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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 FAIRWAYS DEVELOPMENT, LLC'S
MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

Intervenor/Respondent Fairways Development, LLC requests this Honorable Court to dismiss Appellant's appeal stating that the General Assembly did not confer jurisdiction on the Richland County Court of Common Pleas to entertain a planning commission decision on an appeal to it regarding a staff action permit. It states the General Assembly did not bestow appellate jurisdiction on the circuit court by specifically stating who can appeal. The motion avers that since Section 6-29-1150 (C) only refers to the planning

commission action and since section 6-29-1150 (D)(1) does not include who may appeal it does not meet the constitutional standard for the circuit court to take the appeal. It states a complimentary provision in the Richland County Code is inaccurate by stating that any person who may have a substantial interest in the decision of the planning commission may appeal to the circuit court. In actuality the County reflects the right of the circuit court to hear appeals from the decisions of the planning commission as provided in § 6-29-1150 (D)(1). Clause 1150 (D)(1) specifically relates back to the last sentence of Paragraph 1150 (C) regarding the action of the planning commission and that it is the final administrative action in the matter (although “final” is not so defined nor does it need to be considering the necessity of finality for judicial review of administrative actions). The very next sentence, stated in Clause (D)(1) speaks to an appeal from that planning commission decision. It does not say from “a” planning commission decision but from “the” planning commission decision. This distinction demonstrates the reference to the prior sentence. The circuit court’s authority to hear such appeals accordingly is specific and in line with the South Carolina Constitution’s mandate that jurisdiction is provided by law.

Intervenor/ Respondent refers to Article 5-Local Planning—Zoning with regard its provision for appeals to the circuit court. This matter arises under Article 7, not Article 5. In Article 5, relating to zoning matters, the General Assembly states a person with a substantial interest can appeal to the circuit court. Your movant considers this as demonstrating specific language is included for

constitutional jurisdiction. Intervenor/Respondent apparently has no problem with the circuit court otherwise having jurisdiction to hear land development appeals. Article 7—Local Planning Land Development Regulation authorizes, among other things, staff bodies to regulate land use through a permitting process overseen by a local planning commission, not something found in legislatively-charged zoning litigation. Intervenor/ Respondent states since Clause 6-29-1150 (D)(1) does not restate the “any party in interest” language and since the word “final” is used at the end of Paragraph (C), Clause (D)(1) has no effect. It argues the only constitutional provision providing jurisdiction is in Clause (D)(2), a precatory provision encouraging pre-litigation mediation. While arguing that statutory intent is found by examining an entire statutory provision, it ignores the clear intent of the Section 1150 appeal procedures. This issue was briefed in Appellant’s Reply to the respondents’ jurisdictional arguments in their briefs.

To reiterate, the South Carolina Constitution provides at Article 1, Section 22, that all persons have a right to judicial review of an administrative agency determination affecting private rights. The term “final” in Clause (C) of Section 6-29-1150 relates to a final administrative decision making the decision appealable. The phrase “any party in interest” is an inclusive phrase and includes a property owner and a party such as Appellant. Whereas Clause (D)(1) does not reiterate the phrase “any party in interest,” the provision relates back to that phrase in the immediately preceding paragraph with the any party in interest being the appealing party, whether it be the property owner, a developer, a property

owners association, or a person such as the Appellant. For statutory construction the terms in Clauses (1) and (2), “must’ and “may’ are vital in understanding that Clause (D)(2) relates only to a property owner whose land is subject to the decision of the planning commission. Clause (D)(2) does not disenfranchise all persons other than property owners, those persons having the protection of the Constitution’s Article 1, Section 22 rights. A property owner has a choice as to whether it wants to appeal using pre-litigation mediation. Section 6-29-1150 does not require such use. It states “may.” On the other hand, if the property owner decides it wants to forego pre-litigation mediation, it can file as any party in interest. In either case a thirty-day period is applicable. Although a “substantial interest” standard is listed in the Richland County regulation and in Article 5 of the state laws with regard to zoning, its only application with regard to Article 7 statutory language is to Section 6-29-1155 mediation procedures. Mediation itself, as opined above is not mandatory. It states if there is a mediation request it must be granted. Section 1155 says “a person who is not the owner of the property may petition to intervene as a party” to the pre-litigation process. The only time the “substantial” qualifier is used in Article 7 (Land Development) is that a motion to intervene must be granted if the petitioning party has a “substantial” interest. The mediator or lower court however could grant a petition of someone with less than what it might consider a person with a substantial interest. Richland County sets forth certain parameters for substantial interest in its appeal regulations. Appellant indicated his conformity to parameters such as

being adjacent or contiguous in his Planning Commission appeal and continues to contend he is a party in interest.

