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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge
Case No.: 2021-CP-07-00663

Appellate Case No. 2022-000953
Unpublished Opinion No. 24-UP-372, Filed October 30, 2024

West Street Farms, LLC and Mix Farms, LLC, Petitioners,

v.

City of Beaufort, Beaufort Inn, LLC, and
303 Associates, LLCPETITIONERS.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Petitioners claim that this matter contains a novel issue of law but at the same time try to distinguish *Med. Univ. of S.C. v. Taylor*, 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987) and other similar precedent cited by the Court of Appeals in its unanimous unpublished decision as one of the number of reasons why the Circuit Court decision in this matter was affirmed. Thus, there is no overriding novel legal issue in this matter; the Petitioners simply do not like how existing precedent was applied by the Circuit Court and the Court of Appeals to their detriment.

COUNTER-STATEMENT OF THE CASE

This appeal arises from two long-pending development projects in the Historic District in the City of Beaufort (“City”): a hotel project (“Hotel Project”) and associated parking garage project (“Parking Garage Project”) (collectively, the “Projects”) by Petitioners Beaufort Inn, LLC and 303 Associates, LLC, (collectively, “Beaufort Inn”), and decisions of the City of Beaufort Historic District Review Board (“HRB”) (an architectural review board) approving certain aspects of those projects.¹

The central issue in this case is whether the Hotel Project and the Parking Garage Project required Special Exceptions from the ZBOA to be constructed in the City. It is undisputed that neither Project asked for or received a Special Exception from the ZBOA. It is also undisputed that under the current City development ordinance, the Beaufort Code, (“Code”), which became effective on June 27, 2017, the two Projects are now properly categorized as “Large Footprint

¹ This case is but one of many filed by the Petitioners, entities owned by a competing developer in Beaufort, Graham Trask. In addition to this case, Petitioners and their proxies have filed no less than five other appeals in the circuit court from decisions of the HRB or the City of Beaufort Zoning Board of Appeals (the “ZBOA”) in connection with these Projects, and those in which the circuit court has entered a final order have been appealed to the Court of Appeals.

Buildings,” and such buildings *if proposed after enactment of the Code* require Special Exceptions from the ZBOA to be built under the current Code.

It is also undisputed that the City’s development ordinance in effect prior to the effective date of the Code, the Unified Development Ordinance (“UDO”), did not require a Special Exception for either Project. There is no disagreement among the parties on these points. The only factual issue for the circuit court to decide in this case was whether the two Projects were grandfathered under the UDO, or otherwise vested, so that neither project required a Special Exception. The position of Respondents is that both Projects were grandfathered under the UDO so Special Exceptions were not needed. Respondents presented testimony and documentary evidence on this issue during the trial before the circuit court on May 11, 2023.

However, this central issue *was already decided by a judgment of the circuit court on January 20, 2021*. That Circuit Court decision was ultimately affirmed by the Court of Appeals in *West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC*,” Appellate Case No. 2022-000300, on October 20, 2024 (the “HRB Appeal”).² The circumstances surrounding the HRB Appeal will be discussed *infra*.

The circuit court agreed with Respondents and denied relief to the Petitioners in an Order filed June 9, 2023. No post trial motion was filed by Petitioners, who appealed to the Court of Appeals. The Court of Appeals on October 30, 2024 affirmed the Circuit Court in an unpublished *per curiam* opinion.

² Respondents respectfully incorporate the arguments asserted in the briefs they filed in Appellate Case No. 2022-000300, as the arguments in that appeal are germane to the arguments in this one, as noted *infra*. (The Petitioners in that case have also filed a Writ for Certiorari.)

A. The City's Regulatory Framework for the Parking Garage and Hotel Projects.

The Hotel Project and the Parking Garage Project were developed under the following regulatory framework of the City. The City's current Beaufort Code governing development matters was enacted effective June 27, 2017, pursuant to enabling legislation codified by South Carolina Code Annotated Section 6-29-710, *et seq.* Prior to the enactment of the Code, the City's development code was known as the Unified Development Ordinance, or "UDO," which was first adopted on January 28, 2003 (last revised September 14, 2012.) The Code superseded the UDO when enacted.

The UDO provided for an HRB at Section 2.7, which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at South Carolina Code Annotated Section 6-29-870, *et seq.* (R. pp. 1001-1004). The Code, when enacted, similarly provided for the HRB at Section 10.7. (R. pp. 1018-1019). The HRB is essentially a specialized architectural review board with jurisdiction throughout the Historic District. Code § 10.7.2.A. (R. p. 1018). Generally speaking, the HRB reviews alterations to structures in the Historic District and "will seek to preserve and protect the historic character and architectural integrity of Beaufort's National Landmark Historic District." Code § 10.7.1.B. (R. p. 1018). Among its duties, the HRB reviews and takes action on "any Major Certificates of Appropriateness" pursuant to Section 9.7.1 of the Code. Code § 10.7.2.B.1. (R. p. 1018). A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. Code § 9.10.A.1. (R. p. 1011). On large projects that can take years to develop, the HRB under both the UDO and the Code follows a stepped procedure of conceptual approval, preliminary approval, and final approval.

