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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396
Appellate Case No. 2022-001796

John's Marine Service Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,
Lucretia B. Morgan, Sherri Akers Crisp and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,
Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited
Partnership,

Respondents.

RESPONDENTS' RETURN TO APPELLANTS'
MOTION TO SUPPLEMENT THE RECORD

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The Respondents, returning to the Appellants' Motion to Supplement the Record in the above captioned case, submit that the motion must be denied. "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *S.C. Code §6-29-840*.

The BZA (Board of Zoning Appeals) held three hearings over the course of five months, to wit: November 30, 2021, January 24, 2022, and April 25, 2022. At the very first hearing on November 30, 2021, Jay Ratliff, spokesman for the Ratliff Family, recited to the BZA the history of Ellenburg Road and stated that it was a state road until Lake Keowee was built and it then became a county road (*Exhibit A* – Highlighted Excerpts from Transcript of November 30, 2021 BZA Hearing, p. 81-83). On appeal from the BZA findings or order, Judge Maddox filed an order dated September 15, 2022 upholding the BZA decision. Thereafter, on November 21, 2022, Appellants filed a motion to alter or amend the order denying relief that was subsequently denied by Judge Maddox. A certified record of the BZA proceedings was then submitted to the parties on July 25, 2022, and on December 20, 2022 a notice of appeal was filed.

Appellate briefs were then duly filed with the South Carolina Court of Appeals. However, in the meantime, Appellants also filed a declaratory judgment action (Case No. 2022-CP-37-00447) on June 17, 2022 asking the Court to determine whether a portion of Ellenburg Road was a county road or a private driveway based upon their claim that a

county employee with the road department had told them that the county did not maintain the last few hundred feet of the road to the end of the pavement beginning at Respondents' property. Notwithstanding that allegation, no action has ever been brought to close any portion of Ellenburg Road pursuant to *S.C. Code §57-9-10*. Subsequently, in the process of discovery in the declaratory judgment action (an ongoing and totally separate case from the BZA appeal in this matter before the Court of Appeals), the testimony of Ms. Yelena Kalashnikova of the SCDOT was taken on January 25, 2024. It is information obtained from Ms. Kalashnikova's deposition in that separate and distinct case from their BZA appeal that Appellants are now wanting to add to the record in their appeal of the BZA decision and Judge Maddox's order. In essence, the Appellants are claiming that evidence outside the record on appeal in this action should be considered by the Court of Appeals in determining whether the BZA acted appropriately. They are essentially requesting that the Court of Appeals judge the case presently before the Court by considering testimony that was not presented to the BZA and/or Judge Maddox.

Accordingly, it is submitted that the motion should be denied as this court is without authority to grant the relief requested or to judge the propriety of anything other than what was considered by the BZA and Judge Maddox. It is a general basic tenant of South Carolina Law that a court acting as an Appellate Court in reviewing decisions of other courts, agencies or tribunals may only consider evidence that was presented before the lower tribunal and made a part of the record to determine whether the lower tribunal decision is properly supported. *Carolyn Songer Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E. 2d 209 (Ct. App. 2004) and other cases heretofore cited in Respondents' Brief also affirm this position. Now, approximately two and one-half years after the

Appellants' Notice of Appeal and the certification of the record upon which Judge Maddox rendered his decision, Appellants desire to add testimony that was not presented to the BZA Board nor Judge Maddox. Additionally, Appellants are cherry-picking Ms. Kalashnikova's testimony without acknowledging that even though she testified that her search of the records failed to reveal any information as to whether Ellenburg Road was ever maintained by the State of South Carolina that after reviewing deeds and plats of record shown to her at her deposition, she opined that Ellenburg Road is a public road and the final authority as to whether it is a public road belongs to Oconee County and not the State of South Carolina (*Exhibit B* – Highlighted Excerpts from Yelena Kalashnikova's 30(b)(6) Deposition Transcript).

It is clearly the law of the State of South Carolina that in reviewing questions presented by an appeal of a Board of Zoning Appeals' decision, the decision of the reviewing court shall only determine whether the decision of the Board of Zoning Appeals is correct as a matter of law based on the evidence presented to it, and the Appellate Court must refrain from substituting its judgment for that of the board even if disagrees with the decision. *Carolyn Songer Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E. 2d 209 (Ct. App. 2004) and other cases heretofore cited in Respondents' Brief support this position.

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March 14, 2024

JOHN' S MARINE SERVICE, INC., ET AL.

VS.

ORIGINAL

OCONEE COUNTY BOARD OF ZONING APPEALS, ET AL.

11/30/2021

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1 Yes. And -- and it's -- it appears to be a gravel
2 road so at some point was it just gravel all the way
3 down --

4 MR. RATLIFF:

5 So --

6 MALE VOICE:

7 -- to the shop?

