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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

RECEIVED
MAR 22 2017
SC Court of Appeals

Robert and Pamela Wilkes,

Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

MOTION TO RECONSIDER

Brandon T. Reeser
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Attorney for Appellants

Appellants Robert & Pamela Wilkes file this Motion for Reconsideration and Memorandum in Support of said Motion in accordance with Rules 221 and 240, SCACR after the Court filed its Unpublished Opinion, 2017-UP-096, on March 8, 2017. The points overlooked or misapprehended by the Court are the following:

1. The Court's opinion suggests that the determination of whether the UDO Checklist and Tutorial constituted a zoning regulation is a finding of fact as opposed to a holding of law. Appellants contend that such a determination is a matter of law that is reviewed by this Court de novo.

2. Appellants seek review of whether the lower court's determination that Section 3-6.2(a) of the Town's Universal Development Code and the incorporated UDO Checklist and Tutorial are not part of the Town of Pawleys Island's regulatory zoning scheme. The applicability of these ordinances and regulations were never considered by the Zoning Board of Appeals.

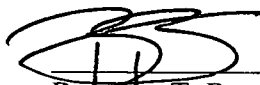
3. When a statute's language is plain and unambiguous, there is no need to employ the rules of statutory construction to determine the intent of the legislature in enacting the specific statute. Appellants request the Court to address whether Section 3-6.2(a) of the Town's Universal Development Code and the incorporated UDO Checklist and Tutorial are part of the same "general statutory law," which must be read and construed together with each statute considered by this Court, the lower court, and the Zoning Board of Appeals.

4. The Court's March 8, 2017 Unpublished Opinion fails to address Issues Two and Three contained in Appellants' Final Brief, which Appellants contend are properly before the Court.

[Signature Page to Follow]

Respectfully submitted,

March 21, 2017



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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER

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Appellants Robert and Pamela Wilkes respectfully submit this Memorandum in Support of their Motion for Reconsideration of this Court's Unpublished Opinion filed on March 8, 2017. This Court's opinion failed to discuss or analyze critical issues presented in this appeal and fails to cite supportive legal authority applicable to the case before it.

1. THE COURT CITES AN INCORRECT STANDARD OF REVIEW.

As a threshold issue, the Court notes that it is applying the standard of review governing factual findings made by the Zoning Board of Appeals. Indeed, Appellants contend the sole issue decided in its March 8, 2017 opinion is a pure matter of law – whether the Zoning Board of Appeals and the lower court should have applied Section 3-6.2(A) and the incorporated UDO Checklist and Tutorial as an ordinance applying to the construction of Appellants' beach walkway. "Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." Eagle Container Co., LLC v. Cnty. of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008). As such, the narrower standard of review appropriate for factual determinations by the Zoning Board of Appeals is improper in this case.

2. THE COURT FAILS TO CONSIDER WHETHER SECTION 3-6.2 OF THE TOWN OF PAWLEYS ISLAND UNIFIED DEVELOPMENT CODE APPLIES TO THE CONSTRUCTION OF APPELLANT'S BEACH WALKWAY.

In its March 8, 2017 Opinion, the Court appears to affirm the lower court's opinion based on the clear language of a statute. However, the issue before the Court is how, as a matter of law, numerous statutes interact as a complete regulatory scheme. Thus, it is unclear from the opinion which statute the Court considers to be "plain and unambiguous." Both the lower court in its December 21, 2015 Order and this Court in its March 8, 2017 Opinion through affirmation, hold without analysis that the UDO Checklist and Tutorial are not part of the Town's regulatory

scheme governing beach walkways. Appellants would request this holding to be directly addressed as there is no dispute that the Sections 2-10.1 and 3-6.2 of the Towns Unified Development Code are ordinances passed by the Town. Section 3-6.2(A) specifically states that the UDO Checklist and Tutorial be completed before any building permit is issued. (R. p. 81) There is also no dispute that the Town has, by ordinance, amended the UDO Checklist and Tutorial and intended them to have the force of law. (R. p. 82.) Appellants contend that the clear and unambiguous intent of the Town was to enforce the UDO Checklist and Tutorial's terms, which govern beach walkways, via the requirement that such be completed and reviewed by a Town official before any beach walkway permit be issued as required by Section 3-6.2(A). (R. p. 81.) The Zoning Board of Appeals, without explanation, clearly ignored the UDO Checklist and Tutorial even after recognition from one of its members that it "was in part of the ordinance" governing beach walkways. (R. p. 61, lines 17-21)

"All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). The essence of Appellants' issue before the lower court and this Court is whether the Town's intent to enforce the UDO Checklist and Tutorial's terms should be ignored when they clearly govern the construction and use of beach walkways as part of the Unified Development Code.