The ZBOA is different from the HRB, as per Section 10.3.1.C.1 of the Code, the ZBOA "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision

or determination made by an Administrative Official in the enforcement of the Code.” (R. p. 1016). The HRB serves a completely different function than the ZBOA, so there is no jurisdictional overlap or logical sequential process for the submittal of plans to one body before the other. The ZBOA per Section 10.3.1.C.1 of the Code: “shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code.” (R. p. 1016). The ZBOA thus has no authority over HRB matters as the HRB is not an “Administrative Official” as defined in Code Section 13.1.

There is no provision in the Code requiring ZBOA approval of any project prior to HRB approval. Indeed, Code Section 9.2.5 expressly allows an applicant to apply for approvals concurrently at its own risk. (R. p. 1010). Further, Code Section 9.1.4 outlining “Permit/Process Type Table” has no indication of sequential ordering of applications as between the ZBOA and the HRB.³ (R. pp. 1008-1009).

B. Background of the Parking Garage and Hotel Projects.

Respondents Beaufort Inn and 303 Associates are sister real estate investment companies owned by Beaufort residents. (R. p. 136, lines 18-22). Beaufort Inn and 303 Associates have renovated, restored and developed numerous historic structures and constructed a number of new buildings in the City. (R. p. 138, lines 3-12). They have received awards recognizing them for their historic preservation and appropriate new construction efforts. (R. p. 138, lines 13-17). For the last decade, Beaufort Inn has envisioned a much-needed downtown hotel and parking garage for the City.⁴ (R. p. 139, line 5-p. 140, line 15). These efforts were welcomed by the City for years.

³ The circuit court made these express findings about the interrelationship, or rather lack thereof, of the HRB and the ZBOA in its Order in the HRB Appeal. (R. pp. 32-33).

⁴ There was a third project at issue in this case originally, the “Apartments Project.” At the time the Complaint in this action was filed, none of the Projects had a Special Exception. However,

(R. p. 140, lines 16-25). The City needs downtown parking, and Beaufort Inn was able to offer a portion of the proposed garage parking available to the public. (R. p. 140, line 19-p. 141, line 9).

Indeed, after the Projects were introduced to the City, the City and Beaufort Inn entered into a Memorandum of Understanding on March 22, 2017 (“MOU”)⁵ that contained provisions demonstrating the commitment of the City and Beaufort Inn to the process. Specifically, the MOU envisioned that Beaufort Inn would eliminate a private parking lot, construct a parking garage which had some spaces dedicated for public use, and thereafter construct a hotel. (R. 433-434; 438-439; 526-528). Beaufort Inn and the City then collaboratively worked for years to fulfill the objectives memorialized in the MOU.

The Parking Garage Project was first presented by Beaufort Inn to the HRB at its **August 17, 2016** meeting. The process for the Parking Garage Project thus began under the UDO, prior to the enactment of the Beaufort Code. After a lengthy meeting with much discussion, the HRB gave unanimous conceptual approval of the Parking Garage, calling it a “496 space, 186,000 square foot parking garage.” (R. 023-024) Order, pp. 3-4. Likewise, the Hotel Project was first

since the Complaint was filed, the Apartments Project has received a Special Exception from the ZBOA. (R. pp. 468-469). The Apartments Project required a Special Exception because, unlike the other two projects at issue, the Apartments Project arose after the enactment of the Code, so it was not grandfathered into the UDO. (R. pp. 468-469). Petitioners appealed (and lost) that grant of the Special Exception for the Apartments Project at the circuit court level in *West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Board of Zoning Appeals, and 303 Associates, LLC*, Civil Action No. 2021-CP-07-01639. Petitioners have also appealed yet another HRB decision granting preliminary approval to the Apartments Project. *See West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, City of Beaufort Historic District Review Board, and 303 Associates, LLC*, Civil Action No. 2022-CP-07-0039. Regardless, it is not disputed that the Apartments Project claim included in the Complaint initiating the case that is the subject of this appeal was mooted by these actions.

⁵ The MOU was entered into when the UDO was in effect, prior to the adoption of the Code. (R 022). Order, p. 2.

presented to the HRB and received unanimous HRB conceptual approval on **September 14, 2016**, again under the UDO and prior to the enactment of the Beaufort Code.

