Greenville, SC 29601
Telephone: 864.240.3200

Attorneys for Appellant

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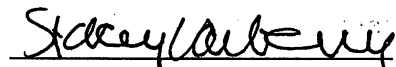
v.

Greenville County Planning Commission Defendant/Appellant.

PROOF OF SERVICE

I certify that I have served *Appellant's Initial Reply Brief* on counsel of record on January
16, 2024, by electronic mail only to the following:

Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Marcelo Torricos III, Esq.
Bannister, Wyatt & Stalvey, LLC
24 Cleveland Street, Ste. 100 (29601)
P.O. Box 10007
Greenville, SC 29603
bbannister@bannisterwyatt.com
lburke@bannisterwyatt.com
mtorricos@bannisterwyatt.com


Stacey Carberry, Legal Assistant
HAYNSWORTH SINKLER BOYD, P.A.
864.240.3223

**HAYNSWORTH
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
ONE NORTH MAIN STREET, 2ND FLOOR
P.O. BOX 2048 (29602)
GREENVILLE, SOUTH CAROLINA 29601
MAIN 864.240.3200
FAX 864.240.3300
www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

January 16, 2024

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

Re: *Marcelo Torricos, as Trustee of the John W. Beeson Irrevocable Trust II FBO James H. Beeson dated August 5, 2021 v. The Greenville County Planning Commission*
Appellate Case No. 2023-000699

Dear Ms. Kitchings:

This firm represents the Appellant in the above matter. Enclosed for filing, please find *Appellant's Initial Reply Brief* together with our Proof of Service for the same.

If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac

Enclosures

cc: Bruce W. Bannister, Esq. (bbannister@bannisterwyatt.com)
Luke Anthony Burke, Esq. (lburke@bannisterwyatt.com)
Marcelo Torricos III, Esq. (mtorricos@bannisterwyatt.com)