

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DEANDREA GIST BENJAMIN
CIRCUIT COURT JUDGE

Appellate Case No. 2016-001871

Opinion No. 2016-UP-261 (S.C. Ct. App., filed June 8, 2016)

Samuel T. Brick

PETITIONER,

versus

Richland County Planning Commission and
Fairways Development, LLC, Intervenor

RESPONDENTS

**REPLY TO RETURN OF RESPONDENT
TO PETITION FOR WRIT OF CERTIORI**

Samuel T. Brick, Pro Se, Petitioner
124 Runnymede Drive
Columbia, South Carolina 29016
803 546 4895
sbrick2011@gmail.com

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S.C. SUPREME COURT

REPLY TO RESPONDENT'S RETURN

In reply, Petitioner addresses the allegations upon which Respondent Richland County relies as follows. This Statement of the Case below responds to each of Respondent's allegations. Petitioner's argument is that Justice Huff's Per Curiam Opinion rests on three interconnecting and failing premises, that dismissal by the Circuit Court is incorrect, The Court of Appeals affirmation of that dismissal is incorrect, and certiorari is merited.

STATEMENT OF THE CASE

Overview. The chronology of the case has been provided in Petitioner's Request for Certiorari, the Intervenor's Return to the petition, Petitioner's Reply to that Return, in Respondent's Return to the Petition, and in several other filings. Petitioner filed his motion on September 13, 2016. Intervenor Fairways Development, LLC (Fairways) returned on October 13, 2016, and Petitioner replied to that on October 21, 2016. Respondent Richland County Planning Commission returned on October 21, 2016. In a motion granting Respondent's late filing, the Court granted Petitioner's reply until November 7, 2016.

Respondent's argues the Court of Appeals decision does not warrant the issuance of a writ of certiorari, that petitioner raised new issues in his petition (not indicating the issues) and that the Court of Appeals correctly affirmed the circuit court's dismissal based upon "failure to timely name the development permittee as a necessary party to the appeal." Respondent while reiterating *Spanish Wells*' rulings to which Petitioner consistently has agreed, states that Fairways is *the* owner of the development. This is not correct. See the deed (App. p. 264) in which Fairways transfers the twenty-two acres that make up the first phase of the development

(App. p. 268).¹ The Planning Commission appeal record noted its sale (App. p. 181). Fairways may still be an owner of part of the project, but it is not the owner of the first development phase. It sold that for \$400,000.00.

Petitioner has argued that the Court of Appeals incorrectly interpreted *Spanish Wells Property Owners Association v. Board of Adjustment of the Town of Hilton Head Island*, 295 S.C. 67, 367 S.E. 2d 160 (1988) (hereinafter “*Spanish Wells*”) by treating failure to join a necessary party as a jurisdictional matter. Petitioner, while agreeing that a development permittee is necessary to an appeal to a land development case argued in its request to the circuit court to reconsider that Intervenor Fairways Development, LLC, is not such a necessary party because it is not the permittee or legally-related to the permittee (App. p. 182-185; App. p. 6). Petitioner pointed out that S.C. Code Ann. § 6-29-1150(B) (2012) requires a public record on all land development plans (the permit in this matter). (App. p. 11, note 2). He pointed out that the administrative fact-finding bodies did not award the development permit (App. p. 74) to Intervenor, its agent, or to any entity connected to it but to the landscape architect (App, p.74 and 183) who worked for a design consulting company employed by yet a different corporate entity than Intervenor Fairways Development, LLC (App. pp.183 and 293).

In its Return Respondent Richland County Planning Commission argued that failure to name a necessary party is jurisdictional and cannot be corrected. (Respondent’s Return at p. 6). Petitioner argued in its Petition for a Rehearing with the Court of Appeals that the *Spanish Wells*’ requirement for joinder of a necessary party serves judicial economy and is based on equitably-considered joinder. (App. pp. 5-7; Petition for Certiorari, pp. 8-11)). Petitioner pointed out that *Spanish Wells* affirmed the circuit court’s decision in that case which gave the appellant fifteen

¹ Richland County tax records for the property state that Longcreek Associates, LLC sold the same twenty-two acres to SPPLA, Inc. three and a half month after its purchase (04/03/2013) (App. 263). There is no connection in the files that relates SPPLA, Inc. or Longcreek Associates, LLC to Fairways Development, LLC.

