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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

Bentley D. Price, Circuit Court Judge
Case No.: 2021-CP-07-01241 and
Case No. 2021-CP-04-1231

Appellate Case No. 2022-000300
Unpublished Opinion No. 24-UP-372, Filed October 30, 2024

Historic Beaufort Foundation ……..…….....Petitioner,

v.

City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC ……..……...…....Respondents,

AND

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

v.

City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC…….Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Benjamin E. Nicholson, V, Esquire
Burr & Forman LLP
P.O. Box 11390
Columbia, SC 29211
nnicholson@burr.com
803.799.9800

Counsel for Respondent
The Beaufort Inn, LLC

Virginia P. Bozeman, Esquire
Alexis K. Lindsay, Esquire
Pope Flynn, LLC
1411 Gervais Street, Suite 300
Columbia, SC 29201
gbozeman@popeflynn.com
alindsay@popeflynn.com
803.354.4947
Counsel for Respondents City of Beaufort and City of Beaufort Historic District Review Board

TABLE OF CONTENTS

THIS CASE DOES NOT WARRANT REVIEW UNDER RULE 242(B), SCACR

Petitioners claim this matter contains a novel issue of law and imply it has state-wide importance based on the below Courts' interpretation of South Carolina Code Annotated Section 6-29-900(1)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.") However, while this statute is part of the enabling legislation for appeals from architectural review boards, the threshold issue centers on the interpretation of the local City of Beaufort Ordinances. More specifically, the prior Beaufort Unified Development Ordinance (the "UDO") Section 3.20.I stated: "A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked" and the later-enacted Beaufort Code (the "Beaufort Code") Section 9.10.I states: "Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision." (R. 029).[1]

How these local ordinances are interpreted is not an issue of state-wide importance, as these ordinances are not uniform and do not always parrot the statute.[2] And this is only a *threshold* issue. For Petitioners to ultimately prevail on this appeal, they also would have to succeed on the merits of their appeals, which the Court of Appeals in its *unpublished* opinion summarily disposed of as not being sufficiently argued or proven. (Those other issues are complex and difficult for

[1] As further evidence that this is purely a local matter, Petitioners contemporaneously with their Petition for Writ of Certiorari ("Petition"), filed on December 18, 2024 a "Memorandum to the HDRB from the Beaufort County Community Development Director" dated December 4, 2024, which was categorically rejected by the HDRB at is meeting on December 12, 2024.

[2] For example, the City of Charleston Municipal Ordinance at Section 54-248 provides for such appeals: "A person who may have a substantial interest in any decision of the Board or any officer or agent of the appropriate governing authority may appeal from a decision of the Board to the circuit court in the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the Board." This ordinance contains more requirements for an appeal than the City of Beaufort version.

Petitioners to overcome; for example, in addition to the threshold timeliness issue, their Petition raises six additional issues not related to timeliness.) Thus, this is not a case where a real novel issue or question for this Court to decide stands out as outcome determinative.

COUNTER-STATEMENT OF THE CASE

These appeals arise 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 Respondent Beaufort Inn, LLC ("Beaufort Inn"), and the latest decisions of the City of Beaufort Historic District Review Board ("HRB") (an architectural review board) approving certain aspects of the Projects.

Notwithstanding years of approvals of the Projects at various stages by the HRB, Petitioners waited until after the Parking Garage Project approvals were nearly complete, and years after the Hotel Project was *finally* approved, to file an appeal of the last and latest HRB decisions regarding the Projects. Simply put, if Petitioners wanted to protest the height, mass, and scale issues involved with the Projects, as they attempt to do in their petitions, Petitioners waited far too late, and as held by every court that has addressed this issue, are not statutorily permitted to do so now.

Further, the timeliness, or lack thereof, of the appeals is only the threshold issue. In support of their six additional arguments, the Petitioners ironically cherry-pick facts relating to the timeliness of a few development renewals but ignore the years and years of other interrelated actions, including hundreds of hours of City staff and citizen board volunteer time, taken collaboratively between the City and Beaufort Inn to move these complex and long planned projects forward. By ignoring the complicated interactions that caused these developments to advance over the course of many years, Petitioners overly simplify the issue before this Court in a

futile effort to disguise the application of local legislation to a fundamentally complex procedural history that is unique to the Projects only as a novel legal issue of state-wide importance in need of resolution by this Court.

