STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Richland County
Tanya A. Gee, Circuit Court Judge
Case No. 2015-CP-40-03357

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SC Court of Appeals

Appellate Case No. 2015-002532

Christ Central Ministries,.....Respondent

Vs.

City of Columbia Board of Zoning Appeals.....Appellant

FINAL BRIEF OF RESPONDENT

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QUESTION PRESENTED

Was the court below correct in ruling that the City of Columbia Zoning Administrator's interpretation of a provision in the City's code of ordinances, as affirmed by the Board of Zoning Appeals, regarding the replacement of certain billboards was erroneous as a matter of law, the error being the Administrator's interpretation that once the original billboard was removed, a replacement board could not be constructed in its place?

STATEMENT OF THE CASE

Respondent objects to appellant's statement of the case and offers the following in its stead.

Respondent, Christ Central Ministries (Ministries), is the owner of real property located at the corner of Main Street and Elmwood Avenue in the City of Columbia. Ministries had leased a portion of its property to Lamar Companies (Lamar) for a term years with an expiration date of August 31, 2014. (R. pp. 73-74) Lamar had erected on the leased property a fixed copy billboard. On March 3, 2014 Lamar sought and was granted by the City, a zoning permit for the replacement of the existing fixed copy billboard with a changeable copy billboard in accordance with section 17-404(e)(4) of the City's zoning ordinance. The permit for the construction of the replacement billboard was to expire on August 30, 2014, one day prior to the expiration of the Lamar lease of the property. (R. p. 72)

On April 16, 2014, Ministries notified the Zoning Administrator (Administrator) that it wished to obtain a permit for a changeable copy billboard on its property. (R. p.71) On May 1, 2014 Ministries notified Administrator that it had appointed an agent other than Lamar, Stevenson, to pursue a zoning permit for the replacement, changeable copy billboard. (R. p. 70) On June 16, 2014, subsequent to Ministries' notice that it had appointed Stevenson as its agent to obtain a permit for the erection of a replacement, changeable copy billboard on its property, and without notice to Ministries, the Administrator extended the Lamar zoning permit to December

31, 2014. (R. p. 69) On June 18, 2014 the Administrator, without advising Ministries that the Lamar permit had been extended, advised Ministries that a zoning permit Ministries sought for the replacement sign could be issued only upon the expiration or abandonment of the Lamar permit. (R. p. 68)

Ministries' agent, Stevenson, notified the Administrator or August 2, 2014 that Lamar had removed its fixed display billboard from Ministries' property. (R. p. 67) Stevenson advised the Administrator that he wished to discuss "permitting" the following Monday which would have been August 4, 2014. (R. p. 67) On September 23, 2014 Ministries submitted an application for a permit to replace the fixed copy billboard with a changeable copy billboard. (R. p. 66) No action was taken by the Administrator on this application. Stevenson, meeting with the Administrator on January 12, 2015 reiterated Ministries' desire to obtain a permit for the changeable copy billboard. On February 2, 2015 the Administrator wrote to Stevenson to provide his interpretation of the ordinance and deny the application for a permit to allow Ministries to construct a replacement, changeable copy billboard (R. p. 64):

> It is my understanding that the non-conforming sign at the above referenced location was removed by the sign owner on or about August 2, 2014. As such, this office would not be able to issue a permit, per §17-404(e)(4) to replace a sign that is no longer existing.

Ministries appealed the decision of the Administrator to the Board of Zoning Appeals. There were no disputed facts, and the decision of the Administrator was affirmed as a matter of law with the Board of Zoning Appeals stating as its conclusions of law (R. pp. 31 - 32):

> Pursuant to the power and duty of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that the appellant has failed to prove that the Zoning Administrator erred in his determination regarding the issuance of a zoning permit to install a digital outdoor advertising sign per §17-404(e)(4).

> Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby AFFIRMED.

Ministries appealed the decision of the Board of Zoning Appeals to the Court of Common Pleas as allowed by law. S.C. Code Ann. §6-29-840 (1976). The Court ruled that the Administrator's interpretation of the applicable provision of the ordinance was erroneous as a matter of law, and ordered the issuance of a permit to erect a changeable copy billboard, including a replacement metal sign support structure. The court's order was dated November 12, 2015, and this appeal followed. (R. pp. 3 - 9)

ARGUMENT

The court below was correct in ruling that the City of Columbia Zoning Administrator's interpretation of a provision of the City's code of ordinances, as affirmed by the Board of Zoning Appeals, regarding the replacement of certain billboards was erroneous as a matter of law, the error being the Administrator's interpretation that once the original billboard was removed, a replacement board could not be constructed in its place.

The City ordinance allowing the replacement of fixed copy billboards with changeable copy billboards provides in its pertinent provisions:

> Notwithstanding the provision of Division 7 of this article, the fixed display surface of a legal nonconforming outdoor advertising sign may be replaced in whole or in part by display surface area with changeable copy.... Generally this permissibility does not include the replacement of, or some other substantial alteration to, the sign support structure, except where existing metal sign support structures would be replaced with new metal sign support structures.

§17-404(e)(4) Code of Ordinances of the City of Columbia.

Judicial review to determine whether the interpretation of an ordinance is correct as a matter of law is guided by several well-established principles: (1) legislative intent will prevail if it can reasonably be discovered in the language used in an ordinance; (2) an ordinance must be interpreted in a reasonable, practical and fair manner; and, (3) the terms used in the ordinance

must be taken in their ordinary and popular meaning. *Charleston County Parks & Recreation Comm'n. v. Sommers,* 319 S.C. 65, 459 S.E.2d 841 (1995). Additionally, ordinances in derogation of the rights of a person to use property must be construed for the benefit of the property owner. *Purdy v. Moise,* 223 S.C. 298, 75 S.E.2d 605 (1953); *Helicopter Solutions, Inc. v. Hinde,* 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015).

