THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable Larry B. Hyman, Presiding Judge

Case No. 2012-CP-26-06987

Appellate Case No. 2013-000971

Helicopter Solutions, Inc.,
d/b/a Helicopter Adventures ..... *Respondent,*

v.

Richard Hinde and Horry County Zoning Administrator, ... *Defendants,*

of whom Richard Hinde is ..... *Appellant.*

FINAL BRIEF OF APPELLANT

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B. Did the Trial Court Err by Expanding the Range of Permitted Uses in the Horry County Amusement/Commercial Zoning District to Include a Heliport or Airport?

II. STATEMENT OF THE CASE

The Horry County Zoning Board of Appeals was created by Horry County Ordinance No. 23–87, effective October 20, 1987, adopted pursuant to S.C. Code Ann. § 6-29-780 (Rev. 2004 & Supp. 2011). This matter arises from an appeal from a decision of the Zoning Board of Appeals ("**Zoning Board**") that a helicopter/ sightseeing tour facility was not a permitted use in the Amusement Commercial ("**AC**") zoning district in Horry County. (R. pp. 3–6; R. pp. 285–88.)

The Horry County Zoning Ordinance lists permitted uses in the AC district in Article VII, Section 712.1 of the Zoning Ordinance as:

> (A) Establishments providing entertainment primarily as a commercial activity, including but not limited to theaters, billiard halls, pool halls, bowling alleys, water slides, skating rinks, dance halls, shooting galleries, gift and novelty shops, taverns, clubs, amusement parks, piers, arcades, miniature and par-three golf, driving ranges, boardwalks, bath houses, and sight-seeing depots.
>
> (B) Hotels, motels, tourist homes, and eating establishments provided:

1. Minimum lot area: Twenty-five thousand (25,000) square feet or one thousand (1,000) square feet per accommodation for one- or two-story structures and seven hundred (700) square feet per accommodation for three (3) or more story structures, whichever is greater.

2. Maximum building height: Unlimited provided that parking standards and other regulatory requirements are met.

(C) Accessory uses.

(R. p. 312.)

Appellant Richard Hinde is a resident of Horry County. Respondent Helicopter Solutions, Inc. operates its helicopter tours from a forty-six (46) acre parcel of property located in an AC zoning district adjacent to Mr. Hinde's home.

In November 2011, the Horry County Zoning Administrator made an administrative interpretation that a helicopter tour facility was a permitted use in the AC district pursuant to Article VII, Section 712.1. (R. p. 322; R. p. 312.) Helicopter Solutions was issued a stormwater permit on February 17, 2012, and a building permit on April 10, 2012. (R. p. 4, ¶¶ 15 & 16; R. p. 286, ¶¶ 15 & 16.) A certificate of occupancy was issued by the County on May 25, 2012. (R. p. 4, ¶ 19; R. p. 286, ¶ 19.)

On June 22, 2012, Mr. Hinde filed an appeal with the Horry County Zoning Board seeking reversal of the Horry County Zoning Administrator's administrative decision that a helicopter tour facility was a permitted use in the AC zoning district. (R. pp. 283–84; R. p. 322.) By an order dated September 10, 2012 ("**Zoning**

Order") (R. pp. 3–6; R. pp. 285–88), the Horry County Zoning Board of Appeals held as a finding of fact and as a conclusion of law that Mr. Hinde's appeal was filed in a timely manner. (R. p. 5; R. p. 287.) The Zoning Order also overturned the decision of the Zoning Administrator, based on the board's finding that "a helicopter tour facility is not a sight-seeing depot, and is not consistent with the uses allowed in the AC zoning district." (R. p. 5; R. p. 287; R. p. 312.)

On September 12, 2012, Helicopter Solutions filed its Notice of Appeal in the Circuit Court in and for Horry County pursuant to S.C. Code Ann. § 6-29-820, seeking reversal of the order of the board. (R. pp. 20–28.) On the same date, the Helicopter Solutions also filed for a Petition for Writ of Supersedeas seeking to maintain the status quo pending the appeal and a decision on the merits of the matter. (R. pp. 256–63.) A hearing was held on the Writ of Supersedeas on September 19, 2012, which the circuit court granted on September 28, 2012, and the matter came before the circuit court on its merits on December 11, 2012. (R. pp. 193–240.)

