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SC Court of Appeals

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

Re: Doe v BZA et al
App. Case No. 2015-002297

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

1) The filing fee,
2) Seven copies,
3) Proof of Service and a copy, and
4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Respondent's Counsel

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SC Court of Appeals

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.

Petition for Rehearing

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

The appellant respectfully enters Petition for Rehearing of the December 1, 2016, Order and respectfully submits that the Court may have overlooked or misapprehended the following material points.

Facts

The underlying matter involves an Ohio LLC's a.k.a. Granuaile LLC's violation of the local government's prior order enforcing compliance with the ordinances regarding impervious surface limitations. See attached. Granuaile LLC's violation of the local government's order for compliance resulted in foreseeable damage to neighboring properties. Damages include, but are not limited to, pooling of wrongful stormwater run-off with contaminants and wastewater collecting and standing under homes and in rear areas where children and pets play and live. The record reflects a BZA hearing was held at the request of property owners. After that hearing, pursuant to S.C. Code Section 6-29-820, notice of appeal with request for mediation was timely served and filed within thirty days. Respondent's counsel acknowledged appellant's hearing in the attached correspondence but relied on a tortured, even frivolous, interpretation of the statute and

pursued dismissal in an untenable manner. In particular, respondent denied basic notice to the other side and failed to provide the required notice at the address listed on the Charleston County Circuit Court website for service, the same address listed on the Charleston County Circuit Court Cover Sheet for service. It is fair to say that respondents themselves would want notice. The record reflects respondents knew, should have known, and/or calculated that the other side would not receive and/or had not received actual notice. The record reflects respondents made misrepresentations and/or material omissions to the lower court upon which the lower court relied. The lower court and the appellant are prejudiced thereby. This appeal followed.

Introduction

Petition for rehearing is requested regarding irregularities, improper handling, and a pattern of confiscation of unearned fees by the Clerk of the Court of Appeals. The attached November 4, 2016, Order confirms the Clerk's wrongdoing. The record however reflects multiple incidents of confiscation of unearned fees and the Clerk of the Court of Appeals has been less than straight-forward or forthcoming. See attached copies of negotiated

checks confiscated for unearned fees. Serious questions are raised regarding confiscation of unearned fees and wrongdoing perpetrated against hapless litigants in how many other cases evading judicial review and capable of repetition. Judge Aphrodite Konduros' December 1, 1016, Order fails to even address the pattern and practice of irregularities and misappropriation by the Clerk of the Court of Appeals, thereby creating the appearance of impropriety, if not tacit condonation and/or approval. With the proverbial wink and a nod, the December 1, 2016, Order turns a blind eye to the Clerk of the Court of Appeals' cavalier disregard for the South Carolina Appellate Court Rules and the rule of law. Lack of evenhandedness and fairness at the office of the Clerk of the Court of Appeals reveals a fundamental disconnect with legislative intent as well as the interests of the citizenry of the State of South Carolina, threatens the integrity of the process, and concerns grave matters of public importance. Petition for rehearing is respectfully requested based on error of material fact and law.

Standard of Review

Questions of law are reviewed de novo. S.C. Const. art. V, § 5. The December 1, 2016, order was issued pursuant to appellant's Rule 240(j), SCACR, Motion. That Rule 240(j), SCACR, motion is an appeal of an order by an individual judge. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for panel review of decisions by a single judge for self-preservation as well as other reasons, particularly in South Carolina where judges are subjected to elections and re-elections. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the issue stands before the appellate court as if it had never been decided. The December 1, 2016, Order is reversible as a matter of law because the improper legal standard was applied and appellant is prejudiced thereby. See *Griffin v. State,* 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge

recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially in the *Thompson* case *supra*, the denial of a transfer motion clearly does not end or finally determine a case; the necessary element for Rule 240(j), SCACR, panel review is that the order is signed by a single judge. With all due respect to Judge Aphrodite Konduros, her December 1, 2016, Order errs as a matter of law because it fails to even consider, much less apply, the rule of law established by the legislature in S.C. Code § 14-8-220. The December 1, 2016, Order errs as a matter of law because it improperly relies without citation or source on Rule 240(i), SCACR. A discerning review of Rule 240(i), SCACR, reveals that Judge Konduros' interpretation of Rule 240(i), SCACR, renders Rule 240(j), SCACR, superfluous and meaningless. A discerning review also establishes

