THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2017-000170

Citizens for Quality Rural Living, Inc., ... Appellant,

v.

Greenville County Planning Commission,
and RMDC, Inc. ..... Respondents.

FINAL BRIEF OF RESPONDENT
Of Greenville County Planning Commission

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FINAL BRIEF OF RESPONDENT GREENVILLE COUNTY PLANNING COMMISSION

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STATEMENT OF ISSUES ON APPEAL

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2. Does state law pre-empt a conflicting local ordinance?

3. Does Appellant have standing pursuant to the public importance standard, an issue not raised in Circuit Court?

STATEMENT OF THE CASE

On August 24, 2016, the Greenville County Planning Commission ("Planning Commission") approved the preliminary plat application of RMDC, Inc. ("RMDC") to subdivide approximately 82 acres of land in the unzoned area of Greenville County.

Citizens for Quality Rural Living, Inc. ("Appellant") appealed the Planning Commission's decision to the Circuit Court on September 19, 2016. On October 18, 2016, RMDC filed a Motion to Dismiss, which the Planning Commission supported. On December 8, 2016, The Honorable Letitia Verdin issued an Order dismissing Appellant's Appeal "due to Appellant's lack of standing in this matter."

On December 16, 2016, Appellant filed a Motion to Alter or Amend Judgment and/or Motion for Reconsideration. Judge Verdin denied Appellant's Motions by an Order dated December 30, 2016.

On January 26, 2017, Appellant filed a Notice of Appeal. This Appeal follows.

STATEMENT OF FACTS

In August 2016, the preliminary plat application filed by RMDC, Inc. ("RMDC") for the subdivision known as Copperleaf was considered by the Greenville County Planning Commission ("Planning Commission"). The plan calls for an 82.17 tract to be subdivided into 95 residential lots. The property is located in the unzoned area of Greenville County. In accordance with S.C. Code Ann. §6-29-1150, the Planning Commission has final approval authority over subdivision development.

The applicant complied with the procedures as outlined in the Greenville County Land Development Regulations in submitting the plan. The property was properly posted to provide notice to the public of the proposed subdivision. At the August 2016 Planning Commission meeting, several people – including members of Citizens for Quality Rural Living, Inc. - spoke in opposition to the proposed subdivision. Citizens for Quality Rural Living, Inc. is an organization made up of people who live in the immediate vicinity of the proposed subdivision and people who live miles away. At the August 2016 meeting, the Greenville County Planning Commission staff recommended that the Planning Commission approve the subdivision plan.

After hearing from Planning Commission staff, representatives of RMDC, and members of the public, the Planning Commission voted to approve the preliminary plat application. Subsequently, Citizens for Quality Rural Living, Inc. filed an appeal of the Planning Commission decision. No member of Citizens for Quality Rural Living, Inc. is an owner of the property that is the subject of the Planning Commission decision.

ARGUMENT

The South Carolina Local Government Comprehensive Planning Act of 1994 ("Planning Act"), S.C. Code § 6-29-310 *et seq.* is, as its name suggests, a thorough and detailed statutory scheme for land development in this state. The Planning Act includes the appeals process from various local boards, including a local board of zoning appeals (S.C. Code Ann. § 6-29-800 *et. seq.*), a local board of architectural review (S.C. Code Ann. § 6-29-870 *et. seq.*), and a local planning commission (S.C. Code § 6-29-1150 *et. seq.*). Appeals from the planning commissions are governed by S.C. Code Ann. § 6-29-1150(D), which provides as follows:

> (1) An appeal from the decision of the Planning Commission must be taken to the circuit court within 30 days after actual notice of the decision.
>
> (2) A property owner whose land is the subject of a decision of the Planning Commission may appeal by filing a notice for appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

The plain language of the statute restricts the right to appeal planning commission decisions (and in this case, the decision of the Greenville County Planning Commission to approve a subdivision development) to the property owner. "[T]he procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing for such appeals." Rule 74, South Carolina Rules of Civil Procedure. No appeal is to be allowed from an inferior or special tribunal, except where it is expressly granted by statute. *Whipper v. Tailbird*, 32 S.C. 1, 10 S.E. 578 (1890); *Sasser v. South Carolina Democratic Party*, 277 S.C. 67, 282 (S.E. 2d 602 (1981). Appellant does not have

standing to appeal the decision of the Planning Commission and the Circuit Court's decision should be upheld.

I. APPELLANT HAS NO STATUTORY RIGHT TO APPEAL.

Pursuant to Rule 208(b)(6), SCRAP, the Greenville County Planning Commission adopts the portion of the brief of Respondent RMDC concerning this issue. The General Assembly has delineated who has appeal rights in circuit court from decisions by each local board set out in the Planning Act. A person who may have a substantial interest in a decision of a board of zoning appeals may appeal the decision to circuit court. *See* S.C. Code Ann. § 6-29-820(A). A person who may have a substantial interest in a decision of a board of architectural review may appeal the decision to circuit court. *See* S.C. Code Ann. § 6-29-900. Only a property owner whose land is the subject of a planning commission has standing to appeal the decision in circuit court. *See* S.C. Code Ann. § 6-29-1150(D).

