THE STATE OF SOUTH CAROLINA
In the Court of Appeals



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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

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Appellate Case No. 2021-000139
Case No. 2020-CP-07-0112

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Eric Greenway, as Agent for Beaufort County, . . . . . Appellant,

v.

Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark Place, LLC, . . . . . Respondents.

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# JOINT FINAL BRIEF OF RESPONDENTS BEAUFORT COUNTY ZONING BOARD OF APPEALS, ROBERT SAMPLE, JR., AND BALLPARK PLACE, LLC

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## STATEMENT OF THE CASE

Eric L. Greenway, as agent for Beaufort County[1] ("Greenway") is appealing the Order Denying and Dismissing Appeal issued by the Circuit Court in an appeal of the decision of the Beaufort County Zoning Board of Appeals ("Board"). On September 24, 2019, Greenway issued his determination ("Greenway Determination") that the legal, non-conforming Manufactured Home Community use of the property owned by Ballpark Place, LLC, and operated by Robert Sample, Jr. had been abandoned. On October 23, Mr. Sample appealed the Greenway Determination to the Board. The Board heard Mr. Sample's appeal of the Greenway Determination ("Board Hearing") on November 13. On November 22, the Board overturned the Greenway Determination ("Board Decision"), and found that the legal, non-conforming Manufactured Home Community use of the Park Property had not been abandoned and continued to be a legal, non-conforming use. Greenway filed a Petition for Appeal from the Beaufort County Zoning Board of Appeals to the Circuit Court on January 20, 2020, naming the Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark Place, LLC, as Respondents. The Beaufort County Zoning Administrator filed the Certification of Record on Appeal on February 10. On August 6, the matter was heard by the Honorable Marvin H. Dukes, III, Beaufort County Master-in-Equity and Special Circuit Court Judge and he issued an Order Denying and Dismissing Appeal on October 6. On October 16, Appellant filed a Notice of Motion, Motion for Reconsideration, and Memorandum in Support. On January 26, 2021, Judge Dukes issued a Form 4 decision denying Appellant's Motion to Reconsider. On February 1, Appellant filed a Notice of Appeal with this Court.

[1] In 2019, Mr. Greenway was the Community Development Director for Beaufort County.

## STATEMENT OF FACTS

This is a zoning case in which Ballpark and Mr. Sample challenge the administrative decision of the Community Development Director alleging the legal, non-conforming use of the property owned by Ballpark was abandoned, which was overruled by the Board and affirmed by the Circuit Court on appeal. Ballpark owns real property ("Park Property") purchased in 2019 and located on Ball Park Road in an unincorporated portion of St. Helena Island. (R. pp. 28-30). The Park Property contains a mobile home community composed of eight home sites. (R. p. 180) The addresses of each individual home site are 79, 81, 83, 87, 89, 93, 95, and 101 Ball Park Road. (R. p. 180) From at least 2009, and, according to electrical service records, potentially back to 1994, each home site has been leased to individuals with varying degrees of vacancy rates. (R. pp. 110-160, 162-163, 172-179) Mr. Mike Pope has continuously leased 89 Ball Park Road from 2009 until the present. (R. pp. 110-160, 172-179) The sites are provided water service from a well located on the Park Property. (R. pp. 83, 169, 180) Sanitary sewer is provided by septic tanks at the individual sites. (R. pp. 83, 180) On November 16, 2010, CSB Property Management II, LLC, owned the Park Property and operated the Park. (R. pp. 28-30, 169, 180) Although the Park Property had declined in the number of active leases, the Park Property had been under constant management and CSB intentionally continued to lease to Mr. Pope in an effort to continue the Park Property operation. (R. p. 180) Ballpark purchased the property in May 2019 with the intent to continue the operation of the Park Property. (R. pp. 164, 168, 180) Shortly after purchasing the Park Property, Mr. Sample began renovations with the intent of continuing Park Property operations. (R. pp. 164, 168, 180) Upon learning of Mr. Sample's activity on the Park Property, Greenway stopped Mr. Sample's attempts to continue renovations. (R. pp. 83, 167)

Prior to 2014, the Park Property was zoned Rural and had a permitted legal conforming use as a Manufactured Home Community pursuant to the Code of Ordinances for Beaufort County in Chapter 106, Zoning and Development Standards ("Old Code"). Under Section 106-1098 of the Old Code, Manufactured Home Community use was defined, in pertinent part as, "[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."

