

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 SAMUEL T. BRICK,)
)
 PLAINTIFF,)
)
 vs.)
)
 RICHLAND COUNTY PLANNING)
 COMMISSION)
)
 DEFENDANT.)

COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Case Number: 2013-CP-400-1643

ORDER

RICHLAND COUNTY
 FILED
 2013 DEC 17 PM 2:25
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter came before the Court on August 30, 2013 at a hearing on Fairways Development, LLC's ("Fairways") Motion to Dismiss. Present at the hearing were Samuel T. Brick ("Appellant"), pro se, and Toby Ward, Esquire, counsel for Fairways. After considering the law, the memoranda submitted by the parties, the arguments of counsel, and all matters submitted, Intervenor Fairways' Motion to Dismiss is **GRANTED**.

BACKGROUND

On November 7, 2012, Fairways submitted an application and sketch concept plan for a project, known as "The Villages at LongCreek," to the Richland County Planning and Development Services Department for review and approval. After its submission, the application was approved by the Richland County Development Review Team ("DRT") at its meeting, which was held on November 29, 2012. In accordance with Richland County Ordinance Section 26-54(c)(3)d.1.[b][3], the Appellant and Monika Iskersky appealed the decision of the DRT to the Richland County Planning Commission on December 20, 2012.

Upon the Planning Commission's affirmance of the DRT's decision on February 4, 2013, the Appellant filed an Appeal and Notice of Appeal with the Richland County Clerk of Court on March 18, 2013. Thereafter, on June 17, 2013, Fairways filed a motion to dismiss based the Appellant's alleged lack of standing and failure to join Fairways, the development permittee, in the appeal. The Richland County Planning Commission also filed a motion to dismiss on June 5, 2013. Moreover, on June 17, 2013, Fairways filed a motion to intervene in the action because it was not a named party to the appeal. At the hearing held on August 30, 2013, this Court granted Fairways' motion to intervene as a party.

ISSUES

- 1.) Should Fairways' motion to be dismiss be granted due to the Appellant's alleged lack of standing to appeal the decision of the Richland County Planning Commission to the Richland County Circuit Court?
- 2.) Should Fairway's motion to be dismiss be granted because the Appellant failed to join Fairways, the development permittee, in his appeal?

DISCUSSION

I. Standing

Sections 26-54(c)(3)(d)(5) and 26-58(f) of the Richland County Code of Ordinances permit a person with a "substantial interest" in the decision of the planning commission to appeal to the circuit court. These appeals are taken in accordance with applicable laws of the State of South Carolina. By permitting the Appellant to appeal the decision of the DRT to the Planning Commission and ruling on the merits of his appeal, the Planning Commission implicitly determined that the Appellant had a sufficient interest in the development project at issue, as appeals from the DRT could only be made by the applicant, a contiguous landowner, or adjacent

landowner. See Richland County Ordinance § 26-54(c)(3)(d)(1)(b)(3). Consequently, this Court finds that any arguments refuting the Appellant's interest in the decision of the Planning Commission have been waived, and the Court declines to address any arguments challenging the Appellant's interest in the Planning Commission's decision.

II. Failure to Join Fairways in the Appeal

In Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, 295 S.C. 67, 69, 367 S.E.2d 160, 161 (1988), the South Carolina Supreme Court held that a development permittee is a necessary party to an appeal of its permit. Further, in Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610, 615, 658 S.E.2d 544, 546 (Ct. App. 2008) vacated due to an agreement mootng the case, 384 S.C. 438, 682 S.E.2d 488 (2009), the Court held that failure to file and serve notice on a necessary party within the statutory period to appeal was fatal to an appeal from a zoning board decision.

In this case, the Appellant failed to join Fairways in the appeal and challenges Fairways designation as the development permittee. Specifically, the Appellant points to the Subdivision Review Application and the Sketch Plan submitted to the Richland County Planning and Development Services Department, which names "Fairways Development Group (John Bakhaus)" as the applicant. Each of these documents is signed by "Fairways Development, LLC By: John T. Bakhaus." The Appellant noted that Fairways Development Group is an "entirely separate entity unincorporated in the State of South Carolina." Further, according to the Appellant's assertions, Fairways Development, LLC was not an active participant in the proceedings before the DRT or the Planning Commission. However, this Court finds that argument unavailing. Although the Subdivision Review Application and Sketch Plan were submitted in the name of "Fairways Development Group (John Bakhaus)," they were each signed

by the registered agent for Fairways Development, LLC on behalf of Fairway Development, LLC. Thus, the Court finds that Fairways is the development permittee in this matter.

S.C. Code 6-29-1150(D)(1) requires that an appeal from the decision of the planning commission be taken to the circuit court within thirty days after actual notice of the decision. According to the Appellant, he received actual notice of the Planning Commission's decision on March 11, 2013. Subsequently, the Appellant filed a Notice of Appeal and Appeal on March 18, 2013, which was filed within thirty days of the Appellant receiving actual notice of the decision, as required by S.C. Code §6-29-1150(D)(1). Although the Appellant timely filed his appeal and sent a copy of his appeal to Fairways within thirty days of his receipt of the Planning Commission's Order, he failed to join Fairways to appeal within the time prescribed by statute. This failure was fatal to his appeal.

