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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Consolidated Case Nos.: 2023-CP-42-01221, 2023-CP-42-01226, 2023-CP-42-01367, 2023-CP-42-01545
Appellate Case No.: 2024-001828

South Carolina Native Plant Society,

Appellant,

vs.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms RV Park,

Respondents,

and

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholtz Trust, and Slater Properties, Inc., d/b/a Caroland Farms,

Appellants,

vs.

Spartanburg County SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC, d/b/a T. Tree Farms RV Park,

Respondents

REPLY BRIEF OF HOMEOWNER APPELLANTS

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INTRODUCTION

The Reply Brief of the Appellant Native Plant Society is correct. The Appellant Homeowners adopt it fully, without repetition.

ARGUMENT

I. The Respondents Misstate the Correct Standard of Review.

The first sign of the Respondents' weakness on this appeal is their misstatement of the standard of review. The Respondents refer to the "any evidence" standard in this appeal as though it should apply. The Respondents also argue that deference must be afforded to "findings of fact" by a planning commission as though this appeal is about findings of fact. It is not. This appeal does not involve the "any evidence" standard, because these appeals do not challenge the weight of the evidence before the Planning Commission or any findings of fact. Rather, these appeals address the supremacy of various statue statutes and the Planning Commission's failure to abide by the express terms of the Spartanburg County's Unified Land Management Ordinance ("ULMO"). Those are matters of law—not fact.

Even Respondents' own cases do not support their argument concerning the correct standard. In fact, *Arkay v. City of Charleston*, 418 S.C. 86, 791 S.E.2d 305 (Ct. App. 2016), which is one of their cases, states, "In construing ordinances, the terms used must be taken in their ordinary and popular meaning." (quoting *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995)). As noted in *Helicopter Solutions v. Hinde*, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 215), another of their cases, the holding of *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 687 S.E. 2d 326 (2009) was accurately stated by Appellant Native Plant Society.

> "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330 (citation omitted). "When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Id*. (citation omitted). "When reviewing issues involving the construction of an ordinance, the determination of legislative intent is a matter of law." *Id*. (citation omitted).
>
> "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning. Where a statute is ambiguous, however, we must construe the terms of the statute according to settled rules of construction." *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001) (citations omitted).
>
> *Furr v. Horry Cnty. Zoning Bd. Of Appeals*, 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014)

does not, as the Respondents suggest, require deference for matters of law. *Furr* involved only factual matters. Furthermore, there is no evidence that the Planning Commission interpreted the language of the ULMO in any particular way. Finally, the Planning Commission did not write the ULMO, so even under the Respondents' incorrect theory of deference for matters of law, there would be no deference to the Planning Commission.

The standard of review set forth by the Appellants in their respective briefs is correct.

II. The Appellants Have Not Raised Issues For the First Time on Appeal.

The HOA Appellants' argument concerning the failure of the ULMO to embody fully the requirements of the South Carolina Local Government Comprehensive Planning Act was explained to the circuit court by the HOA Appellants in their Brief of Appellants. " 'A local comprehensive plan must include the following elements: … fire protection, [and] transportation.' A specific purpose of the transportation element under the statute is 'to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian.' " [Brief of Appellants, pp. 8 & 9, quoting S.C. Code Ann. 6-29-510(D) (5) & (8), and

1120 (3); Record ___]. The next sentence of the Brief of Appellants in the circuit court stated that the ULMO "has no elements for fire protection or traffic safety and the Planning Commission ignored those requirements." The point is clear; and the Respondents' assertion that it was not presented to the circuit court is plainly wrong.

In a similar vein, the Respondents misunderstand or mischaracterize the HOA Appellants' argument concerning the Planning Commission's lack of findings. The HOA Appellants offer inverse condemnation as an example by analogy of how the law protects its citizens against actions of the government that do not conform to the required procedures. It is part of the argument about the issue. It is not the issue. The issue is the lack of findings by the Planning Commission. Findings were required to be made by the Planning Commission. They were not made as required. This is explained at pages 7 and 8 of the Brief of Appellants presented to the circuit court. [Record ___]. This issue is not, as the Respondents assert, made for the first time on appeal.

III. The Commission Violated the Spartanburg County ULMO by Conditionally Approving an RV Park Which Does Not Have a Septic System "Approved by DHEC."

The Respondents' argument that the RV Park septic system has been "approved by DHEC" is wrong. The DHEC Board revoked the septic permit and disapproved of the septic system. The decision by the administrative law judge, affirmed by the Court of Appeals, rested on the narrow procedural point that the appeal to the DHEC Board was not timely. It did not affect the substantive issue that the DHEC Board did not approve the system.[1]

[1] Respondents County of Spartanburg and the Spartanburg County Planning Commission were not parties to the DHEC Board Review of the septic permit in December 2021, the proceeding in the Administrative Law Court in 2022, or the appeal of the ALC order presented to the Court of Appeals in 2022.