On December 8, 2014, Beaufort County adopted the Community Development Code ("New Code" or "CDC"), which replaced the Old Code. (R. p. 88) Among other changes brought about by the adoption of the New Code, the Park Property was rezoned to T2 Rural ("T2R"). Under T2R, Manufactured Home Communities were not a permitted use and caused the Park Property use to be non-conforming.[2] The New Code under Section 8.1.10, *et seq.*, addressed legal nonconformities and states in part, "[l]egal nonconformities are those nonconformities that were property permitted and legally established but that no longer comply with the applicable provisions of this Development Code." Upon adoption of the CDC, the Manufactured Home Community use of the Park Property became a legal, non-conforming use. Section 8.1.40 provides for the continuance of legal, non-conforming uses:

> Legal nonconformities are allowed to continue, and are encouraged to receive routine maintenance in accordance with the requirements of the Article as a means of preserving safety and appearance. Minor repairs and normal maintenance that are required to keep legal nonconforming uses, structures, lots, signs, and other site features in a safe condition are permitted. For the Purposes of this Subsection, "minor repair or normal maintenance" shall mean:

[2] The New Code defines Manufactured Home Community as "[a] single parcel of land that contains two or more manufactured homes for use as dwelling units where home sites are leased to individuals who retain customary leasehold rights. This use does not include 'Family Compounds.'"

A. Repairs that are necessary to maintain a legal nonconforming use, structure, lot, sign, or site feature in a safe condition; and

B. Maintenance of land areas to protect against health hazards and promote the safety of the surrounding uses.

The CDC provides that if a legal, non-conforming use is abandoned, the use is lost. Section 28.2.40 addresses the discontinuance of legal nonconforming uses:

A. If a nonconforming use is abandoned for a period of one year or longer, it shall not be reestablished and shall only be replaced with a conforming use.

B. The [Community Development] Director shall have the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:

1. If steps have been taken by the property owner to resume the nonconforming 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 nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

Ballpark Place, LLC, purchased the Park Property on May 30, 2019, intending to continue the Park Property's use as a Manufactured Home Community pursuant to its grandfathered use. Prior to Ballpark Place, LLC, ownership, the Park Property was owned by CSB Property Management II, LLC, from October 29, 2010, until May 30, 2019. (R. pp. 28-30) From 2009 to 2019, the Park Property maintained at least one leased unit at all times. (R. pp. 110-160, 172-179)

Upon the purchase of the Park Property, Mr. Sample began work to prepare all the sites for the continued placement of manufactured homes. During his preparations, Mr. Sample verified utilities were still connected. For example, Mr. Sample ensured sanitary sewer was available to each site through functioning septic systems, water was available to each site by the well located in the Park Property, electrical utilities were available to each site and functioning, and that the stands on which a manufactured home would be placed were functional or repairable. (R. pp. 83, 180) All sites were available for lease.

Mr. Sample expressed his intent to continue to operate the Park Property and his efforts to repair and maintain the Park Property in an email to Mr. Greenway. (R. p. 180) The email of July 24, 2019, sets forth an explanation of the Park Property's situation:

> I am the owner of Ball Park Place LLC (79, 81, 83, 87, 89, 93, 95, and 101) Ball Park Rd. **I have begun renovating the property and intend to continue operation of it by filling the vacant sites with new modern homes**.
>
> . . . .
>
> Though a few need to be rebuilt and replaced, several electrical panels are still evident on site. And water lines (spickets)*(sic)*, the well and operation pump is also evident. The septic tanks are still in the ground. Various telephone and cable lines are also present throughout. A charge has been placed on the underground lines and they are viable."
>
> (R. p. 180) (emphasis added)

