

75814

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 EXPEDITE APPEAL

The Respondent Fairways Development, LLC ("Fairways") and putative Respondent SPPLA, LLC hereby move this court for an order expediting consideration of this appeal.

Appellant Samuel T. Brick ("Brick") is appealing an order dismissing his appeal to the circuit court of a decision by the Richland County Planning Commission which denied Bricks appeal of an approval by the Richland County Development Review Team of subdivision review application and sketch pan for a development called "The Villages at LongCreek." The lower court dismissed Brick's appeal because he failed to name and serve Fairways as development permittee on his appeal to circuit court. The

Respondents have argued as additional sustaining grounds on appeal that Brick lacks both constitutional and statutory standing to pursue an appeal from the approval of Fairways' development permit. In a separate motion, Respondent has moved this court to dismiss this appeal for lack of appellate jurisdiction.

By letter dated December 7, 2012, Fairways was advised that its Sketch/ Concept plan had been approved by Richland County Development Review Team at its November 29, 2012 meeting. (Exhibit 1) Since that time, Brick has effectively use the appellate process to delay this development for over two years, despite the approval of Richland County and despite his lack of standing and this court's lack of jurisdiction. Brick is taking advantage of Richland County Code Section 26-54(c)(3)(d)(5) which provides in part, "An appeal shall cease all staff review regarding the subject property." (Exhibit 2)

Brick served his Notice of Appeal on March 11, 2014. Thus, it has been over a year since Brick served the Notice of Appeal and the Record on Appeal has not been correctly filed and briefing is not complete.¹ As noted above, the Respondents (Fairways and SPPLA) own the land which they would like to develop as permitted as quickly as possible. This appeal is unfairly delaying this development for an unreasonable length of time.

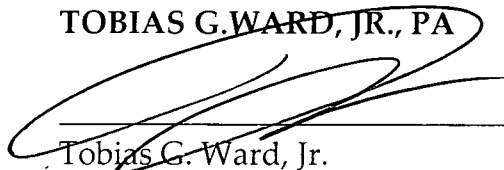
Respondents believe the issues presented (if the court denies the motion to dismiss related to jurisdiction) are straightforward and could be decided without oral argument based on a limited record and briefs. The orders being appealed are virtually identical and are barely three total pages in length each. Fairways' Brief is ten pages, and includes additional sustaining grounds. There is simply no reason for the court to allow Brick to expand and delay this appeal any further.

¹ Fairways timely filed Respondents Brief based on the "Amended Record on Appeal" despite its objections and reservations to this Amended Record on Appeal in an effort to move this case forward. It did plan to move to strike the post-order material Brick inserted in the record.

WHEREFORE, having set forth the grounds therefore, Respondent Fairways Development, LLC ("Fairways") moves this court for an order expediting consideration of this appeal under whatever conditions the court deems appropriate.

Respectfully Submitted,

TOBIAS G. WARD, JR., PA



Tobias G. Ward, Jr.
6 Calendar Court, Suite 3
Columbia, SC 29206
SC Bar No.: 5826
803-708-4200
Fax 803-403-8754
tw@tobywardlaw.com
Attorney for Fairways Development

Dated: 4-24-15



DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES

Post Office Box 192 • 2020 Hampton Street • Columbia, S.C. 29202
Zoning & Land Development: (803) 576-2180 • Zoning Fax: (803) 576-2182

December 7, 2012

John D. Champoux
125 Blythewood Road
Blythewood, SC 29016

RE: The Villages at LongCreek - Sketch Plan
RCP # SD-12-04
TMS # 20401-01-03

Dear Mr. Champoux:

Please be advised the Sketch/Concept Plan entitled "The Villages at LongCreek", dated November 7, 2012, was approved at the Development Review Team meeting on November 29, 2012.

Note: This approval does not indicate certification or acceptance of the conservation areas per Richland County Land Development Code Sec 26-186 (d).

The following items must be addressed at the time preliminary plans are submitted for review:

Hope Hasty, Land Development Administrator, Planning (803-576-2188):

1. No comments, approved.

Andrea Bolling, Flood Coordinator, Public Works (803-576-2150):

1. The 100-year floodplain should be delineated on the plan sheets based on the FEMA designated elevation, not a "scaled" elevation from the FIRM maps. The site appears to be within an AE Zone with a 100-year elevation of 348 feet, NAVD '88 at the project location.
2. Please provide the 100-year floodplain delineation of the wetlands within the proposed project area.
3. Delineate and quantify any areas of proposed floodplain encroachment within the floodplain of the on-site wetlands and the required compensation.
4. Provide match lines on the plans.
5. It is not clear if there is floodplain encroachment due to the proposed trail. If the trail is within the 100-year floodplain, be sure to provide details of the trail that clearly show there are no impacts due to the construction of the trail or provide encroachment and compensation information.
6. The proposed trail appears to impact Wetlands A and B. Please provide evidence (approved permit or exemption letter) that this impact has been approved by the Army Corp of Engineering (ACE).
7. It is not clear from the plans whether the "Waterfront Park" and associated structure extending into Lake Columbia is included in the proposed project. If these areas are included, please provide additional details as it appears the park may be within the 100-year floodplain and there may be impacts associated with the structure within the limits of the lake.
8. Please provide the datum (NAVD or NGVD) on the plans.
9. A wetland survey, approved by the Army Corp of Engineers, needs to be submitted.