Rather, the issue in this appeal involves the interpretation and application of Spartanburg County's ULMO. The ULMO was not involved in the case before the administrative law judge. § 3.13 (8) of the ULMO mandates that an RV Park in Spartanburg County must have an approved method of handling human waste and wastewater from RVs: "*Each park site **shall** be serviced by public water and sewer or other systems **approved** by DHEC.*" (Emphasis added).

The ULMO also contains a definitional section in Article 6: "*the word **shall** is always mandatory*"; and words not defined in the standard building, plumbing, gas and fire codes ***"shall** have the meanings in Webster's Ninth New Collegiate Dictionary, as revised."* (Emphasis added.)

The operative words in § 3.13 (8) of the ULMO are "**shall**" and "**approved**." Webster's Ninth New Collegiate Dictionary defines "**approved**" as "***to have or express a favorable opinion of; to accept as satisfactory; to give formal or official sanction to*.**"

The DHEC Board did not express "a favorable opinion of" the Respondent Blue Sky's septic system, did not accept the septic system as satisfactory, and undeniably did not "give formal or official sanction to" the septic system. The DHEC Board did the exact opposite and rejected the Respondent Blue Sky's septic system. In doing so, it cited the South Carolina Pollution Control Act, which gave it authority over septic systems and human waste. S. C. Code 48-1-100 et seq. The DHEC Board was that state agency's highest authority. The septic permit and system were expressly rejected and rescinded by the DHEC Board in a 3-page written Final Agency Decision. [Record ___]. The DHEC Board specifically determined that the proposed septic system for Respondent Blue Sky's RV Park lacked the requisite capacity to handle peak

sewage flow. This was the final decision by DHEC, the state agency charged with protecting the public health and environment of South Carolina.

The terms “shall” and “approved” in the ULMO at § 3.13 (8) are clear on their face, convey a definite meaning, and are unambiguous. There is nothing for this Court to do except to apply the “plain meaning rule” to the ULMO. This Court should look no further than the above definitions of “shall” and “approved” to find that Respondent Blue Sky’s septic system was not “approved by DHEC” and, therefore, has not fulfilled the requirement of the ULMO § 3.13 (8).

In *Creswick v. Univ. of S.C.*, 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021), the Supreme Court recited the rules of statutory construction in this state. The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face (citing *Kennedy v. S.C. Ret. Sys.,* 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001)). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and the court must apply the statute according to its literal meaning (citing *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005)). Under the plain meaning rule, the court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. (citing *Town of Mt. Pleasant v. Roberts,* 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); *State v. Sweat,* 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29–30, 661 S.E.2d 349, 351–52 (2008)).

By conditionally approving an RV park with a septic system that was rescinded by DHEC's highest authority, the Planning Commission ignored and violated the ULMO's mandates set forth in § 3.13 (8). That was an error of law.

The Respondents know that they are wrong in arguing that they have a septic system "approved by DHEC" because they resort to an argument that the Appellants do not have the right to challenge them on this point. They assert that Section 48-1-250 of the Pollution Control Act prevents the Appellants from challenging the Respondent Blue Sky's septic system. S.C. Code Ann. 48-1-250. They are wrong in this argument, as well. First, the language of that section is restricted to instances where there has been "a determination by the department [DHEC] that pollution exists or a violation of a prohibition contained in this chapter has occurred." That is not this case. Second, even if only the government can enforce the statute, that is exactly what the DHEC Board did when it revoked the septic permit and disapproved of the septic system for the Respondent Blue Sky's proposed RV Park. [Homeowners' Reply Brief of Appellants, Exhibit A, p.2; Record ___]. Third, this is not a private right of action. The Appellants are not seeking damages or an injunction for themselves. That is what a private right of action is. Instead, their challenge is based on the broad-based harm that the RV Park will cause generally and especially to the people in the Upstate and Spartanburg County.

IV. Judge Hayes' Order was a Final and Appealable Order

The Respondents are also wrong in their argument that Judge Hayes' order was not a final order. Moreover, they know that they are wrong because at the end of their argument they beg the Court of Appeals to countenance violation of Rule 203 SCACR and Rule 6(b) SCRCP by accepting from them a notice of appeal beyond the absolute jurisdictional 30-day deadline,

which is so clear under South Carolina case law that it needs no citation. Even today, the Respondents have not filed a notice of appeal.

What the Respondents have forgotten or chosen to ignore is that the Appellants appealed not one but two orders. On April 22, 2024, Judge Hayes issued an order reversing the Planning Commission and vacating its decision to grant conditional approval for Respondent to construct its proposed RV Park. There is no question that this is a final order. "A ' final judgment' … must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what has already been determined." *Bone v. U.S. Food Service*, 399 S.C. 566, 733 S.E.2d 200 (2012). Denial of the permit was final.