Applying these principles to the construction given by the Administrator to the zoning ordinance, it is clear that the court below was correct in ruling that the Administrator's interpretation was erroneous as a matter of law. The Administrator interpreted the ordinance to mean that once the original, fixed display sign was removed, it could not be replaced with a changeable copy sign. (R. p. 64)

What was the legislative intent of the ordinance? The language of the ordinance answers the question without ambiguity: "...[T]he fixed display surface of a legal nonconforming outdoor advertising sign may be replaced in whole or in part by display surface area with changeable copy...." "...[E]xisting metal sign support structures would be replaced with new metal sign support structures." §17-404(e)(4) Code of Ordinances of the City of Columbia. It seems beyond doubt that the Columbia City Council intended with the language of this ordinance to allow a fixed copy sign to be replaced with a changeable copy sign, and, new metal sign support structures could replace the original metal sign support structures. There is no language in the ordinance suggesting that a changeable copy sign and metal support structures cannot be erected if the existing fixed copy sign and metal support structures were first removed.

Turning to the second principle of interpretation identified above, what is the reasonable interpretation of the language of the ordinance? The Administrator's interpretation was that once the original, fixed copy sign and its metal support structure was removed, no other sign could be

erected. Under this interpretation no changeable copy sign could ever replace a fixed copy sign and no new metal support structures could be erected if the fixed copy sign and its metal support structure had been removed to provide a space for the erection of the changeable copy sign and new metal support structures as the fixed copy sign would no longer be existing. Under the Administrator's interpretation Ministries' right to replace a fixed copy sign and its metal support structures ended when the fixed copy sign and its metal support structures were removed. The court below was correct in its determination that the Administrator's interpretation of the language of the ordinance was unreasonable and led to an absurd result: a fixed copy sign and its metal support structures could be replaced except when the fixed copy sign and its metal support structures to be replaced were removed to make way for the new sign and support structures. There is a Lewis Carroll and Joseph Heller feel to the Administrator's interpretation of the ordinance.[1]

Applying the third principle, what is the ordinary and popular meaning of "replaced?" The common meaning of the word is "to take or fill the place of", or "to be a replacement for." "Replacement" is synonymous with "substitution." *Webster's II New College Dictionary* (Houghton Mifflin Co., 1995). Under the Administrator's interpretation of the ordinance no changeable copy sign or new metal support structures would ever be allowed to take the place of or be substituted for a fixed copy sign and its metal support structures if the fixed copy sign were removed to make room for the substituted changeable copy sign and new metal support structures. Of course nothing in the language of the ordinance supports such a bizarre interpretation of "replaced." If one is wearing a hat and wishes to replace it with a new hat, the

[1] "Curiouser and curiouser." Lewis Carroll, *Alice's Adventures in Wonderland* (Macmillan 1865). "Major Major never sees anyone in his office while he's in his office." Joseph Heller, *Catch-22* (Simon & Schuster 1961).

original hat is typically removed before the replacement goes on the head. That is the common understanding of "replaced," the Administrator's misunderstanding of the term notwithstanding.

Finally, construing the ordinance in the favor of Ministries' use of its property, erection of a changeable copy sign and new metal support structures to replace or take the place of the fixed copy sign and its metal support structures is wholly consistent with the language of the ordinance and Ministries' wishes for the use of its property. Nothing in the ordinance suggests that the Administrator is free to disregard the wishes of a property owner or adopt an interpretation of "replaced" unsupported by reason or common language usage.

CONCLUSION

Where, as here, there are no facts in dispute, judicial review of an administrative decision presents a question of law only. And, where, as here, the issue is the interpretation of an ordinance, the determination of whether there has been an error of law by the administrative body, rests on long-established principles: what was the intent of the legislation, was the interpretation of the language of the ordinance reasonable, and, what was the common meaning of the words used in the ordinance? The language at issue in this appeal is "replaced." Clearly the ordinance contemplated that one type of billboard, changeable copy, could replace a fixed copy billboard as that activity is unambiguously stated in the ordinance. The Administrator's interpretation of the ordinance prohibiting the construction of a changeable copy billboard once the original fixed copy billboard had been removed was not reasonable and, if followed, would produce an absurd result—the replacement board could not be constructed if the original board had been removed. This interpretation by the Administrator ignores the common usage of "replaced," and would defeat entirely the intention of the Columbia City Council to allow changeable copy billboards in place of fixed copy billboards. Finally, all ordinances restricting

the power of a property owner to choose the use of property are to be construed in favor of the property owner. Here the wishes of the property owner and the language of the ordinance are consistent—the owner desires to replace a fixed copy billboard with a changeable copy billboard and the ordinance permits the substitution.

The decision of the court below should be affirmed.

Columbia, South Carolina

September 2, 2016

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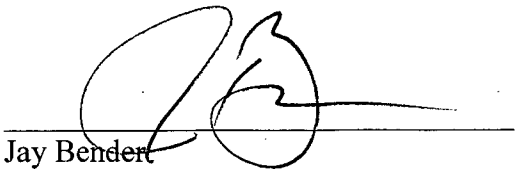
CERTIFICATE

The undersigned certifies that Respondent's Final Brief conforms with Rule 211(b), SCACR.



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September 21, 2016

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