IN 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 RMDC, INC.

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STATEMENT OF THE CASE

On August 24, 2016, the Greenville County Planning Commission ("Planning Commission") approved the preliminary subdivision plat application of RMDC, Inc. ("RMDC") to develop an approximate 82 acre tract of land in an 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 ("R7"). On October 18, 2016, RMDC filed a Motion to Dismiss ("R37"), which was supported by the Planning Commission. On November 1, 2016, The Honorable Letitia Verdin, Circuit Judge, heard arguments on RMDC's Motion to Dismiss. On December 8, 2016 ("R1"), Judge 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. On December 30, 2016 ("R4"), Judge Verdin denied Appellant's Motions.

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

STATEMENT OF FACTS[1]

In August 2016, the preliminary plat application filed by RMDC for the subdivision known as Copperleaf was considered by the 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.

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. includes property owners who live in the immediate vicinity of the proposed subdivision and property owners who live miles away. At the August 2016 meeting, the Planning Commission staff recommended that the Planning Commission approve the subdivision plan.

After hearing from Planning Commission staff, representatives of RMDC, and member 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.

[1] RMDC substantially adopts the Statement of Facts of the Greenville County Planning Commission, which are set forth here for the convenience of the Court.

ARGUMENT

Since at least 1829, South Carolina law has been clear that an appeal is not allowed from an inferior tribunal except where it is expressly granted by statute. *Cormand v. Wall*, 1 Bail. 209, 17 S.C.L. 209 (1829); *Whipper v. Talbird*, 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). "[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. Accordingly, unless Appellant had a statutory right to appeal the decision of the Planning Commission, the dismissal below was correct. No such right exists. The Circuit Court's decision should be affirmed.

I. APPELLANT HAS NO STATUTORY RIGHT OF APPEAL.

A. The Language of the Statute is Clear and Unambiguous.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 ("Planning Act"), S.C. Code § 6-29-310, et seq. governs the appeal process from various local government boards. In 2003, the General Assembly enacted the "Land Use Dispute Resolution Act," which amended the Planning Act by adding Section 6-29-1150, addressing the right of appeal from a decision of a Planning Commission. Section 6-29-1150(D) provides as follows:

> (D) (1) An appeal from the decision of the Planning Commission must be taken to the circuit court within thirty 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 of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155. (Emphasis added)

It is undisputed that Appellant is not the owner of the land on which the proposed subdivision will lie. As Section 6-29-1150 provides that an appeal from a decision of the

Planning Commission may be taken only by the owner of the property, Appellant had no standing to appeal the decision of the Planning Commission.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislature's intent. *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Envtl. Control*, 374 S.C. 201, 648 S.E.2d 601 (2007). The legislative intent should be derived primarily from the plain language of the statute. *Bass v. Isochem,* 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005). The statute's text is the best evidence of legislative intent or will. *Peak v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 654 S.E.2d 284 (Ct. App. 2007). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply a statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).

It is not within the province of the Court to weigh in on the wisdom of legislative policy determinations. *Town of Hilton Head Island v. Kigre, Inc.*, 208 S.C. 647, 760 S.E.2d 103 (2014). A court sits only in judgment of a statute's conformity with, or repugnance to, the Constitution. *City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53 (2011).

The language of Section 6-29-1150 could not be more clear. Subsection (D)(1) sets the time period in which an appeal must be lodged. Subsection (D)(2) states who may appeal. These subsections were part of the "Land Use Dispute Resolution Act," which was enacted in 2003 and which amended the Planning Act. As per the title of the legislation, the General Assembly comprehensively dealt with disputes over land use. The legislation affected disputes arising from decisions of county planning commissions, as well as from boards of zoning appeal. The General Assembly drew a distinction between appeals from a zoning body and appeals from a planning body. The legislation allowed appeals from a board of zoning appeals ("BZA") decision by "[a] person who has substantial interest in any decision of the Board of

Appeals or Officer or agent of the appropriate governing authority ...." Section 6-29-820(A). It limited appeals from a planning commission decision to the owner of the property involved in the decision.