8 MR. RATLIFF:

9 So the history goes -- goes back to before Lake
10 Keowee was built. It was Route 1, Box 268, that was
11 mom's address and the road went all the way across
12 and it was a tar and gravel road. So an old -- old
13 designed road and then right at John's Marine there
14 was a split and there was a dirt road that went
15 across the lake over towards High Falls. And so
16 that road no longer exists. Route 1 went along the
17 -- the edge of the -- the shoreline here, came --
18 came down this way, went along here, then they went
19 -- went out. Now that portion of the lake is still
20 flooded, you can still see the tar and gravel under
21 the water and -- and it's there. The -- the end of
22 county maintenance stopped when about 40 years ago
23 when -- when dad started building the -- the shop
24 they stopped paving the road up here. So everything
25 from here down was maintained by the Ratliff family.

1 MALE VOICE:

2 So that was my question. So, the -- the area
3 because it's not obviously not a -- a gravel road
4 now, it is paved, so y'all paved that road?

5 MR. RATLIFF:

6 That's right.

7 MALE VOICE:

8 The -- Oconee County did not pave that road at any
9 point?

10 MR. RATLIFF:

11 That's correct. So, that's correct.

12 MALE VOICE:

13 Thank you.

14 MR. RATLIFF:

15 And you can, if you go out there you can see where
16 the tar and gravel ends. You can see where the --
17 the pavement has changed over the years. And then
18 in this -- this particular photograph here you can
19 see where the yellow lines end and where the --

20 MALE VOICE:

21 And y'all paved up -- up to that?

22 MR. RATLIFF:

23 That's correct. We've -- well, not -- not every
24 time the county's paved right, so I -- I think
25 someone mentioned that the -- the road is kind of in

1 disarray so we haven't kept up with it as much as --
2 as the county (inaudible).

3 MALE VOICE:

4 And my -- right. My -- my point is so if the -- if
5 you did that privately, y'all paved it privately,
6 the county never has paved that road because I would
7 hope to goodness that if the county did not have an
8 easement for that road that we didn't waste taxpayer
9 money paving the road. That's what I was getting --

10 MR. RATLIFF:

11 I can assure you taxpayer money was not wasted
12 paving that road. There is -- there is one -- one
13 more -- one more piece with the road. It -- it was
14 originally at some point a state road when it was
15 Route 1, Box 268, so -- so it was a state road at
16 some point and then I guess the state of South
17 Carolina went through a -- a -- I'm trying to -- to
18 transition all the roads to local governments and
19 that's when it became a county road, and that's when
20 it transitioned from tar and gravel to asphalt. So
21 it -- it was more -- more funds I guess to be able
22 to pave the road, so.

23 MALE VOICE:

24 Mr. Chairman, I have a question.

25 MR. CHAIRMAN:

1 A. Uh-huh.

2 Q. Does that address mean anything -- or
3 help me understand what Route 1 was.

4 A. SCDOT does not operate by addresses.

5 Q. Okay. So -- so Route 1 is a
6 meaningless identification or maybe just a mail
7 identification like from -- from the postal office?

8 A. It could be. You know how people say
9 Highway 1. To SCDOT that doesn't mean anything
10 because is it a C-1? Is it a Secondary 1? Is it
11 U.S. 1? We're -- we're number people.

12 Q. Okay. And the -- the only name that
13 y'all were able to identify for Ellenburg Road was
14 local 900?

15 A. Yes, based on our records.

16 Q. Okay. And so y'all don't have any
17 records of turning that road over to Oconee County?

18 A. We do not.

19 Q. Okay. And you don't have any records
20 of state maintenance on Ellenburg Road?

21 A. We do not.

22 Q. How -- how would a public road lose its
23 status as a public road?

24 A. Again, if it's a public road that is
25 not state maintained, it can be I guess abandoned

1 by the county or the city or a development is being
2 placed or the route is being closed through court
3 order closure. There is multiple ways.

4 For state maintained roads, as I
5 mentioned from the very beginning, it can be
6 abandonment due to relocation, again, court order
7 closure, or transfer to another government or
8 nongovernment entity. But the transfer doesn't
9 mean that the road is no longer a public road. It
10 just means that it is not maintained by South
11 Carolina DOT by the state.

12 Q. So if historically that had been
13 transferred to Oconee County, there should be some
14 documentation of that?

15 A. We should have a record of it, yes.

16 Q. And if it had been ordered closed by a
17 court order, there would be a record of that?
18 There would be a court order?

19 A. There would have to be a record of
20 that, yes.

21 Q. Okay. Okay. I remember you said
22 something about engineering directive 41 earlier to
23 me.

24 A. Correct.

25 Q. Can you explain what that is?

1 A. I do not know.

2 Q. Okay. In the absence of records, would
3 you not rely on other public records to determine
4 whether Ellenburg Road was ever public?