William Simon, Engineer II Development, Public Works (803-576-2413):

1. No comments, approved.

Miranda Spivey, Fire Marshal, Emergency Services (803-576-3405):

1. No comments, approved.

EXHIBIT 1 - (Page 1 of 3)

A-4

Geonard Price, Zoning Administrator, Planning (803-576-2174):

1. The reference that the project will have attached dwellings needs to be removed. Neither the current zoning district, nor the application of the Green Code to the project will allow for attached dwellings.

James B. Atkins, Director, Conservation Department (803-576-2082):

Additional information is required before the Conservation Department can issue certification of the conservation areas. As mentioned during the Design Review Team (DRT) meeting of November 29, 2012, these include:

1. A listing of each individual conservation area by type (primary or secondary) and the surface area of each. Each area listed should be clearly labeled on a site map. Consistent with Sec 26-186, (g), each individual conservation area should also be identified by subtype and listed in a table. For example:

10 acres of primary conservation areas are comprised of three acres of 100 year flood floodplains, two acres of stream buffers, two acres of slopes greater than 40% and three acres of wetlands. Fifteen acres of secondary conservation areas are comprised of 10 acres of healthy, native forests, two acres of trails and three acres of neighborhood greens.

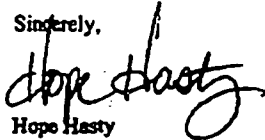
2. Consistent with Sec 26-186, (g), (2), (b), the location, type and surface area of any proposed stormwater BMPs (bioswales, etc.) and outlets constructed in or impacting the proposed conservation areas.
3. The final detail of trail construction materials, for each section of trail, to determine the area of impervious trail surface. In addition, list all other impervious surfaces in recreation areas (gazebos, impervious sidewalks in neighborhood greens, community center, waterfront park, parking spaces at the community garden, etc.). Per Sec 26-186, (g), (3), impervious surfaces in recreation areas shall not be credited as conservation area. Also, please note, constructed facilities shall not exceed 15% of the conservation area [Sec 26-186, (g), (4) (a)].
4. Consistent with Sec 26-186, (g), (4) (a) and (b), quantification of the existing trees in the proposed conservation areas through a tree survey and/or photo documentation to provide a baseline reference for permanent protection of the conservation areas to be conveyed to the POA.
5. A plan detailing how the POA will permanently protect the conservation areas conveyed to the POA consistent with Sec 26-186, (g), (4), (b). Implicit in the plan is the requirement to physically delineate and mark the conservation areas and boundaries prior to any earth-moving, clearing, home construction, or similar activities which could potentially damage or encroach upon the future certified and accepted conservation areas.

The following is noted for informational purposes:

1. Upon written notice of sketch plan approval for a phase, the applicant shall have a two (2) year vested right to proceed with the development of the approved subdivision phase under the regulations that are in place at the time of subdivision approval. Failure to submit an application for preliminary plan approval within this two (2) year period shall render the sketch plan approval void. Approval of the above-referenced sketch plan will expire on December 6, 2014. However, the applicant may apply to the planning department for a one (1) year extension of this time period no later than 30 days and no earlier than 120 days prior to the expiration of the sketch plan approval.
2. Preliminary plans may now be submitted. Please use the Preliminary Plan submittal checklist included in the Major Subdivision Development application packet. This packet is available online at: <http://www.richlandonline.com/departments/Planning/forms.asp>.

If you have any further questions or concerns, please feel free to contact Hope Hasty at (803) 576-2188 or hastyh@rcgov.us.

Sincerely,



Hope Hasty
Land Development Administrator

Cc: John Bakhaus, c/o Fairways Development Group, Applicant
Miranda Spivey, Fire Marshal
William Simon, Engineer II - Development
Tracy Hegler, Planning Director
Geonard Price, Deputy Planning Director
Andrea Bolling, Flood Coordinator
Holland Leger, Planning Services Manager
Mike Bagley, SCDOT

EXHIBIT 2

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.

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

Samuel T. Brick,

Appellant,

v.

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

Respondents.

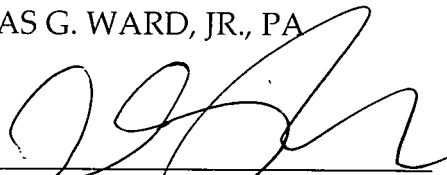
PROOF OF SERVICE

I certify that I have served a copy of the Respondent Fairways Development, LLC's Motion to Expedite Appeal 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



Tobias G. Ward, Jr.

J. Derrick Jackson, SC Bar No.: 15192

P.O. Box 6138

Columbia, SC 29260

803-708-4200

Fax 803-403-8754

dj@tobywardlaw.com

Attorneys for Fairways Development, LLC

April 24, 2015

Columbia, SC

9

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

TOBIAS G. WARD, JR.
tw@tobywardlaw.com

J. DERRICK JACKSON
dj@tobywardlaw.com

April 24, 2015

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

75814
RECEIVED

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

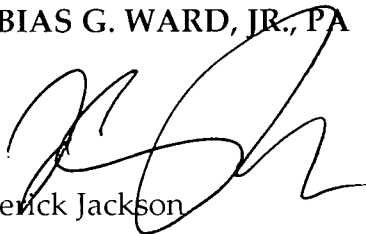
Dear Ms. Kitchings:

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)

TOBIAS G. WORD, JR., PA

— ATTORNEYS AT LAW —

P.O. Box 6338, Columbia, SC 29260

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