a different legal standard of review reflecting a different purpose for Rule 240(j), SCACR, petition or motion for rehearing as opposed to Rule 221, SCACR, petition for rehearing. The legislature enacted S.C. Code § 14-8-220 and Rule 240(j), SCACR, for good reason and did not intend for Rule 240(i), SCACR, to negate or in any way limit Rule 240(j),SCACR. Moreover, the practical effect of the December 1, 2016, Order is denial of meaningful opportunity to respond to Defendant's unauthorized material included in violation of the SCACR and in violation of the jurisdictional prerequisite. Denial of meaningful opportunity to respond necessarily affects final determination. In addition, the lack of a viable remedy after the fact requires timely objection which is hereby made. Accordingly, the appellant respectfully submits petition for rehearing pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR.

Rule 240(j), SCACR, motion expressly provides for panel appeal of order signed by a single judge. Rule 240(j), SCACR, is independent of, and is not controlled by, Rule 240(i), SCACR. The statutory authority underlying Rule 240(j), SCACR, is found in S.C. Code § 14-8-220. That statute expressly provides for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff. July 1, 1985.

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Significantly and materially, the legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. The legal standard of review for Rule 240(j), SCACR, appeal is different than the standard of

review for Rule 221, SCACR, rehearing and clarification is respectfully requested.

The appellant respectfully appeals pursuant to S.C. Code § 14-8-220 for de novo review by a panel of judges which does not include the individual judge who issued the order. Appellant filed the motion under Rule 240(j), SCACR, for appeal of a single judge's order, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge to a panel of judges. S.C. Code § 14-8-220. Meaningful review requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR*. Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978). In the *Rice* case, then Chief Judge

Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper--indeed is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that

section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, .890 F.2d 947 (7th Cir. 1989) (emphasis supplied). The appellant respectfully requests clarification that Rule 240(j), SCACR, appeal is heard by a panel of judges, which does not include the single judge who issued the order.

I. The December 1, 2016, Order overlooks and misapprehends multiple irregularities, mishandling, and confiscation of unearned fees by the Clerk of the Court of Appeals thereby evading judicial review with capability of repetition.

Petition for rehearing is requested regarding irregularities, improper handling, and multiple incidents of confiscation of unearned fees by the Clerk of the Court of Appeals. The attached November 4, 2016, Order confirms the Clerk's wrongdoing. The record however reflects multiple incidents of confiscation of unearned fees and the Clerk of the Court of Appeals has been less than straight-forward or forthcoming. In the interest of even-handedness and fundamental fairness, these issues concern matters of public importance. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418

U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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).

II. Objection to respondent's so-called supplemental material is based on jurisdictional grounds.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8- 200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et*

al., Appellate Practice in South Carolina (3d ed. 2016), p. 11. The instant matter is a direct appeal. Appellate jurisdiction requires that the so-called supplemental material be presented to and ruled upon by the lower court, which it has not. Affidavit entered herein May 9, 2016. Because respondent's so-called supplemental material wrongfully seeks to include matters not ruled upon by the lower court, the jurisdictional prerequisite has not been met; lack of jurisdiction requires exclusion. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998). Moreover, Rule 210(c), SCACR, expressly provides that the material "shall not" be included. Rule 210(c), SCACR. Respondent's so-called supplemental material is prohibited and properly excluded.

III. In the alternative, appellant respectfully requests opportunity to file amended brief.

It is fair to say that respondents would want an opportunity to respond. Moreover, even-handedness and fundamental fairness require meaningful opportunity to respond. The letter and spirit of the South Carolina Appellate Court Rules mandate opportunity to respond. In the

alternative, appellant respectfully requests opportunity to file amended brief. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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).

