

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL DISTRICT  
CASE No.: 2020-CP-07-00112

ERIC GREENWAY, as agent for )  
Beaufort County, )  
 )  
Appellant, )

vs. )

**ORDER DENYING AND DISMISSING  
APPEAL**

BEAUFORT COUNTY ZONING )  
BOARD OF APPEALS, ROBERT )  
SAMPLE, JR., and BALLPARK )  
PLACE, LLC, )  
 )  
Respondents. )

**RECEIVED**  
FEB 04 2021  
SC Court of Appeals

This matter was before the Court on 6 August 2020. This is an appeal from a decision of the Beaufort County Zoning Board of Appeals ("Board") which reversed the interpretation by Eric Greenway, AICP, the Director of the Beaufort County Department of Community Development, in which he determined that the legal non-conforming status of certain real property owned by Ballpark Place, LLC for use as a Manufactured Home Community had been abandoned. The Board found that the legal non-conforming status for use as a Manufactured Home Community was not abandoned and such use continues to be a legal non-conforming use of the property. Jurisdiction for this appeal is set forth in Section 6-29-820, et. seq., Code of Laws of South Carolina, 1976, as amended.

**FACT/PROCEDURAL BACKGROUND**

Respondent Ballpark Place, LLC, is the owner of real property located in Beaufort County, South Carolina, bearing the PIN Nos. R300 016 000 183B 0000 ("183B") and R300 016 000 0360 0000 ("360"). Ball Park Road Mobile Home Park, composed of 183B and 360 ("Park"), is managed

by Robert Sample, Jr. and is located on St. Helena Island, abutting Ballpark Road. Together, both parcels encompass approximately 4.29 acres of land. The parcels were planned for and presently contain nine improved sites intended for the placement of manufactured homes. Currently, the parcels have access to utility services for water, sewer, and electricity.

Ballpark Place, LLC, purchased the Park on May 30, 2019, intending to continue the Park's use as a Manufactured Home Community pursuant to its legal non-conforming, or "grandfather", use. Prior to Ballpark Place, LLC's ownership, the Park was owned by CSB Property Management II, LLC, ("CSB") from October 29, 2010, until May 30 2019. During the time of the CSB's ownership of the Park, several of the nine pads were leased to manufactured homeowners, eventually dwindling to one leasee.

Prior to 2014, the Park was zoned Rural, with one of the permitted uses being a Manufacture Home Community, defined under Section 106-1098, Code of Ordinances for Beaufort County, Zoning and Development Standard, Supp. No. 24 ("Old Code"), in pertinent part, as follows:

**Manufactured Home Community** - A parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights. Subdivision of land as a single-family detached, single-family cluster, family compound, planned community or small single-family affordable land use and intended for fee-simple sale of lots for manufactured homes does not constitute it being defined under this use.

Code of Ordinances for Beaufort County, Sec. 106-1098 (as amended by Ord. No. 2014/2, 1-13-2014).

In 2014, the Beaufort County Council adopted and implemented the Community Development Code, ("CDC") which changed the zoning of the Park to T2R, eliminating the Rural zoning and the limited Manufactured Home Community use.

Upon the purchase of the Park, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes. During his preparations of the Park, Mr. Sample verified that utilities were still connected, such as sewer available to each site through functioning septic systems, and water available to each site via a well in the Park. Mr. Sample also verified that electrical utilities were available to each site and functioning, and that the stands required to place new manufactured home were functional or repairable. All sites were available for lease for home sites, with one site continually being leased by Mr. Pope.

On 24 September 2019, Mr. Greenway informed Mr. Sample that the legal non-conforming use of the Park as a Manufactured Home Community had been previously abandoned for more than a year and, and such use was no longer available for the Park.

Mr. Sample appealed Mr. Greenway's administrative decision to the Board, which held a hearing on the matter on 21 November 2019. During their presentation to the Board, Mr. Sample and his counsel presented evidence of the continuous, uninterrupted use of the Park as a Manufactured Home Community, including a plat showing the individual manufactured home sites, tax records regarding the Park, communications with utilities providers, rent rolls, and testimony of Mr. Sample describing the continuing utility service to the sites, the condition of the sites for lease, and the presence of a long-term resident who currently leased one of the sites. After hearing the evidence and testimony presented, the Board issued its ruling overturning Mr. Greenway's decision, and made the following factual findings:

1. The property continued to have pads available for rent and thus met the requirements of the former statute for the use on the property.
2. There was no interruption in the legal, pre-existing, non-conforming use.
- 3.

