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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Franklin J. Smith, Jr., Special Referee

Appellate Court Case No. 2024-000282
Circuit Court Case No. 2021-CP-18-02238

Virginia B. Crum, Elizabeth Crum-Huffman, Fred Crum, Sr.,
Mattie Middlebrooks, Lula Bryant, Wilhemenia King, Juanita
Hill, and Hazel Parson-Starks,

Appellants,

v.

Dorchester County, Ashley River Lumber Company, Inc., and
Joe Henry Branton, Sr.,

Respondents.

INITIAL BRIEF OF APPELLANTS

/s W. Andrew Gowder, Jr.

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April 30, 2024

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR AS A MATTER OF LAW IN FINDING THAT THE REZONING WAS CONSISTENT WITH THE COUNTY'S COMPREHENSIVE PLAN WHEN THE REZONING TO COMMERCIAL LIGHT INDUSTRIAL IGNORES THE CLEAR LANGUAGE OF THE FUTURE LAND USE DESIGNATIONS FOR THIS AREA IN THE PLAN?
2. DID THE CIRCUIT COURT ERR AS MATTER OF LAW IN FINDING THAT THE REZONING DID NOT CONSTITUTE UNLAWFUL SPOT ZONING WHEN THE REZONING CLEARLY SINGLED OUT A SMALL PARCEL OF LAND FOR LAND USE CLASSIFICATION TOTALLY DIFFERENT FROM THAT OF THE SURROUNDING AREA FOR THE BENEFIT OF THE OWNERS OF THAT PROPERTY AND TO THE DETRIMENT OF THE OTHER OWNERS?

STATEMENT OF THE CASE

On December 30, 2021, the appellants filed this action in the Court of Common Pleas in Dorchester County. Complaint. The complaint stated a declaratory judgment action filed challenging a rezoning of property in a rural residential area of northern Dorchester County to commercial light industrial (CLI) as being contrary to the County's Comprehensive Plan and illegal spot zoning. Complaint.

By order dated October 26, 2023 Circuit Court appointed Franklin J. Smith special referee in this matter pursuant to Rule 53(c), SCRCP, to decide this case with finality as a circuit court judge sitting without a jury.

On December 18, 2023, Special Referee Smith held a nonjury trial taking testimony and receiving exhibits as evidence.

The parties introduced all plaintiff and defendant exhibits into evidence by stipulation and without objection. (Transcript (TR) pgs 13-14). At the conclusion of the trial, Mr. Smith requested the parties submit proposed orders as their final arguments.

On February 2, 2024, Special Referee Smith submitted a written order making findings of fact and conclusions of law, pursuant to Rule 52(a), SCRCP, and entered judgment accordingly, pursuant to Rule 58, SCRCP. That order was filed by the Circuit Court on February 12, 2024. Order of the Special Referee.

The Plaintiffs timely filed their Notice of Appeal on January 29, 2024. Notice of Appeal, February 29, 2024.

STANDARD OF REVIEW

Under the Circuit Court's order referring the matter to the special referee, the special referee decided this case as a trial court judge sitting without a jury.

Trial courts, sitting without juries in an action at law, write their findings specially and separately:

To allow a reviewing court to determine from the record whether the judgment--and the legal conclusions which underlie it--represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system. *In re Care & Treatment of Corley*, 365 S.C. 252, 616 S.E.2d 441 (Ct. App. 2005), citing *Id.* at 132, 568 S.E.2d at 343 (internal citations omitted) (quoting *Coble v. Coble*, 300 N.C. 708, 268 S.E.2d 185, 189 (N.C. 1980)).

The appellate court's standard of review of a law case tried by a court sitting without a jury is to search the record for errors of law and to determine if there is any factual basis to support the findings of the trial court. *Snell v. Parlette*, 273 S.C. 317, 322, 256 S.E.2d 410, 412 (1979). *Bivens v. Watkins*, 313 S.C. 228, 230, 437 S.E.2d 132, 133 (Ct. App. 1993).

