

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2013-CP-400-1643

Appellate Case No. 2014-000583

Samuel T. Brick, Appellant

v.

Richland County Planning Commission and Fairways Development, LLC,
Intervenor, Respondents

APPELLANT'S RETURN TO RESPONDENT'S MOTION
TO CORRECT RECORD ON APPEAL

1. *Allegations of Ministerial Errors:*

(A) *Signatures.* Appellant, Samuel T. Brick, pro se, in response to Respondent Richland County Planning Commission's motion to correct the record on appeal requests this Honorable Court relieve him of the requirement in Rule 210 (c) that every pleading included in the record include a signature. All captions were included but Appellant admits the copies of some included

pleadings do not exhibit signatures. Appellant notes, not as an excuse but for the Court's forbearance, that he was distracted by that portion of the Rule stating verification or service shall not be included unless relevant to the appeal.

Respondent Richland County Planning Commission alleges no prejudice by the omission of such signatures. Respondent does not refer to such documents in its argument. Respondent's fact statement at the beginning of its initial brief does not refer to the record. Appellant understands the importance of technical requirements and notes not as a complaint but that both Respondents to this appeal consistently ignore the one and half inch left margin requirement in Rule 267(d). It further appears the preference of this Court to include the appeals case number prominent in all captions and that Respondents ignore this. There does not appear to be a rule or suggested form in this regard. It also is noted that Respondent Richland County Planning Commission with this Court's forbearance consistently breaches the limiting periods within which to act. He obtained two extensions within which to file his initial brief. The Clerk noted in its Order of October 7, 2014, again extending a limiting period that, "No further extensions will be granted absent extraordinary circumstances." Not long after that Respondent's return to Appellant's motion for relief was overdue but received this Court's forbearance. Respondent's most recent request for an extension to file its final brief in the matter ignored Judge Short's Order on December 4, 2014, that final briefs be served and filed within twenty days of service of the amended record. Appellant served and filed the amended record on December 19, 2014.

The twenty day period gave Respondents until January 7, 2015, to file the final briefs. Respondent/Intervenor Fairways Development, LLC filed its final brief on January 20, 2015, and on that date Respondent Richland County requested an extension for seven days. On January 27, 2015, the Deputy Clerk extended the period for filing until January 30, 2015, and it is unclear at the date of this return whether the brief has been filed. Instead Respondent filed the motion to which this is the return. According to Appellate Rule 240, under which authority Respondent filed this motion, time limits are not stayed by its filing. Appellant filed an appendix to the record under Appellate Rule 212 on December 31, 2014. It authorizes a supplement in the nature of an appendix at any time before argument commences. The filing of the appendix to the record on December 31, 2014, was not the filing of the amended record. Again, the amended record was filed December 19. Notwithstanding, Appellant does not object to Respondent's recalcitrance in this matter and brings this to the Court's attention only to support his request for forbearance in the technical error of not signing copies of several documents included in the amended record. If the Court deems such signatures necessary, Appellant requests approval to retrieve filed copies of the amended record from the Clerk's Office so he can sign the documents, rather than constructing an entire new amended record.

(B) *Consecutive Numbering.* With regard to the requirement that each page of the record be consecutively numbered, Appellant contends that the

amended record is consecutively numbered. The complained of hyphenated numbers follow in a consecutive fashion and are numbered consecutively. The reason for this, as explained in correspondence to the Clerk of Court with copies to all parties when filing the amended record, was to add inserted provisions in compliance with the Court's direction. The Order requiring the additional matter also authorized an amended record and came just before Appellant's deadline to file the record. The alternative to consecutive hyphenated numbering would have necessitated a costly recopying of the entire record and renumbering the entire file. The numbering is consecutive in accordance with its definition in the Webster's New Collegiate Dictionary by G. and C. Merriman Co. (1973 Ed., Springfield, Mass.). Appellant examined this definition before inserting the hyphenated numbers and determined such numbering met the letter and intent of Rule 210(c). The definition at Page 241 is "**con-sec-u-tive** adj. : following one after the other in order without gaps : CONTINUOUS." The few places this hyphenated numbering appears in the record meet this definition.