The circuit court first issued an order dated January 16, 2013 ("**Trial Order**") (R. pp. 7–16) that upheld the board's findings that Mr. Hinde had sufficient standing to challenge the determination of the Zoning Administrator, and that Mr. Hinde filed his appeal to the board of that determination within a reasonable time. (R. p. 10 nn.2 & 3.) The Trial Order reversed the decision of the Zoning Board of Appeals and found as a matter of law that Section 712 of the zoning ordinance permits

a helicopter sightseeing tour facility to locate within an AC district. (R. p. 11; R. p. 16.)

Appellant Hinde moved for reconsideration of the Trial Order by motion pursuant to Rule 59(e), SCRCP dated January 28, 2013 (R. pp. 269–80), and Horry County also moved the circuit court to alter or amend the Order on the same date by parallel motion, also pursuant to Rule 59(e), SCRCP (R. pp. 281–82). Following a hearing on those motions on February 13, 2013, the court issued a Form 4 Order (R. pp. 17–19), granting in part and denying in part the motions of Mr. Hinde and Horry County, and requiring a new draft order to be submitted by Helicopter Solutions' counsel, which was served on Mr. Hinde on March 21, 2013.

However, the draft amended order submitted by counsel for Helicopter Solutions drew objection from Appellant Hinde and Horry County on the grounds that it now contained matters on which the circuit court had heard no evidence, and inserted new provisions. Those objections were made to the circuit court by letter from Horry County and Appellant Hinde on March 15, 2013, to which Helicopter Solutions' counsel responded on March 21, 2013, rejecting the comments of Horry County and Appellant Hinde. The circuit court then issued an order dated April 10, 2013 and filed April 19, 2013, granting in part and denying in part the motions of Mr. Hinde and Horry County, and amending the court's earlier Trial Order by the deletion of a single sentence in a footnote to that Order. (R. p. 19; R. p. 11.)

This appeal followed by Notice of Appeal dated April 29, 2013. As of the date of this Notice of Appeal, a final amended order has yet to be signed by the circuit court, but the circuit court has indicated that the substance of its final order will contain the elements upon which this Appeal will be based.

III. ARGUMENT

A. The Trial Court Erred in Failing to Recognize as and Defer to the Findings of Fact by the Horry County Zoning Board of Appeals.

Local zoning boards, not the courts, are the primary entities responsible for the planning and development of communities in South Carolina. In reviewing all zoning matters, the circuit court is obliged to apply the extremely narrow "no evidence" standard set forth in Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000).

> A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. However, a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.

Clear Channel Outdoor Commc'ns v. City of Myrtle Beach, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007) (citing to Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)); *accord* Black v. Lexington Cnty. Bd. of Zoning Appeals, 396 S.C. 453, 458, 722 S.E.2d 22, 24 (Ct. App. 2012); Wyndham Enters., LLC v. City of North Augusta, 401 S.C. 144, 148, 735 S.E.2d 659, 661 (Ct. App. 2012).

If the appeal involves an issue of law regarding construction of a zoning ordinance, the court must apply a broader standard of review.

> Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." The determination of legislative intent is a matter of law.

Mikell v. County of Charleston, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (citing Charleston Cnty. Parks and Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)). Determining the intent of an ordinance is not made in isolation but is made in consideration of the ordinance language as a whole and in light of the purpose of the ordinance. To ascertain the legislative intent, the following principle applies to the construction of an ordinance:

> It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In construing ordinances, the terms used must be taken in their ordinary and popular meaning.

Somers at 67–68, 459 S.E.2d at 843 (citations omitted).