These appeals of the HRB decisions are but one part of a recent fight by Petitioners West Street Farms, LLC and Mix Farms, LLC (collectively, the "Trask Petitioners"), two entities owned or controlled by Graham Trask, and the Historic Beaufort Foundation, Inc. ("HBF"), which for years sat on the sidelines as the Projects were developed without complaint.[3] (R. 038) Circuit Court Order Denying Appeal, p. 2; p. 18, fn. 9 ("Order").[4]

Prior to these petitions by the Trask Petitioners and HBF, the Trask Petitioners began a broad attack on the Projects by a lawsuit filed on April 5, 2021 in the Beaufort County Court of Common Pleas 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 ("Lawsuit"), which attacked these two projects and another, claiming that the three projects did not comply with the Beaufort Code, primarily on the basis that the three projects each required a special exception by the City's Zoning Board of Appeals to move forward. (R. 038) Order, p. 18, fn. 9.[5]

Pursuant to South Carolina Code Annotated Section 6-29-900(A), the Petitioners appealed the decisions of the HRB on June 9, 2021 that granted a final approval to the Parking Garage Project and granted a Change after Certification to the already approved Hotel Project. The Honorable Bentley D. Price heard the two appeals on January 9, 2022 and denied the appeals each

[3] Indeed, during the years of conceptual and preliminary approvals of these projects, HBF had a designated seat on the HRB, which voted unanimously in favor of these earlier applications. (R. 024) Circuit Court Order Denying Appeal, p. 4.

[4] The Circuit Court issued two nearly identical Orders Denying Appeal in the two cases that are jointly before this Court. Rather than recite to the two Orders, Respondents will refer only to "Order" for the sake of simplicity.

[5] The Trask Petitioners lost that case before the Circuit Court and the Court of Appeals and have also petitioned this Court for a Writ of Certiorari. See Appellate Case No. 2023-000953.

by a separate Order Denying Appeal entered on January 20, 2022. The Circuit Court denied Petitioners' motions to reconsider on February 11, 2022. The Petitioners appealed to the Court of Appeals, which unanimously affirmed the Circuit Court's denial of the appeals on October 30, 2024 in an unpublished one page opinion. The Court of Appeals also denied the Petition for Rehearing on November 19, 2024.

The Memorandum of Understanding between Beaufort Inn and the City

Beaufort Inn for years has discussed a parking garage project and hotel project with the City. The City was cooperative as it needs downtown parking, and Beaufort Inn was able to offer a portion of the available garage parking to the public.

The Projects were complex and would take years to bring to fruition, as Beaufort Inn had to navigate the many requirements of the City of Beaufort, recognizing the historic context in which the Projects would exist. 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")[6] 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.

[6] The MOU was entered into when the UDO was in effect, prior to the adoption of the Beaufort Code on June 27, 2017. (R 022). Order, p. 2. The MOU is in the Record as part of Beaufort Inn's Answer ("Answer") that was filed in the Lawsuit. (R. 429-607.) The Answer tracks all of the development efforts of Beaufort Inn for the Parking Garage Project and the Hotel Project, from the inception of the Projects under the UDO to their current status after the June 9, 2021 HRB meeting.

The Parking Garage Project

Consistent with the MOU, Beaufort Inn invested a substantial amount of time and money into the Parking Garage Project. No fewer than sixteen different actions, including four public hearings before the HRB, were held with respect to the Parking Garage Project between **October 9, 2007** and **July 1, 2020**. Thus, the City and Beaufort Inn were in regular contact for all approvals necessary for the development of the Parking Garage Project and the Hotel Project. Unlike many projects, Beaufort Inn had to secure demolition and relocation approvals for existing buildings on the project sites from the City. Each such approval was part of the overall process and connected to the Projects.

The Parking Garage Project was first presented by Beaufort Inn to the HRB at its **August 17, 2016** meeting. This was 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.

As noted in the HRB meeting minutes, the mass, scale, and height of the proposed Parking Garage were discussed and approved. (R. 023-024) Order, pp. 3-4. The then Executive Director of Respondent HBF, Maxine Lutz, was present at the meeting and expressly stated that "this seems like a wonderful way to develop this parcel," but then qualified that statement that the HBF was "primarily interested in the height, mass, and scale of a parking garage." (R. 024) Order, p. 4, n. 3. The HRB then unanimously gave conceptual approval of the mass, height, and scale. (R. 024) Order, p. 4.

No party appealed the decision of the HRB granting conceptual approval of the mass, height, and scale of the Parking Garage Project, including the HBF, which had its Executive Director present. (R. 024) Order, p. 4.

