

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

WEST STREET FARMS, LLC, and,
MIX FARMS, LLC,
Plaintiffs,

v.

CITY OF BEAUFORT, BEAUFORT INN,
LLC,
and, 303 ASSOCIATES, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2021-CP-07- 00663

ORDER

PRESIDING JUDGE:	R. SCOTT SPROUSE
DATE OF HEARING:	MAY 11, 2023
COURT REPORTER:	SHARON HARDOON
PLAINTIFFS' ATTORNEY:	W. ANDREW GOWER, JR.
DEFENDANT BEAUFORT INN, LLC AND 303 ASSOCIATES, LLC'S ATTORNEY:	BENJAMIN E. NICHOLSON V
DEFENDANT CITY OF BEAUFORT ATTORNEY:	WILLIAM B. HARVEY III

This matter was before the Court for a bench trial in an action filed by the Plaintiffs on April 5, 2021 in which declaratory judgment, a permanent injunction and mandamus were sought. The parties stipulated a large number of exhibits which were placed in the record. The Court heard testimony and arguments of counsel.

This dispute surrounds a plan to construct a hotel and apartments in downtown Beaufort. Accompanying the hotel plans are plans for the construction of a parking garage. The planning and submission process of these projects took many years, with final approval ultimately being obtained by the Historic District Review Board ("the Board"). The Board evaluated numerous documents, including applications requesting the demolition/relocation of existing structures to make way for the new hotel and the parking garage. Several sets of minutes of the board from various stages of the process were entered into evidence. Subsequent to the filing of this lawsuit, the Plaintiffs' appealed the decision of the Board to the Circuit Court. A hearing on the appeal took

place before the Honorable Bentley Price on January 6, 2022. An order was issued on January 20, 2022 in which the Court denied the appeal. Said order was appealed to the South Carolina Court of Appeals, where it is still pending.

This State has a long-standing rule that one judge of the same court cannot overrule another. Charleston Cnty. Dep't of Soc. Servs. v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). The question that this Court must answer is twofold:

1. Are the issues in this case identical to those issues previously heard by the Court?
2. Is the Plaintiff precluded by law from seeking the relief sought in this parallel case?

The analysis begins with an evaluation of the issues. The issue before Judge Price was an appeal from the Board. The Board is an architectural review board created by the City of Beaufort pursuant to South Carolina Code §6-29-710 et seq., which governs zoning ordinances, zoning board of appeals and architectural review boards. The City of Beaufort created the Board as part of the enactment of Unified Developmental Ordinance (“UDO”) in 2003. The statutory language shows the clear intent of the General Assembly for zoning boards to be a major part of “the administrative mechanism designed to enforce the zoning ordinance.” S.C. Code §6-19-870, which allows the creation of architectural review boards when the zoning ordinance

“...makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within areas.”

Pursuant to South Carolina Code §6-29-870, the UDO and the subsequent Beaufort Code (“the Code”) both give the Board the power to approve or disapprove submitted projects in accordance with the various zoning requirements.

The Plaintiffs alleged to the Board that neither the hotel project nor the parking garage were in compliance with the zoning requirements, due to them being “Large Footprint Buildings.” The Plaintiffs specifically outline the following declaratory relief in their Amended Complaint:

“a. The Hotel Project, the Parking Garage Project, and the Apartment Project as currently designed and submitted to the City, exceed 100 feet width frontage and,

under the Beaufort Code, shall comply with the Large Footprint Building standards of Beaufort Code Sec. 4.5.10.

b. Under Sec. 4.5.10, as the Hotel Project, the Parking Garage Project, and the Apartment Project are located in the Historic District Overlay, both are permitted only by the granting of a Special Exception by the ZBOA.

c. Neither the Hotel Project, the Parking Garage Project, nor the Apartment Project have received a Special Exception from the ZBOA.

d. Neither the Hotel Project, the Parking Garage Project, nor the Apartment Project may proceed with any construction, alteration or improvement on those project sites without first receiving a Special Exception for each project from the ZBOA.

e. All prior approvals by the City that were issued without the prerequisite Special Exception permitting by the ZBOA are null, void and of no effect.”

