

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5546 (S.C. Ct. App. filed March 28, 2018)
Appellate Case No. 2018-001240

Town of Sullivan's Island Board of Zoning Appeals
and Town of Sullivan's Island,

Petitioners,

v.

Paul Boehm,

Respondent.

STATUS REPORT AND NOTICE OF MOOTNESS

This appeal involves Respondent Paul Boehm's ("Boehm") appeal from a final order of the Town of Sullivan's Island's Board of Zoning Appeals ("BZA") dated April 10, 2014 (**TOSI-BZA 0103-0129**).^[1] By order filed on May 4, 2015, the Circuit Court reversed the BZA (the "Order"). (**R. pp. 4-10**). The Court of Appeals published an opinion affirming the circuit court on March 28, 2018 (the "Opinion"). Petitioner filed a Petition for Rehearing, which was denied by Order dated June 5, 2018. A Petition for Writ of Certiorari followed, and this Court granted Certiorari by order dated September 21, 2018. The case is set for oral argument on Thursday April 18, 2019.

^[1] Boehm's appeal of the BZA's April 10, 2014 order proceeded under case number 2014-CP-10-2623, the appeal was remanded to the BZA, the BZA made additional factual findings, and Boehm renewed the appeal. The renewed appeal was assigned case number 2015-CP-10-1103.

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S.C. SUPREME COURT

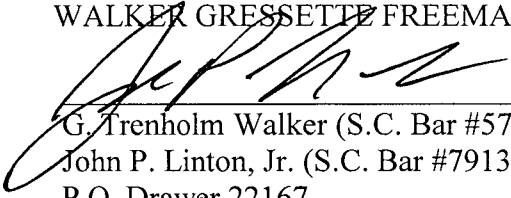
Boehm has withdrawn his application that was the subject of the BZA decision date April 10, 2014, as indicated in the e-mail attached hereto as exhibit A. The parties agree his withdrawal renders the case moot and would ask the case to be removed from the Court's docket.

“A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.” Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (citation omitted). “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” Id. (quoting Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). “To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy.” Id. (quoting Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845-46 (1995)) (additional citation omitted). “The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing.” Id. (citation omitted). ““A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy.”” Seabrook v. City of Folly Beach, 337 S.C. 304, 306, 523 S.E.2d 462, 463 (1999) (quoting Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

Here, there is no justifiable controversy between the parties because Boehm has withdrawn the BZA application that was the subject of the appeal and indicated that he will not proceed with that plan under any circumstances. In Wingert v. First Nat. Bank, a case seeking to enjoin the erection of a new bank building, which was erected while the case was pending, Justice Holmes stated: “It is enough to say that the whole case is disposed of by the erection of the new bank.” 223 U.S. 670, 672, 32 S.Ct. 391, 391 (1912). Here, the case is moot because the improvements will not be erected.

Respectfully Submitted,

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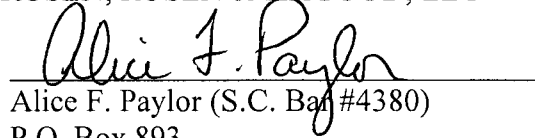
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April 16, 2019
Charleston, South Carolina

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From: [Alice Paylor](#)
To: [John P. Linton, Jr.](#)
Subject: Boehm v. TOSI
Date: Tuesday, April 16, 2019 9:34:56 AM

John, as we discussed, under no circumstances does Paul Boehm want to do the original plan that is pending before the Supreme Court, and he withdraws that application. Alice

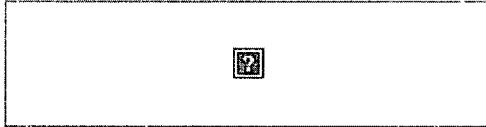
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