C. Petitioners Presented the ZBOA Special Exception Argument to the HRB and to the Circuit Court.

Following the filing of this lawsuit in April of 2021, and unrelated to any issue with the ZBOA, the Hotel Project and the Parking Project received final approvals by the HRB at its June 9, 2021 meeting.

Why did the HRB concern itself with the claim that the Projects required Special Exceptions from the separate ZBOA? It was only because the Special Exception issue was first introduced before the HRB *by the Petitioners*. Prior to the HRB hearing on June 9, 2021, counsel for Petitioners wrote a letter (“Petitioners’ Objection Letter”) to the City Attorney objecting to the HRB’s consideration of the two projects. (R. p. 999, I.R. 421-428).

Petitioners’ Objection Letter at its third page (R. 999, I.R. 423), among other things, expressly cited *this lawsuit* and raised the Special Exception issue:

Furthermore, my clients object to either of these matters proceeding at all and contend that they must be rejected and dismissed. On their behalf, I am contending in court that each project is a Large Footprint Building under the Beaufort Code and that neither has received a Special Exception as required by Beaufort Code in Sec. 4.5.10 (B) (5). This objection forms one of the bases of my clients’ legal action currently pending in the Court of Common Pleas in Beaufort County, *West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC and 303 Associates, LLC*, 2021-CP-07-00663. **The applicants, not having received Special Exceptions from the City of Beaufort Zoning Board of Appeals for either the Hotel nor the Parking Garage, may not proceed to obtain approval for either of these applications from the HDRB, and the HDRB has no jurisdiction to consider these applications. These two particular applications pending before the HDRB must be rejected and dismissed.**

(Emphasis added).

The Petitioners raised the Special Exception issue as a threshold jurisdictional issue so that it had to be considered for the HRB to proceed with its decision. It is well-settled that subject

matter jurisdiction is a threshold matter to be determined by the adjudicatory body. *See, e.g., Judy v. Judy*, 393 S.C. 160, 712 S.E. 2d 408, 412 (2011); *Thompson v. Swicegood*, 430 S.C. 648, 845 S.E. 2d 920, 926 (Ct. App. 2020); *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E. 2d 524, 528 (Ct. App. 2009).

Because of the Petitioners' Objection Letter to the HRB, the Beaufort Inn Respondents filed their Answer in this lawsuit with the HRB for its consideration as part of the June 9, 2021 hearing. (R. 999, I.R. 429-449). Beaufort Inn's Answer traces the development steps taken with the City between 2016 and 2021 with exhibits demonstrating the efforts and expenditures by Beaufort Inn in support of those effects and recites Respondents' position that the Projects were grandfathered under the UDO. (R. 999, I.R. 429-611).

Thus, the HRB had before it the exact Special Exception issue in this lawsuit only because Petitioners raised the issue before it. Ultimately, the HRB disagreed with the complaints of the Petitioners and approved the Hotel Project and the Parking Garage Project at the June 9, 2021 meeting.

The Petitioners then appealed the final approvals of the HRB to the circuit court. It is in that case where the circuit court judge issued an order critical to the circuit court's decision in this case.

The HRB Appeal is significant here because the Petitioners raise factual and legal issues in this case that are identical to the issues raised before the HRB and in the HRB Appeal. Specifically, the Petitioners argued before the HRB and before the circuit court in the HRB Appeal that the (new) Code and not the (prior) UDO applied to the Parking Project and the Hotel Project, so each Project required a Special Exception from the ZBOA before either could proceed to the HRB. (*See* Trask Testimony before HRB, R. p. 260, line 20-p. 269, line 9; R. p. 282, line 8-p.

290, line 17; R. p. 343, line 16-p. 351, line 18; R. p. 369, line 17-p. 370, line 16; Petitioners' Objection Letter to the HRB, R. 999, I.R. 421-428; Amended Petition Appealing HRB Decision (July 9, 2021, Amended Complaint), R. pp. 77-86 and R. 999, I.R. 56-65; Transcript of HRB Appeal Hearing R. 411-450 and R. 999, I.R. p. 612-651). Petitioners characterized this as a subject matter jurisdiction issue, as noted.

Further, the Special Exception issue was raised by citizen comments directly to the HRB. Wayne Vance, the President of the Historic Beaufort Foundation, argued at the June 9, 2021 hearing that the HRB should not move forward because the projects required Special Exceptions. (R. p. 248, line 18-p. 250, line 23; R. p. 296, line 13-p. 298, line 2; R. p. 340, line 13-p. 343, line 12). Mr. Trask, the owner of the Appellant corporations, also attended that June 9, 2021 meeting and spoke. (R. p. 260, line 20-p. 269, line 9; R. p. 282, line 8-p. 290, line 17; R. p. 343, line 16-p. 351, line 18; R. p. 369, line 17-p. 370, line 16).

