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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-400-1643

RECEIVED
APR 28 2015
SC Court of Appeals

Samuel T. Brick,

Appellant,

v.

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

Respondents.

**RESPONDENT FAIRWAYS DEVELOPMENT, LLC'S
MOTION TO DISMISS APPEAL FOR
LACK OF JURISDICITON**

The Respondent Fairways Development, LLC ("Fairways") hereby moves this court for an order dismissing this appeal for lack of appellate jurisdiction. The grounds for this motion are as follows:

The circuit court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction *as provided by law*. S.C. Const. art. V, § 11(*emphasis added*.) Thus, for the circuit court to exercise appellate jurisdiction in this matter, it must be grounded in a law by the legislature conferring such jurisdiction.

S.C. Code Ann. §6-29-1150(d)(1) provides the procedure for an appeal to the circuit court from a decision by the planning commission, but does not specify who may appeal. S.C. Code Ann. § 6-29-1150(D)(2) answers this question by providing, “A *property owner whose land is the subject of the planning commission decision* may appeal.” Brick is not the property owner whose land is subject to the decision and thus the circuit court does not have any jurisdiction to consider his appeal.

Several points show this is the proper interpretation of S.C. Code Ann. §6-29-1150(d) and that the circuit court did not have appellate jurisdiction in this case.

First, the court should note that when the legislature wanted to provide for a person with a substantial interest¹ to appeal to the circuit court, it clearly did so. For example, in addressing appeals from the zoning board, S.C. Code Ann. § 6-29-820(A) provides, “ A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court. S.C. Code Ann. § 6-29-820(B) provides a separate provision for a property owner. There is no corresponding provision in 6-29-1150(d)(1) for a person with a substantial interest to appeal.

Next, the qualification for appeal from the DRT *to the planning commission* states “any party in interest” and also states that the action of the planning commission is “final.” S.C. Code Ann. §6-29-1150(c). Thus, it appears that the legislature intended that a party in interest could appeal to the planning commission, but only the property owner whose land is the subject of the decision can appeal to the circuit court. *Cp.* S.C. Code Ann. §§ 6-29-1150(c) and 6-29-1150(d)(1) and (2).

The court should also note that Richland County Ordinance 26-54(c)(3)(d)(5) (Exhibit 1) refers to §6-29-1150(c), but then inaccurately states, “any person who may have a substantial interest in the decision of the planning commission may appeal to the

¹ Fairways does not believe Brick has a substantial interest, but that is a separate argument.

circuit court...” This reference is not accurate for two reasons: §6-29-1150(c) governs an appeal to the *planning commission*, not circuit court; and the actual language, is “any party in interest.” As argued herein, the appeal to the circuit court is only for a property owner who property is the subject of a decision by the planning commission.

The court should also take notice that the legislature amended S.C. Code Ann. §6-29-1150 in 2003 and removed the following sentence from §6-29-1150(c), “An appeal from the decision of the planning commission may be taken to circuit court within thirty days after actual notice of the decision” and added S.C. Code Ann. § 6-29-1150(D)(1) and (D)(2), “A property owner whose land is the subject of the planning commission decision may appeal.” Thus, it appears from the amendment that the legislature intended to remove the appeal to the circuit court from the “any party in interest” of §6-29-1150(c).

Third, S.C. Code Ann. §6-29-1155(A) provides a mechanism “If a property owner files a notice of appeal...” for a “person who is not the owner of the property to intervene as a party” if the person has a substantial interest in the decision of the planning commission. This is significant because it shows that the legislature intended that a non-party could only become a party to an appeal if the property owner appealed and the non-property owner filed a motion to intervene because of a substantial interest in the decision of the planning commission. This places the court in a gatekeeper function to allow the court to weed out frivolous protests like the present one.

When interpreting a statute, all of the language must be read in a sense that harmonizes with its subject matter. *Thompson ex rel. Harvey v. Cisson Constr. Co.*, 377 S.C. 137, 157, 659 S.E.2d 171, 181 (Ct.App.2008). In this case, the language shows the legislature intended that “any party in interest” could appeal to the planning commission (6-29-1150(c)), but only a property owner whose land is the subject of the planning commission decision may appeal, although a non-property owner with a substantial interest may move to intervene as a party to that appeal. In this case, none

of these requirements are satisfied by Brick's appeal and the circuit court lacked jurisdiction and this court should so hold and dismiss this appeal.