After a number of other HRB meetings where Beaufort Inn addressed various requirements of the HRB, all of which required more time and monetary investment by Beaufort Inn in the project, the Parking Garage Project was submitted to the HRB for final approval at its **June 9, 2021** meeting. The final approval did not involve any elements of mass, scale, or height but dealt with the architectural and aesthetic details set forth in preliminary approval. (R. 025) Order, pp. 5-6. As noted in the HRB's October 9, 2017 preliminary approval letter, the *only things that needed to be addressed* by Beaufort Inn for final approval were:

> the type and color of the concrete, a lighting plan, a plan for screening mechanical equipment, removal of awnings, and a certified arborist report and plan for the 'treatment of trees.' The HRB clarified that the current drawings were approved as submitted, and that the applicant was tasked with refining the details listed in order to receive final approval.

(R. 025) Order, p. 5. Thus, the hearing on final approval of the Parking Garage Project had a very limited agenda and list of items to be considered.

After a four-and-one half-hour meeting, the HRB issued final approval of the Parking Garage Project. (R. 025) Order, p. 5.

The Hotel Project

The Hotel Project currently being appealed is substantively different from the appeal of the Parking Garage Project, as the Hotel Project was before the HRB requesting a change after certification. That is, the Hotel Project *already had final approval* and a COA two years before that meeting, and Beaufort Inn by its current application was simply requesting several modest changes to the original HRB approval to construct the Hotel Project. (R. 025-026) Order, pp. 5-6.

However, in their appeal, Petitioners attempt to reargue matters decided years ago by the HRB and seek to vastly expand the scope of what was actually heard and decided at the **June 9, 2021** HRB meeting. The issues complained of now by the Petitioners involve elements of the Hotel Project which were approved in 2019 and which were not challenged or appealed at that time. The Hotel Project was first presented to the HRB and received unanimous HRB conceptual approval on **September 14, 2016**. (R. 026) Order, p. 6. There was no appeal of the HRB's conceptual approval. (R. 026) Order, p. 6.

The only reason the Hotel Project is before the Court now is that Beaufort Inn determined that it wanted to make certain changes to the approved COA for the Hotel Project. To that end, it applied for a "Change After Certification" for the Hotel Project on December 25, 2020. (R. 025) Order, p. 5.

Notwithstanding Petitioners' claims, the HRB felt that the prior approvals of the Hotel Project were final and could not be changed by the HRB. At the beginning of the June 9, 2021 HRB meeting under appeal, the Chair noted:

> I will explain, also, at this point that we are at final, which means mass, scale, and all of those items have all been dealt with and voted upon in advance. We will not be relitigating them, we will not be going back over all of those details today. We're only here today to review the last details for this project and then to make a decision to approve or not.

(R. 027) Order, p. 7. This is consistent with the view the HRB took of prior approvals of the Parking Garage Project as well, see *supra*. The Change After Certification for the Hotel Project was then approved by a 3-1 vote of the HRB at its June 9, 2021 meeting. (R. 027) Order, p. 7.

Thus, the HRB meeting concluded with final approval of the Parking Garage Project and approval of the Change After Certification of the Hotel Project.

These appeals followed.

The Two City Development Ordinances at Issue

The applicability of the City's prior and current development ordinances permeates the issues in these cases. As noted by the Circuit Court:

> The City of Beaufort's current development code ("Code" or "the Beaufort Code") governing development matters was enacted effective June 27, 2017 pursuant to the State of South Carolina's enabling legislation at S.C. Code Ann. § 6-29-710 *et seq*. Prior to the enactment of the Beaufort Code, the City's development code was known as the Unified Development Ordinance ("UDO") which had been adopted on January 28, 2003 (last revised September 14, 2012.) The Beaufort Code superseded the UDO when enacted. The UDO provided for a Historic District Review Board ("HRB") at Section 2.7 which is a board of architectural review established pursuant to the State's enabling legislation for such bodies at S.C. Code Ann. § 6-29-870 *et seq*. The Beaufort Code, when enacted, similarly provided for the HRB at Section 10.7.
>
> The HRB is essentially a specialized architectural review board, which has jurisdiction throughout the Beaufort Historic District. Code § 10.7.2.A. Generally speaking, the HRB reviews alterations to structures in the Beaufort 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. 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. A "Certificate of Appropriateness" ("COA") is required before a new structure can be built in the Historic District. Code § 9.10.A.1.
>
> 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.

(R. 022-023) Order, p. 2.

The UDO required any appeal of the HRB to be filed within thirty (30) days of the decision. See UDO, ¶ 3.20.I. (R. 029). See S.C. Code Ann. § 6-29-900(1)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.") The same is now true of the Beaufort Code; under the Beaufort Code, there is still only a thirty-day window to appeal decisions of the HRB. See Beaufort Code, ¶ 9.10.I. (R. 029).

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION THAT THE PETITIONERS' APPEALS WERE UNTIMELY.