Mediation language was added by the General Assembly in 2003 throughout various provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (S.C. Code § 6-29-840, et seq.) A complete title to the bill identifying the various mediation additions to the various land development appellate procedures is in a footnote to Appellant's Reply Brief. The point of noting this is it indicates what the General Assembly intended with the language added by the mediation clauses in Sections 1150 and 1155. It was to encourage mediation throughout the State; mandatory mediation did not survive the legislative process. Intervenor/Respondent and Respondent Richland County Planning Commission are in possession of Appellant's briefs. His final reply brief has been filed with the clerk but may need revision to comport with changes to page numbers in the pending Amended Record to the Appeal.

In the instant case the appeal is from a decision by a planning commission upholding staff action to approve a land development plan. The planning department's decision was the final administrative action on the appeal. The administrative process does not include the judicial procedures and protections that judicial review provides. Rules for appealing parties are not published and objections are called out of order. Cross examination is not allowed in the permitting or the appellate processes. The Richland County land development administrative records under review or being appealed are not public. In the

instant proceeding the record before the planning commission was incorrect in containing inapplicable and prejudicial matters of which Appellant did not know until the record was filed for the lower court's determination. This is a complained of issue not yet addressed by the lower court. Appellant appealed the secret nature of the staff action (Development Review Team) under the South Carolina Freedom of Information law and lost that case in the circuit court. Appellant decided not to appeal that decision and the county's staff action remains secret. The appeal to the circuit court by a party whose appeal to it was denied by the planning commission as authorized specifically by Section 6-29-1150 meets the Constitutional mandate for appellate review. It also meets the Constitutional mandate of right to judicial review of administrative actions. Judicial appeals provide citizens rights not provided in administrative actions. The Constitutional threshold for such rights in land development matters in an "any party in interest" standard.

The Intervenor/Respondent contends that the lower court did not address the jurisdictional issue but said instead that with the planning commission hearing the matter, it was waived. That is not what the lower court did or said in its Orders. The lower court deferred to the Planning Commission's determination that Appellant had a sufficient interest to appeal the development project at issue. In other words the lower court found Appellant met the "any party in interest" threshold for making an appeal. The lower court specifically determined and stated in its Orders that Appellant's 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 (to) a property owner, S.C. Code § 6-29-1150(D)(2), and S.C. Code § 6-29-1155(A).” (Parenthetical (to) added for grammatical sense). Neither Respondent Richland County Planning Commission nor Intervenor/Respondent Fairways Development, LLC appealed the lower court’s determination to this Honorable Court. Respondents consider this a jurisdictional matter and not subject to court rules or process stating jurisdictional matters can be brought up anytime. Both Respondents argued the matter in their initial briefs. Intervenor/Respondent continues to allege Appellant has no standing because his property is not adjacent, contiguous, or near the project. The county’s planning commission found to the contrary and the lower court adopted that finding. Intervenor/Respondent argues for standing Appellant must be adjacent to the project’s first phase, a portion of property Intervenor/Respondent has not owned since December 13, 2012. Appellant shares a common border with another portion of the proposed project and is just across a lake less than one-tenth of a mile from where the sketch plans designate a waterfront park, an item specifically forbidden for the area (§26-141 (Table 26-V-2) and § 26-151(b)(2) of the Richland County Land Development Code; copied as at attachment 1).

Appellant requests this Honorable Court to deny this motion. The motion lacks basis and is untimely. It is brought near the end of the process in which a litigation package has been developed by the parties for the Court’s consideration

and deliberations. The respondents already choose to make jurisdictional arguments through the normal appellate process, following appeal procedures and procedures leading to this Court's deliberations. Even with that, Appellant contends the jurisdictional argument is without merit.