### STANDARD OF REVIEW

The Court of Appeals of South Carolina clearly set forth the standard of review in zoning appeals. *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282 (Ct.App.2011). "Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision 'is arbitrary, capricious, has no reasonable relation to a lawful purpose, or in the [zoning] board has abused its discretion.'" *Id.* at 116, 719 S.E.2d at 284 (quoting *Rest. Row Assocs. V. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (quoting *Cnty. Of Richland v. Simpkins*, 348 S.C. 64, 668, 560 S.E.2d 902, 904 (Ct.App.202)): "The factual findings of the Board must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law." *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 502, 455 S.E.2d 171, 172 (1995). "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." SC Code Section 6-29-840. "[T]he factual findings of the jury will not be disturbed unless a review of the record discloses that there is **no evidence** which reasonably supports the jury's findings." *Vulcan Materials Co. v. Greenville County Bd. Of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (quoting *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) (emphasis added)).

In *Rest. Row Assocs. v. Horry Cnty*, the Supreme Court of South Carolina clearly stated the standard of review in zoning appeals:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its

decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

*Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)

(quotation marks omitted).

### ANALYSIS

The parties agreed during the hearing before the Board that there was no question as to the establishment of the legal nonconforming use of the Park as a Manufactured Home Community prior to the adoption of the current zoning of the property as T2R in 2014. Therefore, the sole issue in this appeal is whether the Board's decision regarding the alleged abandonment of the legal nonconforming use of the Park was arbitrary, capricious, and without supporting evidence as to whether the Manufactured Home Community use was abandoned.

The Beaufort County CDC lists seven criteria to be considered when determining whether abandonment of a particular use has occurred:

1. If Steps have been taken by the property owner to resume the non-conforming use;
2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the non-conforming use have been removed;
4. If signs advertising the non-conforming use have been removed;
5. If business licenses for the non-conforming use have expired or not been renewed;
6. If activities generally associated with the non-conforming use are no longer observed on the property; and
7. Other action which, in the opinion of the Director, demonstrate an intention of the part of the owner to abandon the non-conforming use.

The Board received evidence showing the Park continued to meet the requirements of Section 106-1098 of the Old Code. The evidence presented to the Board included a plat showing

the locations of the "pads," rent rolls showing the continued leasing of one of the nine sites to Mr. Pope, the admission by Mr. Greenway that Mr. Pope resides on the site, communications from SCE&G as to the current and prior electrical status, and testimony from Mr. Sample that the sites had water and sewer services available. When asked how many sites were not in suitable repair for usage, Mr. Sample indicated the only issue with the sites was the condition of the "stands" for the placement of incoming homes, which could be easily repaired. Additionally, real property Printout of Tax Records from the Beaufort County Assessor's Office indicated the Park was described as a manufactured housing site and denoted the existence of individual address corresponding to individual sites. The evidence presented to and elicited by the Board clearly addressed the seven criteria. The first criteria, "[i]f steps have been taken by the property owner to resume the nonconforming use" immediately assumes the non-conforming use was ceased. However, the evidence presented to the Board clearly indicates that the Park continued to operate and address any repair issues. The second criteria, "[i]f utility services such as water, gas, and electricity to the property have been disconnected" was addressed through the email from SC&G stating the status of electric hook-ups to the sites, and Mr. Sample's testimony that each of the sites had currently operating water supplies provided by an onsite well system, and sewer was provided to each site via functioning septic systems. Criteria three was also addressed in the evidence presented for criteria two. The functioning water, sewer, and electrical services were still available at the site. Admittedly, there were some repairs to be made; nonetheless, Mr. Pope's site continues to function, and other sites are available for home placement. As to criteria six, "[i]f activities generally associated with the non-conforming use are no longer observed on the property," there was evidence of the continued existence of utility hook-ups, Mr. Pope's home, property tax records, and other visible evidence of the continued Manufactured Home Community use. The Board

properly considered the evidence presented to them and correctly found the legal, non-conforming use as a Manufactured Home Community had not been abandoned.

**CONCLUSION**

This Court finds that there was sufficient evidence in the record of this appeal to support the decision of the Board, that the legal nonconforming Manufactured Home Community use of the Park was not abandoned and continues to be a legal non-conforming use of the Park, and the decision of the Board is correct as a matter of law. The Court finds that the Board's decision was neither arbitrary nor capricious, and that the Board did not abuse its discretion in reversing Mr. Greenway's decision. It is therefore ordered that the Appellant's appeal is denied, and this action is dismissed with prejudice.

**AND IT IS SO ORDERED!**

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Marvin H. Dukes III  
MASTER IN EQUITY

Beaufort, South Carolina  
August \_\_\_\_\_, 2020



Beaufort Common Pleas

**Case Caption:** Eric Greenway VS Zoning Board Of Appeals Beaufort County ,  
defendant, et al  
**Case Number:** 2020CP0700112  
**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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