Second, after the HRB granted the final approvals sought by Respondent Beaufort Inn, the Petitioners specifically raised in their appeal of the HRB ruling before the circuit court their claim that the HRB had no jurisdiction because Special Exceptions for the projects had not been obtained. In their Petition initiating the HRB Appeal, Petitioners alleged:

C. Neither application could proceed before the HRB without each of these Large Footprint Buildings having first obtained a special exception from the City of Beaufort Board of Zoning Appeals.

28. Neither the Hotel nor the Parking Garage could proceed at all before the HRB without having first received a special exception from the City of Beaufort Zoning Board of Appeals, which neither had received.

29. Each project is a Large Footprint Building under the Beaufort Code and neither has received a Special Exception as required by Beaufort Code Sec. 4.5.10(B)(5).

30. As outlined in this petition, The Beaufort Code controls both of these projects, as neither the Hotel nor the Parking Garage have vested rights under

state law that would make the UDO the governing law for these applications. Rather, The Beaufort Code applies.

31. The applicants, not having received Special Exceptions from the City of Beaufort Zoning Board of Appeals for either the Hotel or the Parking Garage, could not proceed to obtain approval for either of these applications from the HRB, and the HRB had no jurisdiction to consider those applications.

(Emphasis in original). (R. pp. 81-82; R. p. 999, I.R. p. 60-61). Thus, Petitioners not only raised these issues before the HRB, but they specifically alleged them as a defense to the HRB decision in their Appeal.

The circuit court rightfully and *necessarily* addressed these arguments raised by Petitioners in the HRB Appeal. Petitioners directly attacked the subject matter jurisdiction of the HRB and the circuit court in that matter. As noted *supra*, subject matter jurisdiction is a threshold issue that must be addressed by the court. Thus, this issue was necessarily decided by the HRB and the circuit court in the HRB Appeal.

The circuit court's January 20, 2022 Order Denying [the HRB] Appeal specifically rejected the same contentions made now by the Petitioners. (R. pp. 15-34; p. R. 999, I.R. pp. 21-39).

The circuit court wrote:

Petitioner, citing no authority, claims that the HRB was precluded from hearing the Hotel Project matter and the Parking Garage Project matter because it alleges that neither project should be permitted under the Beaufort Code because both buildings are allegedly "Large Footprint Buildings" as defined at B.C. § 4.510 (B)(5). Large Footprint Buildings under this section of the Beaufort Code are required to have a Special Exception from the City of Beaufort's Zoning Board of Appeals ("ZBOA") to go forward. Thus, Petitioner reasons, the two projects do not qualify under applicable zoning and so should not be considered by the HRB. The Court rejects this argument.

First, as noted, the Parking Project and the Hotel Project were initiated under the UDO, not the Beaufort Code. As held by the HRB, and admitted by City Respondents, these two projects were to be assessed under the UDO, not the Beaufort Code. The Beaufort Code also provides that these projects are grandfathered under the UDO as they were initiated when the UDO was in effect. B.C. § 1.4.2.A. Critically, the UDO did not have a section like the Large Footprint

Building in the Beaufort Code. Consequently, no Special Exception by the ZBOA was required for either the Hotel Project or the Parking Garage Project. Since the Hotel Project and the Parking Garage Project are grandfathered or otherwise vested under the UDO, the newer Beaufort Code Large Footprint Building requirement does not apply. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal, supra.*

Second, there is no provision in Beaufort Code requiring ZBOA approval of any project prior to HRB approval. Indeed, B.C. § 9.2.5 allows an applicant to apply for approvals concurrently at its own risk. Further, B.C. § 9.1.4 outlining "Permit/Process Type Table" has no indication of sequential ordering of applications as between the ZBOA and the HRB. There is no support in the Beaufort Code for Petitioner's position that one must come before the other.

Third, the HRB has completely different functions from ZBOA, and so there is no overlap or logical sequential process for one before the other. The ZBOA per B.C. § 10.3.1.C.1 of the Code: "shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an Administrative Official in the enforcement of the Code." The ZBOA thus has no authority over HRB matters as the HRB is not an "Administrative Official" as defined in B.C. § 13.1. As noted by HRB member at the June 9, 2021 meeting, the HRB does not determine Special Exceptions, so any issue for a Special Exception was not an impediment to the HRB.

Therefore, there is no validity to the arguments by Petitioner that the HRB was without jurisdiction over these projects or otherwise should have abstained from deciding anything because of its allegation that they needed Special Exceptions from the ZBOA.

(Price Order Denying HRB Appeal, pp. 17-19; R. pp. 31-33; R. 999, I.R. pp. 17-19).