The issues raised by Petitioners in their appeals concern claimed violations by the HRB of the mass, height, and scale of each of the two Projects. Under both the UDO and the Beaufort Code, a person aggrieved by a "decision" of the HRB has thirty days to appeal that decision. See UDO Section 3.20.I; Beaufort Code § 9.10.I. (R. 029); see also S.C. Code Ann. § 6-29-900(1). The Court of Appeals affirmed the Circuit Court's determination that it is far too late for Petitioners to appeal the mass, height, and scale of the Projects as such matters had been decided in prior HRB meetings years ago, and Petitioners failed to appeal from those decisions. (R. 029-033) Order, pp. 9-13. Should the Court uphold the Court of Appeals and Circuit Court on this threshold issue, all of Petitioners' other Issues on Appeal are mooted.[7]

Parking Garage Project. There had been multiple levels of approval by the HRB of the Parking Garage Project prior to the June 9, 2021 HRB meeting. The June 9, 2021 meeting only covered certain limited additions that were not material to mass, scale, or height of the Parking Garage. Any complaint with the mass, scale, or height of the Parking Garage could and should have been made as an appeal of the HRB decisions on such on many prior occasions.

There was no appeal of any of the following decisions of the HRB regarding the Parking Garage Project:

- August 17, 2016 HRB Meeting granted conceptual approval (mass, height, and scale) of Garage Parking Project.
- November 9, 2016 HRB Meeting granted COA for demolition (and later relocation) of 918 Craven Street and the demolition of 310 West Street for Parking Garage Project.
- September 20, 2017 HRB Meeting granted preliminary approval (mass, height, and scale)

[7] The lack of timeliness of the appeals is the subject of Appellants First Argument.

for Parking Garage Project with October 9, 2017 City letter.

Because there were no appeals of these prior decisions of the HRB, Petitioners are barred from appealing them at the final approval stage. (R. 029-033) Order, pp. 9-13.

Hotel Project. Likewise, there was no appeal of the HRB's final approval for the Hotel Project that was granted at the HRB **October 9, 2019** meeting. Indeed, there was no appeal from that decision or from the conceptual or preliminary design approval decisions of the HRB beforehand. Petitioners could and should have appealed these decisions if they did not agree with the COA or the issues that were approved. Their failure to so appeal renders the Court without jurisdiction to hear an appeal of any issue decided at that HRB meeting, including the issuance of the Hotel Project COA. *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117, 122, n. 6 (1998).

Further, the HRB determined that the only issues that could be discussed properly at the June 9, 2021 HRB meeting with respect to the Change After Certification Request for the Hotel Project were the changes under consideration by the HRB *at that meeting*, not any prior approvals granted. The Circuit Court provided a thorough explanation of its reasoning held in its Order at pages 9 through 12 with respect to those reasons why the appeals as to both Projects were time barred:

> The UDO required any appeal of an HRB decision to be within thirty (30) days of the decision. *See* UDO § 3.20.I ("A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked.") The same is now true of the Beaufort Code; there is still only a thirty-day window to appeal decisions of the HRB. See B.C. § 9.10.I ("Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.")*
>
> "Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). These UDO and Beaufort Code deadlines are of critical importance to the Appeal, as it is well settled that

the failure to appeal within the ordinance timelines renders a circuit court with no subject matter jurisdiction to determine such appeal. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)("Nevertheless, the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or *sua sponte* by this Court."); *see also Burnett v. S.C. State Highway Dep't,* 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969) and S.C.R.C.P. Rule 74.

Each conceptual, preliminary, and final approval by the HRB for both projects was indisputably a "decision" under the UDO and the Beaufort Code. Thus, if any party was aggrieved by the subject matter of any of those decisions, the time to appeal was within thirty days of that decision per both the UDO and the Beaufort Code. The Petitioner has attacked both process (for example, contesting that extensions were not properly granted) and substance (whether or not the HRB decisions complied with the substantive requirements for the projects) with respect to approvals for these projects.

However, to the extent the matters they attack were decided at an HRB meeting prior to the June 9, 2021 meeting, the time for appealing those decisions has expired and those decisions cannot be challenged now. Nor can Petitioner use the final approval stage to reach back to prior approvals that were not appealed. Such a "claw back" would create uncertainty for both the City and property owners as the City could have to waste resources by having citizen committees re-hear the same matters over and over, and property owners would not be able to make informative decisions relying on City approvals on the use of their property.

