STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Vanderham Family Living Trust, Villa Las Palmas LLC, Scout Beach House LLC, Amy Oakes, MMH Property Holding LLC, Black Ice Venture, II, Plaintiffs, v. City of Isle of Palms and South Carolina Department of Environmental Services, Defendants.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2024-CP-10-01327

ORDER GRANTING MOTION TO ALTER OR AMEND AND GRANTING JUDGMENT IN FAVOR OF DEFENDANT CITY OF ISLE OF PALMS

This matter is before the Court on the timely motion to alter or amend filed by Defendant City of Isle of Palms ("City"). The City sought reconsideration of the Court's order dated January 27, 2025, which provided:

> Plaintiff's Motion for Summary Judgment is respectfully DENIED as to each of the three grounds sought in Plaintiff's memorandum, filed May 21, 2024.
> Defendant City of Isle of Palms' Motion for Judgment on the Pleadings or for Summary Judgment and Defendant Department of Environmental Services' Motion for Judgment on the Pleadings are also respectfully DENIED.
> The Court will allow time for discovery of factual issues, including location of the current setback and baselines, as well as the dune system of the beach's critical area. The Court requests the parties submit a proposed scheduling order for review of the Court for the timely disposition of this matter.

Plaintiffs submitted a memorandum in opposition. Having fully considered the motion and memorandum in opposition as well as the parties' arguments and submissions at the hearing on the underlying motion, the Court GRANTS the motion to alter or amend.

In its motion for judgment on the pleadings or for summary judgment ("MSJ"), the City sought a ruling that Section 5-4-15(B), a zoning provision within the City's Code of Ordinances,

is not preempted by the Beachfront Management Act ("Act"), S.C. Code Ann. § 48-39-10, *et seq*, and that Plaintiffs' properties are subject to its terms.[1] Although the Court has ruled that there are factual issues relating to the "location of current setback and baselines, as well as the dune system of the Beach's critical area," the City's MSJ does not raise factual questions.

An "ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). "The burden of proving the invalidity of an ordinance is on the party attacking it." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004). To that end, "[t]he party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt." *Skyscraper Corp. v. Cnty. of Newberry*, 323 S.C. 412, 417, 475 S.E.2d 764, 766 (1996); *Univ. of S.C. v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964) (holding that a legislative enactment will be held invalid only when its invalidity appears so clearly as to leave no room for reasonable doubt).

The City's jurisdiction over property within its limits is not derivative of the Act. As a general matter, municipalities have broad authority under home rule. *See* S.C. Code Ann. § 5-7-30. South Carolina municipalities may enact zoning and other ordinances relating to land use within their municipal limits. S.C. Code Ann. § 6-29-710; *see Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) ("The authority of a municipality to

[1] The City asserted a counterclaim seeking declarations that Section 5-4-15(B) is valid, that Plaintiffs are subject to its terms, that Plaintiffs bought their properties with record notice of restrictions on building and possible changes to property lines, and that many of the Plaintiffs had released the City from any claims "in connection with any dune restoration or beach renourishment work."

enact zoning ordinances, restricting the use of privately owned property is founded in the police power.").

The Act, on its face, contemplates cooperation between various entities. *See e.g.,* S.C. Code Ann. § 48-39-50 ("The South Carolina Department of Health and Environmental Control shall have the following powers and duties: . . . (L) To direct and coordinate the beach and coastal shore erosion control activities among the various state and local governments."). The Act's collaborative approach differs from statutory schemes where South Carolina appellate courts have found the General Assembly intended to preempt the entire field. *See, e.g.*, *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) ("To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." (quotation omitted)). S.C. Code Ann. § 23-31-510, concerning firearms, is a good example of statutory language preempting an entire field:

> No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate: the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things . . .

S.C. Code Ann. § 23-31-510. Here, the Act contains no such language. Instead, the Act makes manifest an intent that there will be other enactments by other governing bodies, including municipal zoning ordinances. *See e.g.,* S.C. Code Ann. § 48-39-100(B) ("Any city or county that is currently enforcing a zoning ordinance, subdivision regulation or building code, a part of which applies to critical areas, shall submit the elements of such ordinances and regulations applying to critical areas to the department for review. The department shall evaluate such ordinances and plans to determine that they meet the provisions of this chapter and rules and regulations promulgated hereunder. Upon determination and approval by the department, such

ordinances and regulations shall be adopted by the department, followed by the department in meeting its permit responsibilities under this chapter and integrated into the Department's Coastal Management Program. Any change or modification in the elements of approved zoning ordinances, subdivision regulations or building codes applying to critical areas shall be disapproved by the department if it is not in compliance with the provisions of this chapter and rules and regulations promulgated hereunder."). As such, the Court finds that Section 5-4-15(B) is valid and is not preempted by the Act.

In addition, the Court has reviewed the deeds and plats submitted by the City and finds that Plaintiffs purchased their properties with record notice of the City's policies and ordinances relating to construction on beaches and dunes. Plaintiffs did not contest the submitted property records.

For these reasons, the Court **GRANTS** the City's motion to alter or amend and directs that judgment be entered as follows:

1. Judgment is entered in the City's favor on Plaintiffs' first cause of action. This resolves in full the Plaintiffs' complaint against the City.
2. Judgment is entered in the City's favor on its counterclaim. The Court declares as follows:
    a. Section 5-4-15 is valid and not preempted in whole or in part by the Act.
    b. Plaintiffs purchased their properties with notice of the City's ordinances and are subject to the terms of Section 5-4-15.

IT IS SO ORDERED!

_____
Mikell R. Scarborough
Master in Equity, Charleston County

Charleston Common Pleas

Case Caption:	Vanderham Family Living Trust The , plaintiff, et al VS Isle Of Palms City Of , defendant, et al
Case Number:	2024CP1001327
Type:	Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062