5 MR. PAAVOLA: Object to form.

6 THE WITNESS: We communicate with
7 right-of-way office.

8 BY MR. HOLLIDAY:

9 Q. In the county or --

10 A. No.

11 Q. -- with the state?

12 A. Within DOT.

13 Q. Okay. Do they ever do a title search?

14 A. They do.

15 Q. Do you know if the title search was
16 ever done on Ellenburg Road or any of the
17 properties along Ellenburg Road?

18 A. Jean Barnes, the one that mentioned --
19 was mentioned in the e-mails --

20 Q. Right.

21 A. -- I believe she did it, but I cannot
22 be hundred percent sure.

23 Q. Okay. I'm going to hand you

24 Defendant's Exhibit 1 which is one big mess of

25 deeds and plats and stuff, but I've arranged it

1 A. Uh-huh.

2 Q. I'm going to represent to you that on
3 the fourth page the structure that is circled is
4 Knox store. So that is on Knox Road just south of
5 Ellenburg.

6 A. Uh-huh.

7 Q. So if we go to the fifth page, that --
8 that gives us our plat from 1946 which shows a
9 split of two roads. Now, if we go back to the --
10 the first page, we can see that that plat is
11 referenced, and it says that Mr. Younce's property
12 that he's selling to Mr. Mayfield is lying and
13 being on the public road leading from 183 at Knox's
14 store to High Falls.

15 A. Uh-huh.

16 Q. Is it possible that this Y shown on
17 page five of our exhibit, is it possible that that
18 is the end of Ellenburg Road when you're looking at
19 all the other maps that we had in the record?

20 MR. PAAVOLA: Object to form.

21 BY MR. HOLLIDAY:

22 Q. You can compare it to the third page of
23 Exhibit 4 that Mr. Paavola submitted to you. You
24 can see where the green line ends in a northerly
25 direction?

1 A. Yes.

2 Q. And you see the bridge which if you're
3 looking at page five of our Exhibit 1, where it
4 says, "J. J. Younce," directly above that, there's
5 a bridge there. Does that appear to be in a
6 relatively similar location as the third page of
7 Mr. Paavola's Exhibit 4?

8 MR. PAAVOLA: Object to form.

9 THE WITNESS: Oh, you mean like from
10 the northern end of Ellenburg Road?

11 BY MR. HOLLIDAY:

12 Q. Correct. Correct.

13 A. I mean, it's drawn. It could be, yes.

14 Q. Okay. So if we go to page six, we see
15 that in 1951 Mr. Mayfield sold this acreage -- this
16 35 acres to James Sloan. Do you see that?

17 A. Uh-huh. Yes, I do.

18 Q. And it also includes the same legal
19 description being located on the public road
20 leading from 183 at Knox's store to High Fall and
21 it references the same survey from 1946; is that
22 correct?

23 A. Yes, sir.

24 Q. So if we -- we go to page 8, just that
25 highlighted portion is -- is Ellenburg.

1 Q. And it is still in what condition at
2 that point in time based on the legend that we have
3 to go on with that map?

4 A. Eight.

5 Q. Okay. And we have no way of knowing
6 whether that's 61 -- an orphaned portion of 61?

7 A. There is no records in South Carolina
8 DOT that it ever was.

9 Q. Okay. So even -- even though seeing a
10 plat with that on page 18 doesn't change your mind
11 that it may have been part of 61?

12 A. I have to follow the documents that I
13 have possession of, and we do not have possession
14 of that document. That's maybe erroneous, maybe
15 correct. I -- I do not know. But this is just the
16 one picture.

17 Q. Right.

18 A. I do not have any legal -- other than
19 that, I don't have any legal documents in South
20 Carolina DOT stating that I think 161 would go
21 north of South Carolina 183 in DOT.

22 Q. So when you're looking at the -- the
23 deeds that we've walked through and the plats and
24 the maps, you -- you still -- you believe this is a
25 public road, but it was never state maintained?

1 to road system and the shields would be the
2 indications of whether the route is state
3 maintained or not.

4 Q. Right.

5 There was no -- I don't know when it
6 changed, but in the historic maps from '69 there --
7 there was not a designation for a county road?

8 A. Correct.

9 Q. And --

10 A. So the assumption is that if it doesn't
11 have a shield, it's possibly a county road,
12 non-state maintained road.

13 Q. It's not state maintained?

14 A. Correct.

15 Q. It doesn't mean it's a county road?

16 A. No, it does not.

17 Q. City road, private road, okay.

18 A. Correct.

19 Q. And you -- I think maybe you testified
20 earlier that the information -- such as the October
21 2016 map, the information from the county is
22 what's -- what roads are county, that comes from
23 the county itself?

24 A. Correct.

25 Q. So designated in 2016 Ellenburg Road as

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Respondents' Return to Appellants' Motion to Supplement the Record was served via electronic mail upon the following:

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