(C) *Handwritten Page Numbers and Poor Copies.* Appellant contends the handwritten page numbering is sufficient. Respondent refers to no specific pages to which the numerical identifier is not discernible. Page numbers are placed at the bottom middle of the pages to avoid cutting off the page number on the second side in double-sided printing. Otherwise every other page would have a number too close to the inside binding. Appellant procured photocopying

services by professional clerks to make the copies. Appellant knows of no pages where the numbering or page is cut off or not readable and seeks more specificity prior to undertaking an entire process of again copying the amended record should this Honorable Court so require. Furthermore, Appellant knows of no instance where the documents in the amended record vary from that in the original file in the Richland County Court Clerk's Office nor does Respondent's motion indicate any such variance.

2. *Allegation of Incorrect Version of Complaint Included.*

Intervenor/Respondent, not the movant for this motion, designated the FOIA complaint for inclusion in the record. Such designation is not portrayed as in Respondent's motion. Fairways Development, LLC designated the item in question, "4. Complaint filed by Samuel T. Brick (2012-CP-40-7337)". The FOIA complaint included in the record is the complaint the Court heard in that matter. Respondent Richland County Planning Commission refers to the case in its Brief of Respondent while referring to the action brought against Richland County. What was provided in the record is the final action the Court examined in that matter. Fairways Development, LLC, did not complain that what was included was not what it intended. If it were incorrect, Fairways would have so indicated. Fairways did seek inclusion of another document it designated but by Appellant's misunderstanding was not included. This necessitated Appellant supplementing the amended record with an appendix. Both opposing parties

provided the requisite no objection, reserving rights to make further objections. Fairways Development, LLC made no such further objection and filed its final brief. It is unclear whether Respondent Richland County Planning Commission has filed its final brief as of the date of this return (February 3, 2015).

3. *Complaint of Improper Documents in the Record.*

Appellant considers the inclusion of the documents at pages 234-253 of the amended record relevant and of value to this Appellate Court for its consideration of this appeal. The Richland County Green Code, (Section 26-186 of the Richland County Code) requires a Green Code applicant for a land development project to be the owner¹. The Planning Commission granted Appellant's previous appeal (not the appeal forming the basis of this action) because the owner did not make the green code application. Respondent Richland County Planning Commission's initial brief urges this Court to take judicial notice of Appellant's FOIA Complaint in which he names Fairways Development, LLC as a party-defendant. He cites Freeman v. McBee, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984) in which a court can take notice of its own record, files, and proceedings for all proper purposes including facts established in its records. He refers to Appellant's statement in that case in which Appellant identified Fairways Development, LLC as the owner of the

¹ Sec. 26-186 (c)'s first sentence is " *Application*. A property owner desiring to use the development standards of this section must first submit an application to the Planning department."

property. Respondent Fairways Development, LLC then states there is no doubt that Appellant in March, 2013, was aware that Fairways Development, LLC was the owner of the subject development. In March, 2013, Appellant did think Fairways owned the property. He included Fairways as a FOIA respondent under the mistaken notion that Fairways had a vested interest as owner. Since he was seeking declaratory relief under FOIA the declaratory judgment act required him to include any interested party. This statutory declaratory judgment requirement is more stringent than that required by the South Carolina Supreme Court in Spanish Wells Property Owners Association v. Board of Adjustment of the Town of Hilton Head Island, 295 S.C. 67, 367 S.E. 160 (1988), the case Richland County Planning Commission considers the premise for Judge Benjamin's decision in the case. Spanish Wells specifically limits its determination to the inclusion of development permittees.

Appellant has contended throughout this matter that Fairways Development, LLC was intending to sell the property and that it is not the development permittee. Five days after Appellant filed its initial brief and its initial designated matter, Intervenor/Respondent filed a motion under Appellate Rule 241 with the lower court to lift the automatic stay and impose a supersedeas bond. The Motion was supported by an affiant who stated he and not Fairways Development, LLC owned the property. This was the first indication Appellant had that Fairways Development, LLC was not owner of the property. Appellant

had no reason to suspect Fairways had sold the property because such a sale is prohibited under Section 6-29-1190 of the South Carolina Code². Appellant looked into the matter and found a deed showing Fairways sold the property on December 13, 2012; just six days after the Richland County Planning Department issued the project development permit. This was before the lower court appeal was instituted. He also found official tax records that the property was sold two more times since then. Appellant filed a response to the motion with the lower court and included the deed, tax records, and related documents. Respondent Richland County Planning Commission now complains of these being part of the amended record. These documents are all part of the lower court record. Two of such files (the deed and tax record) are official records maintained by the Richland County Treasurer and its Registrar of Deeds. The other complained of documents are part of the lower court files in this case and are public documents. These documents also are relevant in reply to Respondents' continued misrepresentations and inferences regarding their client's ownership of the property.