In discussing the intent of the past property owners, Mr. Sample states, "[t]he last owner (a bank) divested itself of the other mobile homes on the property but deliberately left and have continuously rented the existing home in an effort to continue the operation of the home park." Sample also contacted several electrical utilities such as South Carolina Electric and Gas and an electrical contractor to inspect the Park Property. (R. pp. 83, 180) Additionally, he had No Cuts visit the site to identify electrical lines. (R. p. 83) Sample also verified the existence of the Park

Property well and septic tanks. (R. p. 83) Shortly after beginning his initial investigations, Sample was "shut down" from progressing further. (R. pp. 83, 167)

The decision of the Board has been appealed by Eric Greenway, then the Community Development Department Director for Beaufort County.

## STANDARD OF REVIEW

"In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law." *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 8-9, 776 S.E.2d 753, 757 (Ct. App. 2015). Furthermore, "[e]ven 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.'" *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 116, 719 S.E.2d 282, 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. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)). "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). "It is well-settled that 'the 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." *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004) (emphasis added).

In *Rest. Row Assocs.*, our Supreme Court clearly states the standard of review in zoning appeals:

> It is 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.*, 335 S.C. at 216, 516 S.E.2d at 446 (1999) (quotation marks omitted.)

"'[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. Although great deference is accorded the decisions of those charged with interpreting an applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.'" *Helicopter Solutions, Inc.*, 414 S.C. at 9-10, 776 S.E.2d at 757 (citations omitted).

## ARGUMENTS

### I. THE TRIAL COURT CORRECTLY INTERPRETED THAT THE MANUFACTURED HOME COMMUNITY USE DID NOT REQUIRE THREE OR MORE HOME SITES TO BE ACTIVELY LEASED

The threshold issue is whether the Old Code definition of Manufactured Home Community requires a minimum of three mobile home sites to be actively leased. The Board and the Circuit Court correctly interpreted that there is no requirement to have a minimum of three mobile home sites be leased to qualify as a Manufactured Home Community.

"The primary rule of statutory construction is that the [c]ourt must ascertain the intention of the legislature." *Kerr v. State*, 345 S.C. 183, 188, 547 S.E.2d 494, 496 (2001). "In interpreting a statute, 'the court must give the words their plain and ordinary meaning without resorting to a tortured construction which limits or expands the statute's operation.'" *State v. Bull*, 350 S.C. 58, 61, 564 S.E.2d 351, 353 (Ct. App. 2002) (*quoting State v. Dickinson*, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000). "If a statute's language is plain and unambiguous, and coveys 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, [a court] must construe the terms of the statute according to settled rules of construction" *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

The question is whether the Old Code requires a minimum of three sites to be actively leased or whether the sites must be offered to be leased. The Board and Circuit Court correctly interpreted the ordinance to require the parcel to be planned and improved for the placement of three or more manufactured homes. The homes are required to be used as residential dwellings. The home sites to be leased and the lessee will retain customary leasehold rights, as opposed to the home sites being conveyed in fee simple and/or used for commercial purposes. Appellant wrongly relies on an incorrect interpretation of the definition of Manufactured Home Community under the Old Code in which Appellant believes at least three of the sites must be actively leased at all times. Otherwise, after a year of only two of three sites being leased, the grandfathered use would be abandoned, and the lessees would face eviction.

A Manufactured Home Community was defined in the Old Code as:

> A parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings where home sites within the development are leased to individuals who retain customary leasehold rights.

