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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2024-CP-10-01327
Appellate Case No. 2025-000636

The Vanderham Family Living Trust, Villa Las Palmas, LLC,
Scout Beach House, LLC, Amy Oakes, MMH Property Holdings, LLC
and Black Ice Venture, II Appellants,

v.

City of Isle of Palms and South Carolina Department of Environmental Services Defendants,

Of whom City of Isle of Palms is the.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. Did the master-in-equity correctly find that judgment should be entered in favor of the City of Isle of Palms (“City”) in this action seeking a declaratory judgment as to whether a City zoning ordinance is preempted by the Beachfront Management Act?

STATEMENT OF THE CASE

Appellants own beachfront properties within the City. Appellants filed this action on March 12, 2024. (Complaint, R. at ____). The complaint included one cause of action against the City, requesting a declaration that section 5-4-15(B) of the City’s Code of Ordinances is unenforceable and void because it is preempted by the Beachfront Management Act (“Act”), S.C. Code Ann. § 48-39-10, *et seq.*¹ (*Id.*). Appellants also included a claim against the South Carolina Department of Environmental Services (“DES”), seeking a declaration that portions of the Act are unconstitutional as applied “as the definition of ‘beaches’ is vague and fails to provide affected homeowners with a reasonable standard to know which areas may and which areas may not be utilized.” (*Id.*).

The City answered on April 12, 2024 and asserted a counterclaim seeking declarations that section 5-4-15(B) is valid, that Appellants are subject to its terms, that Appellants bought their properties with record notice of restrictions on building and possible changes to property lines, and that several Appellants had released the City from any claims “in connection with any dune restoration or beach renourishment work.” The City attached documents from the chain of title for Appellants’ properties (Exs. 1-7, R. at ____) as well as copies of section 5-4-15(B) as amended from 1974 through the present (Exs. 10-16, R. at ____). In their reply to the City’s counterclaim, Appellants admitted the allegations relating to the chain of title “to the extent that The City’s Exhibits 1-9 state what the City alleges[.]” (Reply, R. at ____).

Shortly after filing their complaint, Appellants sought a temporary restraining order and preliminary injunction. (Motion, R. at ____). Prior to the hearing on the motion, the City filed a

¹ The complaint also challenged City Ordinance 2024-01, but the parties agree that issue is moot as the ordinance in question has expired. (App. Br. at fn. 1).

motion for judgment on the pleadings or, in the alternative for a speedy hearing, raising the following grounds:

1. The City is entitled to judgment as a matter of law on Plaintiffs' first cause of action for declaratory judgment, which seeks a declaration that certain ordinances enacted by the City are preempted by the Beachfront Management Act ("Act"), S.C. Code Ann. § 48-39-10, *et seq.* The Plaintiffs' allegations are directly refuted by the language of the Act and its clear intent that numerous stakeholders will play a role in the coastal zone, including municipalities[.]

2. In addition, the ordinances challenged by the Plaintiff include language that ensures consistency with the Act.

a. Section 5-4-15 of the City's Code of Ordinances ("Code", Ex. 10 to Answer and Counterclaim) provides in (A):

No land or building situated in whole or in part in a critical area as defined in S.C. Code 1976, § 48-39-10, as amended, shall be used, occupied, constructed, altered or moved without compliance with the State of South Carolina Beachfront Management Act (S.C. Code 1976, § 48-39-10 et seq., as amended)[.]

As a result, there is no preemption or conflict with state law. *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 228, 464 S.E.2d 113, 119 (1995) ("A local government ordinance conflicts with a State law when its conditions, express or implied, are inconsistent and irreconcilable with the State law."). Accordingly, the City is entitled to judgment on the pleadings with respect to the Plaintiff's first cause of action for declaratory judgment.

(Motion, R. at ____). Appellants filed a motion for summary judgment. (Motion, R. at ____).

The motion for a temporary restraining order and preliminary injunction was heard on May 31, 2024. (Order, R. at ____). Following the hearing, the City filed a renewed motion for judgment on the pleadings or, in the alternative, for summary judgment on the same grounds as its earlier motion. (Motion, R. at ____).

