THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

Appellant,

v.

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

REPLY BRIEF

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SC 29482-0187
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For Appellants

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REPLY

Appellants respectfully submit Reply. The record reflects that Respondents failed to timely file brief in violation of Rule 208, SCACR. The record reflects Respondents' untimely brief evades the issues on appeal. Pursuant to Rule 240, SCACR, failure to timely file and/or respond may be deemed consent to the relief sought. Appellants dispute Respondents' untimely, inaccurate, and disingenuous statement of the case, facts, and issues.

1. Respondents engaged in fraud upon the court in the presence of the court as documented in the transcript dated April 7, 2015, and the attached affidavit, which was timely served and filed; despite timely objection, the lower court erred in failing to address it thereby becoming an unwitting accomplice/enabler in wrongdoing perpetrated by untrustworthy Respondents' Counsel as officers of the court.

Walker failed to timely file his brief. Moreover, Walker failed to respond to and thereby evades the issues on appeal. Walker did not deny his fraud upon the court in the presence of the court. Failure to timely file and/or respond to the stated issues on appeal may be deemed consent to the relief sought. Rule 240, SCACR. Moreover, the Record on Appeal reflects Respondents' counsel's correspondence to Appellants, essentially an admission against interest, stating, "In response to your request, the BZA held a rehearing on September 11, 2014 and issued a Final Order on the rehearing on January 8, 2015 (mailed January 12, 2015)." The notice of appeal and request for mediation was timely served and filed on Monday, February 9, 2015. Further, the record reflects that untrustworthy counsel for Respondents materially omitted and substantially failed his professional duty to timely notify the Presiding Judge BEFORE THE ORDER WAS SIGNED that the other side had not received notice of the hearing or the proposed order. Walker failed to use the proper address for notice as published on the Charleston County website and referred to "Jane Doe" at the hearing. See attached. Materially, Walker's quote on page 15 of his brief fails to disclose that the Postmaster provided notice well before the proposed order was signed and well before the email to the Presiding Judge

was sent. See attached. Walker's brief confirms that untrustworthy officers of the court misused and abused court staff and the Presiding Judge as unwilling and unwitting accomplices. Fraud upon the court in the presence of the court by untrustworthy officers of the court is NOT moot and this Court should reverse the lower court order. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

2. Fraud upon the court in the presence of the court led to wrongful dismissal, it materially prejudiced the Appellant, and it is not moot even after dismissal. Controlling precedent provides that failure to exercise discretion under these circumstances is an abuse of discretion reversible as a matter of law.

Failure to exercise discretion under these circumstances is an abuse of discretion. Walker's frivolous argument that fraud upon the court in the presence of the court is somehow moot should be overruled. Walker did not

deny prior misconduct in the case of *Creighton v. Coligny Plaza Ltd.,* 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998). In that case, the Court of Appeals held the trial judge erred by dismissing the appellant's discovery abuse motion as moot even though the verdict was in favor of the defendant. *Id.* Respondents' counsel listed in the *Creighton* case (*supra*) includes the self-same untrustworthy respondents' counsel herein. The letter and spirit of that case condemns wrongdoing by untrustworthy officers of the court designed to deny the other side a full and fair hearing as in this case. The lower court erred. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

3. The BZA hearing on the merits at the request of the property owner vests jurisdiction in the BZA at the pre-litigation stage; statutory authority provides that party with the right to appeal and to request mediation after the hearing; pursuant to the statute, Appellant timely filed notice of appeal and mediation; the lower court erred because, pursuant to S.C. Code § 6-29-825, the request for mediation "must" be granted. The lower court erred because it has no jurisdiction at the **pre-litigation** stage until and unless mediation is unsuccessful.

The BZA granted the Appellants party status at the hearing. The Record on Appeal reflects that Respondents' counsel admitted, "In response to your request, the BZA held a rehearing on September 11, 2014 and issued a Final Order on the rehearing on January 8, 2015 (mailed January 12, 2015)." The notice of appeal and request for mediation was timely served and filed on Monday, February 9, 2015. S.C. Code § 6-29-820(B). Respondents, bless their hearts, rely on an inapplicable statute which applies to folks who intervene after the hearing and who were not parties to the hearing. It makes sense that folks who were not parties to the hearing would file a petition setting forth grievances. Appellants were parties to the hearing

and complied with the applicable statute, S.C. Code § 6-29-820(B). The BZA confirmed and the Record on Appeal reflects that the Appellants ARE property owners whose land is the subject of a decision of the board of appeals. The lower court order should be reversed. See *Helicopter Solutions, Inc. v. Richard Hinde & Horry Cnty. Zoning Adm'r*, 414 S.C. 1, 776 S.E.2d 753 (S.C. App., 2015).