The circuit court even mentioned *this lawsuit* in the Order:

Prior to this Appeal, Petitioners filed a declaratory judgment action against Beaufort Inn and the City on April 5, 2021 captioned "*West Street Farms, LLC and Mix Farms, LLC v. City of Beaufort, Beaufort Inn, LLC, and 303 Associates,*" Civil Action No. 2021-CP-07-00663, which makes the same specious claim at [sic] they do here: that the Beaufort Code requires the Hotel Project and the Parking Garage Project to have Special Exceptions as Large Footprint Buildings.

(Price Order Denying HRB Appeal, p. 18, fn 19; R. p. 32; R. 999, I.R. 18).

Thus, both the HRB and then the circuit court in the HRB Appeal were presented by the Petitioners with the issue of whether the two Projects were governed by the Code or the UDO, and both determined that the two Projects were grandfathered into the UDO. As noted, the Court of

Appeals affirmed the circuit court in the HRB Appeal. *See* S.C. Appellate Court Case No. 2022-000300.

ARGUMENT

As an initial matter, it is exceedingly difficult to respond to Petitioners' Writ of Certiorari as their original Appeal to the Court of Appeals was based on the concept that the circuit court *should have* analyzed the case using a collateral estoppel, but did not do so, and Petitioners failed to ask the circuit court to revise its ruling to reflect that analysis through a post-trial motion. Therefore, to a great degree, Respondents in this Return, as in their response to the Appeal, are addressing issues for the first time.

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION THAT THE TIMING OF THE FILING OF THE CASES WAS IRRELEVANT WHEN THE PETITIONERS THEMSELVES CREATED THE TIMING ISSUE.

A. Petitioners Were "Hoist by [Their] own Petard."⁶

Petitioners, for the first time, argue in their Petition that the HRB Appeal was required to have been filed before this lawsuit in order for the circuit court to refuse to grant declaratory relief under the precedent of *Med. Univ. of S.C. v. Taylor*, 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987)⁷. This argument is utterly without merit for two reasons.

First, the central maxim in this line of cases is that the different courts should not enter consecutive judgments on the same facts and circumstances which could lead to inconsistent results. Thus, it is not the timing of the commencement of the case, but rather the timing of the

⁶ Shakespeare, William, *Hamlet*, Act 3, Scene 4 (Simon & Schuster, 1992.)

⁷ Petitioners also for the first time argue at pages 4 through 5 that all of the parties to the two proceedings were not identical and for that reason the cases are not parallel proceedings. Once again, this is a new argument not raised at any point below and thus cannot be the basis of relief in the Writ. *See* SCACR Rule 242(d)(1) stating in pertinent part "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court."

ultimate decision that matters. Second, as noted *supra*, the only reason this issue was before the circuit court in this case was because Petitioners forced the issue by bringing up the subject matter of this lawsuit as a jurisdictional argument in the HRB Appeal. Not liking the first taste of the apple it got in the HRB Appeal, the Petitioners try another bite in this case. However, by injecting these issues into the HRB Appeal, Petitioners took the chance that they would lose the same issues that are the subject of this case.⁸

B. The Court of Appeals Held that the Petitioners' Trial Rights Were Sufficiently Protected.

The Court of Appeals in affirming cited a case that neither party cited, *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171-172, 656 S.E. 2d 346, 350 (2008) for the following propositions:

- “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.”
- “Due process does not require a trial-type hearing in every conceivable case of governmental impairment of a private interest.”
- “Rather, due process is flexible and calls for such procedural protections as a particular situation demands.”

Petitioners ignore these principles in their Writ, likely because they had no response. This again supports the proposition that the Petitioners made their bed by inserting the Special Exception issue into the HRB Appeal and choosing the forum. The Petitioners now cannot complain about the forum they chose as imperfect.

⁸ Petitioners could have forced the issue in this case at any time as their Complaint sought temporary and permanent injunctive relief; if they had filed a motion for a temporary injunction at any point prior to the HRB Appeal, a circuit court would have had the opportunity to rule on these issues first.

C. The Circuit Court's Reasoning was Correct.

Regardless, the Court of Appeals properly affirmed the circuit court's refusal to grant declaratory relief because it felt another remedy would be more effective under the circumstances, citing *Bank of Augusta v. Satcher Motor Co., Inc.*, 249 S.C. 53, 152 S.E.2d 676 (1967). (Order, p. 4; R. p. 6). "A declaratory judgment action is not a substitute for a new trial or an appeal, nor can it operate to supersede former adjudications or proceedings already pending." *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643, 644 (Ct. App. 1986).