The circuit court denied the request for temporary or preliminary relief by order dated June 21, 2025, finding that Appellants had failed to avail themselves of remedies available to address the alleged harm as to the claims against DES, that Appellants had failed to establish that they would suffer imminent harm if the court did not enjoin DES from exercising its regulatory

authority in the “Beaches Critical Area,” and that Appellants had not shown that they were likely to succeed on the merits as to either DES or the City. (Order, R. at ____). By agreement of the parties, the case was referred to the master-in-equity (“master”) “for a speedy hearing and decision on the merits.” (*Id.*).

On December 9, 2024, the master heard each party’s dispositive motions. DES presented first, followed by the City, followed by Appellants. (Trans., R. at ____). Appellants did not offer any argument at the hearing with respect to whether the Act preempts section 5-4-15(B). (*Id.*). Nor was there any mention of the title documents for Appellants’ properties.

By order dated January 27, 2025, the master denied all three motions, finding:

<p>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.</p>

(Order, R. at ____). The City moved to alter or amend on February 6, 2025, arguing in part:

The City submits that the order does not rule on the City’s arguments with respect to its motion for judgment on the pleadings or for summary judgment, which relate to the legal question of whether Section 5-4-15(B) of the City’s Code of Ordinances is preempted by the [Act]. Nothing about the claim made against the City or the City’s counterclaims relates to the “location of current setback and baselines, as well as the dune system of the Beach’s critical area.” There are no factual issues to be resolved on these points. Instead, this is a purely legal question relating to whether a City ordinance is valid. . .

The Act on its face contemplates cooperation between various entities and there is no question but that the City has a general power to zone within its municipal limits. The Act’s collaborative approach is very different 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)). Section 23-31-510,

concerning firearms, is a good example of statutory language required to preempt the 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. At the hearing, Plaintiffs did not have a response to these arguments. And, there is no response other than that there is no preemption. On its face, the Act makes manifest an intent that there will be other enactments by other governing bodies. *See e.g.*, S.C. Code Ann. § 48-39-100(B).

The Court’s order does not rule on this point and instead denies the motion based on its concerns 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.” To the extent there are factual questions on these points, those relate to Plaintiffs’ claims against [DES], not the claims against the City.

(Motion, R. at ____). The master granted the motion by order dated March 7, 2025, finding that section 5-4-15(B) was a valid zoning ordinance that was not preempted by the Act and that Appellants purchased with record notice of “the City’s policies and ordinances relating to construction on beaches and dunes.” (Order, R. at ____). Consistent with these findings, the master directed the following judgment:

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.

(*Id.*). This appeal followed.

FACTS

Section 5-4-15(B) is found within the zoning chapter of the City's Code of Ordinances and provides,

(B) No land, building or other manmade structure situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10, as amended, but within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet, shall be used, occupied, constructed, erected, altered or moved except in compliance with the requirements set forth in this section and all other requirements set forth in this chapter or any other City ordinance.

(1) Only beach-compatible sand may be used for any erosion control or beach renourishment activities. **Sea walls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures or devices are strictly prohibited.** Hard erosion control structures or devices shall include bags with a capacity greater than five (5) gallons per bag. Hard erosion control structures or devices shall not include bags containing beach-compatible sand with a capacity of five (5) gallons or less per bag, subject to the following restrictions:

(i) No straps, soldier piles, tape, wire, rope, or any other material or device shall be used to hold together or fasten any sand bags in place;

(ii) No filter cloth, geotextile fabrics, mats or other underlayments shall be placed in conjunction with the use of any sand bags; and

(iii) All sandbags shall be commercially manufactured for the purpose of holding sand, be tan, off-white, or white in color, and manufactured with single layer fabric, with a grab tensile strength not exceeding three hundred (300) pounds or a trapezoidal tear strength not exceeding one hundred (100) pounds.

(2) Walkways over sand dunes which meet all of the requirements of S.C. Code 1976, § 48-39-130(D), as amended, and all regulations promulgated thereunder, shall be allowed.

(3) Placement of sand fence and installation of vegetation in accordance with OCRM Critical Area Regulations R.30-13 shall be allowed.

(4) Other than walkways over dunes, sand fencing and vegetation, no alteration of primary oceanfront sand dunes shall be allowed.

(Answer at Ex. 10 (emphasis added), R. at ____). This provision, as amended from time to time, has been included in the City's Code of Ordinances since 1974. (Beach and Sand Dune Protection Ordinance of 1974, attached as Exhibit 2, R. at ____). Appellants own beachfront properties located within the City, and each purchased their property subject to the City's ordinances and with specific reference to this ordinance in their chain of title. (Exs. 1-7 to Answer, R. at ____).

I. History of "Beach and Sand Dune Protection" in the City.

The City has been protecting its beaches and sand dunes since 1974. (Ex. 2). The 1974 ordinance regulated "activities and alterations of beaches and sand dunes," and declared "activities on and alterations of beaches and sand dunes that are likely to weaken or alter significantly the protective function or sand-sharing system of beaches and sand dunes are hereby declared to be negligence per se." (*Id.* at ¶ 6-12, R. at ____). The ordinance defined the terms "sand dune" and "beach" as follows:

(a) "Sand Dune" means a hill or ridge of loose, windblown sand, with or without vegetation, located between Dewees Inlet, the Atlantic Ocean or Breach Inlet and the upland from Morgan Creek to the Breach Inlet Bridge, within the Protection District as defined in Section 6-14.

(b) "Beach" means the area between the mean high-tide mark and the mean low-tide mark of the waters of Dewees Inlet, the Atlantic Ocean or Breach Inlet from Morgan Creek to the Breach Inlet Bridge.

(*Id.* at ¶ 6-13, R. at ____). The ordinance then describes a "limited activity area" and a "general permit area" as follows:

Section Limited Activity Area.

(a) The Limited Activity Area shall include the beaches and sand dunes from the mean low-water mark to a point fifty (50) feet landward of the crest of the most seaward stable dune or of a point where the most seaward stable dune is likely to form. In areas where no functioning sand dune system exists or is likely to form, factors such as hydrography, currents and beach profile shall be given consideration in determining the boundaries of the Limited Activity Area.

(b) No significant activity or alteration shall take place within the Limited Activity Area, unless it can be shown that the activity or alteration is not likely to weaken or alter significantly the protective function or sand-sharing system of beaches and sand dunes, nor likely to prevent the formation of new dunes.

Section The General Permit Area.

(a) The General Permit Area shall include all beaches and sand dunes in the Protection District not included in the Limited Activity Area.

(b) Activities or alterations shall be permitted in the General Permit Area only if it can be shown that such activity is not likely to weaken or alter significantly the existing dunes nor prevent the formation of new dunes.

(*Id.* at 6-14, R. at ____). Thus, construction in any beach or sand dune area within the Isle of Palms has been restricted for the last 50 years.

Over time, this provision has been amended consistent with the terms of the Act, to include the addition in 1997 of a provision banning hard erosion control devices “landward of the critical area as defined in S.C. Code Section 48-39-10, as amended, but within a 250 foot radius of the mean high water mark of the Atlantic Ocean . . .,” and expressly prohibiting “[s]eawalls, revetments, groins, rip-rap or any other hard erosion control structures or devices[.]” (Answer at Ex. 16, R. at ____). The 1997 amendment further stated that no construction will be allowed

within a critical area without compliance with the Act. (*Id.*). This section has since been amended twice more, but the bar on the use of “[s]eawalls, revetments, groins, rip-rap or any other hard erosion control structures or devices” has remained. (*See* Answer at Exs. 10, 14-15, R. at ____).

The current version, section 5-4-15, has been in place since 2007. (Answer at Ex. 10, R. at ____). As set forth there, hard erosion control devices are banned, but property owners are left with other alternatives, including sand fences and placement of vegetation. (*Id.*).

The City has emphasized its commitment to the policy set forth in Section 5-4-15 (and its predecessors) by requiring that all beachfront plats include the following note:

The City of Isle of Palms, at the time of the approval of this plat, prohibits the issuance of any permits for any kind of hard beach erosion control structures or devices (i.e., sea walls, revetments, rip-rap, bulkheads, groins, large sandbags, etc.) within the area landward of the OCRM critical area and within a 250-foot radius of the mean high water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet, and strongly opposes the issuance of any permits for hard beach erosion control structures elsewhere in the City.

(Answer at Ex. 11, R. at ____).

The City’s ordinances are reviewed and approved by the Office of Coastal Resource Management (“OCRM” now known as the Bureau of Coastal Management (“BCM”) within DES) as part of the City’s approved Local Comprehensive Beach Management Plan. (Attached as Exhibit 3; *see* §§ 2.3, 4, 4.2.4-4.2.6, 5.3, R. at ____). Each of these facts relating to the City’s ordinances is a matter of public record and was not disputed by the Appellants.

II. Appellants purchased their property on notice of the City’s ordinances and that the southern boundary lines of the property were subject to fluctuation.

The deeds and plats for Appellants’ properties are attached to the City’s answer. (*See* Answer at Exs. 1-7). With the exception of the two most recent deeds for the Villa Las Palmas, LLC parcel, the recent chain for each of the Plaintiffs’ properties includes an acknowledgment in

the property description that the southern boundary of these parcels is subject to change over time based on the mean high water mark of the Atlantic Ocean. (Answer at Ex. 2 (“and to the South by the mean high water mark of the Atlantic Ocean (as the same may exist from time to time) . . . “the southern boundary may have fluctuated since the mean high water mark was surveyed for purpose of said plat.”), Ex. 3 (same); Ex. 5 (same); Ex. 6 (same); Ex. 7 (same)).

In addition, the chain for each parcel includes a reference to a subdivision plat that includes notes addressing the City’s policies and ordinances as follow:

- 9 Portions of the property shown on this plat may lie within 250 feet of the mean high water mark of the Atlantic Ocean and thereby may be subject to the Dunes Permit Ordinance of the City of Isle of Palms Under the Isle of Palms Dunes Permit Ordinance, the 250 foot line must be re-established by survey at the time building permits are applied for, as such line changes from time to time
- 10 No house may be located closer to the ocean than either the "Maximum Building Line" as depicted on this plat or the point 250 feet from the mean high water mark at the time of the application for a building permit, whichever point shall be closer to Ocean Boulevard
- 15 The Isle of Palms City Council at the time of the approval of the conditional plat stated for the record that it strongly opposed the future issuance of any permit for any kind of beach erosion control structures (i.e., sea walls, riprap, bulkheads, etc) should such measures be requested by property owners as a result of erosion to these properties shown on this plat
- 17 The South Carolina Coastal Council Critical Line was established during July and August 1987 and is subject to change over a period of years

(Answer at Ex. 4). Given this background, Appellants were on record notice at the time they acquired their parcels that the southern boundary of their properties was subject to fluctuation and that they would not be able to construct any kind of beach erosion control structure.

STANDARD OF REVIEW

A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “Where cross motions for summary judgment are filed, the parties concede the issue . . . should be decided as a matter of law.” *Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011); *see also Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 579, 823 S.E.2d 697, 700 (Ct. App. 2019).

“Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984). This Court must view the facts and inferences in the light most favorable to the nonmoving party. *See, e.g., Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). If a motion has been properly made and supported, the nonmoving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004).

ARGUMENT

Appellants spend much of their brief rehashing their arguments with respect to DES and critical areas, baselines, and setbacks under the Act.² Those arguments have no bearing on the legal issue of whether section 5-4-15(B) is valid. Nor do they have any bearing on the documents in Appellants’ chain of title. The City has not taken any action that is inconsistent with the Act,

² The term “critical area” is defined in the Act. Under S.C. Code Ann. §48-39-10(J), “critical area” means any of the following: “(1) coastal waters; (2) tidelands; (3) beaches; and (4) beach/ dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” Each of these subsections is a distinct category of critical area. “Beaches Critical Area” is defined in S.C. Code Ann. § 48-39-10(H) as “those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.” Under this definition, the determination what constitutes the beaches critical area is made without reference to the setback line (unlike the beach/dune system critical area).

but has instead enacted zoning provisions in the ordinary course that have been reviewed and approved by DES as contemplated by the Act. In their brief, Appellants do not dispute the documents underlying the master's ruling (the ordinances, DES approved Local Comprehensive Beach Management Plan, and recorded deeds and plats). Instead, they contend the master erred as a matter of law in upholding the City's ordinance.

I. Section 5-4-15 is not preempted by the Act.

This case does not present a novel issue. It presents a garden variety preemption argument. As a general matter, 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 municipal 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 enact zoning ordinances, restricting the use of privately owned property is founded in the police power."). Section 5-4-15(B) is simply a zoning ordinance applicable to property within the City's

limits that is “landward of the critical area as defined in S.C. Code 1976, § 48-39-10, as amended, but within a two hundred fifty-foot (250’) radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet[.]”

It is this general power to zone, applicable to all property within the City’s limits, which provided the City with the power to enact section 5-4-15. Nothing in the Act strips the City of this general power landward of the critical area. The City has every right to regulate within its municipal limits, including beachfront property landward of critical areas. *See Braden’s Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 181–82, 886 S.E.2d 674, 679–80 (2023) (discussing ability of City of Folly Beach to enact zoning regulations applicable to beachfront property).³

Appellants contend that section 5-4-15(B) is preempted in its entirety by the Act. This argument lacks merit given the language of the Act and section 5-4-15. In considering whether a local ordinance has been preempted by a state statute,

[a] two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the State.

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. Furthermore, for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other.... If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.

³ Although Folly Beach is exempted from some of the Act’s requirements, *Braden’s Folly* stands for the general proposition that a municipality can regulate in beach areas subject to the Act and for the proposition that the Act contemplates that both state and local governments have a role in beachfront management.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations and quotations omitted).

Rather than expressing an intent to preempt the entire field of beachfront management, the Act embraces an “all hands on deck” approach. This intent is illustrated in the following code sections from the Act, which are presented as examples and not as an exhaustive list:

1. 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.”);
2. 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.”);
3. S.C. Code Ann. § 48-39-260 (“In recognition of its stewardship responsibilities, the policy of South Carolina is to: . . . (2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system. These plans must promote wise use of the state’s beachfront; (3) severely restrict the use of hard erosion control devices to armor the beach/dune system and to encourage the replacement of hard erosion control devices with soft technologies as approved by the department which will provide for the protection of the shoreline without long-term adverse effects; (4) encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system; . . . (7) involve local governments in long-range comprehensive planning and management of the beach/dune system in which they have a vested interest[.]”); and
4. S.C. Code Ann. § 48-39-350 (setting forth contents of local comprehensive beach management plans).

Based on these provisions, the General Assembly expressly contemplated that local governments have authority and are integral players in the management of South Carolina's coastal zones to include zoning ordinances. *See* S.C. Code Ann. § 48-39-100(B). As such, there is no indication of any legislative intent that no other enactment may touch upon the subject of beachfront management. *See S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006) (“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.”). Consistent with S.C. Code Ann. §§ 48-39-100(B) and -350, DES has evaluated and approved the City's zoning ordinances. (*See* Ex. 3 at §§ 2.3, 4, 4.2.4-4.2.6, 5.3, R. at ____).

This collaborative approach is bolstered by the language of section 5-4-15, which provides in (A):

No land or building situated in whole or in part in a critical area as defined in S.C. Code 1976, § 48-39-10, as amended, shall be used, occupied, constructed, altered or moved without compliance with the State of South Carolina Beachfront Management Act (S.C. Code 1976, § 48-39-10 et seq., as amended).

(Ex. 10, R. at ____). Thus, there is no inconsistency or conflict between the ordinance and the Act because the City recognizes that the Act must be followed within any critical area. Therefore, the City was entitled, as a matter of law, to judgment declaring that section 5-4-15(B) is valid and not preempted by the Act. As such, the judgment should be affirmed.

II. The master correctly found that Appellants purchased their properties with record notice of the City's ordinances and are subject to the terms of section 5-4-15.

As set forth above, Appellants own beachfront properties within the City's limits. Those properties are subject to the City's Code of Ordinances, including section 5-4-15. Appellants had record notice of the City's policies and ordinances relating to construction on beaches and dunes as set forth above and as shown in the deeds and plats attached to the City's counterclaim, which

were admitted by Appellants. Appellants did not present any evidence or any argument on this point in response to the City's motion to summary judgment. Therefore, the Court was correct in entering judgment in the City's favor as required by Rule 56(e), SCRPC.

In addition, there is no mention of the notice issue in Appellants' memorandum opposing the City's motion, at the hearing, or in their response to the City's motion to alter or amend. As such, this issue is not preserved for this Court's review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (holding that an argument must have been raised to and ruled on by the circuit court to be preserved for appellate review).

CONCLUSION

The City is free to zone and regulate development within its limits. That is what the City has done in its beachfront areas, beginning fifty years ago. Nothing in the Act changes the City's ability to exercise its powers landward of the critical areas. As such, the master correctly entered judgment in the City's favor, and that order should be affirmed on appeal.

Respectfully submitted,

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