STATEMENT OF FACTS

The appellants are all residents, property owners, and taxpayer in Dorchester County owning real property and residing adjacent or near the rezoned property at issue in this case. (“Adjacent Properties”) These Adjacent Properties are located in Coburn Town, a historic African American settlement community lying adjacent to the properties that are the subject of this action, or the Town of Ridgeville. See, Plaintiffs' Exhibit 15, 23, 27, 30, 31, 33; TR. 62-65, 86-88.

A. Dorchester County has a comprehensive plan as required by state law.

Under the Zoning and Land Development Standards of Dorchester County, Ordinance 04-13 adopted in May 1999 (“ZLDS”) in accordance with the state enabling legislation, the South Carolina Local Government Comprehensive Planning Act of 1994, S.C. Code Ann. Sec. 6-29-310, *et. al.*, local governments must create comprehensive plans and make all zoning decisions consistent with those plans.

The current comprehensive plan for Dorchester County is the 2018 Comprehensive Plan adopted by County Council on January 7, 2019. Plaintiffs' Exhibit 1, as amended, Plaintiffs' Exhibit 2.

The broad community engagement process required by law for each local government's comprehensive plan by state enabling act resulting in several "Visionary Statements" guiding the findings of the Comprehensive Plan including these:

- "Our values are reflected in our preserved downtowns and historic neighborhoods..."
- "We preserve our fragile natural environment and protect our rural qualities and character. New developments support our desires to protect our waterways, breathe clean air and conserve natural resources."

- "We walk on accessible sidewalks.... Our rural areas have unique zoning that allows our citizens to enjoy the benefit of land ownership while also promoting conservation, land preservation, and context sensitive development."

Plaintiffs' Exhibit 1, page 25.

The community selected their preferred settlement type for each area of Dorchester County, and the area around Ridgeville, at issue here, was identified as Area 8 and the general land use described as follows: " Plan for transit ready suburban residential, commercial, and employment growth around Ridgeville, while supporting existing rural character." Plaintiffs' Exhibit 1, page 27.

The future land use designations for the area at issue in this case were Employment Mixed Use and Transit Oriented Development. Plaintiffs' Exhibit 1, page 28.

Under Steps to Initiate the Plan, the Comprehensive Plan lists: "Use the vision, goals and strategies of the CP to influence future planning efforts..." Plaintiffs' Exhibit 1, page 71.

In listing its action steps to implement the Comprehensive Plan, the plan lists: "Implementing plans to preserve the historic and vital neighborhoods that exist in the County that surround historic towns..." Plaintiffs' Exhibit 1, page 75.

B. The Defendant property owner sought to rezone his property to allow for industrial development.

On May 28, 2021, Branton and ARLC applied to Dorchester County to rezone three parcels (TMS # 109-00-00-002, 003, and 141) above from (AC), Absence of Control, to (I) Industrial. Plaintiffs' Exhibits 7, 8, 9. The reason stated for the rezoning on each application was to "[a]llow for future industrial development that could utilize the adjacent rail access." Plaintiffs' Exhibits 7, 8, 9.

What the applicant has in mind for this property is shown in the site plan prepared by the applicant's engineering firm, Stantec, in conjunction with the Norfolk Southern railroad company. Plaintiffs' Exhibit 4. The site plan shows a warehouse distribution center campus serviced by truck and by rail.

C. County planning staff cautioned against the rezoning requested by the applicant, warning particularly about truck traffic and ingress/egress.

The applications first came before the Dorchester County Planning Commission at its July 8, 2021, meeting. Plaintiffs' Exhibit 12. At that meeting the Planning Commission deferred action on the applications so that the resident Council member from the area could hold a public meeting on the request. Plaintiffs' Exhibit 14.

Thereafter, a community meeting was held on July 23, 2021, to address questions and concerns of residents who live in the area and to help explain the different zoning classifications being requested.