Nor should such relief be granted when the remedy is invoked merely to try issues or determine the validity of defenses in pending cases. While declaratory relief will not be refused, if otherwise appropriate, merely because there is another remedy available or because of the pendency of another suit, these are factors which may be considered by the Court in determining whether its discretion should be exercised in favor of assuming jurisdiction. The wholesome purposes of declaratory acts would be aborted by its use as an instrument of procedural fencing either to secure delay or to choose a forum.

Williams Furniture Corp. v. S. Coatings & Chem. Co., 216 S.C. 1, 7, 56 S.E.2d 576, 578 (1949) (citations omitted).

"The decision to grant a declaratory judgment is a matter which rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse." *Hyde*, 442 S.E.2d at 583. "An abuse of discretion occurs when a court's order is controlled by an error of law or there is no evidentiary support for the court's factual conclusions." *Wilson v. Dallas*, 403 S.C. 411, 425, 743 S.E.2d 746, 754 (2013).

An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.

State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

Nowhere in their filings did Petitioners argue that the circuit court abused its discretion with respect to its decision to decline to issue a declaratory judgment because such relief cannot be used to circumvent the need to exhaust administrative remedies or to challenge the ruling of another circuit court judge on the same issue. An appeal of the offending circuit court order, here the order denying the HRB Appeal, is instead the appropriate remedy and one that the circuit court noted has been exercised by Petitioners.⁹

Likewise, the circuit court denied Petitioners' requests for injunctive relief and mandamus. Actions for injunctive relief and mandamus are equitable in nature. *Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 92, 302 S.E.2d 340, 341 (1983). "The granting or denying of injunctive relief is also addressed to the circuit court's sound discretion. In such cases, the circuit court's exercise of discretion will not be disturbed unless clearly against the weight of the evidence or controlled by an error of law." *Taylor*, 294 S.C. at 103, 362 S.E.2d at 883 (citation omitted). Nowhere in their Briefs before the Court of Appeals did Petitioners argue that the circuit court abused its discretion with respect to its decision to decline to issue an injunction or mandamus, and Petitioners did not present the Court with applicable law in support of such an argument. This issue has, therefore, been abandoned on appeal.

This Court should deny the Writ.

⁹ Regardless, there was evidence in the record to support the circuit court's conclusion. The record included citations to the pleadings and Judge Price's Order in the HRB Appeal. The record also contained extensive testimony and exhibits explaining the steps taken by Beaufort Inn over the years that supported the grandfathering of the Hotel Project and the Parking Garage Project under the UDO and/or creation of vested rights. (R. pp. 15-34, 87-210, 533-937). The circuit court had an ample basis to compare the facts in this matter to the facts in the HRB Appeal; thus, the decision had evidentiary support.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DECISION OF THE CIRCUIT COURT THAT THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY DETERMINING THAT THE PETITIONERS DID NOT EXHAUST ADMINISTRATIVE REMEDIES AND PETITIONERS' CLAIMS WERE BARRED BY THE TWO-JUDGE RULE.

A. The Two Judge Rule.

The Court of Appeals affirmed the circuit court's refusal to grant declaratory relief based, in part, on the rule stated in *Charleston Cnty. Dep't of Soc. Servs. v. Fuller*, 317 S.C. 283, 454 S.E.2d 307, 310 (1995) that one Circuit Judge cannot effectively overrule the order of another Circuit Judge.¹⁰ (Order Denying Appeal, pp. 2, 4-5; R. pp. 4, 6-7,). The circuit court held that to conclude the Hotel Project and the Parking Garage Project required ZBOA approval through the granting of Special Exceptions would effectively overrule Judge Price's order denying the HRB Appeal because he had already ruled on the identical issues and, when doing so, found Special Exceptions were not required under the applicable development ordinance – the prior UDO.

In their Briefs before the Court of Appeals, Petitioners simply ignored this basis for the circuit court's Order and instead attacked the opinion on the basis that it does not expressly address collateral estoppel. Having failed to challenge the propriety of the circuit court's decision that it cannot overrule another circuit court judge so it must deny Petitioners' request for declaratory judgment, Petitioners abandoned the issue on appeal. Further, the Petitioners again spend pages discussing collateral estoppel, something never mentioned by the circuit court. The Respondents

¹⁰ Petitioners incorrectly referred to this holding the "two judge rule." The "two-judge rule" referred to the concurrence of a circuit court judge to the opinion of a master-in-equity. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976), *abrogated by Matter of Est. of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018). This rule was rendered obsolete by the 1999 amendment to S.C. Code § 14-11-85 which prohibited the practice of appeals from masters to circuit court judges. Respondents can only assume that Petitioners are actually discussing exhaustion of administrative remedies.

cannot respond to something the circuit court did not do or that was not requested of the circuit court by Petitioners.

This Court should deny the Writ.