In the present case, the Zoning Administrator determined that a helicopter tour facility would be allowed in the AC District (R. p. 322; R. p. 4, ¶ 14; R. p. 286, ¶ 14), despite not being referenced in any zoning district (R. p. 4, ¶ 9; R. p. 286, ¶ 9). That factual determination by the Zoning Administrator was overturned by the Zoning Board, which expressly found "[T]hat a helicopter tour facility is not a sight-

seeing depot and is not consistent with the uses allowed in the AC zoning district." (R. p. 5; R. p. 287.)

A zoning zdministrator does not have authority to alter or waive a zoning ordinance. McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill, 360 S.C. 301, 599 S.E.2d 617 (Ct. App. 2004). The fact that Horry County may have issued stormwater and building permits does not waive the terms of a zoning ordinance. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229 (2001).

> The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature. 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. Where a statute is ambiguous, however, we must construe the terms of the statute according to settled rules of construction. It is well-settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.

Grant at 79, 551 S.E.2d at 231 (citations omitted).

The decision of the Zoning Board must be upheld by the Court unless there is no evidence to support the decision. In the present case, the Zoning Board heard evidence as to the manner in which Helicopter Solutions operated, and found as fact that Helicopter Solutions' use of the property as an airport for its helicopter tour operations was not a sight-seeing depot. (R. p. 5; R. p. 287.) Further, the use was not included in the list of permitted uses within an Amusement Commercial Zoning District (Article VII, Section 712). (R. p. 312; R. p. 4, ¶ 9; R. p. 286, ¶ 9.) The

Zoning Board then ordered the reversal of the Zoning Administrator's determination. (R. p. 5; R. p. 287.)

The circuit court mischaracterized this finding of fact in the present case by the Zoning Board as a conclusion of law (R. p. 11; R. p. 16), and overturned the Zoning Board. The Zoning Board had made a finding that Helicopter Solutions' use of the property was not for the permitted use of a sight-seeing depot. (R. p. 5; R. p. 287.) The findings of fact by a board of zoning appeals must be treated in the same manner as a finding of fact by a jury. S.C. Code Ann. § 6-29-840(A); McCrowey at 304, 599 S.E.2d at 619 (Ct. App. 2004).

> A "use" in the zoning context is "the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." A determination by a zoning board that a particular purpose or activity does or does not constitute a "use" is a finding of fact.

Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001) (Shuler, J., dissenting). The finding by the Zoning Board in the present case was thus a finding of fact.

In Heilker, the Court of Appeals, relying on Stanton v. Town of Pawleys Island, 317 S.C. 498, 455 S.E.2d 171 (1995), said: "This Court reads Stanton to mean that in South Carolina, a zoning board determination regarding whether a particular activity or purpose constitutes a "use" of property is a finding of fact." Heilker at 411, 552 S.E.2d at 47–48.

Even if the circuit court disagreed with the Zoning Board in the present case, it was bound to uphold that decision unless the Zoning Board's decision was arbitrary, capricious, and had no reasonable relation to a lawful purpose. Restaurant Row Assocs. at 216, 516 S.E.2d at 446. The Zoning Board framed the core question before the board as whether "[A] helicopter/sightseeing tour facility is an allowed use in the Amusement Commercial (AC) zoning district. . . ." (R. p. 3; R. p. 285.)

The Zoning Board "[O]bserve[d] and question[ed] whether a helicopter tour ride can be classified as an Amusement[,]" (R. p. 5, ¶ 21; R. p. 287, ¶ 21), but did not base any decision on that question. The Zoning Board concluded that the use of the property by Helicopter Solutions was not consistent with the uses allowed in the AC zoning district. (R. p. 5; R. p. 287.)

The property in question was subject to a Development Agreement concluded in December 2000 between Horry County and the owner of the property, Burroughs & Chapin, Inc. (R. pp. 289–90.) At that time, the zoning districts of Horry County provided for aircraft operations from one or more of the five airports owned and operated by Horry County. The Development Agreement limited any applicable zoning district classifications to Limited Forest Agriculture; Forest Agriculture; fCommercial Forest Agriculture; Amusement Commercial; Resort Commercial; Neighborhood Commercial; Community Commercial; Highway Commercial; Office/ Professional/Institutional; Limited Industrial; and Heavy Industrial. (R. pp. 289–90.)