(15) days to join the developer as necessary for that appeal, which obviously was well past any jurisdictional deadline for bringing it to the circuit court. (App. p. 2; Petition for Certiorari, p. 8).

Respondent cites *Vulcan Materials Co. v. Greenville County Board of Adjustment*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) for the premise that timeliness of an appeal from a zoning board's decision is jurisdictional. Respondent states that while it involves a zoning board matter, it nonetheless is no different from the timeliness of an appeal from a planning commission decision. Petitioner has never contested this proposition. Respondent admits in its Return (third paragraph of page 2) that Petitioner timely filed his appeal under appropriate jurisdictional requirements. Respondent then points out that Rule 74, SCRCF, requires notice of appeal must be served *on all parties* within thirty days as indicated by the Court of Appeals and that failure to do so is a fatal error. Emphasis was by Respondent. Petitioner argued that where a statutory provision controls taking an appeal to the circuit court, Rule 74, SCRCF, does not apply. Petitioner addressed this in his Petition for Rehearing (App. pp. 10-14) and also in his motion for a writ of certiorari (Petition for Certiorari, pp. 16-20). Petitioner argued that Fairways Development, LLC did not participate in the planning commission appeal as a party or otherwise. He also argued the permit is a legislatively-required public record. He argued the decision not to award it to Fairways was based on facts the county's Development Review Team (DRT), the county's designated staff knew from the permit process.²

² The Planning Commission rejected the developer's initial sketch/concept plan application because it did not comport with the Green Code (previously Richland County Code §26-186 (App. pp. 239-246) requiring that an owner make the application (owner and developer having varying roles under the Green Code) (subsection (c)). Note that the owner's application did not require a second fee payment (App. p. 74). The permit was to John D. Champoux, the landscape architect for Sustainable Design Consultants, Inc. hired by Longcreek Associates, LLC to draft the plan. (App. p. 293). See also a later internet advertisement regarding the project in which includes a number of participants to include Ron Johnson, who the Planning Commission found to be the developer (App. p. 94), Steve McNair, who said he was an associate of Longcreek Associates LLC who commissioned the sketch plan (App. p. 259), John Champoux as an officer of Sustainable Design Consultants, Inc., and several others none of which are Intervenor Fairways Development, LLC or its representative, John Bakhaus (App. p. 267).

Respondent states Petitioner excuse for not naming Fairways Development LLC a party is because Fairways Development Group was the applicant on the sketch plan and Subdivision Review Application. Respondent further states that Petitioner should have named somebody as a party to the appeal.

Petitioner has indicated that Fairways Development Group may be the developer. The owner's application was for Fairways Development Group, not for itself. Fairways Development, LLC has expended no known funds for the permit or the development. Its major interest has been to sell the property upon which the development is requested (App. p. 263).³ The record in this matter has no indication that such a team or group is an association known to the community, is incorporated, has an address, or who its members are. Other than in a Sustainable Design Consultants, Inc. prepared presentation of the Longcreek Plantation Development Team (App. p. 267), published on the internet well after Petitioner filed his appeal to the circuit court, the file in this matter has no indication as to the identity of this group. See for further discussion pages 19 and 20 of the Petition for a Writ of Certiorari in this matter regarding potential interested entities that might be considered parties in this matter.

Respondent states that Petitioner's reliance for collateral estopple indicates no confusion regarding Fairways as the development permittee and furthermore that it is inapposite as FOIA only applies to public entities.