The Dorchester County planning staff led the meeting and received questions and comments from those who attended, including the Plaintiffs and other residents of Coburn Town who opposed a rezoning that would allow incompatible uses, including industrial uses and distribution warehousing on this site adjacent to their homes and their community. The planning staff prepared slides showing what uses would be allowed in various zoning categories, Plaintiffs' Exhibit 5.

A petition was circulated and signed expressing disapproval and opposition to the proposed zoning change. Plaintiffs' Exhibit 15. The signatures of many of the Plaintiffs and residents of the nearby African American settlement community of Coburn Town are listed on the petition opposing the rezoning. Plaintiffs' Exhibit 15.

The questions posed by those in attendance and answers given by the County planning staff were captured in a memo prepared by the county staff. Plaintiffs' Exhibit 17.

The application came before the Planning Commission again at its August 12, 2021, meeting. The County planning staff issued a report on the rezoning request, similar to its earlier report prepared before the July meeting, addressing each of the 3 parcels separately based on the specific characteristics and location of each parcel in relation to Coburn Town. Plaintiffs' Exhibits 13 and 18.

The staff report, Plaintiffs' Exhibit 18, identified the future land use designation for these parcels as identified in the Dorchester County Comprehensive Plan as follows:

The 2018 Comprehensive Plan Future Land Use Map designates this area/parcels with two settlement types:

- **Employment/ Mixed Use Development**

- Providing jobs closer to where people live is a high priority. Settlements in these areas should promote job- oriented uses along with a mix of residential uses that allow people to walk and bike to work. Densities in these settlement types are to be medium to high, with a broad mix of affordability. Developments should be highly walkable and include parks, amenities, connected streets, neighborhood retail, employment, and institutions.

- **Transit Ready/Transit Oriented Development**

- The highest level of density should occur in this settlement type to support future transit opportunities. They should be “transit ready” and include the attributes of Transit Oriented Development. These areas are located along the rail line and adjacent to existing towns. Developments in these areas should include urban block sizes, buildings fronting pedestrian oriented streets, a high mix of uses-both vertical and horizontal- and include

urban amenities. These areas should support employment, commercial uses, institutions, and high levels of urban design.

Plaintiffs' Exhibit 18, page 2.

The staff identified the surrounding land uses, including the Plaintiffs' homes and community, as rural, residential, and needing to be protected. Plaintiffs' Exhibit 18, pages 2-3.

The staff then made specific recommendations for the rezoning of each of the three parcels as follows:

- TMS#109-00-00-002
 - Although this property is adjacent to a railroad, it is also adjacent to an existing residential community that needs to be protected. It also has direct access to a road that is not built to manage this type of use which will likely produce large volumes of heavy truck traffic and would not mix well with the existing residential settlement in the area. While staff can support uses that will utilize the existing rail infrastructure, to protect the existing residential character, we only support (CLI) Commercial Light Industrial zoning which would limit heavy industrial uses such as manufacturing plants and resource extraction operations. Staff had some early discussions about this parcel possibly developing as residential which could be supported by the Comprehensive Plan, but the applicant submitted for the parcel to be rezoned for Industrial use to support Economic Development in the area.
 - In addition, staff also encourages the County to require assurances from the applicant to show how they plan on accessing the site and that no truck traffic would directly

take access from Coburn Town Road. Coburn Town Road is a narrow, ditch-section, rural residential road with no pedestrian facilities and staff has concerns with the introduction of truck traffic onto this road. Staff would like to see access to the site provided from School Street, and steps should be taken to prohibit truck traffic down Coburn Town Road.