The Zoning Administrator represented to the Zoning Board that helicopter operations in any of those agreed districts was not specifically referenced but, historically, outdoor amusement uses that may create noise were limited to the AC district. (R. p. 290.) She also represented to the Zoning Board that "[T]he AC zoning district historically has been regarded as one of the most intense zoning districts and commercial sight-seeing uses by land, water or air; ...." (R. p. 290.) The helicopter operations at issue merely take off and land inside the AC district, and do not limit themselves to the AC district itself (unlike the outdoor gun ranges and motorsports facilities referenced by the Zoning Administrator). (R. p. 290.[1])

The County Planning Director represented to the Zoning Board that (under the December 2000 Development Agreement) the AC district was "[T]he only district that could even arguably be appropriate for a helicopter sight-seeing tour[,]" and that the Zoning Administrator "made the best possible decision that she could with the tools she had." (R. p. 363.) The Planning Director thus tacitly admitted that there was no stated authority to allow the use to proceed. Without the benefit of express authority, the Planning Director acted solely upon her assumption that there must have been somewhere in the enumerated zoning districts in the Development Agreement that aircraft operations would have been permitted in December 2000.

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[1] The eleven zoning districts used in the Development Agreement did not include the 2004 amendment to the Zoning Ordinance creating a Passenger & Product Transportation District (PA1) for airports, airport terminals and related services, though the existence of that zoning district was known to the Zoning Board and the circuit court through the material submitted. See, R. p. 355–56.

There was no basis for that assumption, and in fact there was evidence submitted to the Zoning Board that contradicted that assumption.

Included in the submission to the Zoning Board was a draft amendment to the Official Zoning Maps (R. pp. 355–56), which had been proposed in 2010 to change the zoning of a one (1) acre tract of land from Highway Commercial to Passenger & Product Transportation (PA1)[2], a category of zoning that was introduced in 2004, after the Development Agreement was signed. The intention had been to use that one acre as a helicopter landing area for sight-seeing tours (that project ultimately did not proceed).

What the Planning Director and the Zoning Administrator failed to consider or include in their presentations to the Zoning Board was that aircraft operations might not be allowed in any of the eleven zoning districts included in the December 2000 Development Agreement. (R. pp. 289–90.) The [certified] record on appeal [to the circuit court] shows that the Horry County Planning Commission had, prior to the Zoning Board hearing, conducted a discussion on June 25, 2012 to consider amending the Zoning Ordinance to address the issues surrounding heliports and airfields generally, and inclusion of such uses in the Airport Environs zoning district. (R. pp. 359–62; R. p. 314.) Horry County created its Department of Airports in 1987

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[2] [Sec. 742]: "*Intent.* The Passenger and Product Transportation (PA1) District is intended to provide opportunities to locate and develop businesses whose primary purpose is the movement of people or goods either within Horry County or between Horry County and other destinations. These facilities are generally located near population centers where accessibility to the transportation network is easily achieved; however; should not be located near established residential communities."

and has had civilian airports for many years; however, none are located in AC districts.

The Zoning Administrator's decision in favor of Helicopter Solutions meant that in December 2000 she would have interpreted the Zoning Ordinance to include aircraft operations in an AC district, since a helicopter is an aircraft for the purposes of licensing and regulation by the Federal Aviation Administration, and the FAA has been involved in the complaints made concerning this matter. (See, e.g., R. pp. 323–26.) Mr. Hinde's counsel argued to the circuit court that the County Zoning Ordinances allowed and contemplated (as of the date of the Development Agreement) that aircraft shall be operated from one or more of the county's five airports and that at least one commercial helicopter business was already based at an airport close to the Helicopter Solutions tract. (R. p. 215, lines 8–18.)