Petitioner considered Fairways interest as owner in October, 2012, when he instituted his FOIA action (App. pp. 374-388). Respondent's Return (Page 5, Paragraph starting at bottom of page) continues to imply that Fairways Development, LLC is *the* owner and development permittee of the project. As mentioned above and throughout this matter, Petitioner has

³ See <http://longcreekplantation.com/wp-content/uploads/2013/10/Design%20Standards1.pdf>. It shows the plans as approved by the DRT that fail to abide by the residential low density zone in which the design is to be built.

contested that Fairways is the development permittee for the project. In his petition for rehearing to the Court of Appeals (App. p. 8) and his Motion for a Writ of Certiorari (Petition pp. 4-6, and 13-15) Petitioner addressed his collateral estoppel argument. The issue is Fairways' necessity as a party. The necessity is based on Fairways' interests as an owner of the project. Both collateral suits involve the Richland County Planning Commission development permit, the object of this action. See the Request for Relief in the FOIA matter (App. p. 382) and the request for relief in the instant matter (App. p. 66). Section 80 of the Uniform Declaratory Judgments Act S.C. Code Ann. § 15-53-80 (2013) states "all persons shall be made parties who have or claim any interest which would be affected by the declaration". Petitioner alleges this jurisdictional requirement is more comprehensive than the *Spanish Wells* equitable-required joinder of a development permittee based on judicial economy (App. pp. 484-485). In March, 2013, while Petitioner was defending Fairways' motions for sanctions for him adding Fairways to his FOIA case and its motion to dismiss Fairways based on having no interest in that matter, Petitioner was required to meet the thirty day requirement to bring this appeal to the Circuit Court.⁴ Fairways continued to contest its joinder as a necessary party in FOIA even after Judge Lee determined, "It is clear that Plaintiff's purpose in naming Fairways in this action was not to delay the project but was instead based upon Fairways as a party in interest." (App. p. 37) Judge Lee dismissed the FOIA action against Fairways only to the extent it alleged any violations by FOIA retaining Fairways as to concerns it might have regarding the project (App. p. 38). Judge Cooper's later action in April, 2013, dismissed Fairways from the FOIA case altogether. The requested declaration was almost identical to that in the instant matter.⁵ Petitioner has persisted throughout the Circuit Court and

⁴ Petitioner received the Planning Commission dismissal order on March 11, 2013. He filed his appeal March 18, 2013.

⁵ This appeal requests the permit be returned to the DRT for a reexamination (App. p. 66). The FOIA request is for the permit to be declared null and void and returned to the DRT for another examination. (App. p. 280).

Court of Appeals considerations (App. pp. 8-9 and 484-485) that Fairways' protestations of having insufficient interest to be joined as a necessary party in the collateral FOIA matter and Judge Cooper's grant of its dismissal motion based on those protestations should bar its arguments for a jurisdictional joinder as a necessary party in the instant matter. When he filed his appeal to the Circuit Court in this matter, he did not know nor did Fairways ever indicate during the FOIA proceedings or until July, 2015, that Fairways had sold the first development phase of the property to be developed. (App. p. 489).

Respondent Fairways continues to rely on *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) as requiring a post-trial motion to preserve issue consideration on appeal. Petitioner argued that *Wilder Corp.*, while restating a long-held requirement, did not apply it as the matter was specifically ruled upon in the lower court. See Petitioner's request for rehearing (App. pp. 8-10) and his Petition for a Writ of Certiorari (pp. 13-15). Judge Benjamin in her action on Fairways Intervention specifically refers to Petitioner's argument that Fairways is not a necessary party (App. pp. 30-31). By specifically determining the necessity issue, Judge Benjamin rejected the collateral estoppel argument (App. pp. 219-222) upon which the equitable remedy was based. She specifically rejected Petitioner's necessity arguments during her hearing on intervention, the motion to dismiss, and subsequently in her Order on Intervention (App. pp. 29-32). She referred in her Order on intervention to Petitioner's objection during the hearing on the matter to Fairways' designation as a "necessary party" (Last line on App. p. 30). She said regarding the hearing that the Court "declined to make a ruling regarding whether Fairways was a necessary party; the Court simply granted Fairways motion to intervene." (First line on App. p. 31). Her written Order on intervention granting Fairways intervention as a necessary party specifically referred to and rejected Petitioner's objection to that determination.