B. The Failure to Exhaust Administrative Remedies.

The circuit court denied the relief sought by Petitioners because they have not exhausted the administrative remedies required by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Sections 6-29-310, *et seq.*, of the South Carolina Code of Laws 1976, as amended (“Comprehensive Planning Act”), for appeals from architectural review boards, like the HRB. (Price Order Denying HRB Appeal, pp. 3-4; R. pp. 5-6).

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available remedies before seeking such relief from the courts. *See Stanton v. Town of Pawley’s Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating a party is “clearly required to exhaust its administrative remedies prior to bringing suit” when challenging DHEC’s denial of permit).

Exhaustion is required so that the administrative agency “may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). Furthermore, when factual disputes are involved, “one must pursue

the administrative remedy or be precluded from seeking relief in the courts.” *Hyde*, 442 S.E.2d at 583, citing *Meredith v. Elliot*, 247 S.C. 335, 147 S.E.2d 244 (1966).

For these purposes, where there is a specific statutory procedure for challenging the decision of an administrative agency, compliance with such procedure is a condition precedent for judicial review. *Meredith*, 147 S.E.2d at 249 (“Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, they are precluded from resorting to the courts for relief.”); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) (“It was incumbent upon the respondent Schwerin and, for that matter, the City Council of Aiken to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if they, or either of them, considered his decision erroneous. Not having done so, she cannot now attack the validity of his decision.”).

The doctrine of exhaustion of administrative remedies applies to zoning matters. *Moore v Sumter Cnty. Council*, 300 S.C. 270, 387 S.E.2d 455, 457 (1990); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976) (“The impact of the zoning ordinance upon this property cannot be determined at this time since the Landowner has failed to pursue his administrative remedies by applying for a variance.”).

In an analogous case, this Court reversed the grant of a declaratory judgment by the circuit court when the same issues before the circuit court were before the State Employee Grievance Committee. *Taylor*, 294 S.C. at 103. As stated by the Court:

The general rule followed by most jurisdictions is that a court will not entertain a declaratory judgment action “if there is pending, at the time of the commencement of the declaratory action, another action or proceeding to which the same persons are parties [and] in which are involved and may be adjudicated the same identical issues that are involved in the declaratory judgment action.” Annot., 135 A.L.R. 934-35 (1941); *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643 (Ct. App. 1986). The general rule is especially applicable “where a special statutory remedy has been provided, or where another remedy will be more . . . appropriate under the

circumstances.” *Williams Furniture Corporation v. Southern Coatings & Chemical Co.*, 216 S.C. at 7, 56 S.E.2d at 578-79.

We therefore hold that the circuit court erred in granting MUSC a declaratory judgment and injunctive relief where there were pending before the Grievance Committee, the administrative agency vested with primary jurisdiction of the question in issue, i.e., the cause of Taylor’s discharge, proceedings in which both Taylor and MUSC were parties and in which the issue raised by MUSC in the within action could have been raised. MUSC advanced no good reason, certainly none raising any jurisdictional issue, as to why Taylor’s grievance should not have been determined in the manner prescribed by the State Employee Grievance Procedure Act. *See Ex Parte Allstate Insurance Company*, 248 S.C. 550, 151 S.E.2d 849 (1966) (exhaustion of administrative remedies is not required and injunctive relief is proper where jurisdictional issues involved).

Taylor, 362 S.E.2d at 883-84. Therefore, the *Taylor* court refused to allow the circuit court to disturb the legislatively proscribed process. *Id.*

Likewise, the Supreme Court upheld a circuit court’s refusal to issue a declaratory judgment when the plaintiff sought an interlocutory review of a decision in an administrative process in *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 390-91, 461 S.E.2d 819, 820-21 (1995). As noted by the court in *Wessinger*, “[t]he reason for this rule is obvious. A subsequent case deciding an issue in a prior case would be a classic example of a tail wagging a dog.” 288 S.C. at 160, 341 S.E.2d at 644.¹¹

Petitioners did not address the exhaustion of administrative remedies holding at all before the Court of Appeals. They therefore cannot raise it now. *See* SCACR Rule 242(d)(1).

This Court should deny the Writ.

¹¹ That the present case was filed before the HRB Appeal is irrelevant here; the Petitioners introduced the same issues in a subsequent action that was decided before this case and should not be allowed to cry foul that the consequences of their actions in the HRB Appeal should not affect this case. The Petitioners were not forced to introduce the Special Exception issue in the HRB Appeal but chose to do so.

III. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE PETITIONERS FAILED TO PRESERVE MANY OF THEIR ARGUMENTS.

The circuit court clearly explained why it rejected Petitioners' Declaratory Judgment claims based on several reasons, but the Petitioners challenged those findings in their Briefs with only conclusory arguments and fail to include even a single reference to a legal authority in support of those arguments. Rather, the Petitioners choose to attack the circuit court's order solely on the basis that the circuit court "should have analyzed this case based on the doctrine of collateral estoppel..." (Petitioners Brief, p. 11).