In Friends of McLeod Inc., the parties, by consent order, joined the necessary party to the appeal. Friends of McLeod, Inc., 376 S.C. at 612, 658 S.E.2d at 545. However, in that case, the Court still found the appeal to be untimely because the appellant failed to join the necessary party within the statutorily required time to appeal. Id. at 613-15, 658 S.E.2d at 545-46. In this matter, Fairways moved to intervene as a party, and that motion was granted on August 30, 2013. However, this intervention does not save the Appellant's defective appeal. In order for the Appellant to have perfected his appeal to the circuit court, he would have had to join Fairways in the appeal by April 9, 2013. For this reason, the Court finds that Fairways' motion dismiss should be granted.

ORDER

For the foregoing reasons, Intervenor Fairways LLC's Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.



DeAndrea Gist Benjamin
Presiding Judge

December 17, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
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 COUNTY OF RICHLAND)
)
 SAMUEL T. BRICK,)
)
 PLAINTIFF,)
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 vs.)
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 RICHLAND COUNTY PLANNING)
 COMMISSION)
)
 DEFENDANT.)

**COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT**

Case Number: 2013-CP-400-1643

ORDER

2013 DEC 17 PM 2:26
 JEANETTE W. HERRIDGE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

This matter came before the Court on August 30, 2013 at a hearing on Richland County Planning Commission's ("Planning Commission") Motion to Dismiss. Present at the hearing were Samuel T. Brick ("Appellant"), pro se, and Michael Wren, Esquire, counsel for the Richland County Planning Commission. After considering the law, the memoranda submitted by the parties, the arguments of counsel, and all matters submitted, Defendant Richland County Planning Commission's Motion to Dismiss is **GRANTED**.

BACKGROUND

On November 7, 2012, Fairways submitted an application and sketch concept plan for a project, known as "The Villages at LongCreek," to the Richland County Planning and Development Services Department for review and approval. After its submission, the application was approved by the Richland County Development Review Team ("DRT") at its meeting, which was held on November 29, 2012. In accordance with Richland County Ordinance Section 26-54(c)(3)d.1.[b][3], the Appellant and Monika Iskersky appealed the decision of the DRT to the Richland County Planning Commission on December 20, 2012.

Upon the Planning Commission's affirmance of the DRT's decision on February 4, 2013, the Appellant filed an Appeal and Notice of Appeal with the Richland County Clerk of Court on March 18, 2013. Thereafter, on June 17, 2013, Fairways filed a motion to dismiss based the Appellant's alleged lack of standing and failure to join Fairways, the development permittee, in the appeal. The Richland County Planning Commission also filed a motion to dismiss on June 5, 2013. Moreover, on June 17, 2013, Fairways filed a motion to intervene in the action because it was not a named party to the appeal. At the hearing held on August 30, 2013, this Court granted Fairways' motion to intervene as a party.

ISSUES

- 1.) Should Fairways' motion to be dismiss be granted due to the Appellant's alleged lack of standing to appeal the decision of the Richland County Planning Commission to the Richland County Circuit Court?

DISCUSSION

I. Standing

Sections 26-54(c)(3)(d)(5) and 26-58(f) of the Richland County Code of Ordinances permit a person with a "substantial interest" in the decision of the planning commission to appeal to the circuit court. These appeals are taken in accordance with applicable laws of the State of South Carolina, specifically S.C. Code § 6-29-1150(D)(1), which does not limit standing to appeal a property owner, S.C. Code § 6-29-1150(D)(2), and S.C. Code § 6-29-1155(A). The last two code sections provide standing specifically to appeal to property owners and individuals with a substantial interest in the decision of the planning commission. By permitting the Appellant to appeal the decision of the DRT to the Planning Commission and ruling on the merits of his appeal, the Planning Commission implicitly determined that the Appellant had a sufficient

interest in the development project at issue, as appeals from the DRT could only be made by the applicant, a contiguous landowner, or adjacent landowner. See Richland County Ordinance § 26-54(c)(3)(d)(1)(b)(3). Consequently, this Court finds that any arguments refuting the Appellant's interest in the decision of the Planning Commission have been waived, and the Court declines to address any arguments challenging the Appellant's interest in the Planning Commission's decision.


II. Failure to Join Fairways in the Appeal

This issue was not raised by the Richland County Planning Commission in its motion to dismiss; however, it was raised in a companion motion to dismiss made by Fairways Development, LLC. For reasons set forth in that order, this Court has dismissed the Appellant's appeal.

ORDER

For the foregoing reasons, Defendant Richland County Planning Commission's Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.



DeAndrea Gist Benjamin
Presiding Judge

December 17, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-400-1643

Samuel T. Brick

Richland County Planning Commission

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: The Appellant's motion to alter or amend the Court's previous order under Rule 59(e), SCRPC is denied with oral argument. The Court's previous order ordering dismissal of the appeal still stands.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge WB Judge Code 2161 Date 2-5-14

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Feb, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Feb 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel T. Brick

Toby Ward and Michael Wren

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court Jeanette W. McBride