Finally, the court should note that this issue was raised before the circuit court judge; however, the circuit court concluded that Richland County waived the argument by not raising the issue when Brick appealed from DRT to the planning commission. Respectfully, this is in error for two reasons. Standing is jurisdictional and cannot be waived and must be considered by this court, even if it's not raised by the parties. *United States vs. Hays*, 515 U.S. 737 (1995). Also, the appeal from the DRT to the planning commission is based on the "any party in interest" requirement and not the property owner requirement of the appeal to the circuit court.

For all these reasons, this court should conclude that the legislature did not confer jurisdiction on the circuit court for a non-property owner to directly appeal the "final" decision of a planning commission approving a land development permit and dismiss this appeal. Richland County has been consulted and supports this motion.

TOBIAS G. WARD, JR., PA



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J. Derrick Jackson (15192)
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Attorneys for Respondent
Fairways Development

Dated: _____

4-25-14

EXHIBIT 1

Sec. 26-54(c)(3)(d) . Subdivision review and approval.

5. *Appeals.* Pursuant to the requirements of Section 6-29-1150 (C) of the South Carolina Code of Laws, any person who may have a substantial interest in the decision may appeal such decision of the planning commission to the circuit court, provided that a proper petition is filed with the Richland County Clerk of Court within thirty (30) days after receipt of the written notice of the decision by the applicant. An appeal shall cease all staff and review agency activity regarding the subject project. However, a reconsideration request may be heard at the same time an appeal is pending. Since an appeal to the circuit court must be based on the factual record generated during the subdivision review process, it is the applicant's responsibility to present whatever factual evidence is deemed necessary to support his/her position. In the alternative, also within thirty (30) days, a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1150 and Section 6-29-1155 of the South Carolina Code of Laws.

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DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-400-1643

Samuel T. Brick,

Appellant,

v.

**Richland County Planning Commission and,
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Respondents.

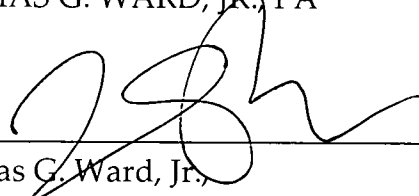
PROOF OF SERVICE

I certify that I have served a copy of the Respondent Fairways Development, LLC's Motion to Dismiss Appeal for Lack of Jurisdiction on all parties, by depositing the same in the United States Mail, postage prepaid, on April 24, 2015 addressed as follows:

Samuel T. Brick
124 Runneymeade Drive
Blythewood, SC 29016

Andrew Lindemann, Esquire
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202-8568

TOBIAS G. WARD, JR., PA

A handwritten signature in black ink, appearing to read 'TGW', is written over a horizontal line.

Tobias G. Ward, Jr.

J. Derrick Jackson, SC Bar No.: 15192

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Columbia, SC 29260

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Attorneys for Fairways Development, LLC

April 24, 2015

Columbia, SC

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TOBIAS G. WARD, JR., PA
— ATTORNEYS AT LAW —

TOBIAS G. WARD, JR.
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J. DERRICK JACKSON
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April 24, 2015

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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APR 28 2015

SC Court of Appeals

RE: Samuel T. Brick v. Richland County Planning Commission
Civil Action No.: 2013-CP-40-001643
Case Tracking No. 2014-000583

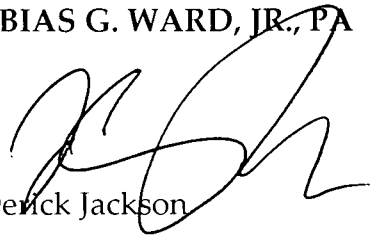
Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) copies of the Respondent Fairways Development, LLC's Motion To Expedite, Motion for Substitution and Motion to Dismiss Appeal and Proofs of Service in the above referenced matter along with a check for \$75.00 for the filing fees. Please file the originals and return clocked copies in the envelope provided.

Along with a copy of this correspondence we are serving other parties of record.

Respectfully,

TOBIAS G. WARD, JR., PA


J. Derrick Jackson

Enclosures
TGW,Jr.:wrc

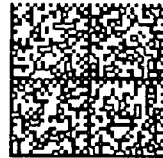
cc: Andrew Lindemann, Esquire (w / enclosures)
Samuel T. Brick, pro se (w / enclosures)

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211



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