- TMS#109-00-00-003
 - This tract contains Ashley River Lumber which is an established use with direct access to rail and takes direct access from Campbell Thicket Road. Staff can support (I) Industrial zoning as requested for existing Ashley River Lumber to bring the existing use into zoning compliance, however, if the existing use goes away staff can support CLI to match adjacent parcels to allow for similar zoning/uses. This parcel takes direct access off Campbell Thicket Road, has access to the rail line and is directly across from the prison. Staff would need assurance regarding no future access being taken from Coburn Town Road for this parcel as well.
- TMS#109-00-00-141
 - This parcel does not have direct access to rail and is adjacent to an existing residential community that needs to be protected. It also has direct access to roads that are not built to manage this type of land use and would not mix well with the existing residential settlement in the area. Staff recognizes that the parcel is directly across from the prison, but to protect the existing residential character, we only support (CLI) Commercial Light Industrial zoning which would limit heavy industrial uses such as manufacturing plants and resource extraction operations.

- Finally, addressing all parcels, staff stated: “School Street, Coburn Town Road, and Thicket Road are all state roads, and the County does not have the final authority on the aforementioned actions regarding access. **The application shall address these concerns prior to third reading to maintain staff support as indicated.**”
- In addition, staff also encourages the County to require assurances from the applicant to show how they plan on accessing the site and that no truck traffic would directly take access from Coburn Town Road. Coburn Town Road is a narrow, ditch-section, rural residential road with no pedestrian facilities and staff has concerns with the introduction of truck traffic onto this road. Staff would like to see access to the site provided from Campbell Thicket Road like existing Ashley River Lumber, and steps taken to prohibit truck traffic down Coburn Town Road.

Plaintiffs' Exhibit 18, pages 2-3.

Numerous speakers appeared to oppose the rezoning application. Plaintiffs Exhibit 20, pages 2-3. The only speakers in support of the rezoning application were Mr. Branton, the owner, and Dorchester Council Member Bailey, who would later be voting on the rezoning as a member of Dorchester County Council, stating that “the Economic Development Board is in need of land for commercial/ industrial sites.” Plaintiffs Exhibit 20, page 3.

Commissioner Pratt then made a motion to recommend approval based on the staff's recommendation of a rezoning to Commercial Light-Industrial District (CLI), and further suggested based on staff's recommendation that the applicant consider access points for management of ingress / egress and traffic control. After a second the Commission voted 5-0 to recommend approval with

consideration for access management of the sites. Plaintiffs Exhibit 20, page 3, and Plaintiffs' Exhibit 21.

D. The County approved a rezoning from Agricultural Residential District (AR) to Commercial Light-Industrial District (CLI, allowing a number of intense commercial uses, including warehousing distribution centers.

The rezoning ordinance had its first reading before Dorchester County Council at its meeting of September 7, 2021. Plaintiffs' Exhibit 23.

In the public comments period, many area residents and Plaintiffs in this case spoke against the rezoning. Plaintiffs' Exhibit 23, pages 2-3.

The motion passed 6-1, with the resident Council Member, Councilwoman Holman who conducted the community meeting and heard the opposition of the residents, voting against. Plaintiffs' Exhibit 23, page 5.

At the October 4, 2021 County Council meeting, several residents appeared to speak against the rezoning, even though it was not on the agenda for action at that meeting, Plaintiffs' Exhibit 27, page 2, and Council also received written comments expressing opposition to the rezoning application. Plaintiffs' Exhibit 26.

At the October 18, 2021, Council held a public hearing on the rezoning request before the Council Planning, Development, and Building Committee. Plaintiffs' Exhibit 28 and 29. Ten speakers appeared and spoke against the rezoning request, including many of the Plaintiffs. Plaintiffs' Exhibit 30, pages 4-5.

There was only one speaker for the rezoning, a representative of Stantec, the engineering firm hired by the applicant to prosecute the application for rezoning. Plaintiffs' Exhibit 30, pages 4-5.

After the public hearing, Councilwoman Holman, who represents the district where this property and the Coburn Town community is located, made a motion to deny the request to rezone the property. The motion failed for want of a second. Plaintiffs' Exhibit 30, page 5.

Councilman Friddle, seconded by Councilman Chinnis, moved to approve the rezoning request. The motion passed, 6-1, with Councilwoman Holman voting against. Plaintiffs' Exhibit 30, page 5.

