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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.

**CONSENT MOTION FOR AGREED DISMISSAL AND TO VACATE**

Pursuant to Rules 260 and 261, SCACR, the Appellant hereby moves for the agreed dismissal of this action and asks that the orders on appeal in this matter be vacated. Respondent consents to the requested relief.

**BACKGROUND**

This appeal stems from an attempt to gain approval from the Greenville County Planning Commission (“Planning Commission”) for a proposed subdivision known as Langford Hills (“subdivision” or “Langford Hills”). The Planning Commission considered multiple applications for the subdivision, including an application filed during the pendency of this appeal. The parties have reached an agreement, approved by the circuit court, that will allow for the approval of a subdivision on the property in question.

A brief discussion of the history of these applications is helpful in considering why the Appellant seeks to have the orders on appeal vacated. On November 17, 2021, the Planning Commission considered a subdivision application for Langford Hills (the “November Application”) seeking approval for a 176 lot subdivision on 164.4 acres. A motion to approve the November Application failed by a vote of 3-3.

On January 26, 2022, the Planning Commission considered another application for Langford Hills (the “January Application”) again seeking approval for a 176 lot subdivision. A motion to approve the January Application failed by a vote of 3-4. Mark III Properties, Inc. (“Mark III”) appealed this decision, and Judge Letitia H. Verdin denied the appeal (“Judge Verdin’s order”). Judge Verdin’s order provided in part as follows:

During the meeting, two members of the public addressed Respondent in opposition of the proposed subdivision. They cited as concerns the existence of two historic houses on the Langford Hills property that they argued should be preserved, as well as the adverse impact on the water table should the subdivision be approved. There was even some discussion between the Commission Chairman and the developer about whether Appellant would preserve one of the historic houses, which the developer was unable to commit to. One of [the] commissioners, Ms. Clark, specifically stated that “Greenville County has a goal to reduce septic tank usage and when septic tanks are used it is encouraged to provide septic easements.” and “the density is inconsistent with the surrounding area.” Another commissioner, Mr. Rogers, stated that the proposed subdivision was out of character with the surrounding area. In all, three of the four members who voted against the plan explained their opposition on the record, and it is reasonable to presume that the fourth member voted against it because he found their arguments compelling.

#### IV. CONCLUSION

Therefore, the Court finds that there is a sufficient record to explain Respondent’s denial of Appellant’s application. *The Court does not find that that Respondent made its decision with no evidentiary support or in an arbitrary or capricious manner.* Appellant also committed no clear errors of law. Accordingly, Respondent’s decision is AFFIRMED.

Mark III did not appeal Judge Verdin’s order.

On July 27, 2022, the Planning Commission again considered an application for Langford Hills (the “July Application”). A motion to deny the July Application passed by a vote of 4-3. This motion cited as reasons for denial (1) the reasons underlying the previous denials and Judge Verdin’s order, (2) a finding that the application was “inconsistent with the Comprehensive Plan,” and (3) concerns about the proposed septic tank use.

Respondent appealed, and the matter was heard by Judge Bentley D. Price on February 23, 2023. At the hearing, Judge Price indicated that he was inclined to go beyond mere reversal of the Planning Commission’s decision, directing Respondent’s counsel to draft an order along the following lines:

Here’s what I’m going to do. I’m going to remand it because I just think that they need to get more specific grounds other than what Mr. Torricos is indicating what everybody is also stating that they’re giving. I mean, I asked a simple question, and Mr. Torricos doesn’t have the answer for it. So we’ve got to figure out what this comprehensive plan is.

So what I’m going to remand it for is if, in fact, they are going to deny the application, I’m going to allow the appellant to reapply once again. And if, in fact, they decide to deny it, I want every specific fact to be outlined and brought to the Court for my approval. That’ll be a tricky order for you to write, but if you write it right, I’ll approve it.

MR. TORRICOS: Thank you, Judge.

THE COURT: All right. You all have a great day.

All right. What’s next? Ms. Walters?

MR. TORRICOS: Judge, and just to be clear, one second.

Can they go -- can they use the comprehensive plan as a ground for denial?

THE COURT: No because we don’t know what the comprehensive plan is.

