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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,

v.

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 Homeowners 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 Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants,

v.

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

FINAL BRIEF OF RESPONDENTS SPARTANBURG COUNTY, SPARTANBURG COUNTY PLANNING COMMISSION AND BLUE SKY ASSOCIATES, LLC

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STATEMENT OF ISSUES ON APPEAL

The issues enumerated in both Appellants' Statement of Issues on Appeal are largely the same. The HOA Appellants adopted by reference all the Issues identified by Appellant Native Plant Society (NPS) although NPS did not explicitly list the finality issue in its Statement. The HOA Appellants independently raise the sixth issue.

1. The Circuit Court's Order was not a final order subject to appeal. If the Court cannot determine what the Circuit Court intended, the Court should remand the matter back to the Circuit Court for clarification. However, if the Court finds the Order was final and appealable, Rule 203(b)(1), SCACR requires Respondents to be given an opportunity to challenge the Circuit Court Order.
2. The Circuit Court did not err in concluding that the Spartanburg County Planning Commission (Commission) did not violate the Preamble or Sections 3.13 (2) and (8) of the Unified Land Management Ordinance (ULMO) in issuing its approval.
3. The Circuit Court did not err in concluding that the Commission did not violate the County's Rules of Procedure in declining to reconsider its decision.
4. The Circuit Court did not err in concluding that the Commission did not violate S.C. Code Ann. § 6-29-1150(B).
5. The Circuit Court did not err in remanding the matter back to the Commission.
6. The arguments of the HOA Appellants attacking the sufficiency of the ULMO are meritless and are not a ground for overturning the actions of the Commission.

STATEMENT OF THE CASE

A collection of four Homeowners Associations, five individuals, and one LLC, (collectively "HOA Appellants") along with the NPS separately appealed a decision of the Spartanburg County Planning Commission granting approval for the development of a Recreational Vehicle Park ("RV Park") called T. Tree Farms RV Park. After a lengthy pre-submittal and review process, on March 7, 2023, the Commission voted to approve the plan (hereinafter the "Plan") for the project.

The HOA Appellants and NPS filed notices of appeal to the Circuit Court on April 4, 2023. On March 31, 2023, NPS filed what it styled as a request that the Commission reconsider its approval. When the Commission did not act on that request, on April 17, 2023, NPS filed a separate appeal of that inaction. The HOA Appellants did not file a request for reconsideration, but on April 18, 2023, they also filed a separate appeal relating to the Commission's failure to reconsider.[1] The court consolidated the four appeals for hearing. After a hearing, on April 22, 2024, Judge Hayes issued an order denying the Appellants' requests for relief on all but two issues. One issue upon which Judge Hayes granted relief involved the Commission's decision to approve a Plan without comfort stations. In his formal Order Judge Hayes found that the Commission erred in applying the regulatory definition of "Public Water System" found at S.C. Code Ann. Regs. 61-58 (B)(150) where the ULMO uses the term "public water." The Order also stated the approval was "vacated." Respondents filed a joint motion for reconsideration on the "public water" question and the procedural remedy. After a hearing, on September 26, 2024, Judge Hayes issued a Form 4 Order.

[1] On March 28, 2023, an unincorporated group of "Concerned Citizens" filed what it styled as a request for reconsideration with the Commission. In its second Notice of Appeal the HOA Appellants claimed to challenge the Commission's failure to act on the "Concerned Citizens" request and Plant Society's request.

In it, he only clarified that the matter would be remanded back to the Commission. He declined to give further direction to the Commission. On the Form 4 Order, Judge Hayes checked the box indicating that the Order did not end the case, and it included the language "[s]ee page 2 for additional information. Formal Order to follow." (R. p. 15). Based on this, Respondents waited for a formal order to follow. However, on October 28, 2024, the HOA Appellants and the NPS noticed and filed appeals. They challenged the provisions of the Form 4 Order, and they also challenged the findings of Judge Hayes from the April 22, 2024, Order. On November 20, 2024, Respondent Blue Sky moved to dismiss the appeals as the Order was not a final Order. This Court denied the motion to dismiss but allowed the parties to address appealability in their briefs.

RESPONDENTS' STATEMENT OF FACTS

The facts giving rise to this appeal began with Blue Sky's 2023 application to the Spartanburg County Planning Commission for an RV Park located in Spartanburg County at 1970 Landrum Mill Road near Campobello. (R. pp. 707-736). Appellants include four homeowners' associations representing owners of residences and hobby farms near the proposed RV park site, five individual property owners, a Limited Liability Company, and an environmental non-governmental organization. For nearly four years they have waged a campaign to defeat Blue Sky's development. This has resulted in five Planning Commission appeals, an appeal over a septic system that ended in this Court, and a pending case for injunctive relief over a water supply system.[2] In this latest challenge against the Commission's action, Appellants raise lengthy claims of violations of the ULMO, that the Commission acted improperly by failing to reconsider its

[2] The individual appellants were parties in a prior Planning Commission appeal, but not the septic system appeal. The appeals giving rise to this case marks the first appearance of NPS as a party. The Circuit Court case over the water supply is being carried on by one of the HOAs against one of its own members.

decision, and that it violated state law by failing to explain its decision. (*HOA Appellants' Brief* at 9-11, *NPS Brief* at 24-25). Appellants further attempt to relitigate issues which were determined adverse to the HOA Appellants in a 2024 decision of this Court. (*HOA Appellants' Brief* at 5-8, *NPS Brief* at 20-22.) Appellants include lengthy discussions of the actions of the Greenville County Planning Commission, (*NPS Brief* at 6, R. pp. 972-998) and exhibits on threatened species that were submitted to the Commission. (R. pp. 934-967, 1075-1109, 1119-1121). The substance of these is properly left to the Argument section of this Brief.

Following the Respondents' Rule 59(e), SCRCP motion, on September 24, 2024, Judge Hayes issued a Form 4 Order that remanded the case back to the Commission. In NPS' brief, it states that Respondents "…have not appealed the Circuit Court's decisions that the Commission violated the Ordinance by approving a site plan for an RV Park that is not served by public water and that did not have public restrooms." (*NPS Brief* at 11). As discussed in the Argument section *infra*, under Rule 203(b)(1), Respondents were not required to file an appeal at the time. Respondents crave reference to the Form 4 Order itself in its entirety and argument on that issue.

STANDARD OF REVIEW

Both the Circuit Court and this Court have the same standard of review as both act in an appellate capacity reviewing a decision of the Planning Commission. S.C. Code Ann. § 6-29-1150 states the standard of review and requires the same level of deference given to findings of fact by a jury. "The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). This is the most deferential standard of review found in state law. The extreme deference given to the Commission's decision is called the "any evidence" standard. The Court is not free to substitute its judgment for that of the Commission. *Town of Hollywood v. Floyd*, 403

S.C. 466, 476, 744 S.E.2d 161, 166 (2013); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying the "any evidence" standard of review applicable in appeals of jury verdicts to appeals of planning commission decisions). Planning commissions are entitled to this deference because of the Supreme Court has recognized "…the legislature's intent [to grant] a planning commission broad discretion in this area." *Kurschner*, 376 S.C. at 173-74, 656 S.E.2d at 351. To do otherwise would have courts stand in the shoes of the Planning Commission. Commission decisions are subject to review for errors of law. *See*, *Kurschner*, 376 S.C. at 173-74, 656 S.E.2d at 351. Decisions affected by errors of law may "…be overturned if [they are] arbitrary, capricious, [have] no reasonable relation to a lawful purpose, or if the [Commission] has abused its discretion." *Rest. Row Assocs. v. Horry Cnty*., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); *see also Gurganiuous v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995) (decision to be upheld absent abuse of discretion).

Appellant NPS improperly cites to the *Mikell* case, both in terms of its caption and its holding. Appellant's Brief contains the bare statement, "Issues involving the construction of an ordinance are reviewed as a matter of law." (*NPS Brief* at 12). The case is *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2009) and the complete citation is:

> [i]ssues involving the construction of an ordinance are reviewed as a matter of law **under a broader standard of review than is applied in reviewing issues of fact.** *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id*. at 568, 666 S.E.2d at 894 *citing Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). The determination of legislative intent is a matter of law.
>
> *Id.,* 386 S.C. at 158 (emphasis added).

The *Mikell* decision prescribes a different standard of review for the County's interpretations of its own ordinances. While it is "broader" than the "any evidence" standard for reviewing findings of fact, the County's interpretations of its own ordinances are to be accorded "great deference."[3] *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) (emphasizing the "great deference" accorded to the decisions of those charged with interpreting and applying local zoning ordinances). A court will refrain from substituting its own judgment for that of the reviewing body, even if it disagrees with the decision. *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014). The appellate courts are prohibited from writing into an ordinance language restricting property rights to a greater degree than intended by the legislative body. *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015).

ARGUMENT

1. **Dismissal or other disposition of this appeal is proper as the Form 4 Order is not final. Summary disposition is proper if the Court cannot determine what the Circuit Court intended. If the Court finds the Order is final, Respondents are entitled to file their own appeal pursuant to Rule 203 (b)(1), SCACR.**

Rule 201, SCACR, states: "[a]ppeal may be taken…from any final judgment, appealable order or decision." S.C. Code Ann. § 14-3-330 identifies what constitutes an appealable order. The appealed-from order in this matter does not fall within the categories set forth within the statute: It does not involve the merits of the case, it is not a final judgment, it does not affect a substantial right, it does not strike a pleading, and it does not involve injunctive relief or the appointment of a receiver. It is not immediately appealable under Rule 201, SCACR or S.C. Code Ann. § 14-3-330.

[3] A standard where the County's interpretations of its own ordinances are reviewed under a mere error of law standard affords the County no deference, in contravention of the Supreme Court's holding in *Mikell.*

NPS pastes images of pieces of the Order into its Brief, stating that because the "Statement of Judgment" box was checked, the Order was final. It further states that "[i]n any event, the Circuit Court never issued any other Order. Accordingly, the September 2024 Order is a final order and this appeal is proper." (*NPS Brief* at 13). But the appeals took the case away from the Circuit Court, leaving it unable to issue a formal Order. Rule 205, SCACR states:

> Upon the service of the notice of appeal, **the appellate court shall have exclusive jurisdiction over the appeal**; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (emphasis added)

See Tillman v. Oakes, 398 S.C. 245, 255-56, 728 S.E.2d 45, 51 (Ct. App. 2012). By filing these appeals, Appellants deprived the Circuit Court of the ability to issue a final formal order, and so they cannot argue the Court's alleged inaction to support their argument for finality. Issuance of a final formal Order would not be a "matter not affected by the appeal."

There is a line of cases where the appellate courts of this state have held that where an order of the circuit court remands a case for additional proceedings before an administrative agency, that order is not immediately appealable. "[W]e have consistently held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable." *Montjoy v. Asten-Hill Dryer Fabrics*, 316 S.C. 52, 52, 446 S.E.2d 618, 618 (1994) (holding that an appeal from a circuit court order remanding the case to an agency is interlocutory and dismissing the appeal); *See Owens v. Canal Wood Corp.*, 281 S.C. 491, 316 S.E.2d 385 (1984); *Hunt v. Whitt*, 279 S.C. 343, 306 S.E.2d 621 (1983); *Brown v. Greenwood Mills*, 366 S.C. 379, 622 S.E.2d 546 (Ct. App. 2005); *S.C. Baptist Hosp. v. S.C. Dept. of Health and Env'tl Control*, 353 S.E.2d 277, 291 S.C. 267 (Ct. 1986). Judge Hayes' remand Order should

not have been appealed; his remand back to the administrative agency (the Commission) should not have been disturbed.

Although Judge Hayes did clearly check the box "this order does not end the case," and as it clearly uses the word "remand," the Form 4 Order is not a model of clarity. The "Decision by the Court" box was not the proper selection as this was an appeal to the Circuit Court. "Disposition of Appeal to the Circuit Court" should have been selected, and the applicable box (presumably "remand") selected thereunder. The box "Statement of Judgment by the Court" was checked, with a paragraph of provisions stated, including the remand; under "Order Information" the box "This order [X] does not end the case." was checked. Further, under "Additional Information for the Clerk:" it states "See page 2 for additional information. Formal Order to follow." Page two contains no additional information. (R. pp. 15-16). During the hearing Judge Hayes only stated he would issue a "short order" on the remand issue; he did not state whether he would issue only a Form 4 Order or a more formal order. (R. p. 636). However, he did state that the case would have to go back down to the Planning Commission for review; he was clear on that. (R. pp. 632-634). Whether this case is dismissed as being prematurely filed, based on what Judge Hayes did say in his Form 4 Order, or if the Court cannot determine what Judge Hayes meant and remands the case with instructions for him to clarify himself, the result is functionally the same. If it is remanded with instructions, Judge Hayes will clarify his Order, the case will not be ended; it will be remanded for review by the Commission. The Appellants will have a right to appeal the decision of the Commission, just as they have appealed every prior decision made by the Commission relating to this project. If this case is merely dismissed, either Judge Hayes will issue a complete order *sua sponte* upon receiving the remittitur, or if he does not, the case will simply go back down to the Commission for review under the Form 4 Order. Once the Commission acts, Appellants will

have the right of review which they will undoubtedly exercise. In either case the outcome is the same. As Judge Hayes "…declined the invitation to give further direction to the commission," (R. p. 15), the Commission is free to decide what issues can be re-raised on remand. (R. pp. 632-33). NPS states that "Respondents have not appealed the Circuit Court's decisions that the Commission violated the Ordinance by approving a site plan for an RV Park that is not served by public water[4] and that did not have public restrooms." (*NPS Brief* at 11). Inaccuracies aside, Respondents were not required to appeal at the time. Under Rule 203(b)(1), SCACR, "[w]hen a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment." Respondents are entitled to rely on the Form 4 Order's promise of a "formal order" and so Respondents need not notice an appeal 30 days after receiving the Form 4 Order. Regardless of the specific remedy sought, this case is not ripe for adjudication by this Court.

If the Court were to find that Judge Hayes' Order was final, it would work a substantial injustice upon Respondents if they were not allowed the opportunity to file their own appeal if they wished to challenge any of the adverse findings of the Circuit Court. They were entitled to rely on the provisions of Rule 203(b)(1). If the Court determines this case is ripe at this time, it must afford Respondents the opportunity to serve and file their own appeals.

2. The Commission did not violate the Preamble, Sections 3.13 (2) (natural features) and 3.13 (8) (septic) of the ULMO.

[4] This is not what Judge Hayes ruled in his April 22, 2024, Order; he held that the Commission erred in relying on the DES (then DHEC) definition of "Public Water System" found at S.C. Code Ann. Regs. 61-58(B)(150). (R. pp. 7-8) Furthermore, the order does not reach the other requirement for Commission approval, a system "approved by DHEC." This was not an issue Respondents could have raised at the time as the drinking water permit had not yet been issued. Respondents raised this in their Rule 59(e) Motion, but the Court did not address it. (R. pp. 586-88).

The Preamble of the ULMO states that one of the purposes of the Ordinance is to protect "ecologically sensitive areas." However, this does not rise to the level of any substantive requirement. Section 3.13(2) of the ULMO pertains to RV Parks and simply states: "[t]he site shall be developed in a manner that preserves natural features and landscape." This vague qualitative requirement also cannot be elevated to impose specific requirements on a project. Disposition of this issue on appeal is a matter of showing the existence of evidence in the record supporting the Commission as this is a matter of fact. As argued to the Circuit Court, the Plan's provisions for setbacks from the street and water bodies, as well as ULMO-mandated screening features, satisfies these requirements. (R. pp. 538-40, 703). Additionally, the project proposes to leave more than half of the parcel's 38.68 acres undisturbed, preserving most of the site's natural features and landscape. (R. pp. 539, 703, 732-33). This is unquestionably evidence supporting the findings of the Commission.

In its Brief, NPS devotes some four pages to the evidence Appellants put on the record supporting their proposition that the Plan did not comply with these provisions of the Ordinance. They include the actions of the Greenville County Planning Commission, which have nothing to do with Spartanburg County. Again, these are questions of fact, and the appellate court's role is limited to determining the presence or absence of evidence. The Commission did not agree with the Appellants, and the Circuit Court rejected them as well. The Court may not stand in the shoes of the Commission. Appellants' claims go to the sufficiency of the evidence and must fail.

Appellants next attack the DHEC-permitted septic system. As ULMO Section 3.13(8) states in pertinent part, RV parks "…shall be serviced by public water and sewer or **other systems approved by DHEC**." (emphasis added). In late 2021, the four HOAs in the instant appeal filed an untimely request for administrative review of Blue Sky's septic system permit after DHEC staff

issued its decision granting the permit. Under S.C. Code Ann. § 44-1-60, failure to timely invoke the authority of the Board removes the Board's jurisdiction and voids any action taken on the staff decision. *Knight Pub. Co. v. Univ. of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) (when a statute "affixes the time within which an action may be commenced…; commencement within the time affixed is then an indispensable condition of the action."). *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 775 (S.C. 2004). Notwithstanding the untimeliness of the action, members of the DHEC Board improperly took up the matter and reversed the staff's decision to grant the septic system permit. Blue Sky sought a contested case hearing at the Administrative Law Court to correct the Board's error, and the ALC reversed the DHEC Board. (R. pp. 22-42); *T. Tree Farms RV Park v. S.C. Dep't of Health and Envtl. Ctrl.*, et al., No. 22-ALJ-07-0010-CC (S.C. ALC Nov. 29, 2022). In so doing the Court ruled, "...the Court hereby vacates the Board decision and reinstates the Department's staff decision to grant the Blue Sky permit." (R. p. 42). The ALC determined that the DHEC Board had no authority to review an untimely filed appeal. (R. pp.41-42). The HOA Appellants appealed their loss to this Court, and the Court upheld the decision of the ALC. *T. Tree Farms RV Park v. S.C. Dep't of Health and Envtl. Ctrl. et al.*, Opinion No. 2024-UP-241 (Ct. App. filed July 3, 2024). Subsequently, the General Assembly did away with the DHEC Board entirely.

Appellants maintain that because the ALC's reversal was on procedural grounds (specifically, that the DHEC Board had no business taking up the matter in the first place), the system was not "approved by DHEC." This argument is absurd on its face. DHEC staff approved the permit. The ALC conducted *de novo* review of the matter, vacated the decision of the DHEC Board, and reinstated the decision of DHEC staff. This Court upheld the decision of the ALC, and of DHEC staff. To argue otherwise would render the review process under the Administrative

Procedures Act a nullity. Indeed, Appellants are attempting to collaterally attack the HOA Appellants' defeat in this action, effectively arguing that unless they had a chance to litigate the septic system permit on the merits, the holdings of the ALC and of this Court are null and void.

The HOA Appellants echo the arguments of NPS, adding a long argument attempting to re-litigate their loss in that case and claiming that somehow the timeliness issue does not apply. They attempt to raise S.C. Code Ann. § 48-1-50(5). This provision of the Pollution Control Act gives the Department of Environmental Services (DES) authority to revoke permits, but the Board did not do that, as discussed by the Administrative Law Court in its Order. (R. pp. 29-30); *T. Tree Farms RV Park v. S.C. Dep't of Health and Envtl. Ctrl.*, *et al.*, No. 22-ALJ-07-0010-CC, at 8-9 (S.C. ALC Nov. 29, 2022). HOA Appellants' citation to S.C. Code Ann. § 48-1-100(C) is likewise inappropriate; it is a general grant of agency authority over the field of septic system permitting, not a specific grant of jurisdiction to review a particular agency decision. In vain, HOA Appellants repeatedly attempt to revive their challenge to this permit.

The HOA Appellants also recite a parade of alleged horribles relating to the septic system, which is again, not at issue before this Court. DHEC's issuance of that permit is final and unappealable because the HOA Appellants failed to timely petition for rehearing following this Court's July 3, 2024, decision. *See* Order in *T. Tree Farms RV Park*, case 2022-001792, issued September 19, 2024, declining to consider an untimely petition for rehearing. They further claim that the change in the water source renders the septic permit void. But this would be a decision for DES to make, not the HOA Appellants. To allow a third party to arrogate to itself DES' permitting and enforcement authority creates a private right of action. The General Assembly emphatically stated that no such right existed when in 2012 it amended S.C. Code Ann. § 48-1-250 to read:

> No private cause of action is created by or exists pursuant to this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.

If DES concludes that the septic system permit should be revoked, that is a decision for DES to make, not Appellants, and certainly not in an attack on a decision of a local Planning Commission.

3. The Circuit Court did not err in rejecting Appellants' arguments regarding the Commission's decision not to "reconsider" its decision.

NPS makes the following argument:

> Respondents may contend that only a Commission member may move to reconsider and that only the Commission may reconsider its decision. To be sure, that is the procedure for reconsideration. The Native Plant Society does not contend that it had the ability to move for reconsideration. Instead, the Society points out that the Commission acted arbitrarily and capriciously and abused its discretion when it decided not to reconsider its illegal decision and its violations of the Ordinance after being informed of such violations. The Circuit Court erred in holding otherwise. (*NPS Brief* at 23-24).

Indeed, that is the crux of the argument. Spartanburg County Council Rules & Procedures, § 12-4 limits who may request reconsideration and when. It states that motions to reconsider:

> …may be made only on the day such action was taken or at the next Regular Council meeting. Such motion must be made by a Council member voting on the prevailing side, but may be seconded by any other Council member, and may be made at any time.

NPS claims that by not acting on its request for reconsideration, this somehow constitutes an independent ground for reversal after the Commission "…decided not to reconsider its illegal decision..." (*NPS Brief* at 23-24). NPS was granted the opportunity to litigate the alleged delicts of the Commission at the Circuit Court, but the Commission's refusal to take up its complaints do not provide independent grounds for reversal. The appeal route Appellants have taken advantage of is the proper, and only, venue for adjudicating allegations that the Commission erred in

approving Blue Sky's Plan. The fact that the Commission did not agree with NPS's request for reconsideration does not constitute a ground for reversal.

4. **The Circuit Court did not err in rejecting Appellants' arguments regarding S.C. Code Ann. § 6-29-1150(B), and the "variance" issue.**

S.C. Code Ann. § 6-29-1150(B) simply requires the Commission to maintain as a public record the reasons for its decisions with the grounds for approval or disapproval. Appellants attempt to elevate this to a substantive requirement, which is inappropriate. The statute does not require the Commission to make specific findings. By contrast, when a Board of Zoning Appeals issues a variance, S.C. Code Ann. § 6-29-800(A)(2) requires "…the board makes and explains in writing" specific findings enumerated in the statute." § 6-29-800(A)(2)(a)-(d). If the General Assembly had meant to require Planning Commissions to attach an exhaustive list of findings that they had to make in approving each and every project, it would have included those requirements in the statute, and it did not. Furthermore, the Commission stated the conditions under which it would grant the approval in its decision. (R. p. 298). Appellants are challenging a number of those conditions here, while at the same time claiming that no conditions were stated. NPS then cites to *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019) for the proposition that the Planning Commission failed to exercise discretion. In *Citizens for Quality Rural Living,* the trial court issued a Form 4 order dismissing the appeal citing based only on the appellant's lack of standing. 426 S.C. at 102, 825 S.E.2d at 723. The Court of Appeals reversed, finding that the trial court, not the commission, failed to exercise discretion as evidenced by its one-sentence, summary order. *Id*., 426 S.C. at 114, 825 S.E.2d at 730. This case is simply inapplicable here.

HOA Appellants claim that the Commission "in effect" granted Blue Sky a variance, should have required Blue Sky to seek a variance, or that the Commission was required to make findings related to a variance. They analogize the Commission's action to an inverse condemnation, which is a claim they did not raise below. "An issue must be raised to and ruled on by the trial court for an appellate court to review the issue." *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.*, 347 S.C. 333, 343, 554 S.E.2d 870, 875 (Ct. App. 2001). The Commission determined that the Plan met the requirements of the County's ULMO without necessitating a variance. While the Circuit Court found the Commission erred in two particulars, this is not tantamount to finding that a variance was implicitly granted. As noted in the Circuit Court's Order, "all parties agree that the Commission did not issue a variance to excuse compliance with any of the Ordinance's provisions." (R. p. 9). The HOA Appellants' attempt to now argue otherwise must be rejected.

5. The Circuit Court did not err in Ordering a Remand.

NPS cites to *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953) to argue that vacatur was the only proper remedy following the Circuit Court's decision. *Hodge* involved an appeal of the grant of a variance filed by a neighboring landowner. The Board of Adjustment had granted the variance but did not make the required finding of unnecessary hardship as required by the 1952 Code. The decision of the Court was that "[t]he action of the Board of Adjustment is set aside and the order appealed from is reversed." *Id.*, 223 S.C. at 350, 75 S.E.2d at 755. *Hodge* did not discuss the propriety of the remedy of remand versus vacatur at all. There is a reason there is very little South Carolina case law discussing the distinction between the remedy of remand versus vacatur, and that is because, as discussed *supra,* a decision to remand is not directly appealable. Review statutes such as the Administrative Procedures Act generally give trial or appellate courts the right

to remand. *See* S.C. Code Ann. §§ 1-23-380(4)-(5) & 1-23-610(B). The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 discusses remand as well. *See* S.C. Code Ann. §§ 6-29-840, 930. Finally, contrary to Appellants' assertions, the provisions of the County Ordinance do not explicitly prohibit amendment of plans, and the Commission should be left to conduct its own affairs. Under the circumstances Judge Hayes' decision to remand the matter was properly left to his discretion and should not be disturbed on appeal. The strongest indication that remand was the appropriate remedy is Judge Hayes' clarification in his Form 4 Order that "vacate," in fact, meant "remand."

6. HOA Appellants' Allegations of Fire Danger and Traffic Danger

HOA Appellants do not merely attack the actions of the Commission; they allege that the ULMO itself falls short of and violates the South Carolina Local Government Comprehensive Planning Act. Specifically, they claim that the ULMO falls short in that it contains no specific requirements in line with the preamble of the Act, fire protection, transportation, etc. From this they go on to raise the claims that the Plan causes "Fire Danger[5]" and "Traffic Danger." These are not requirements found in Section 3.13.1-10 of the ULMO. HOA Appellants attempt to raise the issue of conflict preemption in their Brief (*HOA Appellants' Brief,* at 15) but they did not raise this issue to the Circuit Court, and it is not properly before this Court. *S.C. Farm Bureau Mut. Ins. Co.*, 347 S.C. at 343, 554 S.E.2d at 875. The enactment of the ULMO is a legislative act by Spartanburg County, and it would be error for the Commission to impose requirements beyond what is in the

[5] As part of the allegation of "fire danger" HOA Appellants make the absurd claim that "the RV Park will not have any water. It is not connected to the [Inman Campobello] system and Judge Hayes ruled that its proposed well is not 'public water,' as required by the Ordinance." (*HOA Appellants' Brief,* at 13). Again, this is incorrect. As stated in footnote 5, Judge Hayes ruled otherwise, and the legal issue over whether the water supply was "approved by DHEC" has not been adjudicated. (R. pp. 7-8, 586-88).

Ordinance. It would be unlawful for the Court to write additional requirements into the Ordinance in such a way as to further restrict private property rights. *Helicopter Sols., Inc.*, 414 S.C. at 13, 776 S.E.2d at 759.

CONCLUSION

The Circuit Court's Order was not a final Order and is not immediately appealable. Dismissal or remand back to the Circuit Court is proper. In the event the Court determines the Order is final, Respondents are entitled to file their own appeal. The Circuit Court did not err in its decision regarding the Preamble and Sections 3.13(2) and 3.13(8) of the ULMO. The Circuit Court did not err in rejecting Appellants' arguments regarding the Commission's decision not to reconsider its approval of Blue Sky's Plan. The Circuit Court properly rejected Appellants' arguments relating to S.C. Code Ann. § 6-29-1150(B), and the Commission's conclusion that Blue Sky did not need a variance. The Circuit Court had the discretion to issue a remand, and remand is entirely appropriate. The Circuit Court properly rejected the HOA Appellants' arguments relating to the terms of the ULMO relating to "fire danger" and "traffic danger," and its conflict preemption claims were not raised below. Accordingly, the Court should find that the Commission acted lawfully and within its discretion, reject Appellants' arguments on appeal, and end their multi-year effort to thwart Blue Sky's ordinance-compliant project.

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