

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAR 31 2017

SC Court of Appeals

Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO. 2016-000029

Robert and Pamela Wilkes,.....Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

RESPONDENTS' OPPOSITION TO APPELLANTS MOTION TO RECONSIDER

Norwood DuRant, Jr., Esquire
Law Offices of N. David DuRant
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Attorney for Respondent

The Respondents file this return to the Appellants Motion for Reconsideration and Memorandum in Support of said Motion in Accordance with Rule 240 of SCACR. South Carolina Court of Appeals filed its Unpublished Opinion, 2017-UP-096, on March 8, 2017. In Response to Plaintiff arguments:

1. This Court correctly cites two cases; *Black v. Lexington Cty. Bd. Of Zoning Appeals* and *Austin v. Bd. Of Zoning Appeals*, to demonstrate the proper Standard of Review.
2. This Court's affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper. This Court cites *CFRE, LLC v. Greenville Cty. Assessor*, which states "We will reject an agency's interpretation if it conflicts with the statute's plain language." *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011).
3. This Court's affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper, and therefore the court did not need to address "general statutory law" in regards to the above stated checklist and tutorial.
4. This Court properly addressed the Appellants' Issues Two and Three.

[Signature Page to Follow]

Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 30 day of March, 2017.

Norwood D. DuRant, Jr., Esquire (SCB# 101723)
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ATTORNEY FOR Respondents

By: _____



Norwood D. DuRant, Jr. Esquire

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RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION OF APPELLANTS
MOTION TO RECONSIDER

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Attorney for Respondent

The Respondents file and submit this Memorandum in Opposition to the Appellants' Motion to Reconsider this Court's Unpublished Opinion filed on March 8, 2017.

1. This Court did not cite an incorrect Standard of Review.

This Court correctly cites both *Black v. Lexington Cty. Bd. Of Zoning Appeals* and *Austin v. Bd. Of Zoning Appeals*. First, in *Black v. Lexington Cty. Bd. Of Zoning Appeals*, the court states, "On appeal, the findings of fact of the Board shall be treated in the same manner as findings of fact by a jury, and the court shall take no additional evidence." *Black v. Lexington Cty. Bd. Of Zoning Appeals*, 396 S.C. 453, 457-58, 722 S.E.2d 22, 24 (Ct. App. 2012). Secondly, in *Austin v. Bd. Of Zoning Appeal*, the court states "In reviewing the questions presented by the appeal, the [reviewing] court shall determine only whether the decision of the Board is correct as a matter of law." *Austin v. Bd. Of Zoning Appeal*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004).

This Court correctly cites and applies the proper Standard of Review.

2. This Court's affirmation of the lower court's decision did consider the Town of Pawleys Island Unified Development Code and its application.

This court cites *Eagle Container Co., LLC v. Cty. Of Newberry*, which states "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning". *Eagle Container Co., LLC v. Cty. Of Newberry*, 379 S.C. 564, 570-71, 666 S.E.2d 892, 896 (2008). This Court further cites *CFRE, LLC v. Greenville Cty. Assessor*, which states "We will reject an agency's interpretation if it conflicts with the statute's

plain language.” *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011).

The Court by citing these two cases, demonstrated that they considered Section 3-6.2 of the Town of Pawleys Island Unified Development Code as plain and unambiguous and that the UDO Checklist and Tutorial did not constitute a zoning regulation, but an “agency’s interpretation” of the said Code. Therefore, this Court’s affirmation of the lower court’s decision did consider the Town of Pawleys Island Unified Development Code and its application.

3. This court properly interpreted the Town of Pawleys Island Unified Development Code.

The Appellants argue that this Court failed to look at the entire Town of Pawleys Island Unified Development Code as a complete statutory scheme. However this court cites *CFRE, LLC v. Greenville Cty. Assessor*, which states “We will reject an agency’s interpretation if it conflicts with the statute’s plain language.” *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011). The makeup of the actual UDO Checklist and the Tutorial is an interpretation by an agency that directly conflicts with the Town of Pawleys Island Unified Development Code. There was no need for this court to make an interpretation of a statutory scheme when the Appellants base their entire appeal off a non-statutory document.

CONCLUSION

In conclusion, this Court’s affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper, and that the disposition of this issue being dispositive was also proper.

Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 30 day of March, 2017.

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CERTIFICATE OF COUNSEL

The undersigned certified that the Respondents' Memorandum of Law in Opposition of Appellants' Motion to Reconsider and Respondents' Opposition of Appellants' Motion to Reconsider complies with Rule 211(b), SCACR.

March 30, 2017



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PROOF OF SERVICE

I certify that I have served the Respondents' Memorandum of Law in Opposition of Appellants' Motion to Reconsider and Respondents' Opposition of Appellants' Motion to Reconsider to the Attorney for Appellants by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2017, addressed to Brandon T. Reeser, Esquire, P.O. Box 13177, Charleston, SC 29422.

March 30, 2017



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Other Counsel of Record:

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ATTORNEYS AT LAW

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NORWOOD D. DuRANT, JR.
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March 30, 2017

Via UPS Overnight Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

MAR 31 2017

SC Court of Appeals

RE: Robert W. Wilkes v. Town of Pawleys Island, et al.
Appellant Case No. 2016-000029

Dear Ms. Kitchings:

Enclosed please find the following in connection with the above-referenced case:

- Respondents' Memorandum of Law in Opposition of Appellants Motion to Reconsider;
- Respondents' Opposition to Appellants Motion to Reconsider;
- Certificate of Counsel;
- Proof of Service; and
- Self-addressed stamped envelope for returning clocked copies.

By copy hereof, we hereby serve other counsel of record with the enclosed documents.

Thank you for your assistance in this matter and in the event you need any additional information, please do not hesitate to contact our office.

With kindest regards, I remain

Yours very truly,



Norwood DuRant, Jr.

NDjr/jlj

Enclosures

cc: Brandon T. Reeser, Esquire
P.O. Box 13177
Charleston, SC 29422
Attorney for Appellants

Nate Fata, Esquire
P.O. Box 16620
Surfside Beach, SC 29587
Attorney for Respondent

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SC Court of Appeals

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