When a statute's terms are clear and unambiguous, no room exists for statutory construction, and a court must apply the statute according to its literal meaning. *Miller v. Aiken,* 364 S.C. 303, 613 S.E.2d 364 (2005). There is no language in the Planning Act that confers standing on anyone else to appeal planning commission decisions regarding the subdivision of land. The General Assembly could have conferred standing on aggrieved parties, or parties with a substantial interest in the decision, or those who have a concern over someone else's land, but it did not. Had the General Assembly meant to give anyone other than a property owner the right to appeal how he wants to subdivide his property, the General Assembly would have so stated. *Horry Ct. Sch. Dist. v. Horry*

Cty., 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001) ("if [the] legislature had intended [a] certain result in in [a] statute [,] it would have said so.")

II. THE GREENVILLE COUNTY LAND DEVELOPMENT REGULATIONS DO NOT CONFER STANDING UPON APPELLANT.

Appellant cites the language of the Greenville County Land Development Regulations ("County Regulations") in effect at the time of the Planning Commission decision as the authority that conveys standing to Citizens for Quality Living, Inc. However, Appellant ignores the comprehensive scheme the General Assembly has established with the South Carolina Local Government Comprehensive Planning Enabling Act ("Planning Act"), codified at S.C. Code §6-29-310 *et. seq.*, that governs the appeals process from various boards, including decisions of local planning commissions. On its face, the language of §6-29-1150(D)(2) limits the right of appeal from planning commission decisions to property owners.

The 1994 Planning Act did not specify who had standing to appeal planning commission decisions regarding land development to circuit court. Prior to the 2003 amendments to the Planning Act, the language in the County Regulations indicated an "aggrieved" person could appeal such a decision. Prior to 2003, this language in the local regulation could be read in harmony with the state statute.

In 2003, the General Assembly amended the Planning Act and addressed the appeals process from various local government boards. With regard to preliminary plat applications, the General Assembly provided appeal rights solely to the property owners. *See* S.C. Code Ann. § 6-29-1150(D)(2). There is no way to harmonize the local

regulation language with the language included in the 2003 state law amendment. In 2003, the General Assembly amended the Planning Act to clearly establish appeal rights only to "a property owner whose land is the subject of a decision of the planning commission." This amendment contradicts and pre-empts the local regulation provision which stated an "aggrieved" party could file an appeal.

In order for there to be a conflict between a state statute and a local ordinance "both must contain either express or implied conditions which are inconsistent or irreconcilable with each other." *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. at 553, 397 S.E.2d at 664 (quoting *McAbee v. Southern Rwy., Co.*, 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932). In the present case, there is a direct conflict between language in the local regulation and what is in the state law concerning the appeals process from planning commission decisions on land subdivision. The plain language of the statute restricts the right to appeal these particular decisions to the property owner.

The County Regulation also falls under the doctrine of implied field preemption. The Legislature has created a detailed and specific statutory scheme concerning every aspect of the subdivision approval process. Implied field preemption occurs "when the state statutory scheme thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." *S.C. State Ports Authority v. Jasper County*, 368 S.C. at 397, 629 S.E.2d at 628 (S.C. 2006).

The Planning Act, in precise terms, governs the entire preliminary plat approval process in South Carolina. The Planning Act sets time limits for local governments to act on applications; it describes the records that must be maintained as public records; and in

detail describes a pre-litigation mediation process, and how a property owner (and only a property owner) can request pre-litigation mediation after filing an appeal. The Act then details how mediation must be approved, which includes both approvals by the local legislative governing body and the circuit court. This comprehensive scheme governs the procedures local governments must follow when approving the development of land in this state. Included in that comprehensive scheme is the right of property owners – and solely property owners - to appeal a decision made by a planning commission regarding the subdivision of their land.

Appellant erroneously asserts that counsel for the Planning Commission argued the question of standing should be governed by a pending amendment to the Greenville County Land Development regulations at the time the appeal was heard. There is no matter in the record indicating that was the argument of the Planning Commission. In fact, this matter was brought to the Court's attention to indicate Greenville County Council recognized the conflict between state law and the local regulation concerning standing, and amended the County Regulations to ensure compliance with state law. Appellant is correct in asserting the new and current language in the Greenville County Land Development Regulations defers to the state statute for rules governing an appeal.

Appellant avers that other local governments in South Carolina include language in their land development regulations that give expansive appeal rights to non-property owners. No ordinance enacted in any other county has any application whatsoever in Greenville County. Additionally, no matter how many counties enact substantially the same ordinance, if that ordinance is pre-empted by state law, the state statute controls.

Appellant participated in the process and voiced concerns to the Greenville County Planning Commission staff members and Greenville County Planning Commission members regarding this subdivision request. Members of this group attended the Planning Commission meeting in August 2016, and several spoke in opposition to the plan. The plain language of state law simply does not give everyone who disagrees with a property owner's decision concerning his land the right to appeal that decision in circuit court. Citizens for Quality Living, Inc. are not the property owners of the land that will be subdivided. The language of the controlling statute is clear and unambiguous, and only provides rights to appeal in this case to the owner of the property.

II. APPELLANT HAS NO "PUBLIC INTEREST" STANDING.

Pursuant to Rule 208(b)(6), SCRAP, Greenville County Planning Commission adopts that portion of Respondent RMDC's brief regarding this issue.

CONCLUSION

The Appellant does not have standing to appeal the decision by the Greenville County Planning Commission. For the reasons stated herein, this Court should uphold the decision of the Circuit Court dismissing this Appeal.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned attorney for Respondent Greeenville County Planning Comission certifies that this Final Brief complies with Rule 211(b), SCACR.

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