On the same day, Council met and considered second reading of this rezoning request. During the public comment period, yet again, many residents and other opponents of the rezoning request spoke in opposition to it. Plaintiffs' Exhibit 31, page 2, with others submitting written statements opposing the rezoning. Plaintiffs' Exhibit 31, pages 8, 9, 10, 11-15.

Nevertheless, Council voted to approve the rezoning, 6-1, with Councilwoman Holman voting against. Plaintiffs Exhibit 31, page 5.

Finally, on November 1, 2021, Dorchester County Council considered third and final reading the rezoning application from “Agricultural Residential District (AR) to Commercial Light-Industrial District (CLI).” Plaintiffs' Exhibit 33

During the public comments period, seven speakers spoke against the rezoning; none spoke in favor of it. Nonetheless, Council voted 6-1 in favor of final reading of the rezoning request, with Councilwoman Holman voting against. Plaintiffs' Exhibit 33, page 2.

Despite staff's requirement in its report about specifically addressing ingress and egress and the effect of traffic on the surrounding neighborhood, there was never any discussion of this issue before Council on the record, and no provision was made regarding ingress and egress access points as part of Council's approval. Plaintiffs' Exhibit 33, page 3.

E. The uses allowed in the Commercial Light-Industrial District, including distribution warehousing are inconsistent with the future land uses called for by the Dorchester County Comprehensive Plan.

The CLI zoning classification is inconsistent with the Employment/ Mixed Use future land use designation in that it does not provide a “mix of residential uses that allow people to walk or bike to work,” does not provide for “medium to high residential densities with a broad mix of affordability,” is not “walkable,” and does not include “parks, amenities, connected streets, or neighborhood retail.” Plaintiffs Exhibit 1, page 34.

Likewise, CLI zoning is not compatible with the Transit Oriented Development future land use designation as described by the Comprehensive Plan in that it does not include “urban block sizes, buildings fronting pedestrian oriented streets, a high mix of uses-both vertical and horizontal,” or support “high levels of urban design,” all as called for by the Comprehensive Plan for this area. Plaintiffs Exhibit 1, page 35.; TR 151-153.

F. The zoning classification of Commercial Light-Industrial District use is unique in this area of the Town of Ridgeville and Dorchester County.

The land use classification of Commercial Light Industrial in the location of the Rezoned Properties would be entirely different from the general character of the adjacent surrounding land uses which are residential, rural, agricultural, wooded, or small-scale service retail.

There are no other CLI zoned parcels in this region of Dorchester County. TR. 148.

G. The zoning of this parcel as Commercial Light Industrial fails to comply with the County Ordinance 7.9.2.

County Ordinance 7.9.2, Defendant's Exhibit 2, states that zoning of CLI land is not encouraged except as an extension of an existing CLI. TR. 137.

The rezoned parcels challenged here were not adjacent to a commercial light industrial district, was not isolated from residential uses, and the industrial use that had existed on one of these parcels, a sawmill and lumber yard, is no longer in use. TR. 137-140.

The rezoning of these parcels to CLI does not comply with the requirements of the County's own ordinance, 7.9.2. Defendants' Exhibit 2, TR 137-140.

ARGUMENT

I. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE REZONING WAS CONSISTENT WITH THE COUNTY'S COMPREHENSIVE PLAN WHEN THE REZONING TO COMMERCIAL LIGHT INDUSTRIAL IGNORES THE CLEAR LANGUAGE OF THE FUTURE LAND USE DESIGNATIONS FOR THIS AREA IN THE PLAN.

This declaratory judgment action challenges this rezoning as contrary to the Dorchester County Comprehensive Plan, and therefore as invalid, and seeks a declaratory judgment to that effect. The special referee found that "Dorchester County Council's approval of the rezoning was not arbitrary or capricious, and at the very least, the propriety of its rezoning decision was fairly debatable." Order, Conclusion of Law (3). That cannot be, though, where the language of either future land use designation attributable to this site is clearly meant to be a mixed use compatible with residential neighborhoods and pedestrian activity, and any use allowed by commercial light industrial, including a distribution warehouse, cannot be consistent with that future land use identified in the Comprehensive Plan. To find that otherwise is clear legal error.