The finding in *Wilder Corp. v. Wilke*, 330 S.C. at p. 77, is that in that case there was no waiver by failure to include the issue in a post-trial motion. Judge Benjamin expressly made the determination that is contrary to and a specific rejection of Petitioner's contentions regarding the issue of Fairways necessity as a party to the proceeding. The issue was argued in the hearing on the matter which Judge Benjamin referenced when she granted intervention without determining its necessity as a party and after she stated she had considered all matters submitted in her action.

ARGUMENT IN REPLY

The Court of Appeals' decision to which petitioner requests this Court to examine, rests upon jurisprudence supported by three interconnecting premises, the failure of any which would invalidate the result.

The first leg is that Fairways is the development permittee for the project, the crux of the appeal. The Circuit Court found Fairways to be the permittee based on its signing the application (App. pp. 23-24). A number of facts undercut this premise, the first being that the DRT, after examining the sketch/concept plan for the development (App. pp. 72—Project # SD-12-04) issued the permit to John D. Champoux, not to Fairways Development, LLC or its agent John Bakhaus (App. p. 74). That permit is the only official public record in the matter required by S.C. Code Ann. § 1150(B) (2012). It is the public information of the development and its developer. The permittee, Mr. Champoux, is not an agent of or agent with any known relationship to Fairways Development, LLC. He is an employee or officer of Sustainable Design Consultants, Inc., and was hired by Longcreek Associates, LLC to prepare the sketch/concept plan (See *Supra*, Note 2 and App. p. 293). The DRT permit is an approval of the developer's sketch/concept plan. Petitioner's appeal is based on alleged incorrect interpretations of the local Green Code ordinance in the sketch/concept plan. The identity of the developer is unclear with

the permit issued to the sketch/plan drafter, an individual not the developer but an architect who prepared the plan for corporate bodies otherwise unidentified in the development administration (App. p. 13). Fairways Development LLC did not pay the \$500.00 permit fee (App. p. 71). A developer who filed the first application paid it. Section 26-186 (c) of the Richland County Land Development Code then in effect (App. p. 239) required the owner to apply.⁶ Respondent Richland County Planning Commission's facts state Ron Johnson is the developer (App. p. 69).⁷ Johnson stated he conducted the required tree study and for surveys. John Bakhaus, Fairways' agent, did not participate in the hearing (App. pp. 304-318). R. Steve McNair, a member of Longcreek Associates, LLC states his group spent \$50,000.00 in site planning, surveying, and civil design for the development (App. p. 223). Fairways Development, LLC has no record of paying any development expenses. Its financial interest clearly was to make the property saleable. It sold less than a week after the permit was issued. (App. pp. 264-265). Judge Benjamin did not know the property was sold when she acted and the Court of Appeals decided not to consider this. Respondents consistently led Judge Benjamin to believe it was "the" property owner (See App. pp. 489-491; and pp. 500-501). The Circuit Court failed to consider the DRT's official permitting action or the Planning Commission's finding that Ron Johnson is the developer. (App. pp. 180-185). Even not considering that Fairways sold its interest in the first phase, to the extent that the Circuit Court's decision to determine Fairways Development, LLC the development permittee failed to defer to the fact finding administrative bodies in finding a different permittee and developer, is arbitrary and an abuse of discretion. *Gurganious v. City of Beaufort*, 317 S.C. 481, 486, 454 S.E.2d 912 (Ct. App. 1995). Even if a circuit court

⁶ The concept plan and the existing features site analysis plan (the sketch plan) are prepared and submitted by the applicant or developer.(Section 26-186 (e)). The county understood that the owner was not always the developer as is apparent in the instant matter. See the discussion regarding this by Richland County's attorney (App. pp. 198).