There is a basic presumption the legislature has knowledge of preceding legislation when enacting subsequent statutes on related matters. *City of Camden v. Fairfield Elec. Coop., Inc.*, 372 S.C. 543, 643 S.E.2d 687 (2007). The legislature made a clear distinction between an appeal from a zoning decision and an appeal from a planning decision. The decision to make such a distinction is solely the prerogative of the General Assembly. "Once the legislature has made (a) choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645, 649 (quoting *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989)). "The responsibility for the justice or wisdom of legislation rests exclusively with the legislature." *Busby v. State Farm Mut. Auto. Ins. Co.*, 280 S.C. 330, 337, 312 S.E.2d 716, 720 (Ct. App. 1984). The General Assembly has clearly limited the right of appeal from a Planning Commission decision to the owner of the subject property.

Appellant argues that the plain language of the statute gives it standing. The plain language of the statute contradicts Appellant's statement. The only person given the right to appeal a planning commission decision is the property owner. As Section 6-29-820 illustrates, the legislature knows how to provide appellate rights to persons other than property owners. It did not do so in this instance. Courts must "presume that a legislature says in a statute what it means and means in a statute what it says." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). The fact that the legislature allowed a non-party

to petition to intervene in a mediation does not change the fact that only a property owner may appeal.

Appellant claims that without reading additional parties into the statute, Subsection (D)(1) would be superfluous. On the contrary, Subsection (D)(1) provides the time period in which an appeal must be filed. It is a separate Subsection (D)(2) that designates who has the right to appeal.

Under the established law of this state, an appeal is not allowed unless it is expressly granted by statute. *Cormand v. Wall*, supra. The General Assembly expressly provided that a land owner may appeal a decision of the applicable planning commission. It did not provide, expressly or otherwise, for any other party to perfect such an appeal. There is no right to appeal by implication. Under the established law of statutory construction in this state, Appellant lacks standing to appeal the Planning Commission decision.

B. The "Statutory Scheme" is Clear.

Appellant argues that the Court should compare the "statutory scheme" regarding the Board of Zoning Appeals with the "statutory scheme" regarding the Planning Commission. As set forth above, the law of statutory interpretation in this state forbids such an exercise. The General Assembly has every right to distinguish between appeals regarding zoning and appeals regarding planning. Despite Appellant's wishes, it is not the province of a court to second guess decisions of the legislature. See *State v. Sweat*, *supra*. Nevertheless, an examination of the distinctions between planning and zoning provides a more than rational basis for the distinction made by the General Assembly.

The duties of a planning commission are set forth in Section 6-29-340. A local planning commission may make and distribute maps, plans, and reports and make

recommendations relating to such plans and as to development in its area of jurisdiction. A planning commission has the power to prepare and recommend for adoption zoning ordinances and regulations for the subdivision of land. A planning commission has the power to propose a landscaping ordinance regarding planting, tree preservation, etc. Importantly, while a planning commission has the authority to recommend plans, programs, etc., it does not have the authority to enact them into law.

The duties of a zoning authority, on the other hand, are covered by Section 6-29-710. To carry out its responsibilities, the governing body of a municipality or county may adopt zoning ordinances which, like other ordinances, have the effect of law. These ordinances may regulate: The use of buildings, structures, and land; the size, location, height, number of stories, construction, and alteration and/or demolition of buildings and signage; the density of development; the use or occupancy of buildings; the size of yards, courts, and the amount and location of off street parking.

Zoning ordinances must take into account the prevention of overcrowding, the preservation of historic and scenic areas, and must provide for adequate light, air, and open space. Zoning ordinances must facilitate a provision of or availability for transportation, police and fire protection, water, sewage, schools, etc.

The powers of a board of zoning appeals are set forth in Section 6-29-800 which are, *inter alia*, to decide appeals involving an error in the application of the zoning ordinance, to decide appeals for variances from the requirements of the zoning ordinance particularly in cases of hardship, or extraordinary and exceptional conditions; to decide whether such a variance will affect in a detrimental manner adjacent property or the public good; to decide

whether the character of the district will be harmed by the granting of a variance; and, to decide whether to permit uses by special exception to the zoning ordinance.