Once a local government has adopted at least the land use portion of a comprehensive plan, it is entitled to establish zoning districts to implement the provisions of that plan. Further, those regulations and zoning decisions must be made in accordance with the comprehensive plan. S.C. Code Ann. Sec. 6-29-720(a) and (b). *Sinkler v. Cty. of Charleston*, 387 S.C. 67, 77, 690 S.E.2d 777, 781 (2010).

The out of state law cited by the special referee at Conclusion of Law 10 for the proposition that "[t]he plan is only a general blueprint and thus only general conformance is necessary" *Oyster Growers Ass'n v. Moby Dick Corp.*, 115 Wn. App. 417,429, 62 P.3d 912, 918 (Wn. Ct. App. 2003) is not supported by any South Carolina appellate court decision and is in fact directly contrary to our state's planning enabling act. Relying on that Washington state decision was clear legal error.

Relevant provisions of the County's Comprehensive Plan and the County planning staff's own statements in their report to the Planning Commission and Council are evidence that this rezoning is not consistent with the County's Comprehensive Plan and is for the private gain of the property owner, as opposed to the common good of the neighboring community. The harm to the community, especially from truck traffic on roads that are not constructed to maintain such activity, is described in detail by the County's own planning staff.

As pointed out by the County planning staff's report, the rezoning of the subject properties is adjacent to sensitive residential settlement areas that need to be protected. The rezoned property does not have the roads or other infrastructure to support the uses allowed by an industrial and warehouse distribution use. See, for example, Plaintiffs' Exhibit 18, pages 2-3.

Further, the rezoning was contrary to and ignores the future land uses described by the Dorchester County Comprehensive Plan, which was adopted by ordinance of County Council after careful and deliberate work by County planners and input from Dorchester County citizens through public hearings and other community engagement efforts as called for by South Carolina law.

The Defendants point to two words in the Employment/ Mixed Use Settlement vision bullet points, "light industry," that are used completely out of context of the rest of the overall description of the use category. The "Settlement Vision" for Employment/ Mixed Use states: "Settlement in

these areas should promote jobs oriented uses along with a mix of residential uses that allow people to walk and bike to work. Densities in this Settlement Type are to be medium to high, with a broad mix of affordability. Developments should be highly walkable and include parks, amenities, connected streets, neighborhoods, retail, employment, and institutions." Plaintiffs Exhibit 1, page 34.

Then, the description of this Settlement Type lists factors making up "Settlement Character" and includes one bullet out of several that states: "Allocation of land for employment used (sic) of all types including industry, light industry, office and commercial." This employment allocation is in the context of residential, educational, and institutional uses connected by highly walkable streets and open space and parks. Nowhere does the Comprehensive Plan suggest that this area is suitable for a stand-alone industrial park/ distribution warehouse located next to an existing residential neighborhood.

The industrial park/ distribution warehouse district for which the rezoning is aimed, is anything but the holistic, mixed residential, employment-oriented use described in the Comprehensive Plan.

The special referee adopts the County and property owner's argument that the distribution warehouse plan is a concept, but the property could be put to another use under CLI. The other uses, however, are no better and some even less compatible with residential living. See Plaintiff's Exhibit 5.

The purpose behind requiring conformance to a comprehensive plan is to prevent the arbitrary, unreasonable, and discriminatory exercise of the zoning power and to serve as an effective brake on ad hoc, one-off zoning decisions.

Dorchester County Council's actions in this matter in allowing the rezoning of these properties to industrial in this location totally out of character with the surrounding property uses is the antithesis of planned zoning required by South Carolina law. S.C. Code Ann. Sec. 6-29-510, et. seq.

The rezoning neither adheres to the County's Comprehensive Plan nor promotes the good of the common welfare.