² **SECTION 6-29-1190.** Transfer of title to follow approval and recording of development plan; violation is a misdemeanor.

The owner or agent of the owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records. A transfer of title in violation of this provision is a misdemeanor and, upon conviction, must be punished in the discretion of the court. A description by metes and bounds in the instrument of transfer or other document used in the process of transfer does not exempt the transaction from these penalties. The municipality or county may enjoin the transfer by appropriate action.

Respondent opened the door to this issue in its initial brief. It argued that this Court can take judicial notice of its own records and records of court proceedings other than the instant matter. Appellant, in its reply brief, adopts this argument and referring to these documents states that during the prosecution of this case Intervenor/Respondent Fairways Development, LLC was not owner of the property currently intended for development. This is in the face of repeated inferences and declarations by the Respondents that Fairways Development, LLC was such an owner, the most recent, as stated above, by the movant in this motion. Appellate Rule 267(c) states a record should not include matter that was not presented to the lower court. All the matter included in the amended record was filed with the lower court and is part of the lower court record. The lower court scheduled this issue for a hearing on September 8, 2014, but on August 25, 2014, it cancelled the hearing citing scheduling conflicts. The issue has not been rescheduled. Respondent Richland County Planning Commission states the documents are not properly in the record because they were filed after Judge Benjamin issued her orders. Rule 210 does not state such a requirement.

Respondent's Motion furthermore is dilatory. Respondent was copied both on the Intervenor/Respondent's motion to lift the stay on May 28, 2014, and on Appellant's response to the motion. Respondent knew, or should have known, at that time that Fairways Development, LLC did not own the property now planned for development. It could have objected to the inclusion of the

information provided by Appellant but did not do so. Instead on October 7, 2014, in its initial brief to be provided this Court it stated, “in March 2013 that Fairways Development, LLC, was the owner of the subject development.” Appellant filed his initial reply brief on October 17, 2014, and knew at that time Appellant intended to include the matter in the record. Although Respondents raised other issues with the record, Respondent Richland County Planning Commission still did not raise an issue with the deed and the other documents relating to Fairways’ ownership of the property. Not until just before the date for filing his final brief did he object.

ACCORDINGLY, Appellant requests this Honorable Court to deny Respondent Richland County Planning Commission’s motion to correct the amended record on appeal and for such other and further relief as this Honorable Court deems just, necessary, and proper.

Very respectfully submitted,



Samuel T. Brick, Appellant, Pro se
124 Runnymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

February 3, 2015

Certificate of Service follows next page

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CERTIFICATE OF SERVICE

Samuel T. Brick, Appellant pro se hereby certifies that the foregoing Appellant's Return to Motion in the above-captioned appeal was served upon the parties to this action by depositing a copy of same, enclosed in a First Class postpaid envelope addressed to the attorneys of record in a post office or official postal depository under the exclusive care and custody of the United States Postal Service, on February 3, 2015, addressed in the following manner:

Andrew F. Lindemann, Esquire
Michael B. Wren, Esquire
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, S.C. 29202-8568
Attorneys for Respondent

Tobias G. Ward, Jr., Esquire
J. Derrick Jackson, Esquire
Post Office Box 6138
Columbia, SC 29260
Attorneys for Intervenor/Respondent



Samuel T. Brick, Appellant, pro se

February 3, 2015

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

HAND DELIVERED: February 3, 2015

Re: Appellate Case Number 2014-000583, Samuel T. Brick, Appellant v. Richland County Planning Commission and Fairways Development LLC, Intervenor, Respondents

Dear Ms Kitchings:

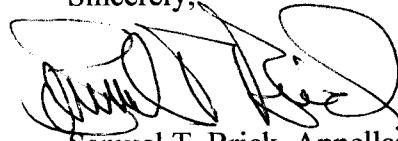
Enclosed for filing is Appellant's Return to the Motion to Correct Record on Appeal with the attendant Certificate of Service to Counsel.

I will be out of the Country from February 4, 2015 until February 18, 2015. I will be accible with my cell phone during this period at 803 546 4895.

If you have any other concerns or questions, please advise.

Thank you for your assistance in this matter.

Sincerely,



Samuel T. Brick, Appellant, Pro se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

Enclosures;
As Stated.

cc:

Tobias G. Ward, Jr. and J. Derrick Jackson (Counsel for Intervenor, Respondent)
Andrew F. Lindemann and Michael B. Wren, Davidson & Lindemann, P.A. (Counsel for Respondent, Richland County Planning Commission).