The Respondents then moved for reconsideration. When they failed at the hearing to get Judge Hayes to change his reversal of the conditional approval, they pressed him to "remand", which he viewed to be the same as "vacate", the term he used in reversing and vacating the Planning Commission's decision to grant conditional approval.

> Judge Hayes: "But I'm leaning towards keeping it as is with the understanding that this term vacate equals the term remand."…
>
> Mr. Shissias: "Your Honor, if -- if your final order only said that in two sentences, you know, I -- I feel like I would've done my job today."
>
> Judge Hayes: "Well, I -- you raised the issue of remand versus vacate. I can put that in a very short order saying vacate equals remand and it should be so."

[Transcript of September 24, 2024 hearing, p. 48, l.14 – p.49, l.3; Record ____.]

The reason that the Respondent Blue Sky pressed Judge Hayes to use the word "remand" was so that it could make a last-ditch, though incorrect, argument to prevent this appeal.

The Respondents' argument about remand is wrong for several reasons. First, Judge Hayes did not withdraw his use of the term "vacate". He incorrectly equated it with remand. That is all. The Planning Commission decision remained vacated. Second, Judge Hayes did not alter his reversal. "For these reasons, the Court grants Appellants' appeal in part and reverses and vacates the Commission's conditional approval of the T. Tree Farms RV Park site plan dated March 7, 2023." [Order dated April 22, 2024; Record ___]. The September 24, 2024 Order changed the April 22, 2024 Order only "to the extent that the court needs to clarify the term 'vacate'." [Record ___]. Reversal remained intact. Third, the so-called "remand" was not remand at all. There was nothing left for the Planning Commission to do. Fourth, the line of cases on remand cited by the Respondents are irrelevant because they all arise for appeals from state agencies under the Administrative Procedures Act, which has a stricter standard for appealability. The Planning Commission is not an "agency" under that statute; and the APA does not apply to this case. This is explained by the South Carolina Supreme Court in *Bone v. U.S. Food Service*, 399 S.C. 566, 733 S.E.2d 200 (2012), " . . . the APA governs the review of administrative agency matters … the APA purports to provide uniform procedures before State Boards and Commissions . . .. Today, we reiterate that appeals in administrative agency matters are handled differently than appeals in other cases." An "agency" under the APA is a <u>state</u> agency, board, commission or the like. S.C. Code § 1-23-10(1), 1-23-310, 1-23-505(2). (Emphasis is supplied) The Planning Commission is a <u>local</u> county commission. The APA does not apply and the cases cited by the Respondents for their argument about remand are irrelevant.

Additionally, Respondents incorrectly cite S.C. Code 6-29-840, the South Carolina Local Government Comprehensive Planning Enabling Act at § 840, in their argument about remand. That section deals with zoning. § 840 is in Article 5 of the Act, which is entitled "Local Planning - Zoning." Article 5 of the Act deals exclusively with zoning and § 840 deals with appeals from a local zoning board to a circuit court. This is not a zoning case. Respondents' citation to this section of the Act is not applicable.

The statute that controls appeal of this case is S. C. Code 14-3-330(1), that permits appeals from final judgments and "that permits immediate appeal from an interlocutory order 'involving the merits.'" *Bone v. U.S. Food Service*, *Id*. The orders on appeal certainly involve the merits. Even if they are not final, they are appealable under S. C. Code 14-33-330(1) and *Bone*, *Id*.

The Respondents are not rescued by their arguments about the September 26, 2024, Form 4 Judgment in a Civil Case issued by Judge Hayes. The conditional approval that was reversed and vacated in the April 22, 2024 Order remains reversed and vacated. This is the core issue in the case. After "IT IS ORDERED AND ADJUDGED", the September 26, 2024 Form 4 Order leaves blank the box for "See attached order (formal order to follow)" and instead marks the box for "Statement of Judgment by the Court." The "Order Information" section of that Form 4 is not the order. It clearly states that it is "Additional Information for the Clerk." There is no page 2 to Form 4, no additional information, and no formal order to follow. [Order dated September 26, 2025; Record ___].

The judgment was final, and if not, it certainly "involved the merits." For either reason the orders are appealable.

CONCLUSION

The Order of the Hon. Mark J. Hayes II dated April 22, 2024, was correct insofar as it reversed and vacated the Planning Commission's conditional approval of Respondent Blue Sky's RV Park. It was incorrect insofar as it did not base reversal and vacatur on the matters raised by the Appellants on this appeal, including but not limited to environmental matters, lack of a septic permit for a septic system approved by DHEC, and failure of the Unified Land Management Ordinance to comply fully with the mandates of the South Carolina Local Government Comprehensive Planning Act. The Order of Judge Hayes dated September 26, 2024 was in error and should be reversed. The matter should not be remanded to the Planning Commission. The Planning Commission's conditional approval of the RV Park on March 7, 2023 should remain reversed and vacated. These decisions by the Court of Appeals are necessary to ensure compliance with the law and to protect the people and environment of the State of South Carolina.

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