Consistent with that direction, Judge Price reversed the decision of the Planning Commission by order dated March 31, 2023, granting the following relief:

1. The Respondent's motions to dismiss this appeal based on the doctrines of *res judicata* and/or collateral estoppel are denied.
2. The Planning Commission's denial of the Appellant's preliminary subdivision applications considered on July 27, 2022 is hereby **VACATED**.
3. The issue shall be remanded back to the Planning Commission.
4. The Appellant may refile a new application with the Planning Commission for the Langford Hills Subdivision. The Appellant has leave to make modifications to the application to ensure that it substantially complies with relevant statutes, land development regulations, and any applicable ordinances.
5. In its consideration for approval, conditional approval, or denial, **the Planning Commission is barred from (1) using the Comprehensive Plan as a basis for denial, (2) Judge Verdin's June 3, 2022 Order as a basis for denial, and (3) any of the other reason's similar applications were denied previously as a basis for denial.**
6. Should the Planning Commission decide to deny this new application, then the Appellant shall have leave to file an expedited appeal per S.C. Code Ann. § 6-29-1150. I am retaining jurisdiction in this matter and, if Appellant files a subsequent appeal pursuant to this order, then the Planning Commission shall provide my chambers with a detailed list of the reasons and detailed explanations as to why the Planning Commission has denied the Appellant's new application. Should I find that the reasons or basis for denial is or are not supported by law, the facts, are arbitrary, unreasonable, harmless error or an abuse of discretion, then the matter will again be remanded back to the Planning Commission with direct orders to approve the application as filed.

The Planning Commission timely moved to alter or amend on April 10, 2023. In its motion, the Planning Commission argued, among other things, that Judge Price improperly created a new standard of review for Planning Commission decisions, that Judge Price improperly considered evidence relating to individual Planning Commission members rather than the vote of the Planning Commission as a whole, that Judge Price erred in ruling that the Planning Commission could not consider Judge Verdin's order, that Judge Price erred in failing to find that the applications reviewed by the Planning Commission were substantially similar, that Judge Price erred in allowing the Developer to amend its application and in dictating to the Planning Commission what it could and could not consider following that amendment to include an express prohibition on considering the

duly adopted Comprehensive Plan for Greenville County, and lastly, the Planning Commission took issue with Judge Price's direction that he would continue to remand this matter with "direct orders to approve the application as filed." Judge Price denied the motion by order dated April 25, 2023. This appeal followed.

### **BASIS FOR VACATING ORDERS ON APPEAL**

The South Carolina Appellate Court Rules provide that the parties to an appeal may, by agreement, request that an appeal be dismissed and that the appellate court vacate a prior order, opinion, or judgment in the matter. Rule 260(b), SCACR; *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Havird*, 343 S.C. 485, 486, 541 S.E.2d 241, 242 (2001) (granting motion to dismiss and vacate under former version of Rule 260, SCACR). This request is properly made by motion. Rule 260(b), SCACR. In the motion, the parties are required to set forth the "facts that warrant this extraordinary relief[.]" Rule 261(d), SCACR.

The parties have reached an agreement providing for the approval of the Langford Hills subdivision. The Planning Commission has agreed to dismiss its appeal on the condition that the orders on appeal be vacated. The Planning Commission seeks to have the orders vacated because they improperly discount the County's duly enacted comprehensive plan and apply an incorrect standard of review, throwing into question the role of the Planning Commission as more fully set forth in the Initial Brief of Appellant and Initial Reply Brief. The Planning Commission's concern is not the reversal of its decision by Judge Price, but rather the sweeping nature of the relief ordered and the portion of the orders barring the Planning Commission from considering the comprehensive plan. It is this overreach that gives rise to "the facts that warrant this extraordinary relief" as contemplated by Rule 261(d).

**CONCLUSION**

For the reasons stated above, Appellant, with the consent of the Respondent, seeks an order dismissing the appeal and vacating the orders on appeal in accordance with Rules 260(b) and 261(d), SCACR.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

*s/ Sarah P. Spruill* \_\_\_\_\_

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**We agree and consent to the requested relief:**

*s/ Marcelo Torricos*

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*Attorneys for Respondent*

July 2, 2024

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**PROOF OF SERVICE**

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I certify that I have served *Consent Motion for Agreed Dismissal and to Vacate* on counsel  
of record on July 2, 2024, by electronic mail only to the following:

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July 2, 2024

**VIA EMAIL AND U.S. MAIL**

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

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-captioned matter. Enclosed for filing, please find a *Consent Motion for Agreed Dismissal and to Vacate* along with our *Proof of Service* for the same. Also enclosed is our firm's check to cover the cost of the filing fee (w/ mailed copy).

Please note service on counsel of record by copy of this letter. If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac

Enclosure

cc: Bruce W. Bannister, Esq. (bbannister@bannisterwyatt.com)  
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