⁷ The Planning Commission was the first appellate authority (S.C. Code § 1150(C) (2012)). The Planning Commission took testimony and evidence and made conclusions of law and factual findings (App. pp. 91-94).

disagrees with the agency administrative decisions, if the administrative decisions have any basis and the findings are not arbitrary or capricious, a circuit court acting in an appellate capacity must adopt them. *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442 (1999). The DRT knew Fairways was not the developer. The Planning Commission knew it. The administrative findings and permit award to someone other than Fairways are of the administrative bodies most knowledgeable of the issue.

The Court of Appeals cites *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E. 2d 346 (2008) stating the same standard of review in an appeal from a zoning board should apply to an appeal from a planning commission. Petitioner agrees with *Kurschner* insofar as it holds that in an appeal regarding zoning cases the findings of fact must be treated in the same manner as a jury's findings. Judge Benjamin's appellate review ignored the administrative findings. Her decision was based only on Fairways initiating the permit process by its agent signing the application, something Fairways had to do under the local code to remedy the developer's first rejected permit application.

The second leg upon which the Court of Appeals decision depends is Petitioner's failure to join a required party in a land development appeal within the legislatively-mandated period within which to bring an appeal to the circuit court. The Circuit Court cites *Friends of McLeod, Inc. v. City of Charleston*, 376 S.C. 610, 658 S.E.2d 544 (Ct. App. 2008) (*Friends of McLeod*) for its reasoning to justify her Order dismissing the appeal based on such failure. The Court of Appeals uses the *Friends of McLeod* justifications. *Friends of McLeod* was vacated by this Court after it granted certiorari to hear that case⁸. The parties settled that case and the issue has not been revisited. *Friends of McLeod*, 376 S.C. at p. 614 cited Rule 74, SCRPC, as a basis for its decision. Judge Benjamin found that since Fairways applied for the permit, it is the developer

⁸ *Friends of McLeod v. City of Charleston*, 384 S.C. 438, 682 S.E.2d 488 (2009).

and dismissed the appeal. *Friends of McLeod* depends on a determination of a clear identity of the development permittee. *Id.* What differentiates *Friends of McLeod* from the instant matter, besides the clarity of the developer, is that it relates to a zoning exception specifically involving an owner's rights to use its property in a particular area while in the instant case the identity of the developer of a land development project is unknown. *Spanish Wells* also states the development permittee is the necessary party; it did not say the owner is the necessary party. In *Spanish Wells*, the Court knew not all land development is conducted by the owner. It specified only that a development permittee be joined. Under the Richland County Green Code the owner and applicant have varied roles. In the instant case Fairways did not participate in those proceedings and incurred no costs from its administration. Respondent's citation of *Vulcan Materials Co. v. Greenville County Board of Adjustment*, 342 S.C. 480, 536 S.E. 2d. 892 (Ct App. 2000) that timeliness is jurisdictional may be applicable as to bringing a matter to the circuit court but it is not necessarily controlling to any potential persons who could be joined as parties. *Spanish Wells* did not require such a harsh result. It based its requirement on equity. The DRT's permit does not clarify who the developer is. What is clear is that it is not Fairways. Notwithstanding the Court of Appeals statements in *Friends of McLeod* and this matter that Rule 74, SCRCP, provides a jurisdictional-type result, see *Skinner v. Westinghouse v. Electric Corp.*, 380 S.C. 91, 94, 668 S.E.2d 795, 796 (2008), which this Court stated "Our jurisprudence confirms that jurisdictional appealability issues are governed by statute, not by the rules of civil procedure." See also *Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d. 297, (Ct. App. 1996) that finds Rule 74, SCRCP, inapplicable in appeals where limiting periods are fixed by statute. S.C. Code Ann. § 6-29-1150(C) (2012) is the appropriate jurisdictional provision. It does not refer to parties. See also S. C. Code Ann. § 6-29-1155 (A) (2003) where the General Assembly's

construct for land development appeals would entertain persons as intervenors well after the period in which to bring the appeal to a mediator. This provision shows the General Assembly's intention for inclusion rather than exclusion in such appeals. Appellant argued that making joinder of interested persons a jurisdictional matter in land development cases flies in the face of civil joinder rules and is an inappropriate extension incorporating exclusion not contemplated or included by the General Assembly in its construct of the appellate process. See also Petitioner's discussion regarding the term "all parties" as designated in Rule 74, SCRPC, in his motion before this Court.