In short, a planning commission's duties involve planning and suggestion. Zoning involves legislation and implementation. Zoning is much more detailed, and much more specific. A board of zoning appeals has power far beyond that of a planning commission and has the ability to affect neighboring properties by a variance of enacted zoning regulations. These distinctions could account for the differentiation made by the General Assembly between appellate rights from a zoning body and appellate rights from a planning body. Zoning is legislation, planning is not. A planning document regarding unzoned areas of a county or municipality is nothing more than a recommendation. It does not carry the weight of law. On the other hand, a zoning ordinance carries the weight of law.[2]

Appellant's members were accorded all rights conferred upon them by the Planning Act. Appellant's members contacted Planning Commission's staff as well as members of the Planning Commission expressing their opposition to this subdivision. Appellant's members attended the Planning Commission meeting in August 2016 and made their opposition clear to members of the Planning Commission. Appellant's members wish to place restrictions on the lawful use of another's property. Yet this property, and the surrounding area, is unzoned. Appellant's members wish the benefits of zoning (restrictions on the property of another) without zoning's corresponding responsibilities (restrictions on their property). As the

[2] Appellant also argues it should have standing because a guide published by the Municipal Association of South Carolina agrees with her position. First, it does not appear the guide was presented to the Court below, thus its inclusion here is precluded. Secondly, and more importantly, such a guide is not even a regulation, it is simply an interpretation of the statutes at issue. As discussed below, a regulation, which is contrary to state law is void. To suggest that a court should grant standing based upon the interpretation of an interest group is unprecedented.

property is unzoned, the owner may put it to any lawful use. As the property is unzoned, only the property owner has the right to appeal a denial of such a use by the Planning Commission.

C. Appellant's Cases do not Support its Position.

Appellant also claims that "at least two cases have been filed with this Court under this statutory language and neither challenge the appeal on the basis that the Appellants were not property owners." (App. Initial Brief at 11.) Appellant misreads the cases cited in support of this proposition. Both *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011), and *Bevivino v. Town of Mount Pleasant Bd. Zoning of Appeals*, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013) involved appeals from a board of zoning appeals. Neither involved an appeal from a planning commission. While neither appeal was by property owner, as set forth above, the legislature did not restrict appeals from a board of zoning appeals to a property owner alone. Rather, the legislature allowed a person who has "a substantial interest in a decision to appeal." See Section 6-29-820. Thus, Appellant's argument carries no weight.

Appellant posits that a disappointed developer could not appeal a Planning Commission decision and as a result, this Court must infer that a non-property owner has a right of appeal. This argument ignores the reality of land development. No developer would propose a development without the consent of the owner of the property. If the Planning Commission ruled against the development, the owner, having the same interest as the developer, would simply appeal the decision.

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

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

states that the general rule, and the rule which applies here, is that where a regulation conflicts with a statute on the same subject, the statute controls. *McNickel's, Inc. v. S.C. Dept. of Revenue*, 331 S.C. 629, 503 S.E.2d 723 (1998). A county regulation cannot supersede a statute.

III. APPELLANT HAS NO "PUBLIC INTEREST" STANDING.

Lastly, Appellant argues that it should have standing pursuant to the public interest or public importance doctrine or the alternatively Declaratory Judgment Act. As an initial matter, while Appellant's counsel argued this issue in her Rule 59 motion, it was not raised before the Circuit Court. A party cannot raise an issue for the first time in a Rule 59 motion which could have been raised at trial or hearing. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995). Thus, this issue is not preserved for review in this Court.

Should the Court choose to consider Appellant's argument, "public interest/declaratory judgment" is of no help to Appellant. This matter does not qualify for "public interest" standing.

The Court need look no further than one of the cases cited by Appellant, *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008). ATC involved another section of the Planning Act, Section 6-29-760, which deals with the procedure for enacting or amending zoning regulations. Section 6-29-760(c) provides that an adjoining land owner or his representative may bring an action to contest the zoning ordinance or amendment. ATC, which was a non-adjoining land owner, filed suit in Circuit Court challenging the rezoning of certain property. The Circuit Court dismissed the case finding that ATC lacked standing. The Supreme Court affirmed. The Supreme Court ruled that as ATC was not an adjoining land owner, it did not have the right to appeal the rezoning. The Supreme Court also addressed the

issue of the "public importance" exception in appeals involving zoning matters. The Court denied public interest standing stating that "[o]f course, zoning is a matter of public importance, but the same may be said of most legislative and executive actions." 380 S.C. 199, 669 S.E.2d 341. The Court found that efforts to cloak a zoning challenge "as a matter of public importance for the purpose of acquiring standing finds no traction in this record." *ATC* at 200, 342. Thus, Appellant is not entitled to public interest standing.

CONCLUSION

For the reasons set forth herein, RMDC submits the decision of the Circuit Court dismissing Appellant's Appeal should be affirmed.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COUNSEL

The undersigned attorney for Respondent RMDC, Inc. certifies that this Final Brief complies with Rule 211(b), SCACR.

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