What the Planning Director and the Zoning Administrator failed to consider or include in their presentations to the Zoning Board was the possibility that aircraft operations might not be allowed in any of the eleven zoning districts included in the December 2000 Development Agreement. (R. pp. 289–90.) The Planning Director and the Zoning Administrator also failed to address that the Horry County Planning Commission had, prior to the Zoning Board hearing, conducted a discussion on June 25, 2012 to consider amending the Zoning Ordinance to address the issues surrounding a heliport or other aircraft operations, and inclusion of such uses in the Zoning District's Airport Environs zoning district. (R. pp. 359–62; R. p. 314.)

The Zoning Board correctly found as a fact that nothing in the definitions of permitted uses within an AC district permit helicopter sight-seeing tour facilities (R. p. 4, ¶ 9; R. p. 286, ¶ 9), and the Zoning Board had not acted arbitrarily or capriciously. (R. p. 219, line 12 – p. 220, line 22.) The circuit court subsequently erred in overturning the Zoning Board's factual finding.

B. The Trial Court Erred by Expanding the Range of Permitted Uses in the Horry County Amusement Commercial Zoning District to Include a Heliport or Airport.

Assuming *arguendo* that the circuit court's determination that the Zoning Board had reached a conclusion of law, as opposed to a finding of fact, the circuit court erred. The circuit court lacked any evidence that it was the intention of the Horry County Council, when adopting the zoning district definitions embedded in its Zoning Ordinance, to allow aircraft to either take off or land in an AC district. The circuit court reviewed the evidence submitted to the Zoning Board, which contains no indication that might lead to that conclusion.

In interpreting an ordinance, a court must determine the legislative intent that lies behind the introduction of that ordinance. In Horry County, the County Council's legislative intent expressed in Article VII, Section 712 of its Zoning Ordinance, was stated as follows: "The intent of the Amusement Commercial District is to allow for the mixing of certain specified land uses in the county where both residential and limited business uses are competing for land and accelerated transition is in evidence." (R. p. 312.)

The circuit court heard no evidence drawing any difference in the County Ordinances between fixed-wing and other types of aircraft, but did hear that there were permitted zoning district areas for aircraft operations. (R. p. 215, lines 8–16.) Whether or not such areas would be as commercially viable for the particular helicopter operator was not before the Zoning Board or circuit court for determination.

The full submission to the Zoning Board, including the proposal to change the Highway Commercial tract to PA1 (R. pp. 355–56), was also provided to the circuit court. Thus the circuit court, far from being able to change the Zoning Board's determination under the "no evidence" standard, actually had before it the same evidence as the Zoning Board—that in order to allow helicopter operations in one of the zoning districts enumerated in the Development Agreement, a change of zoning district would have been required.

In Myrtle Beach Farms v. Hirsch, 304 S.C. 94, 401 S.E.2d 196 (1991), a case quoted and discussed before the circuit court (R. p. 234, line 19 – p. 236, line 14), the Supreme Court was considering deed restrictions concerning a parcel of land nearby the Helicopter Solutions tract. The Supreme Court noted that the applicable zoning district[3] did not permit a helicopter ride service as a permitted use. Myrtle Beach Farms at 96–97, 401 S.E.2d at 198. The case was not cited to the circuit court as being controlling, but it was cited for the proposition that the Zoning Board, by

[3] Highway Commercial, one of the zoning classifications under the Development Agreement.

withholding approval of a project that would create noise and annoyance to neighboring property owners, was not an arbitrary or capricious finding or decision.

> There are a wide variety of opinions regarding helicopters. Doubtless, some people think they are among the loveliest creations of humankind. Other people think they are noisy and dangerous. In other words, some people like helicopters; other people don't. . . . It is not unreasonable for a property owner not to want a helicopter constantly taking off and landing near his or her property.

Myrtle Beach Farms at 98, 401 S.E.2d at 199 (Sanders, J., *concurring*).

The Zoning Board had heard evidence that the use of the Helicopter Solutions' property for aircraft operations interfered with the use and enjoyment of residential property adjacent to the property, and that noise, safety, and property value issues were some of the nearby residents' complaints. (R. p. 363.) The competition for land recognized in the statement of legislative intent of Horry County for the AC zoning district should have compelled the circuit court to rule that there should be no expansion in the range of permitted uses beyond the plain language of the ordinance, and not expanded to include aircraft. (R. p. 312, § 712.) If the Horry County Council desired to permit aircraft operations within the AC district, an amendment to the ordinance would have been the appropriate mechanism. The circuit court is not a legislative body.