4. Even assuming the lower court had jurisdiction, after BZA hearing on the merits at the request of the property owner and after timely filing of notice of appeal with request for pre-litigation mediation, statutory authority and legislative intent pursuant to S.C. Code § 6-29-825 provide that the requested mediation "must be granted"; the lower court erred in failing to grant the request for mediation.

American jurisprudence is based upon due process with notice of appeal after hearing as was timely entered in this case pursuant to statute, S.C. Code § 6-29-820(B). With regard to *Newton*, Walker misconstrues the case because "first-level" appeal refers to those who first intervene after the BZA hearing. *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (S.C. App. 2011). Specifically, in this case, the BZA at the hearing granted party status to the Appellants as property owners whose property is the subject of and whose property is adversely affected by a

decision of the zoning administrator (Z.A.). The BZA then held a hearing on the merits. Pursuant to the applicable statute, S.C. Code § 6-29-820(B), after the hearing, notice of appeal is proper pending mediation. When interpretation of a statute is required, "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The lower court order should be reversed.

5. Public policy supports the request for mediation after BZA hearing on the merits involving violation of impervious surface limitations and storm water runoff adversely affecting adjacent property.

Legislative intent and express statutory authority provide that "mediation must be granted" at the statutory **pre-litigation** stage, S.C. Code § 6-29-825. Walker concedes that violation of impervious surface limitations and storm water runoff may affect adjacent property. Legislative intent and express statutory authority recognize a **pre-litigation** stage between parties to the hearing until and unless mediation is unsuccessful. S.C. Code § 6-29-825. With regard to *Newton*, Walker again misconstrues the case. *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112,

719 S.E.2d 282 (S.C. App. 2011). The statute, S.C. Code § 6–29–820(B), is designed to encourage **pre-litigation** mediation by **NOT** requiring the filing of a petition until and unless pre-litigation mediation is unsuccessful after the hearing. In *Newton*, the Court made clear, "This procedure does not allow for **issue identification, or even party identification, prior to the filing of a petition** with the circuit court." Id., p. 284 (emphasis supplied). Accordingly, the lower court erred.

6. The substantive rights of the Appellant have been prejudiced and the lower court order should be reversed.

Under these circumstances pursuant to S.C. Code § 6–29–820(B), a party to the BZA hearing has the right to file notice of appeal and request mediation after the hearing. Legislative intent and express statutory authority provide that "mediation must be granted" at the statutory **pre-litigation** stage, S.C. Code § 6-29-825. Appellant respectfully requests the statutory right to mediation. *See State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the

right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

In support of express legislative intent for mediation and for substantial justice affecting substantial rights, Appellants respectfully request reversal of the lower court orders.

Respectfully submitted,

Dated 3/5/16

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843.883.3010
For Appellants

John Doe VS Board of Zoning Appeals , defendant, et al

Case Number:	2015CP1000775	Court Agency:	Common Pleas	Filed Date:	02/09/2015
Case Type:	Common Pleas	Case Sub Type:	Zoning Board 970	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	04/10/2015	Disposition Judge:	Dennis, R. Markley Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Board of Zoning Appeals					Defendant		02/09/2015
BZA					Defendant		02/10/2015
Doe, John	PO Box 187 Sullivans Island SC 294820187				Plaintiff Pro Se		04/30/2015
Doe, John					Plaintiff		04/14/2015
Linton, John Phillips Jr.	PO Drawer 22247 Charleston SC 29413				Defendant Attorney		03/09/2015
S I					Defendant		02/10/2015
S I Building Dept					Defendant		02/10/2015
S I Zoning Administrator					Defendant		02/10/2015
Sullivans Island Town of					Defendant		03/09/2015

UNITED STATES
POSTAL SERVICE

April 27, 2015

PO Box 187

The enclosed mail was addressed to John Doe at the Post Office address. However, Pratt-Thomas, Walker, Attorneys At Law instructed me to place these letters into PO box 187.

If you have any questions or concerns, please call the attorney's office.

Sincerely,

Margie L. Seabrook

Margie L. Seabrook
Postmaster
2061 Middle St.
Sullivans Island, SC 29482