The Court of Appeals in affirming the circuit court recognized this principle, citing *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505-06, 812 S.E.2d 438, 441 (Ct. App. 2018). Petitioners then proceed to cite case law applicable only to collateral estoppel for the bulk of the legal arguments in their Brief. (Petitioners Brief, pp. 11-15). However, the circuit court nowhere in its Order discussed collateral estoppel. Petitioners did not raise this issue in a SCRCP Rule 59(e) motion to reconsider. Petitioners' failure to present the issue of collateral estoppel to the circuit court bars them from arguing this issue in this appeal.

It is axiomatic that a litigant is required to raise an issue fairly to the trial court, thereby giving the trial court an opportunity to rule on the issue. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); *Risher v. S.C. Dep't of Health & Env't. Control*, 393 S.C. 198, 208, 712 S.E. 2d 428, 433 (2011); and *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187, 189 (1939) (requiring that the party bringing an issue before the appellate court must first bring it to the attention of the lower court for issue preservation purposes).

Certainly, Respondents argued that collateral estoppel applied in this matter before the circuit court. (R. p. 108, line 16-p. 110, line 3; R. p. 132, lines 306; R. p. 196, lines 1-23; R. p. 202, lines 17-24). Petitioners argued before the circuit court that it did not. (R. p. 196, line 15-p.

199, line 2; R. p. 207, line 19-p. 208, line 20). As stated, no SCRCRCP Rule 59(e) motion was filed by Petitioners. The circuit court therefore had no opportunity to consider the very point addressed by the Petitioners: that the circuit court should not have exercised its discretion to deny declaratory judgment based in part on Petitioners' failure to exhaust administrative remedies and should have, instead analyzed the case using collateral estoppel rubric.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Where a party raises an issue, but the issue is never ruled on by the trial court and the party fails to file a motion to alter or amend, the issue is not preserved. *Summersell v. S.C. Dep't of Pub. Safety*, 337 S.C. 19, 22, 522 S.E.2d 144, 145-46 (1999). Petitioners failed to file a SCRCRCP Rule 59(e) motion before the trial court raising the issue that the trial court should have analyzed the issue using a collateral estoppel framework but did not. Even if in error, the trial court had no chance to correct any such error. Thus, the Petitioners are clearly precluded from raising that issue as a basis for appeal here. *Summersell*, 522 S.E.2d at 145-46.

It is fundamental that an appellate court should affirm a lower court's ruling if the appealing party does not challenge that ruling. *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). It does not matter if the ruling is right or wrong, if not appealed, it nonetheless becomes the law of the case. *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 171, 714 S.E.2d 869, 878 (2011). Likewise, if a court's decision can be upheld on more than one ground, the appellate court will affirm the decision unless the appellant appeals all grounds because, again, any unappealed grounds becomes the law of the case. *Biales*, 432 S.E.2d at 484. Further, an appellate court will not consider conclusory arguments or arguments lacking a citation to legal authority, as

by failing to make a substantive argument with a legal basis in support of all issues raised in the initiating brief, the appellant abandons the appeal of the unsupported issues. *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 692 (2010) (“Moreover, the half-page argument made by the Fund falls far short of overcoming the substantial evidence standard of review. Hence, the Fund has abandoned this issue.”).

The reasoning behind this abandonment rule is sound. All issues and arguments must be raised in the Initial Brief. Rule 211(b), SCACR. If Petitioners are permitted to wait until the submission of their Reply Brief to substantively argue for the first time that the circuit court was wrong with respect to the articulated grounds for its Order, Respondents will have been precluded from making arguments in support of the Court’s holding. Because of this, an appellant may not make new arguments in its reply brief as a method of circumventing SCACR Rule 211(b). “South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.” *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001).¹² See SCACR Rule 242(d)(1).

This Court should deny the Writ.

¹² Petitioners in the circuit court argued that Beaufort Inn was not entitled to certain extensions it received from the City of Beaufort in the permitting process and therefore was precluded from arguing that the two projects were grandfathered. (R. p. 189, line 18-p. 293, line 6). The propriety of those extensions is much of the subject matter of the HRB Appeal. Regardless, Petitioners have not challenged the circuit court’s ruling based on the propriety of those extensions, and thus those issues are not before this Court. The Court will not consider a point not raised as an issue on appeal. Rule 208(b)(1)(B), SCACR. See *Allen v. Pinnacle Healthcare Sys., LLC*, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011).

CONCLUSION

Petitioners provide no convincing arguments why their Writ of Certiorari should be granted, and so it must be denied.

This 15th day of January, 2025.

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