IV. Rule 240(j), SCACR, is not limited by Rule 240(i), SCACR, and the standard of review is not the same standard as Rule 221, SCACR, petition for rehearing.

The Court is requested to confirm the standard of review at Rule 240(j), SCACR, appeal pursuant to S.C. Code § 14-8-220, which is different than Rule 221, SCACR, rehearing. Case law and other authority in the

Standard of Review section, *supra,* are incorporated in full and set forth below for ease of reference and in compliance with the SCACR. The Rule 240(j), SCACR, motion herein is an appeal of an order by an individual judge and the proper legal standard is de novo. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State,* 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that

'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially in that case, the denial of a transfer motion clearly does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, panel review is that the order is signed by a single judge. The appellant respectfully submits request pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, for panel appeal.

Rule 240(j), SCACR, is independent of, and is not controlled by, Rule 240(i), SCACR. S.C. Code § 14-8-220, the statutory authority underlying Rule 240(j), SCACR, expressly provides for appeal of an order by a single judge as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

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1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff. July 1, 1985.

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Significantly and materially, the legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. The legal standard of review for Rule 240(j), SCACR, appeal is different than the standard of review for Rule 221, SCACR, rehearing. Clarification is hereby requested.

V. As a matter of public policy, panel review benefits the appellate court, benefits individual judges, and benefits, even fosters, the integrity of the appellate process.

As a matter of public policy, panel review benefits the appellate court,

benefits individual judges/justices, and benefits, even fosters, the integrity of the appellate process. Legislative intent and express statutory authority in S.C. Code § 14-8-220 provide for panel review. That legislative intent is consistent with former Justice Sandra Day O'Connor's warning to the public about the dangers of electing judges. South Carolina elects judges and subjects them to re-election. Former Justice Sandra Day O'Connor wrote ". . . many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." *Judicial Independence and 21st Century Challenges,* Sandra Day O'Connor, The Bencher, July/August 2012. As she explained, "[t]he reason why judicial independence is so important is because **there has to be a safe place** where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences." *Id* (emphasis supplied). In addition, speaking at a forum organized by former Justice Sandra Day O'Connor at Georgetown University Law Center, Supreme Court Justice David Souter concurred, "I was in Philadelphia for a dinner one evening a few years back, where the speakers included the late Richard Arnold, surely one of the greatest judges of our time or any other time. Richard Arnold put

the value of an independent Judiciary in these words: 'There has to be a safe place.' That's all he said. 'There has to be a safe place.' ... Because there has to be a safe place." Georgetown Law Journal, Vol. 99:157,160. Public policy, legislative intent, statutory authority, federal case law, FRAP, State and federal constitutional law, and the SCACR provide for appeal of orders by a single judge, especially where judges are subjected to election and re-election. This Court is respectfully requested to uphold the letter and spirit of the same with panel review.

VI. Even assuming applicability of Rule 240(i), SCACR, the December 1, 2016, order is based on error of material fact. Respondent's pattern of lack of diligence, untimely brief, and motion regarding so-called supplemental material, and/or premature printing and binding of improper material wrongfully characterized as supplemental, deprive the other side of due process by denying any meaningful opportunity to respond, thereby, prejudicing the appellant and affecting final determination. As such, the order is reviewable pursuant to Rule 240(i), SCACR, and/or it is reversible denial of due process in violation of, including but not limited to, the SCACR.

Even assuming Rule 240(i), SCACR, applies, the December 1, 2016 order should be set aside due to error of material fact. The record reflects respondent's lack of diligence and untimely motion with no timely objection after the Record on Appeal was served. After the Record on Appeal was

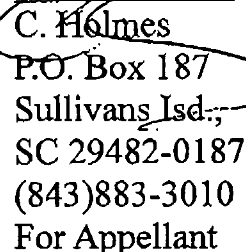
timely printed, bound, and filed, however, Respondents filed untimely motion claiming so-called supplemental material. Appellant disputes the material is supplemental and respectfully submits that it is excluded on jurisdictional grounds. By prematurely printing and binding the improper material, untrustworthy respondents counsel seeks to deprive the other side of due process by denying any meaningful opportunity to respond, thereby affecting final determination. As such, the order is reviewable pursuant to Rule 240(i), SCACR, and/or is reversible denial of due process in violation of the SCACR. 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