3. THE LOWER COURT'S ORDER AND THIS COURT'S OPINION FAIL TO READ THE TOWN'S APPLICABLE ORDINANCES AND REGULATIONS AS A COMPLETE STATUTORY SCHEME.

Statutes that are part of the same act “must be read together.” Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). “[S]tatute[s] must be read as a whole, and sections which are part of the same general statutory law must be construed together and each given effect” if reasonable. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992) (citation omitted). As stated previously, the Zoning Board of Appeals failed to consider the applicability of Section 3-6.2 and the incorporated UDO Checklist and Tutorial even after admission that the UDO Checklist and Tutorial was “part of the ordinance” regulating Appellants’ walkway. In affirming the Zoning Board of Appeals, the lower court failed to explain why it should not read all sections of the Unified Development Code governing beach walkways together. Appellants contend that Sections 2-10.1, 3-6.2, and the ordinance-enforced UDO Checklist and Tutorial should be construed and given effect together. Failure to do so by the Zoning Board of Appeals and the lower court was improper as a matter of law. Indeed, the lower court was bound to read all applicable ordinances in Appellants’ case such “that no word, clause, sentence, provision, or part shall be rendered surplusage or superfluous.” Had Section 2-10.1 been sufficient as the governing ordinance, there would have been no need for the Town to have enacted the document requirements of Section 3-6.2 or to amend and maintain the UDO Checklist and Tutorial by ordinance. Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. Statutes § 346).

CONCLUSION

In its March 8, 2017 Unpublished Opinion, this Court, like the lower court and the Zoning Board of Appeals before it, did not consider all of the applicable zoning ordinances and amendments applicable to the construction of Appellants' walkway. Not only has the Town of Pawleys Island made its intent to enforce the UDO Checklist and Tutorial's provisions clear, but the Zoning Board of Appeals was aware of their place in the Town's statutory scheme. The Town should not now be able to selectively choose what ordinances and regulations it will enforce depending on the result it seeks, and Appellants were entitled to have full consideration of their case before the Zoning Board of Appeals. Failure to properly consider all applicable ordinances was an error of law that must be reversed. Appellants further request that this Court consider and hold as to Issues Two and Three as they contend such are properly before the it.

[Signature Page to Follow]

Respectfully submitted,

March 21, 2017



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PROOF OF SERVICE

I certify that I have served Appellants' Motion to Reconsider and Memorandum of Law in Support of Appellants' Motion to Reconsider on the Town of Pawleys Island by depositing a copy in the United States Mail, postage prepaid, on March 21, 2017, addressed to its attorneys of record, N. David DuRant and Natale Fata, at their respective addresses of P.O. Box 14722 and P.O. Box 16620, Surfside Beach, SC 29587 as well as the Office of Court Administration by depositing said copies in the United States Mail, postage prepaid, on March 21, 2017 at its address of 1015 Sumter Street, Suite 200, Columbia, SC 29201.

March 21, 2017

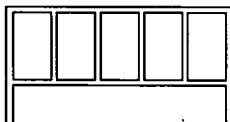

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SC Court of Appeals

VIA UPS OVERNIGHT DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Robert and Pamela Wilkes v. Town of Pawleys Island, et al.
Appellate Case No.: 2016-000029

Dear Ms. Kitchings:

Enclosed for filing, please find the original and six copies of Appellants' Motion to Reconsider, an original and six copies of Appellants' Memorandum of Law in Support of their Motion to Reconsider, and an original and six copies of the Proof of Service of the Motion and Memorandum on all counsel of record and the Office of Court Administration. Also enclosed, please find our firm's check in the amount of \$25.00 for the appropriate filing fee.

Thank you for your assistance in this matter.

Sincerely,

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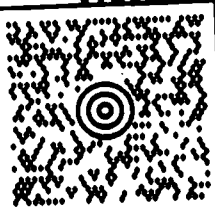
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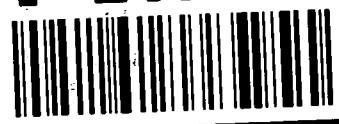
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