The *Spanish Wells* disposition in that matter is determined in equity. Its basis, judicial economy is equitable. See *Cathcart v. Snohomish County*, 96 Wash.2d 201, 634 P.2d 853 (1981), the majority rule relied on by *Spanish Wells*, 295 S.C. at p. 68. *Cathcart* states "The doctrine of indispensability is not jurisdictional but rather founded on basic equitable considerations." *Cathcart v. Snohomish County*, 96 Wash.2d, at p. 206. The *Spanish Wells* approval of the Circuit Court's provision of an additional period for the Appellant to join the developer in that case is jurisprudence supported by equitable considerations. *Id.* It would be a novel expansion of a harsh jurisdictional requirement to require unclear entities to be joined as parties for judicial economy when the appeals otherwise are properly brought. Finally with regard to this premise supporting the Court of Appeals decision, Fairways notification of the appeal in a timely manner and its intervention before any action had been taken on the appeal must be considered in relation to the harsh result of the case being dismissed. Judicial economy continues to be served with Fairways bound as a party to the appeal.

The third leg supporting the Per Curiam Opinion is the suggestion that *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1988) requires all issues to be raised in post-trial motions or

be lost in an appeal. Petitioner contends *Wilder Corp.* is not so comprehensive. The issue that forms the basis of Petitioner's collateral estoppel argument, Fairways' necessity as a party in the proceeding, goes to the crux of the appeal. Citing *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E. 2d 187 (1939), *Wilder Corp.*, 330 S.C. at p. 77 states post-trial motions are not necessary to preserve issues that have been ruled upon at trial. The issue in the *Wilder Corp.* case was specifically addressed and ruled upon in the trial court making a post-trial motion in that case unnecessary. *Id.* Judge Benjamin's written opinion on intervention specifically addressed Petitioner's arguments on Fairways not being a necessary party and determined it was necessary. See pages 6-7, above, where Judge Benjamin referred to Petitioner's oral (App. pp 218-219) and other arguments (App. p. 29) in making her decision. In Petitioner's request to the Court of Appeals for Rehearing he points to six specific places in the Record of Appeal where he argued the collateral issue.⁹ Judge Benjamin clearly understood Petitioner's estoppel argument that the necessity issue involved a proceeding where the county acted on a collateral matter involving the same property and Fairways, as owner of that property, declined to participate, fully litigating the issue. The Circuit Court excused Fairways as an unnecessary party regarding the asked for declaration. She knew the circuit court in the FOIA matter determined Fairways unnecessary and she determined otherwise examining the same necessity issue. Her actions on intervention and dismissal, both based on Fairways being a necessary party, were specific rejections of Petitioner's collateral estoppel argument. Under *Wilder Corp.*'s ruling, they negated any necessity for post-trial motions. *Wilder Corp. v. Wilke*, 330 S.C. at p. 77. Even if collateral estoppel is not applicable as a bar to determining Fairways a necessary party in the instant proceeding, disregarding it altogether was an arbitrary and capricious action.

⁹ For convenience the Record references are converted to the Appendix references as follows: R. pp. 184-184-App. pp. 219-220; R. p. 89-App. p. 114; R. p. 93-App. p. 118; R. pp. 101-102-App. pp. 126-127; R. pp. 116-117-App. 141-142; and R. p. 135-App. p. 160.

