

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 18 2020

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Civil Action Nos. 2009-CP-40-01307, 2013-CP-40-02159
Appellate Case No. 2019-000868

Frieda H. Dortch,Appellant,

v.

City of Columbia, Planning & Development Services/Zoning Division a/k/a City of Columbia
Board of Zoning Appeals,Respondent.

RESPONDENT’S RETURN IN OPPOSITION TO APPELLANT’S “MOTION TO STRIKE MATTER DESIGNATED BY RESPONDENT FOR INCLUSION IN THE RECORD ON APPEAL AND FOR LEAVE TO EITHER LEAVE OTHER MATTER ON FILE WITH THE CIRCUIT COURT OR FILE ONLY ONE COPY OF IT”

This is an appeal from various rulings made by Respondent City of Columbia Board of Zoning Appeals (“Respondent” or the “Board”). Audio/video recordings were made of the proceedings held before the Board. It is these recordings and transcripts of the recordings which are at issue in Appellant’s motion.

Respondent will first address the second part of Appellant’s motion which seeks this Court’s instructions on the inclusion of certain audio/video recordings in the Record on Appeal. Appellant cites Rule 210(f), SCACR, dealing with “exhibits other than paper exhibits,” and Appellant requests leave to submit only one copy of the recordings if this Court “determine[s] that [Rule 210(f)] does not apply or the Court wishes another disposition.” Subsequent to the service of Appellant’s motion, the parties have discussed this matter amongst themselves and

with helpful input from Court staff. The parties have agreed that Appellant will submit one copy of the recordings as part of the Record on Appeal. Therefore, this portion of Appellant's motion is moot.

Respondent will now address the first part of Appellant's motion. Appellant moved, pursuant to Rule 210(c), SCACR, for an order striking certain matters from Respondent's Designation of Matter. The offending materials are the transcripts made from the recordings of the hearings held before the Board on three separate dates. Appellant's appeal arises out of the decisions made by the Board following hearings held on July 8, 2008, September 9, 2008, and February 12, 2013.

Each of the hearings held before the Board was recorded. The hearings held on July 8, 2008, and February 12, 2013, were recorded with video footage and audio. The hearing held on September 9, 2008 was recorded by audio means only. The audio and video recordings were presented to the circuit court for its review. Respondent has designated the audio/video recordings for inclusion in the Record on Appeal. As discussed above, the recordings will be provided to this Court as part of the Record on Appeal.

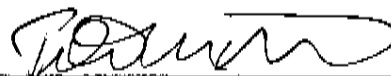
After Appellant filed her Notice of Appeal, Respondent took the extra step to have the audio/video recordings transcribed. The recordings were provided to a court reporter and transcribed verbatim from the recordings. A copy of the reporter's certificate for each transcript is attached hereto as Exhibit A. Respondent undertook this extra expense only for ease of reference for the parties and for the Court in this appeal since the statutes governing appeals from zoning boards do not require a transcript to be prepared. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229 (2001). Now that transcripts have been prepared, verbatim from the recordings provided to the circuit court, Respondent submits the transcripts should be accepted

as part of the Record on Appeal because the matter in the transcripts was presented to the lower court.

The recordings were presented to the circuit court. The transcripts were prepared from the recordings. The matter on the recordings, as captured in the form of video and audio files on disks, is already in the record. Respondent is not suggesting to include “matter which was not presented to the lower court or tribunal.” Rule 201(c), SCACR. The “matter” in question is the statements and testimony provided to the Board in 2008 and 2013. This matter has been recorded on disks which were provided to the circuit court. Providing this same matter in transcript form does not violate Rule 210(c), SCACR. The transcripts simply provide the testimony in a more user-friendly capacity.¹ It seems only sensible at this point to also include the transcripts as part of the Record on Appeal rather than listening to video and audio files of the same matter.

Respondent respectfully requests that Appellant’s motion be denied, and that the transcripts be included in the Record on Appeal.

Respectfully submitted,



Peter M. Balthazor, #68244
RILEY POPE & LANEY, LLC
2838 Devine Street
Columbia, South Carolina 29205
803-799-9993
peteb@rplfirm.com
Attorneys for Respondent

May 18, 2020
Columbia, South Carolina

¹ Respondent prepared its initial brief using references to the transcripts of the hearing. If the transcripts are stricken from the Record on Appeal it will be necessary for Respondent to amend its references to the record to include the approximate time stamps from the respective audio/video recordings.

Exhibit A

Video Meeting 07/08/08
Dortch, Frieda Vs. City Of Columbia, Et Al.

October 21, 2019

Page 36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Tia Shean, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of October, 2019, at Myrtle Beach, Horry County, South Carolina.



Tia Shean, Court Reporter
Commission Expires: 02/10/2024

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Tia Shean, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of October, 2019, at Myrtle Beach, Horry County, South Carolina.



Tia Shean, Court Reporter
Commission Expires: 02/10/2024

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Tia Shean, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of October, 2019, at Myrtle Beach, Horry County, South Carolina.



Tia Shean, Court Reporter
Commission Expires: 02/10/2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
May 18 2020
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Walton J. McLeod, IV, Circuit Court Judge

Civil Action Nos. 2009-CP-40-01307, 2013-CP-40-02159
Appellate Case No. 2019-000868

Frieda H. Dortch, Appellant,

v.

City of Columbia, Planning & Development Services/Zoning Division a/k/a City of Columbia
Board of Zoning Appeals, Respondent.

PROOF OF SERVICE

I certify that on May 18, 2020, I have caused to be served all counsel in this action with a copy of **RESPONDENT’S RETURN IN OPPOSITION TO APPELLANT’S “MOTION TO STRIKE MATTER DESIGNATED BY RESPONDENT FOR INCLUSION IN THE RECORD ON APPEAL AND FOR LEAVE TO EITHER LEAVE OTHER MATTER ON FILE WITH THE CIRCUIT COURT OR FILE ONLY ONE COPY OF IT”** by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

M. Baron Stanton, Esquire
STANTON LAW OFFICES, P.A.
Post Office Box 245
Columbia, South Carolina 29202
Attorneys for Appellant


Peter M. Balthazor

May 18, 2020
Columbia, South Carolina

RILEY
POPE &
LANEY
— LAW —

South Carolina | North Carolina

South Carolina Office:
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205
Phone: 803.799.9993
Fax: 803.239.1414
www.rplfirm.com

May 18, 2020

RECEIVED

May 18 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Frieda H. Dortch v. City of Columbia, Planning & Development Services/Zoning Division
a/k/a City of Columbia Board of Zoning Appeals
Civil Action Nos.: 2009-CP-40-01307, 2013-CP-40-02159
Appellate Case No.: 2019-000868
Our File Nos.: 5253.00614 and 5253.00714

Dear Ms. Kitchings:

Please find enclosed the original and one copy of the *Respondent's Return in Opposition to Appellant's "Motion to Strike Matter Designated by Respondent for Inclusion in the Record on Appeal and for Leave to Either Leave Other Matter on File with the Circuit Court or File Only One Copy of It"*, with *Certificate of Service* attached in connection with the above-referenced matter. Please file the enclosed documents and return a filed copy in the enclosed self-addressed, stamped envelope.

Thank you for your kind assistance in this matter.

Sincerely,



Peter M. Balthazor

PMB/mwt

Enclosures

cc: M. Baron Stanton, Esquire (w/enclosures)