> It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the

> lawmakers. In construing ordinances, the terms used must be taken in their ordinary and popular meaning.

Somers at 67–68, 459 S.E.2d at 843 (citations omitted).

There is no mention of aircraft in the AC zoning definition, but the Zoning Ordinance contains a complete separate chapter devoted entirely to aircraft, and as the circuit court was aware, the county had altered its zoning classifications since December 2000 to provide for a specific zoning category for airports, airport terminals and related services to operate in an appropriate district. (R. pp. 355–56.)

Determining the intent of an ordinance is not made in isolation but is made in consideration of the ordinance language as a whole and in light of the purpose of the ordinance. In the present case, the circuit court concluded that "[T]he common dictionary definition of the word "depot" is broad and contemplates a facility that is used for the purpose of transporting passengers by helicopter for such a sight-seeing tour." (R. p. 12.)

The circuit court, in coming to its conclusion, referred to various dictionary definitions of the word "depot" (R. p. 13, nos. 1–3; R. pp. 185–88), none of which referred to aircraft operations, and to a South Carolina Department of Revenue Technical Advice Memorandum concerning State admissions taxes assessed against tours by carriage, bus, helicopter, airplane, trolley, boat, "and other similar modes. . . ." (R. pp. 191–92; R. p. 13.) The circuit court regarded the Technical Advice Memorandum to be probative evidence, despite the provision contained in the "Definitions" section of the Horry County Zoning Ordinance which specified that

terms not specifically defined in that Ordinance would be accorded their "customary dictionary definitions." (R. p. 311.) This reliance by the circuit court was plain error, and merits reversal.

Other than in Section 712.1(A), the Horry County Zoning Ordinance as of December 2000 referred in several places to "depot"—but all those references are associated with land-based transport activities or uses of land, upon established routes, and the word does not appear in isolation. There is no indication that any aeronautical means of transport was implied in December 2000 in the use of the word "depot." Where the word "aircraft" is intended, it is used in the Zoning Ordinance.

Allowing the circuit court to modify the intent of the County Council when it adopted its zoning classifications would be to allow the circuit court to overreach its authority and power.

IV. CONCLUSION

Appellant Richard Hinde respectfully seeks the following relief:

That the Appeal of the Appellant be granted and that the matter be returned to the Circuit Court for Horry County for an Order consistent with the Court of Appeals finding that:

(1) The finding by the Zoning Board of Appeals that the use of the property as a heliport was a finding of fact by the Zoning Board of Appeals; and

(2) The Circuit Court erred in substituting its own determination of fact for that of the Zoning Board of Appeals;

(3) In the alternative, the Circuit Court wrongly concluded as a matter of law that the Zoning Ordinance definition of "sight-seeing depot" included the operation of helicopters or other types of aircraft landing and taking off; and

(4) The trial court was required to uphold the determination of the Zoning Board on an "any evidence" standard of review under statute, including but not limited to S.C. Code Ann. § 6-29-840 (Rev. 2004 & Supp. 2011).

The Appellant respectfully requests oral argument before this Honorable Court.

Respectfully submitted,

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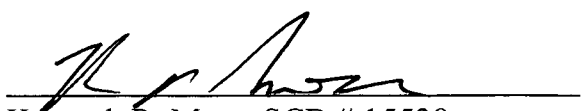

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR. The undersigned further certifies that this Final Brief complies with the Supreme Court's Order of August 13, 2007 regarding personal identifiers and sensitive information.

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PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Final Brief in the above-captioned appeal on the following individuals, addressed as follows:

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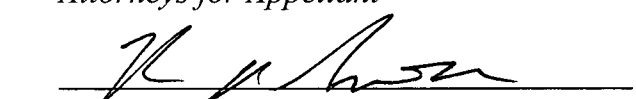

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