Very Respectfully Submitted,



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May 1, 2015
Date

Attachment 1 (§26-141 (Table 26-V-2) and § 26-151(b)(2) of the Richland County Land Development Code

Secs. 26-142 – 26-150. Reserved

ARTICLE VI. SUPPLEMENTAL USE STANDARDS

Sec. 26-151. Permitted uses with special requirements.

- (a) *Purpose.* Permitted uses with special requirements are uses permitted by right in a certain zoning district, provided that the specific standards set forth in this article are met. The specified standards are intended to ensure that these uses fit the intent of the districts within which they are permitted, and that these uses are compatible with other development within the district. All permitted uses with special requirements shall comply with the following:
- (1) All properties and structures containing permitted uses with special requirements shall conform to all applicable development standards.
 - (2) Permitted uses with special requirements shall comply with all applicable local, state, and federal regulations and standards, and shall be properly licensed and permitted.
- (b) *Permitted uses with special requirements listed by zoning district.*
- (1) Accessory Dwellings - (RU, RR, RS-E, RS-LD, RS-MD, RS-HD, M-1)
 - (2) Amusement or Water Parks, Fairgrounds - (GC, M-1, LI)
 - (3) Animal Shelters - (GC, M-1, LI)
 - (4) Antennas - (All Districts)
 - (5) Athletic Fields - (TROS, NC, RC) (Ord. 043-07HR; 5-1-07)
 - (6) Banks, Finance, and Insurance Offices – (NC, RC)
 - (7) Barber Shops, Beauty Salons, and Related Services - (RU, RM-MD, RM-HD)
 - (8) Bars and other Drinking Places - (RC, GC, M-1, LI)
 - (9) Batting Cages - (GC, M-1, LI)
 - (10) Bed and Breakfast Homes/Inns - (RU, RR, RM-MD, RM-HD, OI, NC, RC, GC) (Ord. 020-10HR; 5-4-10)
 - (11) Beer/Wine/Distilled Alcoholic Beverages – (GC)

SBC. 26-141 TABLE 26-V-2

Current through 12-9-2014

USE TYPES	TROS	RU	RR	RS-E	RS-LD	RS-MD	RS-HD	MH	RM-MD	RM-HD	OI	NC	RC	GC	M-1	LI	HI
Fraternity and Sorority Houses									P	P	P			P			
Group Homes (9 or Less)		SR	SR	SR	SR	SR	SR	SR	SR	SR							
Group Homes (10 to 15) (Ord No.044-12HR; 9-11-12)		SR								SE	SE	SE	SE	SE			
Manufactured Home Parks								SR									
Rooming and Boarding Houses										SE	SE	SE	SE	P			
Special Congregate Facilities											SE			SE			
Accessory Uses and Structures																	
Accessory Uses and Structures (Customary) – See Also Sec. 26-185		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Home Occupations		SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR			
Swimming Pools		SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR			
Yard Sales		SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR			
Recreational Uses																	
Amusement or Water Parks, Fairgrounds														SR	SR	SR	
Amusement Arcades												P	P	P	P		
Athletic Fields	SR	SE	SE	SE	SE	SE	SE	SE	SE	SE	P	SR	SR	P	P		
Batting Cages														SR	SR	SR	
Billiard Parlors														P	P		
Bowling Centers														P	P		
Clubs or Lodges (Ord No.054-08HR; 9-16-08)		SE									P	P	P	P	P		
Country Clubs with Golf Courses	SR	SR	SE	SE	SE	SE	SE	SE	SE	SE				SR	SR	SR	
Dance Studios and Schools											P	P	P	P	P		
Go-Cart, Motorcycle and Similar Small Vehicle Tracks														SR	P		P
Golf Courses	SR													SR	SR	SR	
Golf Courses, Miniature													P	P	P	P	
Golf Driving Ranges (Freestanding)	SR													SR	SR	SR	SR

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CERTIFICATE OF SERVICE

Samuel T. Brick, Appellant pro se hereby certifies that the undersigned Appellant, pro se, served a copy of Appellant's Return to Fairways Development, LLC's Motion to Dismiss Appeal for Lack of Jurisdiction upon the parties to this action by depositing a copy of same, enclosed in a First Class postpaid prepaid 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 May , 2015, addressed in the following manner:

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