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.

REPLY BRIEF OF APPELLANT

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I. S.C. Code Section 6-29-1150(D)(1) grants the Appellant the right to appeal.

While the Respondents may read the statute as "plain on its face" to their way of thinking and their advantage, the fact that so many other counties and the Municipal Association have interpreted the statute differently than Respondents infers that either (1) the statute is not plain on its face or (2) Respondents misconstrue the statute. Appellant believes the statute is plain and that Respondents are adding restrictions that are not in the plain language of the statute.

The language of the statute is plain: "An appeal from the decision of the Planning Commission must be taken to the circuit court within thirty days after actual notice of decision." Respondents attempt to read more into the plain language by pulling the next subsection into this one: the next subsection adds the ability to request mediation upon an appeal, but only for the property owner, and references the following section which provides for a mediation process and ensures that the public is not cut off from the mediation process. Reading subsection (D)(2) in context with the larger statutory scheme leads to the conclusion that the legislature did not intend to limit remedies for redress to only the property owner.

Respondents aver that subsection (D)(1) sets only the time limit and subsection (D)(2) defines who may appeal, but a full reading of subsection (D)(2) includes the time limit as well, specifically, "A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed." If subsection (D)(1) set the time limit and (D)(2) established the appellant, then either (D)(1) or the last

sentence of (D)(2) is superfluous and has no purpose. Such an interpretation is contrary to the established law of South Carolina that each part should be given purpose and meaning. *Matter of Decker,* 322 S.C. 215, 218, 471 S.E.2d 462, 463 (1995); *TNS Mills, Inc. v. S.C. Dept. of Revenue,* 331 S.C. 611, 620, 503 S.E.2d 471 (1998).

Respondent RMDC distinguishes the various roles of zoning authorities and planning commissions as a logical justification for treating those who can appeal from the different bodies separately to support its interpretation of the "plain language of the statute," but the argument fails in this instance. Zoning ordinances are adopted by the local governing body based upon the comprehensive plan proposed by the planning commission. S.C. Code § 6-29-720(A). Respondent RMDC points out that zoning authorities are responsible for, among other things, use of land and size of buildings, the density of development, overcrowding and providing adequate light, air and open space; facilitating fire and police protection, water, sewage, schools, etc. In approving an urban subdivision in a rural area, the Greenville County Planning Commission was impacting every one of the above points that Respondent attributes to zoning authorities; if these impacts are what make it appropriate for the affected public to appeal, then certainly there is no logical distinction prohibiting nearby neighbors from appealing subdivision decisions by a planning commission rather than a zoning board.

Respondent RMDC's allegation that the cases cited by Appellant regarding appeals from the zoning board do not support Appellant's position fails to reach Appellant's intended argument. (*Newton v. Zoning Bd. of Appeals for Beaufort Cnty.,* 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011), *reh'g denied;* and *Bevino v. Town of Mount Pleasant Bd. of Zoning Appeals,* 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013)). It

is true that the planning commission appeals process statutory language appears to be merely an abbreviated form of the zoning board appeals process statute (compare S.C. Code § 6-29-1150 to S. C. Code § 6-29-820), and Appellant could argue the similarities for the proposition that a non-property owner could appeal under the particular planning commission procedures language. But rather *Newton* and *Bevino* demonstrate that appeals from land use decisions may be brought by parties which were not named at all during the permitting process. Respondent RMDC notes that Appellant and its constituents availed themselves of opportunities to express their opposition to the subdivision as it was proposed at as many opportunities as they could, even beyond what Respondent mentions beginning at the first three planning commission hearings at which the subdivision was denied approval in November 2015, March 2016 and May 2016, as well as the most recent hearing in August 2016. However, even if the Appellant had never voiced any objection at any of the hearings, the statute would allow them to begin their involvement with an appeal after final approval.

II. Appellant has standing under the local ordinance.

A. The county ordinance was not invalid based on the plain language of the statute.

Respondents cannot deny that the plain language of the county ordinance at the time of the appeal grants standing to the Appellant. Respondents, however, aver that the county regulations were of no effect since they were preempted by the statute speaking to the subject. If the statutory language is clear, and is accorded the meaning as interpreted by Appellant as argued above, then there is no conflict between the state statute and the county ordinance. If the state statute is interpreted to mean that only a property owner of

land subject to a decision may appeal a planning decision, then not only was Greenville County's ordinance invalid, so also are the ordinances of Richland County, Horry County, Colleton County and Charleston County. (Counsel has not reviewed the ordinances of all forty-six South Carolina counties, so this list is by no means exhaustive.) If all of these counties and the Municipal Association[1] are misconstruing the statute, then clearly it the meaning attributed to it by Respondents is not "plain"; if these counties are correct, then the Greenville County ordinance was not invalid and Appellant has standing under the county ordinance.

B. The county ordinance is not preempted by the state statute.

Respondents further allege that any elucidation or expansion of the statute is preempted by the statute itself. Nowhere in the statute does it say that a non-property-owner is prohibited from appealing, or that "only" the property owner may appeal. Where the statute is silent, "[a]s a general rule, 'additional regulation of that State law does not constitute a conflict therewith.'" *Denene, Inc., v. City of Charleston,* 352 S.C. 208, 214, 574 S.E.2d 196 (2002), r*eh'g denied* (2003), citing *Town of Hilton Head Island v. Fine Liquors, Ltd.,* 302 S.C. at 533, 397 S.E.2d at 644, *infra.* "[I]n order to preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." *Town of Hilton Head Island v. Fine Liquors, Ltd.,* 302 S.C. 550, 552, 397 S.E.2d 662, 663 (1990). Assuming, for purposes of argument,

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[1] The Municipal Association Comprehensive Planning Guide was referenced at circuit court (Tr. 20) and demonstrates that Respondents' interpretation of the "plain language" of the statute may not have the plain meaning respondents claim when an association publishes a guide for municipalities within South Carolina interpreting the statute differently.

that the state statute provides for property owners to appeal, there is no contradiction in a county ordinance also allowing other persons to appeal, so long as the appeal is brought within the 30 days provided by state statute.

III. The appellant has standing under the Declaratory Judgment Act and public interest standards.

Appellant requested relief under the Declaratory Judgment provisions, raising the public interest issues, in its initial Appeal. (R. p. 23, paragraphs 53 and 54). Respondent RMDC did not challenge or address this ground for relief or standing in its Motion to Dismiss, nor did the Planning Commission, challenging only the interpretation of S.C. Code § 6-29-1150(D) and the county ordinance, so there was nothing to verbally argue against as Respondents did not question this ground of relief. Appellant did raise the question of Declaratory Judgment relief in its Memorandum to the circuit court in opposition to the Motion to Dismiss, making it part of the record and which the Court assured counsel it would read. (R. p. 80, lines 5-11). And, as counsel notes, the argument was carried forward in the Rule 59 motion.

The issues raised in the Appeal include application of planning standards to the majority of the land area of Greenville County, uniformity of application of planning standards across the state, and interpretation of state statutes and county ordinances across the state, as well. These significant questions of public interest are worthy of clarifying statements from the Court. *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007) fn. 1, *reh'g denied* ("standing is not inflexible and standing may be conferred

upon a party when an issue is of such public importance as to require its resolution for future guidance.").

Respectfully submitted,

May 1, 2017

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

June 7, 2017

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