For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this petition for rehearing with abeyance. These issues concern matters of public importance. The citizenry of the state of South Carolina as well as the bench and bar deserve compliance by the clerk of the Court of Appeals with the South Carolina Appellate Court Rules and the plain language of Rule 240(j), SCACR, as well as legislative intent in the underlying statutory authority, S.C. Code § 14-8-220. The December 1, 2016, Order overlooks or misapprehends the legal standard of review for Rule 240(j), SCACR. Further, it fails to address multiple irregularities and confiscation of unearned fees by the Clerk of the Court of Appeals thereby evading judicial review with capability of repetition. In addition, appellate jurisdiction requires that material be presented to and ruled upon by the lower court. Because respondent's so-called supplemental material wrongfully seeks to include matters not ruled upon by the lower court, the jurisdictional prerequisite has not been met; lack of jurisdiction requires exclusion from the Record on Appeal. Moreover, consistent with respondent's pattern and practice of lack of diligence, out-of-time brief, and out-of-time motions

herein, respondent's motion is untimely. It was filed after the Record on Appeal was served without objection and without notice to the other side. Respondents untimely motion was filed after the Record on Appeal was printed, bound, and filed without objection. Further, by prematurely printing and binding the improper, mischaracterized, so-called supplemental material, respondents again seek to guarantee the other side is deprived of any meaningful opportunity to respond, a pattern abundantly reflected in the circuit court. As a matter of law, the South Carolina Appellate Court Rules and controlling precedent exclude respondent's so-called supplemental material on jurisdictional grounds and pursuant to Rule 210, SCACR. In the alternative and in the interest of even-handedness and fundamental fairness, appellant respectfully requests opportunity to respond and file amended brief. Petition for rehearing is respectfully requested.

Respectfully submitted,



C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

No. 7242 P. 24

CHARLESTON COUNTY Auditor
Peter Tecklenburg

- MAIN MENU
- EXIT

Parcel ID 5231200058

Sub-Division FORT MOULTRIE

Tax District 23, Town of Sullivan's Island

Legal Description : LT 10 AREA F
Acreage High : 0 Marsh : 0 Swamp : 0 Water : Total : 0
Jurisdiction : CNTY-ASSESSR
Property Address : 1607 POE AVE
Mailing Address : 3 HIDDEN VLY, ROCKY RIVER- OH, 44116-1143

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
-	-	GRANUAILE LLC	-	R624-643	05/07/2007	04/30/2007	

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Dec. 16. 2016 2:35PM

PRATT, THOMAS | WALKER
ATTORNEYS AT LAW
PROFESSIONAL ASSOCIATION

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JOHN P. LINTON, JR.
Email: jpl@p-tw.com
Direct: (843) 727-2252

June 25, 2015

RECEIVED
DEC 16 2016
SC Court of Appeals

Dr. Cynthia Holmes
Post Office Box 187
2061 Middle Street
Sullivan's Island, SC 29482-0187

Dear Dr. Holmes:

I am in receipt of your two letters to Larry Dodds, Town Attorney for the Town of Sullivan's Island, indicating that you are requesting mediation with respect to the BZA appeal involving permit # 2014-2899. Our firm is currently handling an appeal to the Charleston County Circuit Court which is related to permit # 2014-2899. That appeal was filed by J. Doe and is Civil Action Number 2015-CP-10-0775. That being the case, Mr. Dodds asked that we respond to your letter concerning the same BZA decision.

The BZA held a hearing on the appeal of permit # 2014-2899 on April 10, 2014 and issued a Final Order on May 8, 2014 (mailed May 9, 2014). 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).

Your request for mediation of this matter does not meet the requirements of the applicable South Carolina statute. Under South Carolina Code Section 6-29-820(B), the property owner whose land is the subject of a decision of the board of appeals may appeal a decision of the board of zoning appeal by filing, within thirty days of the mailing of the board of zoning appeals decision, a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina code section 6-29-825.

