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Jan 27 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT

The Honorable R. Scott Sprouse

Appellate Court Case No. 2024-002136
Unpublished Opinion No. 2024-UP-373 (S.C. Ct. App. Filed October 30, 2024)

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

v.

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

PETITIONERS' REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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Petitioners submit this Reply Brief to address the arguments raised in Respondents' Return.

I. THE RESPONDENTS PROVE THE PETITIONERS' POINT: PETITIONERS WERE CONFRONTED WITH A NO-WIN DILEMMA IN ISSUE PRESERVATION BY RESPONDENTS FILING AN ADMINISTRATIVE APPROVAL PROCEEDING MONTHS AFTER AN ONGOING DECLARATORY JUDGMENT ACTION.

The Respondents vigorously assert that the Petitioners are not entitled to review by this Court because Petitioners "hoisted themselves by their own petard" by attempting to preserve a legal argument in the subsequent and limited architectural review board appeal. They pointedly make the Petitioners' case for issuing the writ.

The Respondent developer, as it turns out, was moving by fits and starts through a drawn-out, multiyear architectural review process for these projects that may have received some conceptual or preliminary review by the DRB, but the developer had not applied for or received a final Certificate of Appropriates from the Historic District Review Board (DRB).[1]

Even without final approval, the Respondent developer continued to move forward with three massive projects (a Hotel, Parking Garage, and Apartment building) in the downtown historic district in Beaufort, South Carolina, not only without a Certificate of Appropriateness but also without the proper zoning. A special exception for allowance for Large Footprint Buildings in the historic district was required. With no available administrative proceeding in which to object to this illegal process, the Petitioners filed this declaratory action in Circuit Court.

[1] Whether it was required or even lawful to seek an appeal of these earlier conceptual or preliminary reviews is the subject of this petition's companion case, *Historic Beaufort Foundation v. City of Beaufort*, Appellate Court Case No. 2022-000300. The Petitioners respectfully request that this Court issue writs in both cases and review the decisions together.

Months later, the Respondents (likely in response to the ongoing declaratory judgment action) finally restarted the architectural review process and sought final approval and the issuance of a Certificate of Appropriateness from the DRB. This subsequently filed proceeding lies at the heart of the issues in this case and provided the basis for the Circuit Court judge's error, as affirmed summarily by the Court of Appeals.

The Petitioners never had the opportunity to litigate the merits of their declaratory judgment action in any forum. The only issue before the DRB was aesthetic approval based on the limited record before it (without the presentation of documents or testimony). The Circuit Court judge in this case, after a full trial before him, refused to rule on the merits, deciding instead that the case had already been decided by the DRB and by the Circuit Court in its review of the DRB's decision on appeal.

The Respondents make much of the fact that the Petitioners raised the legal issue of the Respondents' failure to obtain proper zoning approval in the DRB proceeding, but that is precisely the point. The subsequent regulatory proceeding presented the Petitioners with the "Hobson's choice" of either not raising these arguments before the DRB and facing the argument from the Respondents that the Petitioners waived the ability to litigate these arguments in the declaratory judgment action, or as happened here, raising them in the DRB to preserve the issue, and facing the Respondents' argument that the Petitioners "chose their forum" and forfeited their right to relief in the declaratory judgment action Petitioners filed first.

Such an outcome is not mandated or appropriate under this state's jurisprudence. The Circuit Court and Court of Appeals misapprehended the law by refusing to decide this case on its merits. The conflict between a valid and pending declaratory judgment action and a subsequent, related, but distinct regulatory proceeding has not been decided by this court. The Petitioners respectfully request that this Court issue the writ of certiorari to clarify the law created by this conflict.

II. THIS CASE PRESENTS NOVEL AND IMPORTANT ISSUES WARRANTING REVIEW

Contrary to the Respondents' assertions, this case presents novel questions about the interplay between declaratory judgment actions and subsequent administrative proceedings. The Court of Appeals' decision expands *Med. Univ. of S.C. v. Taylor*, 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987) beyond its intended scope by applying it to bar a preexisting declaratory action based on a later-filed administrative appeal.

This unprecedented extension warrants review under Rule 242(b), SCACR, as it raises novel questions about the scope of declaratory relief. See *Peagler v. USAA Ins. Co.*, 368 S.C. 153, 157, 628 S.E.2d 475, 477 (2006) (courts should consider "which answer and reasoning would best comport with the law and public policies of the state"). The Court of Appeals' expansion of *Taylor* creates uncertainty about when property owners may seek declaratory relief from unlawful municipal action.

III. THE TIMING OF THE FILINGS IS CENTRAL TO THE ANALYSIS

Respondents mischaracterize the chronology by arguing that *Taylor* controls this case. The declaratory judgment action was filed in April 2021, months before the Respondents' submission, which resulted in DRB's June 2021 decision and subsequent appeal. *Taylor* involved an attempt to circumvent ongoing administrative proceedings—the opposite sequence from this case.

The Court of Appeals disregarded this critical distinction, contrary to *Williams Furniture Corp. v. S. Coatings & Chem. Co.*, 216 S.C. 1, 7, 56 S.E.2d 576, 578 (1949) (declaratory relief should not be refused merely because another remedy is available). The timing here demonstrates that this is not an attempt to circumvent the administrative process; rather, the administrative appeal was an attempt by the Respondents to moot a properly filed declaratory action.

IV. THE ISSUES IN THE TWO PROCEEDINGS WERE NOT IDENTICAL

Respondents fail to address the fundamental differences between the declaratory judgment action challenging the City's systemic failure to follow zoning ordinances requiring Special Exceptions for Large Footprint Buildings and the narrow appeal of specific DRB approvals limited to aesthetic and design considerations under Beaufort Code § 9.10.2.

These distinct proceedings did not present "identical" issues under the test articulated in *Kunst v. Loree*, 404 S.C. 649, 658, 746 S.E.2d 360, 364 (Ct. App. 2013) (requiring issues be "actually litigated and determined" in prior action). The Historic District Review Board lacked jurisdiction to consider the zoning compliance issues central to the declaratory action.

V. ADMINISTRATIVE EXHAUSTION WAS NOT REQUIRED

The Court of Appeals erroneously applied administrative exhaustion principles where no administrative remedy existed when the declaratory action was filed. *Hyde v. S.C. Dep't of Mental Health,* 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994) requires "a sound basis for excusing the failure to exhaust administrative relief." Here, there was no administrative remedy to exhaust when the action commenced.

CONCLUSION

For these reasons and those stated in the Petition, Petitioners respectfully request the Court grant certiorari to address these critical issues of first impression.

Respectfully submitted,

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