The requirement of immediate appeal of HRB decisions on conceptual, preliminary and final approval is consistent with how the HRB itself views its processes. For example, the Petitioner attacks the Parking Garage Project and Hotel Project generally, disagreeing with the mass, scale and height and citing to many provisions of the Code and various documents Petitioner claim are relevant. However, the HRB members specifically discussed whether or not the HRB could revisit prior approvals given to Beaufort Inn for the Parking Garage Project and the HRB specifically decided it could not revisit those approvals, as three of the four HRB members specifically stated that it was not their position to revisit approvals given by the HRB at prior meetings. Therefore, the HRB specifically discussed and rejected Petitioner's claims that the HRB could revisit matters already decided favorably to Beaufort Inn in prior HRB meetings. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort,* 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995).

This requirement for timely appeals is also consistent with the common law and avoids problematic situations where a property owner has relied on an HRB approval and created vested rights in the HRB approval by expending resources. It is axiomatic that when a government entity makes a land use decision regarding property, the property owner is entitled to rely on that decision and the government cannot later change that

decision to the detriment of the property owner. *See e.g.*, *Nuckles v. Allen*, 250 S.C. 123, 130, 156 S.E.2d 633, 637 (1967).

The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given. The record is replete with evidence that Beaufort Inn, for both the Hotel Project and the Parking Project, obtained HRB conceptual approvals under the UDO, then obtained later preliminary approvals from the HRB, and were granted demolition and relocation permits from the HRB necessary for Beaufort Inn to proceed with the projects.

It is well established in South Carolina that a project that is begun under one ordinance cannot be stopped or limited by a subsequent change in that ordinance. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal*, 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). If HRB conceptual and preliminary approval decisions could be challenged at the final approval stage, the City Defendants could face legal challenges by property owners of interference with the property owner's vested rights.**

Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals. As the City Defendants cannot revoke the approvals, the Petitioner by the Appeal cannot force the City Defendants to do what they are otherwise legally prohibited from doing.

For these reasons, the Petitioner is precluded from appealing any matter that was the subject of the conceptual, preliminary, or final approvals of the Hotel Project, as final approval was granted to that project in October 2019. Likewise, Petitioner is precluded from appealing any matter that was the subject of the preliminary approval of the Change after Certification of the Hotel Project on February 10, 2021.

(R. 029-032). Order, pp. 9-13. The Circuit Court in footnote 6 (R. 029) also stated "Both time periods are as authorized by South Carolina law. See S.C. Code Ann. § 6-29-900(A)("The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.")"[8] (R. 029) Order, p. 9, n. 6.

Thus, the failure of any party to appeal any of the prior approvals by the HRB of the Parking Garage Project means that the Court is without jurisdiction to hear an appeal of any matter decided

[8] There was a footnote 7 in the Order (R. 032) more specifically addressing the vesting of the projects that is addressed *infra*.

at a prior HRB meeting. As the Petitioners attack the existence of the Parking Garage Project itself (based on mass, scale, and height matters decided long ago), and nothing specifically with respect to those minor issues was actually reviewed for final approval by the HRB at its June 9, 2021 meeting, their appeals are untimely and must be denied.[9]

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DECISION OF THE CIRCUIT COURT REJECTING PETITIONERS' CLAIMS THAT APPROVALS OF THE PROJECTS WERE PROCEDURALLY BARRED.

Petitioners' Second, Third, and Fourth Arguments all rely on broad-based allegations that the HRB failed to comply with procedural requirements of either the UDO or Beaufort Code with respect to extensions for the Parking Garage Project and Hotel Project they claim were either not granted at all or were not timely granted.

The Court of Appeals apparently disposed of these issues by noting that the Petitioners did not provide sufficient legal authority or arguments to sustain any debate on them, citing to *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016), *Glasscock, Inc. v. U.S. Fid. & Guar. Co*., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001), and *Taylor v. Taylor*, 294 S.C. 296, 299, 363 S.E.2d 909, 911 (Ct. App. 1987). Nonetheless, Petitioners' arguments should also be rejected with the same reasoning used by the Circuit Court, as outlined *infra*.

A. The Hotel Project

Noting that the Petitioners could no longer contest whether proper extensions had been provided for the Hotel Project's final approval awarded by the HRB in 2019 at the 2021 HRB meeting years later, the Circuit Court expressly rejected Petitioners' procedural contentions in

[9] As noted, the only item at the June 9, 2021 HRB meeting that Petitioners timely challenged with respect to the Hotel Project was the change to the rooftop design. The Circuit Court found that there was sufficient evidence in the Record to support the HRB's approval of the Change After Certification. (R. 033-034) Order, pp. 13-14. The Appellants failed to challenge this finding in their appeal to the Court of Appeals. Therefore, it is the law of the case. *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 714 S.E.2d 869 (2011).

pages 14 through 17 of its Order as time barred. (R. 034-037.) While there was evidence in the record supporting the granting of extensions and Beaufort Inn's vested rights acquired in the Hotel Project, Petitioners cannot argue that the original final approval should not have been made by the HRB in 2019 as the HRB did not even consider the issue.

B. The Parking Garage Project

The Circuit Court also expressly rejected the contention that the Parking Garage Project did not have proper extensions in its Order as follows:

> Petitioner only advances two arguments with respect only to the Parking Garage Project. First, it argues that the time period for a final approval by the HRB had run, and so final approval should not have been granted. Second, it disagrees with the HRB's decision almost entirely on matters that were conclusively established at the conceptual and preliminary approval stages—that is the scale, size, height and mass of Parking Garage Project.
>
> 1. There was no error in the HRB accepting the extensions.
>
> Petitioner argues that the prior approvals granted to Beaufort Inn for the Parking Garage Project expired before the June 9, 2021 HRB meeting, and thus the application for final approval was not properly before the HRB. Petitioner asserts that the UDO did not allow for an extension totaling more than 18 months, and there was more than an 18 month gap between the preliminary approval of the HRB on September 20, 2019 and the June 9, 2021 HRB meeting. Petitioner claims that the approvals granted previously on the Parking Garage Project had thus expired, and so Beaufort Inn was required to start the Parking Garage Project approval process again.
>
> However, the City granted two extensions to Beaufort Inn, one by letter of June 21, 2019 and one by letter of July 1, 2020, pursuant to § 9.1.4 of the Beaufort Code, which allows up to five one-year extensions. There are no time limitations on extensions for conceptual, preliminary, or final approvals for COAs other than those stated in § 9.1.4. See B.C. § 9.1.9.C. Thus, the City was within its discretion to provide such extensions, and such extensions were accepted by the HRB in its discretion. See *Gurganious v. City of Beaufort*, 454 S.E.2d at 916.
>
> Petitioner cites to § 1.4.2 (B) of the Beaufort Code stating that the City Defendants and Beaufort Inn were required to follow the UDO time limits on extensions. However, that is not what § 1.4.2(B) requires. This section does not address extensions of the application process other than to say the City "shall review and decide the application in good faith and in accordance with any time frame established by the prior standards." This

language clearly requires the City not to use the crossover of applicable codes to delay a project; otherwise, there would be no need to reference a "good faith" requirement.

Cleary the HRB did not construe § 1.4.2 (B) to bar final approval of the Parking Garage Project. Given the many interrelated acts by the City requiring approvals on this Project at various stages, as well as interconnected approvals needed for existing structure demolition and relocation, it would be inequitable and patently unfair for the HRB to give Beaufort Inn written extensions and then have this Court vacate those extensions. Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights. *Boehm v. Town of Sullivan's Island Board of Zoning Appeal, supra*. The application of timelines in the UDO that do not exist or are no longer in the ordinance clearly would impair such rights. Simply put, § 1.4.2 (B) cannot be construed to make a project *harder* to develop simply because of a crossover of codes. That would not be the "good faith" required of the City.

Further, Petitioner ignores B.C. § 1.4.4.A: "Other Approved Development Permits and Approvals." Section 1.4.4.A provides:

> Any other development that has received approval of a development permit or approval of a portion of a development—including any required Traffic Impact Analysis and/or Archaeology Survey—before the effective date of this chapter or any amendments thereof **may** be carried out in accordance with the terms and conditions of the development permit or approval and the procedures and standards in effect at the time of the approval, provided the permit or approval does not expire and otherwise remains valid. If significant changes are made to the development, associated studies and surveys required as part of the development process shall be redone. If the development permit or approval expires, is revoked (e.g., for failure to comply with time limits or terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

(Emphasis added.) In statutory construction, the use of the word "may" means the action is permissive. *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980)("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary."); *Cricket Store 17, LLC v. City of Columbia Bd. of Zoning Appeals*, 428 S.C. 270, 276, 834 S.E.2d 209, 212 (Ct. App. 2019).

B.C. § 1.4.4.A clearly gives the HRB the *discretion* to apply the UDO or the Code with respect to timelines it applied to the Parking Garage Project. Thus, the HRB staff was free to apply the Beaufort Code timelines per this section of the Code, and was not required to follow the UDO. There was no error in the HRB allowing the extensions to stand and the Parking Project to move to final approval.

(R. 034-037) Order, pp. 14-17. In footnote 8, the Circuit Court also noted:

> To the extent that B.C. § 1.4.4.A may be interpreted to conflict with § 1.4.2 (B), the interpretation of the HRB giving precedence to § 1.4.4.A must be given great weight. "We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). "'The Board['s] ... construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor.'" *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018), quoting *Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

(R. 036-037) Order, p. 16, n. 8.

Petitioners quibble with the characterization of extensions by City staff, arguing that staff issued extensions for COAs that did not exist. Additionally, Petitioners also argue City staff erred in their interpretation of the applicable ordinance binding the City and HRB. However, staff comments and characterizations do not bind the City or HRB. Only the HRB itself, not staff, has the authority to decide if an approval is proper. When proceeding with each approval, the HRB inherently determined that the extensions (regardless of the term used for "extension") were proper, and these decisions are supported by evidence in the Record. Both the City and Beaufort Inn understood that the extensions were more generally for the Projects and part of the ongoing cooperation between Beaufort Inn and the City in furtherance of Beaufort Inn's vested rights. Both the Court of Appeals and Circuit Court agreed, and thus Petitioners' procedural arguments must be dismissed.

III. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION REJECTING PETITIONERS' CLAIM THAT THE PROJECTS REQUIRED PRIOR ZONING BOARD OF APPEALS APPROVAL BEFORE THE HRB ACTED ON THE PROJECTS.

Petitioners claim that the HRB could not act on either the Parking Garage Project or the Hotel Project because they argue that both require a Special Exception issued by the City's Zoning Board of Appeals ("ZBOA") for a Large Footprint Building pursuant to the Beaufort Code. The Circuit

Court expressly and properly rejected this contention in its Order. Specifically, the Circuit Court stated:

> 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 Defendants, 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.

(R. 037-039) Order, pp. 17-19. (Footnote omitted.)

Once again, the Petitioners provide no analysis in their Petition explaining why the Circuit Court's Order is incorrect. Therefore, as recognized by the Court of Appeals, Petitioners have abandoned any argument contesting these findings. *Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003). Regardless, as correctly noted by the Circuit Court, there is no validity to the arguments by Petitioners regarding Special Exceptions before the HRB, and the HRB properly disregarded such arguments.

IV. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION THAT EVIDENCE BEFORE THE HRB SUPPORTED THE HRB'S DECISIONS.

Petitioners argue in their Sixth Argument that the factual record did not support the HRB's decisions. Petitioners' burden for such a claim is substantial. On appeal, "the findings of fact by the [HRB] shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8–9, 776 S.E.2d 753, 757 (Ct. App. 2015) (alteration in original) (quoting *Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct. App. 2012)). "In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [HRB] is correct as a matter of law." *Helicopter Solutions, Inc.*, 414 S.C. at 9 (quoting *Wyndham Enterprises, LLC*, 401 S.C. at 147–48). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)). The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary." *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

As noted by the Court of Appeals and the Circuit Court, the Petitioners argue only about the weight that the HRB should have given to certain guidance documents in its interpretations. This is not a question of a lack of evidence to support the HRB; it is a disagreement by Petitioners of the determinations of the HRB. The failure of the Petitioners to point out the actual lack of evidence for the HRB decisions is their failure of proof of this claim. Also see, fn. 8, *supra*.

V. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION THAT BEAUFORT INN'S VESTED RIGHTS DEFEATED PETITIONERS' PROCEDURAL ARGUMENTS.

A. The Vested Rights Act Did Not Preempt Common Law Vesting of Rights.

Both Beaufort Inn and the City agree that Beaufort Inn has vested rights in the Parking Garage Project and the Hotel Project as stated *supra*. The vested rights argument eviscerates the Petitioners' claims of procedural defects in the HRB process as once Beaufort Inn was vested in the approvals given by the City, such vested rights could not be taken away by the City unilaterally. The Circuit Court concurred, and the Court of Appeals affirmed.

However, Petitioners in their Seventh Argument claim that Beaufort Inn could not have rights vested in the Projects unless Beaufort Inn and the City had a special agreement pursuant to Vested Rights Act, S.C. Code Ann. § 6-29-1510, *et. seq*. ("VRA"). It is undisputed that there was no such agreement pursuant to the VRA.

The Circuit Court expressly rejected this argument:

> Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986). However, Petitioner argues that Beaufort Inn may not claim a vested right, even though the City Defendants concede it has vested rights in the application of the UDO to the project, because Beaufort Inn has failed to comply with the Vested Rights Act, S.C. Code § 6-29-1510, *et. seq*. ("VRA"), and therefore it obtained no vested rights. This is incorrect for several reasons. First, the VRA nowhere states that it is the exclusive method of establishing vested rights by a property owner in South Carolina. It is well settled in South Carolina that a statutory scheme creating a remedy of some type is not deemed to create an exclusive remedy unless the

> statute expressly so provides. *See e.g.*, *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 40–41, 508 S.E.2d 16, 20 (1998)(creation of specific remedy by statute did not mean it was the sole one at law); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986)(Collection of Rent by Distraint Statute not exclusive remedy); and *Wimberly v. Barr*, 359 S.C. 414, 419, 597 S.E.2d 853, 856 (Ct. App. 2004)(timber cutting statute not the exclusive remedy). Conversely, where the legislature intends a statute to create an exclusive remedy, it has expressly said so. *See e.g.*, *Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993)(workers compensation is exclusive remedy); *Wimberly v. Barr*, 597 S.E.2d at 857 (S. C. Tort Claims Act is exclusive remedy.) North Carolina, with its similar vested rights act, has recognized that its vested rights act is not meant to be the sole method of establishing vested rights, and that the traditional framework of substantial reliance on municipal actions is still an avenue of relief for property owners. *Simpson v. City of Charlotte*, 115 N.C. App. 51, 56, 443 S.E.2d 772, 776 (1994). The same reasoning applies here; the South Carolina Supreme Court has recognized "the purpose of the Act was to protect, preserve, and create vested rights in development permits." *Grays Hill Baptist Church v. Beaufort Cty.*, 431 S.C. 630, 640, 850 S.E.2d 29, 34 (2020). Limiting the ability of a property owner to acquire vested rights to those under a statutory scheme is anathema to the purpose for the VRA. The VRA merely provides another vehicle by which a property owner and developer can achieve some certainly in the development process—but it is not the only method.
>
> (R. 032) Order, p. 12, fn. 7

The Circuit Court clearly explained why it rejected Petitioners' argument that Beaufort Inn was required to follow the VRA. However, Petitioners fail to challenge the Circuit Court's reasoning.[10] Petitioners have not made any argument why the Circuit Court's Order was incorrect in its holding. Petitioners make only a half-page, conclusory argument that the VRA applies, but they do not even state *why* the VRA should be the exclusive method for assertion of vested rights. Therefore, that issue must be determined to be abandoned on appeal. *Jinks*, 355 S.C. 341.

Thus, as apparently concluded by the Court of Appeals, Petitioners have abandoned any argument contesting the Court's holding and should not be allowed to proceed further on this issue.

[10] Nor did Petitioners contest the Circuit Court's logic in the Order in any filing before the Circuit Court, including their Motions to Reconsider. (R 811--812). 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).

Given that Beaufort Inn's approval rights in the Projects are vested as the law of the case, Petitioners' procedural arguments are moot, and the Petitioners' arguments are unavailing.

B. The Law of the Case is that Beaufort Inn had Vested Rights.

Other than the VRA argument, Petitioners nowhere else contest the Circuit Court's determination that Beaufort Inn's rights in the two Projects are vested under South Carolina law. Thus, the Circuit Court's holdings that Beaufort Inn was vested in the Projects moots any argument by Petitioners that procedural steps were not properly followed. Specifically, the Petitioners have not challenged the Circuit Court's holdings in several places that Beaufort Inn had vested rights:

- "The Court agrees with the position of the City Defendants and Beaufort Inn in this Appeal that the Hotel Project and the Parking Garage Project are on these facts vested with respect to the approvals given." (R. 031) Order, page 11.

- "Thus, even if it wanted to, the HRB cannot revisit and revoke its prior approvals given to Beaufort Inn, as Beaufort Inn has vested rights in the application of the UDO and those approvals." (R. 032) Order, page 12.

- "Further, as noted, Beaufort Inn has constitutionally protected vested rights in the two projects; the change in the ordinance cannot in any way impair those vested rights." (R. 035) Order, page 15.

- "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." (R. 038) Order, page 18.

As found by the Court of Appeals, the failure of Petitioners to challenge these findings of the Circuit Court binds them to these findings as the law of the case. The failure of the Petitioners to challenge these holdings means the vested rights in the approvals of the Projects are the law of the case, which effectively disposes of any argument Petitioners make on procedural deficiencies in the approval process for the Projects.

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.

ss/Benjamin E. Nicholson, V
Benjamin E. Nicholson, V, Esquire
Burr & Forman LLP
P.O. Box 11390
Columbia, SC 29211
nnicholson@burr.com
803.799.9800

Counsel for Respondent
The Beaufort Inn, LLC

ss/ Virginia P. Bozeman
Virginia P. Bozeman, Esquire
Alexis K. Lindsay, Esquire
Pope Flynn, LLC
1411 Gervais Street, Suite 300
Columbia, SC 29201
gbozeman@popeflynn.com
alindsay@popeflynn.com
803.354.4947
Counsel for Respondents City of Beaufort and City of Beaufort Historic District Review Board