Your letter requests do not comply with the above statute in several ways. For example, it is not timely, it is not filed with court as a notice of appeal accompanied by a request for mediation, and it does not appear to be requested by the owner of the property that was the subject of the BZA. According to the Charleston County records, James P. Walsh, not Dr. Cynthia Holmes, is the owner of the property that was the subject of the permit and BZA (1607 Poe Ave, Sullivan's Island, South Carolina). Therefore, because your requests are not proper under the applicable statute, the Town will not be providing tentative dates and mediators as you request in your letters to Mr. Dodds.

Very truly yours,

John P. Linton, Jr.

JPL/cam

The South Carolina Court of Appeals

John Doe, Appellant,

v.

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

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DEC 16 2016
SC Court of Appeals

Appellate Case No. 2015-002297

ORDER

Appellant has filed a "Motion for the Court's Clarification" relating to this court's letter of July 29, 2016, returning Appellant's "Motion for Leave to File and Other Relief" to Appellant and explaining that this court would take no further action on the motion.

After consideration of the "Motion for the Court's Clarification," we find that Appellant's "Motion for Leave to File and Other Relief" was returned to Appellant in error, and we accept the motion for filing.

In the "Motion for Leave to File and Other Relief," Appellant requests that this court strike the supplemental record or allow Appellant to file a response to the supplemental record, arguing it contains matter not ruled upon by the lower court. Because the only matter contained in the supplemental record is a motion that was filed in the circuit court and designated in Respondents' designation of matter, the motion was properly included in the record on appeal pursuant to Rule 210(c), SCACR. Accordingly, "Appellant's Motion for Leave to File and Other Relief" is denied.

FOR THE COURT

FILED
November 4 2016

RECEIVED
DEC 16 2016
SC Court of Appeals

CYNTHIA HOLMES
PO BOX 187
SULLIVANS ISLAND SC 29482-0187

2729

5/27/16 Date

Pay to the order of Clerk, CoA $ 25.00

Twenty Five and 00/100 Dollars

ACH R/T 053904483

Memo Thank you

79751

Seq: 57
Batch: 302067
Date: 06/03/16

For Deposit Only
SC State Treasurer's
General Deposit Account
(B04 Judicial Department)

Seq:00057 06/03/16
BAT:302067 CC:0057189000
WT:81 LTPS-Atlanta ET
Bc.Cayce, Park Place Bc SC5-213

Dec. 16. 2016 2:36PM

CYNTHIA HOLMES
PO BOX 187
SULLIVANS ISLAND SC 29482-0187

2836

6/23/16 Date

Pay to the order of Clerk, SCCoA $ 25.00

Twenty Five and 00/100 Dollars

Bank of America

Memo Thank you

80078

ENDORSE HERE

X — For Deposit Only —
SC State Treasurer's
General Deposit Account
(B04 Judicial Department)

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Seq: 89
Batch: 236867
Date: 07/01/16

Seq:00089 07/01/16
BAT:236867 CC:0357070700
WT:01 LTPS:Atlanta ET
BC:Dutch Square SC SC3-211

RECEIVED
DEC 16 2016
SC Court of Appeals

No. 7242 P. 28

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

RECEIVED
DEC 16 2016
SC Court of Appeals

App. Case No. 2015-002297

John Doe,

Appellant,

v.

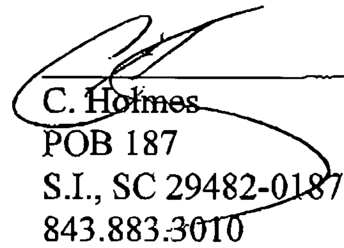
Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

PROOF OF SERVICE

I certify that I have timely served the foregoing on the Respondents on this date by deposit in the United States Mail, postage prepaid, addressed to Respondents' attorney of record at 16 Charlotte St., Charleston, SC 29403.

Dated December 16, 2016



C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010