CONCLUSION

The premises upon which the Court of Appeals relies do not support dismissal of the appeal. For fairness, proper jurisprudence, and the integrity of the judicial system, the failure of these premises begs your review. Fairways is not the developer or the permittee notwithstanding that its agent signed the development application. It clearly signed to comport with a county code requirement. Fairways' interest only was to sell the property. That fact was before Judge Benjamin. She knew a member of the Planning Commission recused herself from acting on Petitioner's appeal because she represented Fairways in its selling the property. Fairways expended no funds for the development. Respondents have presented no indication or evidence in the proceedings that John Champoux, the named permittee, had any connection to Fairways Development, LLC. This is in the face of exhaustive arguments that he is not so involved but working for a design company hired by a different corporation. Fairways Development, LLC did not participate in the DRT or Planning Commission's hearings on the project. Judge Benjamin ignored this and based her decision solely on Fairways signing the application. The application actually was the second for the project, the first rejected as being by the developer instead of the owner as required for Green Code bonuses. The vacated *Friends of McLeod, Inc.* bases its reasoning on there being a clearly-indicated permittee. As mentioned above, the permit is to another person and several other entities might comprise the Fairways Development Group or any one of them be the developer.

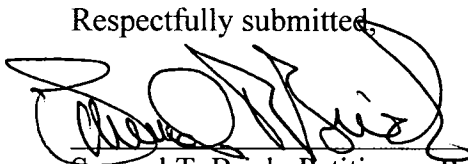
The second leg of the case is that if there were such a clearly-indicated permittee then it is a jurisdictional requirement that it be joined within the thirty day appeal period or the case is forfeited. *Spanish Wells* does not mandate this. Its development permittee was clear and this Court approved, without comment, the Circuit Court's action in that case giving the appellant

fifteen days to join the developer, well over any statutory or regulatory period. *Spanish Wells* is based on judicial economy, an equitable matter. *Spanish Wells* adopted the majority rule which specifically is based in equity. The Recorder's Note to Rule 19 (a), SCRCR, speaking to joinder of persons needed for a just adjudication, states that defects in joinder of necessary persons is not jurisdictional. Rule 74, SCRCR, cited in *Friends of McLeod, Inc.* is erroneously relied on by the Court of Appeals since a statutory appeals process already provides a notice of appeals provision. Rule 203(b)(6), SCACR, , a mirror provision to Rule 74, SCRCR, says notice of appeals to the appellate courts shall be served on all "parties of record." Applying a party to any person for Rule 74, SCRCR, is an incorrect stretch. Fairways Development, LLC was not a party of record before the administrative bodies. It was not even a participant. The only public record was to another person as permittee. The equities in the matter, especially that Fairways joined before any action was taken on the appeal with no harm to judicial economy, are that such failure to join does not merit forfeiture of the entire matter.

The last premise is that Petitioner's collateral estoppel argument is lost because it was not included in a post-trial motion. The issue was Fairways necessity as a party. Judge Benjamin specifically addressed and rejected Petitioner's argument that it was not such a necessary party in her actions on intervention and her dismissal. *Wilder Corp.* had a similar circumstance and ruled under such circumstances that post-trial motions are not needed to preserve issues for review. Collateral estoppel should bar Intervenor's argument it is a necessary party.

Petitioner requests this Honorable Court to grant Petitioner's Motion for certiorari in order that it can examine these issues in further depth and if it deems appropriate now, to overturn the Court of Appeals' decision directing its return through the Circuit Court to Richland County to address the issues in Petitioner's appeals.

Respectfully submitted,



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

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S.C. SUPREME COURT

Date: November 7, 2016

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for the Respondents with a copy of the Reply to the Return of Respondent Richland County Planning Commission to Petition for Writ of Certiorari by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Michael B. Wren, Esq.
Andrew F. Lindemann, Esq.
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, SC 29202-8568.

Tobias G. Ward, Jr., Esq.
J. Derrick Jackson, Esq.
Tobias G. Ward, PA
Post Office Box 6138
Columbia, SC 29260,



Samuel T. Brick, Pro Se, Petitioner
124 Runneymede Drive
Columbia, South Carolina 29016

November 7, 2016