The Plaintiffs further alleged at the hearing that improper extensions were granted to the project regardless of which ordinance applied. The UDO provides for one six (6) month extension while the Code provides for a twenty-four (24) month extension. Plaintiffs’ counsel referred to the timelines set forth in Court’s Exhibit J.

All of the above-outlined issues were before the Court in the Plaintiffs’ appeal. The question is whether the Plaintiffs may maintain an independent action under the Declaratory Judgment Act, particularly South Carolina Code §15-53-30, where “any person interested ...whose rights, status, or legal relations are affected by a statute, municipal ordinance, contract or franchise...” may petition a court of record for “a declaration of rights, status, or other legal relations thereunder.” The General Assembly further outlines the purpose of this law in South Carolina Code §15-53-130 where it states that “this chapter is declared to be remedial. Its purpose is to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.”

We must now turn to the statute governing these types of disputes. South Carolina Code §6-29-930 (B) specifically sets forth the procedure for an appeal from an architectural review board:

“(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil

cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.”

The Court notes that there are no damages sought in this case nor is there a jury trial requested.

Generally, specific laws will prevail over general laws, and the most recent legislation will take precedence over earlier enactments. *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000); *Lloyd v. Lloyd*, 295 S.C. 55, 57-58, 367 S.E.2d 153, 155 (1988); *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 88, 326 S.E.2d 395, 399 (1985). Declaratory relief will ordinarily be refused where another remedy will be more effective or appropriate under the circumstances. *Bank of Augusta v. Satcher Motor Co., Inc.*, 249 S.C. 53, 152 S.E.2d 676 (1967).

The long-standing law in South Carolina is that a party aggrieved by the application of an ordinance must invoke and exhaust the administrative remedies provided thereby before he may resort to the courts for relief. *DePass v. City of Spartanburg et.al.*, 234 S.C. 198, 107 S.E.2d 350 (1959). The core of the Plaintiffs’ arguments surrounds whether the current Beaufort Code or the previous zoning code, the United Development Ordinance (UDO) is the applicable law governing the project and whether approval of the projects in question violates the applicable law. The South Carolina General Assembly has outlined a specific procedure acted upon by the City of Beaufort to create a board to hear these disputes. The Plaintiffs availed themselves of this procedure and contested the approval of the projects. Unsuccessful in their efforts, the Plaintiffs appealed the decision to the Court, where their appeal was denied. The Court finds that the Plaintiffs’ administrative remedies have not been exhausted since their appeal to the South Carolina Court of Appeals is still pending.

Furthermore, the Court finds that the issues in that case are identical. While the Declaratory Judgment Act is a general law that could be utilized in this case if an administrative procedure were not available, the Court finds that it is not applicable in light of the parallel case. The Court notes that Judge Price’s order does not present the arguments exactly in the same order in which they were presented at this trial. However, the core issue is identical----whether approval of these projects violates the applicable municipal ordinance. This Court making findings of fact and adjudicating this issue would be improper since another Circuit Court judge has issued an order on the same facts, which is under appeal. Granting the relief requested would violate the above-stated

rule in this State that one judge of the same court cannot overrule another. It hypothetically could result in competing orders from the same court, which is exactly the problem that the above-referenced statutes seek to prevent. This principle of South Carolina law also makes the request for a permanent injunction/mandamus and attorney fees improper.

WHEREFORE, IT IS ORDERED,

1. That the Plaintiffs' request for Declaratory Judgment is DENIED; and
2. That the Plaintiffs' request for a Permanent Injunction/Mandamus is DENIED; and
3. That the Plaintiffs' request for attorney fees and costs is DENIED.

AND IT IS SO ORDERED!

June 8, 2023

/s/ R. Scott Sprouse

Circuit Court Judge



Beaufort Common Pleas

Case Caption: West Street Farms Llc , plaintiff, et al VS Beaufort City , defendant, et al
Case Number: 2021CP0700663
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit