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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH CIRCUIT
)
South Carolina Native Plant Society,) Case No. 2023-CP-42-01221
)
Appellant,)
)
vs.) **Opinion and Order**
)
The Spartanburg County Planning)
Commission and Blue Sky Associates,)
LLC d/b/a T. Tree Farms RV Park,)
)
Respondents.)
)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH CIRCUIT
)
South Carolina Native Plant Society,) Case No. 2023-CP-42-01367
)
Appellant,)
)
vs.) **Opinion and Order**
)
The Spartanburg County Planning)
Commission and Blue Sky Associates,)
LLC d/b/a T. Tree Farms RV Park,)
)
Respondents.)
)

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SC Court of Appeals

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG The Enclave at Fairview Farm Homeowners' Association, Inc., *et al.*, Appellants, vs. Spartanburg County, SC, *et al.*, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-01226 **Opinion and Order**

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG The Enclave at Fairview Farm Homeowners' Association, Inc., *et al.*, Appellants, vs. Spartanburg County, SC, *et al.*, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-01545 **Opinion and Order**

The consolidated appeals before the Court seek reversal and vacatur of the Spartanburg County Planning Commission's conditional approval of the T. Tree Farms RV Park in Campobello, South Carolina. The parties to the appeal are Appellants South Carolina Native Plant Society (the "Society" or "Native Plant Society"), the Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc.,

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Chales D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz Trust, and Slater Properties, Inc. (collectively, "HOAs and landowners"), as well as Respondents Spartanburg County Planning Commission (the "Commission") and Blue Sky Associates, LLC ("Blue Sky"). For the following reasons, the Court grants the appeals in part and denies the appeals in part.

FACTUAL BACKGROUND

In February 2023, Blue Sky applied to the Commission for approval of its site plan for the T. Tree Farms RV Park (the "RV park"). Blue Sky, Application at 2 (Feb. 7, 2023) (App. A to Native Plant Society Opening Br. ("App. A") at 5) (amended application). This application replaced an earlier one submitted in 2021 which was abandoned because Blue Sky was unable to obtain public water as required in the 2021 application. Blue Sky, Major Land Development Application (Jan. 29, 2021) (App. A at 1) (original application). Particularly relevant to the appeals before the Court, Blue Sky's 2023 site plan for the RV Park provided that the RV Park would be serviced by a well rather than a public water service provider and did not include any comfort station. Application at 2 (Feb. 7, 2023) (App. A at 5) (amended application); *see also* Blue Sky, Major Land Development Application (Jan. 29, 2021) (App. A at 1) (original application). Blue Sky's earlier 2021 application had provided for water from a public water system, but Blue Sky was unable to obtain public water service for the RV park site.

The Commission considered Blue Sky's application at its March 7, 2023, meeting. Commission Agenda at 3 (Mar. 7, 2023) (App. A at 186). The Commission voted 6-2 to approve Blue Sky's site plan, with standard conditions that Blue Sky obtain approvals from Spartanburg County Public Works for engineering, stormwater, and encroachment, and from DHEC for well construction. *Id.* at 30 (App. A at 178).

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

On March 31, 2023, Appellants asked the Commission to reconsider its decision. Southern Environmental Law Center, Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC (Mar. 31, 2023) (App. A at 187–93); Concerned Citizens, Cover Letter to Request for Reconsideration of Conditional Approval (Mar. 28, 2023) (App. A at 229). At its next meeting on April 4, 2023, the Commission decided not to reconsider its conditional approval of the RV park site plan. *See* Commission Meeting Minutes (Apr. 4, 2023) (App. A at 212–20).

Appellant Native Plant Society and Appellants HOAs and landowners each timely filed two appeals challenging the Commission's conditional approval of the RV park site plan and the Commission's decision not to reconsider that conditional approval. These four appeals were subsequently consolidated and are now before the Court.

LEGAL BACKGROUND

The ordinance governing the Commission's review of Blue Sky's site plan is the Spartanburg County Unified Land Management Ordinance (the "Ordinance"), which includes a preamble setting forth the purposes of the Ordinance and a section dedicated to "Camps and Recreational Vehicle Parks." *See* Ordinance Preamble, Ordinance § 3.13. The Preamble establishes that one goal of the Ordinance is to protect "ecologically sensitive areas." App. A at 35. With respect to RV parks, Section 3.13 of Ordinance requires, among other things, that all RV parks "preserve natural features and landscape"; that RV parks be "serviced by public water"; that RV parks be serviced by "sewer or other systems approved by DHEC"; and that no RV park site "be located less than 150 feet from drinking water supply or 300 feet from a comfort station." Ordinance § 3.13 (2), (4), and (8) (App. A at 49). The Ordinance further details certain procedural measures. The Ordinance also sets forth requirements for granting a variance from

any of the requirements of the Ordinance. *See* Ordinance §§ 1.02–04, 5.01–02 (App. A at 36-37, 43-44). In addition to the Ordinance, the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, sets forth certain elements for local comprehensive planning.

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act. S.C. Code Ann. § 6-29-1150(D)(1).

Decisions of a county planning commission are reviewed in the Circuit Court. S.C. Code § 6-29-1150; *Town of Hollywood v. Floyd*, 403 S.C. 466 (2013); *Kurschner v. City of Camden*, 376 S.C. 165 (2008), *Rest Row Assocs. v. Horry County*, 335 S.C. 209 (1999); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). A decision of a county planning commission will be overturned on appeal when "it is based on errors of law," where the commission "acts arbitrarily or unreasonably," where the commission "has abused its discretion," or when "there is no evidence to support" the Commission's decision. *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637 (2020); *Kurschner*, 376 S.C. at 173–174.

ANALYSIS

Appellant South Carolina Native Plant Society and Appellants HOAs and landowners each argue that the Commission's conditional approval of the RV Park violated the Ordinance Preamble and Section 3.13 of the Ordinance. Specifically, they argue that the Commission wrongly approved a site plan that failed to protect ecologically sensitive areas and to preserve the natural features and landscapes of the site; that was not serviced by public water; that was not serviced by a sewer system approved by DHEC; and that lacked any comfort station. Appellants

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

further argue that the Commission's decision not to reconsider its conditional approval and its failure to provide any explanation for parts of its decisions were arbitrary and capricious.

Appellants HOAs and landowners also argue that the Commission's March 2023 meeting and approval violated certain procedural requirements, that the Commission based its conditional approval on the wrong site plan, that the Ordinance fails to fulfill the South Carolina Local Government Comprehensive Planning Enabling Act, and that the roads proposed to be used to access the RV Park were not dedicated by the relevant landowners.

The appeals are granted as to the issues involving public water and comfort stations and denied as to all other issues.

I. Whether the Commission violated the Ordinance Preamble and Section 3.13

The Court finds that the Commission's conditional approval of the RV Park violated Section 3.13(8) of the Ordinance requiring public water and Section 3.13(4) requiring comfort stations but that the Commission's decision did not violate the Ordinance Preamble, Section 3.13(2) requiring the preservation of "natural features and landscape," or the part of Section 3.13(8) requiring "sewer or other systems approved by DHEC."

Public Water. The Ordinance provides that "[e]ach park site shall be serviced by public water," Ordinance § 3.13 (8). The Ordinance provides that "[t]he word 'shall' is always mandatory." Ordinance Article 6 (App. A at 92). Blue Sky's 2021 application was based on the RV park being serviced by a public water system, but when Blue Sky was unable to obtain public water, it submitted the 2023 application with the RV park being serviced by a well. The Commission approved the 2023 application with the RV park being serviced by a well.

In this respect, the Commission committed an error of law, acted arbitrarily and capriciously, and made a decision with no evidence to support it. The Ordinance by its plain

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

language mandates that RV parks be serviced by public water. But the approved 2023 RV Park site plan fails to provide for public water and instead relies upon a well.

Blue Sky and the Commission argue that the definition of "public water" as used in the Spartanburg County Ordinance should be governed by the definition of "Public Water System" contained in a regulation of the state Department of Health and Environmental Control ("DHEC"), S.C. Code Ann. Regs. 61-58 (B) (150). Respondents' Br. at 7. The DHEC regulation defines a Public Water System as "any public or privately owned waterworks system which provides drinking water, whether bottled or piped, for human consumption, including the source of supply whether the source of supply is of surface or subsurface origin."

However, the requirements for RV parks in the County's Ordinance does not reference or mention the DHEC regulation or its definition of "Public Water Systems," and the Ordinance uses a different term, "public water." "In interpreting a statute, words must be given their plain and ordinary meaning. . . ." *Rowe v. Hyatt,* 321 S.C. 366, 369 (1996).

Moreover, the County Ordinance and the DHEC regulation serve different purposes. The Ordinance sets out mandatory standards to prescribe how RV parks are built, whereas the DHEC state regulation is written broadly to encompass all conceivable drinking water sources to ensure water quality. See S.C. Code Ann. Regs 61-58 (A) ("The Department finds the standards and procedures prescribed are necessary to maintain reasonable standards of purity of the drinking water of the State consistent with the public health, safety, and welfare of its citizens"). By requiring public water, the Ordinance ensures an adequate reliable supply for an RV park. In addition, the DHEC regulation includes bottled water within its definition of Public Water Systems, and there is no indication that the County's Ordinance would contemplate an RV park serviced through bottled water.

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

The Commission's application form shows that, unlike the state DHEC water quality regulation, the county Ordinance regulates the source of water for various developments. The form asks the applicant to designate "water or well." When "water" is designated, the applicant must identify the provider. Blue Sky, Application at 2 (Feb. 7, 2023) (App. A at 5). The County is thus concerned about the source—water or well. Section 3.13 specifies that for RV parks, public water must be the water source.

Further, the Ordinance imposes the "public water" requirement in other places for multi-unit developments like an RV park. The Ordinance requires "public water" for the operation of manufactured home parks, mandating that "[a]ll proposed Manufactured Home Parks shall be served by public water. . . ." Ordinance § 3.04-4 (2) (App. F to Native Plant Society Reply Br. ("App. F") at 10). The Ordinance similarly requires "public water" for patio and zero lot line homes. Ordinance § 3.01 (5) (App. F at 7). If the Ordinance were read to substitute the state DHEC regulation definition of "Public Water Systems" for the ordinary meaning of "public water," throughout the County Ordinance protective requirements for "public water" would be eliminated and various types of multi-unit developments could now be serviced by bottled water or private wells when the Ordinance mandates "public water"—with corresponding risk to public health and safety and loosening of development standards.

By approving an RV park not serviced by public water, the Commission violated the Ordinance and the ordinary and natural plain meaning of its "public water" requirement.

Comfort Stations. As with public water, the Ordinance contains an unqualified mandate that RV parks provide for comfort stations. The Ordinance provides that no RV park site "shall be located less than 150 feet from drinking water supply or 300 feet from a comfort station,"

Ordinance § 3.13 (4). App. A at 49. The approved 2023 site plan for the RV park does not include a comfort station.

Respondents Blue Sky and the Commission argue that because each RV site will have individual hookups for water and sewage, this requirement is excused. Respondents' Br. at 8–9. The Court disagrees. There is nothing in the Ordinance that allows RV Parks to ignore the mandatory comfort station requirement because RVs often have sewer and water hookups. Indeed, it is always the case that RVs may have these hookups, yet the Ordinance requires RV parks to have one or more comfort stations regardless. Moreover, all parties agree that the Commission did not issue a variance to excuse compliance with any of the Ordinance's provisions. *See* Respondents' Br. at 10; Appellants HOAs and landowners' Opening Br. at 7–8; Appellant Native Plant Society's Opening Br. at 24–25. Blue Sky, Application at 2 (Feb. 7, 2023) (App. A at 5); Commission Meeting Minutes at 18–19 (Mar. 7, 2023) (App. A at 166–67). The plain language of the Ordinance governs.

When it conditionally approved an RV park site plan with no comfort station, the Commission violated the plain language of the Ordinance, committed an error of law, acted arbitrarily and capriciously, and made a decision with no evidence to support it.

Sewer or other system approved by DHEC. In Section 3.13(8), the Ordinance requires that RV park sites shall be serviced by "sewer or other systems approved by DHEC." App. A at 49. The RV park site is not serviced by sewer, and the application for the RV park provided for a septic system instead. Appellants contend that the Commission approved a plan for the RV park that included a septic system that had been rejected and not approved by DHEC. Appellant Native Plant Society's Opening Br. at 4–6; Appellants HOAs and landowners' Opening Br. at 4. Specifically, Appellants point to the fact that the DHEC Board, which is the highest authority of

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

DHEC, overturned the DHEC staff's decision granting a permit for the RV park's septic system. The DHEC Board concluded that the septic system did not meet the minimum requirements of South Carolina law and had less than half the treatment capacity required by state regulation. App. A at 123-125; *see also* S.C. Code Reg. 61.56-501.

Appellants acknowledge that the DHEC Board's decision was subsequently overturned by the Administrative Law Court, but they contend that the Administrative Law Court's decision, which has been appealed, does not render the RV park's septic system "approved by DHEC." Appellants point out that the Administrative Law Court's decision, App. A at 127-147, was based on a procedural error in that the Administrative Law Court found that the request for Board review was filed too late, rather than a determination that the proposed septic system met the substantive requirements of South Carolina law. Appellant Native Plant Society's Opening Br. at 6. Appellants argue that the proposed RV park septic system is still not "approved by DHEC" since the Administrative Law Court's decision did not question or overrule the substance of the DHEC's Board's decision.

The Court concludes that the Commission's decision satisfies the Ordinance's requirement that the RV park be serviced by sewer or other system approved by DHEC. It is reasonable to assume that the Commission was well aware of the substantive issues being argued to DHEC. Thus, under an appellate review analysis, the Court cannot find a sufficient basis for reversing, even if it disagrees with the Commission, on the sole bases that the DHEC decision was or is being challenged, even if the challenge is classified as only technical rather than substantive. The Court notes that DHEC permit for this septic system is the base minimum for the RV Park. The arguments and information offered by Appellants are not being determined irrelevant and immaterial by this Court. The Commission may consider that information upon its

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

consideration of the RV park in the future. Simply because a site may have received approval from DHEC does not conclude the analysis that the Commission may conduct when it conditionally approves a development site.

Ecologically Sensitive Areas and Natural Features. The Preamble to the Ordinance sets out a goal to protect "ecologically sensitive areas," and Section 3.13(2) of the Ordinance provides that RV park sites "shall be developed in a manner that preserves natural features and landscape." App. A at 35, 49.

Appellants argue that the RV park site plan violates these provisions of the Ordinance because it fails to preserve or acknowledge the presence of a plant protected as threatened by the federal Endangered Species Act, *Hexastylic naniflora* (Dwarf-flower Heartleaf), and its habitat on the RV park site. Appellant Native Plant Society's Opening Br. at 3; Appellants HOAs and landowners' Opening Br. at 4. Appellants explain that this plant is one of the nation's rarest plants, is also designated a Highest Priority Species by the South Carolina Department of Natural Resources, and is found in South Carolina only in limited areas within three counties, including on the RV park site. *Id.* *See also* App. A at 48-83; Apps. B-E to Native Plant Society Opening Br.; S.C. Dep't of Nat. Res., South Carolina's State Wildlife Action Plan (SWAP) at 2–9 (Oct. 14, 2014)

The Court concludes that the standard of review does not support the conclusion that the Commission acted unlawfully or abused its discretion in granting conditional approval on this basis. Notwithstanding, this Court acknowledges the broad goals of protecting ecologically sensitive areas as discussed by Appellants. As with Appellants' substantive arguments related to the proposed septic system, the Court notes that the information presented by Appellants

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

regarding rare plants and habitat on the RV park site may prove to be material to the Commission when determining future specific site plans.

Accordingly, Appellants' appeal is granted as to the issues of public water and comfort stations and denied as to the issues of septic system approved by DHEC and preservation of natural features, landscapes, and ecologically sensitive areas.

II. Whether the Commission's decision not to reconsider its conditional approval and failure to provide reasons for decision were arbitrary and capricious

Appellants contend that because the Commission is charged with carrying out the Ordinance and complying with its terms and was informed by Appellants of multiple violations of the Ordinance, its decision not to reconsider the conditional approval was arbitrary and capricious and an abuse of discretion. Appellants also contend that the Commission acted unlawfully and arbitrarily and capriciously and abused its discretion when it failed to address the request for reconsideration and provided no explanation for its decision not to reconsider and when it failed to address some of the provisions of the Ordinance and provide the bases for its decision as to those provisions when it conditionally approved the RV park site plan. Appellant Native Plant Society's Opening Br. at 22–24. The Court concludes that the record does not support the conclusion that the Commission acted unlawfully, arbitrarily, or capriciously or abused its discretion in these respects. Accordingly, Appellants' appeal is denied on these grounds.

III. Whether the Commission's March 2023 meeting and conditional approval violated the Ordinance's procedural requirements

The Court finds that the Commission's March 2023 meeting and conditional approval complied with procedural requirements. Appellants HOA and landowners first argue that the Commission's March 2023 meeting violated the Ordinance because it "locked out many members of the public" from a meeting that was required to be open to the public. Appellants

HOA and landowners' Opening Br. at 5. Appellants HOA and landowners further argue that the Commission did not allow members of the public to speak for a mandated 30 minutes and the Commission failed to provide notice of a public hearing. *Id.* Respondents argue that there was sufficient due process provided at the March 2023 meeting, noting that the Commission afforded a representative for the HOAs an opportunity to speak and allowed the public to submit written comments. Respondents' Br. at 12. The Court concludes that the record does not support the conclusion that open meetings requirements or due process rights were violated or abused by the Commission. Accordingly, Appellants HOAs and landowners' appeal is denied on this basis.

IV. Whether the Ordinance fulfills the requirements of the South Carolina Local Government Comprehensive Planning Enabling Act

The South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, sets forth certain elements that must be considered in local comprehensive plans, such as "fire protection" and "transportation." *Id.* § 2-29-510. Appellants HOA and landowners contend that the Ordinance fails to fulfill these requirements of the Enabling Act and that the Enabling Act has independent force. Appellants HOA and landowners Opening Br. at 8–9 and Reply Br. At 10-11. Regardless of whether the Ordinance properly reflects these elements, the Court need not consider this argument because it has reversed the Commission's decision on other grounds. The Respondents' assertion that the Appellants HOA and landowners challenged the validity of the Ordinance based upon the Enabling Act goes beyond these Appellants' argument; and it is likewise not necessary for the Court to consider this assertion otherwise. Appellants HOA and landowners Reply Br. at 10-11.

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

ELECTRONICALLY FILED - 2024 Apr 22 10:25 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

V. Whether the roads used to access the RV Park were dedicated by the relevant landowners

Appellants HOA and landowners contend that the roads that would be used for the RV Park are private, not public, roads and that the individuals who own the roads have not dedicated the roads to use by RVs. Appellants HOA and landowners Opening Br. at 11–12. The decision of the Commission did not involve a taking or dedication of the roads and that issue is not before the Court. The appeal concerning them is without merit.

VI. Whether the Commission considered the wrong site plan

This matter was not raised to the Commission before it made its decision. Therefore, it falls under this Court's decision concerning the Commission's refusal to reconsider, and therefore the record does not support the conclusion that the Commission acted unlawfully, arbitrarily, or capriciously or abused its discretion in these respects. Accordingly, Appellants' appeal is denied on this ground.

CONCLUSION

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.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Circuit Judge

April 22, 2024