Evidence in the Comprehensive Plan, the application, and its supporting documents before the Planning Commission and Council all demonstrate the incongruity between the new use classification and the existing surrounding land uses and the future uses called for in the Comprehensive Plan and the damage that the rezoning will cause the Plaintiffs and other residents of Coburn Town, Ridgeville, and Dorchester County, the Council's actions are without justification, are not fairly debatable, and are instead arbitrary and unreasonable.

The special referee's finding on this point must be reversed.

II. THE CIRCUIT COURT ERRED AS MATTER OF LAW IN FINDING THAT THE REZONING DID NOT CONSTITUTE UNLAWFUL SPOT ZONING WHEN THE REZONING CLEARLY SINGLED OUT A SMALL PARCEL OF LAND FOR LAND USE CLASSIFICATION TOTALLY DIFFERENT FROM THAT OF THE SURROUNDING AREA FOR THE BENEFIT OF THE OWNERS OF THAT PROPERTY AND TO THE DETRIMENT OF THE OTHER OWNERS.

The special referee also found that the Plaintiffs had not carried their burden to establish that the rezoning was illegal spot zoning under South Carolina law. That decision, too, is legal error.

Not only must a local government make zoning decision consistent with the land use portion of its comprehensive plan, it may not single out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of the owners of that property and to the detriment of other owners. *Bob Jones Univ. v City of Greenville*, 234 S.C. 351, 361, 133 S.E.2d 843, 848 (1963).

The special referee cited language from *Knowles v. Aiken*, 305 S.C. 219, 222, 407 S.E. 2d 639, 641-42 (1991) that supports the exercise of deference on the part of courts to zoning decisions of local government. The *Knowles* decision also provides the standard for setting aside rezoning that is not a

part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare. *Knowles*, 407 S.E.2d at 641-42 (emphasis added).

It cannot reasonably be disputed that this zoning change was made solely to benefit the applicant owners, Branton and ARLC. It does so to the detriment of the surrounding property owners in Coburn Town, including the Plaintiffs, whose single-family homes will be substantially and irreparably damaged by the uses allowed by the industrial zoning.

The County's Planning Director, at trial conceded that there is no other CLI use in this part of Dorchester County, much less in the area of this rezoned parcel.

Whether the property is "small" as pointed out by the special referee is certainly relative, and in the context of the larger Coburn Town and Ridgeville area of Dorchester County, the rezoned parcel could certainly be characterized as "small" standing alone.

What is more relevant is that CLI is a completely unique and incompatible use in this location, and there is no question that this rezoning was made at the request of and for the benefit of this one individual landowner, not the community, and not his neighbors.

This rezoning is clearly spot zoning under the Knowles test, and the special referee's failure to so find is reversible legal error.

CONCLUSION

Appellants respectfully request an order reversing the decision of the Special Referee.

Despite all of the qualifications and rationalizations offered by the County and property owner adopted by the special referee in the Order, the fact remains that Commercial Light Industrial and its allowed uses cannot be read as compatible with mixed-use residential living as described in either of

the future land use designations for this area prescribed by the County's Comprehensive Plan. To allow the County to overrule the statutorily mandated public process that resulted in the Comprehensive Plan by a one-off rezoning at the request of one property owner is exactly the kind of poor and harmful planning decision the state's Comprehensive Planning Enabling Act was meant to prohibit. To allow that rezoning to stand in the face of the clear incompatibility between the Plan and this rezoning decision was a legal error and is reversible.

Similarly, the refusal to recognize that this rezoning is illegal spot zoning when there is no other use like it in the area, it was requested and is only meant for the benefit of one property owner and is otherwise harmful to the neighboring property owners is not fairly debatable and is legal error. Judicial restraint is not a panacea for decision-making by local governments, and trial courts review them, which is clearly contrary to the requirements of law.

For all these reasons, the Appellants respectfully request that this Court reverse the special referee's decision.

Respectfully submitted,

/s W. Andrew Gowder, Jr.

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