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

The definition requires sites to be planned and improved for the placement of three or more manufactured homes, but does not require the actual leasing of the sites. Appellant's contention that the Manufactured Home Community use requires more than one site to be leased is incorrect. The leasing portion of the definition is forward looking with the sites have to be planned and

improved so the sites can be leased in the future. The definition simply requires that there must be at least three sites planned and improved and those sites shall be for the placement of manufactured homes. The definition then provides that the manufactured homes should be for residential use and are to be leased to individuals with customary leasehold rights. The Board correctly interpreted the Manufactured Home Community use definition and ruled accordingly. The latter part of the sentence "where home sites within the development are leased to individuals who retain customary leasehold rights" simply describes the contemplated property interest of the planned and improved sites which differentiate the site from being held in fee simple by the occupying individual.

Appellant suggests the correct interpretation would be to require at least three mobile home sites to actually be leased at all times. However, Appellant's interpretation ignores the "or more" portion of the Old Code. Appellant's interpretation would require all sites available for lease to be leased. If the community had 100 sites ("or more"), then all 100 sites would have to always be leased. This would require a community to have a vacancy rate of 0 percent to maintain the legal, non-conforming use. If the community had only 99 sites leased, then according to Appellant's interpretation, the legal, non-conforming use of the property would be abandoned, and 99 homes would have to be evicted due to an annual vacancy rate of 1%. Appellant's interpretation would lead to draconian and absurd results.

## II. THE TRIAL COURT PROPERLY CONSIDERED EVIDENCE THAT WAS CLEARLY IN THE CERTIFIED RECORD FILED WITH THE TRIAL COURT

The Circuit Court correctly found there was sufficient evidence in the Certified Record to support the Board's decision, including that the legal, non-conforming use of the Park Property was not abandoned and continues to be a legal, non-conforming use of the Park Property. (R. p. 1)

"A reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville County Bd. Of*

*Zoning Appeals*, 342 S.C. 480, 491 536 S.C. 892, 897 (Ct. App 2000). "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*, 317 S.C. at 502, 455 S.E.2d at 172 (1995). "It is well-settled that 'the 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." *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct.App.2004) (emphasis added). Section 6-29-840 provides that "[t]he 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."

The Circuit Court properly considered evidence on which the Board relied and which is contained in the Certification of Record on Appeal filed by the County and testimony of Robert Sample.

Testimony provided at the Board Hearing and submitted by Mr. Sample to the Board for its consideration is replete with factual support. On appeal to the Circuit Court, the Beaufort County Zoning Administrator filed the Certification of Record on Appeal. Contained in the Certification is a (a) a compact disk that contains a video of the Board Meeting from November 21, 2019 which includes the Board Hearing[3]; (b) the December 19, 2019, Notice of Decision; (c) the minutes from the Board meeting which includes the Hearing;[4] (d) excerpts from Zoning & Development Standards Ordinance – Table 106-1098 – Manufactured Home Community Definition; (e) Staff Recommendations dated November 13, 2019; (f) a Letter from Staff to Mr. Thomas Taylor – Date of Hearing dated October 29, 2019; (g) Receipt of payment, Printout of Tax Records; (h) ZBOA – Administrative Appeal Application with justification; (i) Exhibits from Mr.

[3] The video link of the November 21, 2019, Zoning Board of Appeals meeting is: https://beaufort.granicus.com/player/clip/4592?view_id=15.

[4] The minutes from the November 21, 2019 Board meeting were subsequently adopted by vote at the next Board meeting. No amendments to the Minutes were made.

Thomas Taylor dated October 23, 2019; (j) Email from Mr. Eric Greenway to Mr. Robert Sample, Administrative Interpretation dated September 24, 2019; (k) Email from Mr. Robert Sample to Mr. Eric Greenway – Ball Park Rent Rolls dated August 26, 2019; and (l) Email from Mr. Robert Sample to Mr. Eric Greenway – Ball Park Road Mobile Home Park dated July 24, 2019.[5] (R. pp. 76-181)

Contained within the Administrative Appeal Application with justification ("Application") filed with the Board were four exhibits. Exhibit 1 contained financial records of Mr. Pope reflecting his rental payments (unlabeled); Exhibit 2 is a plat of one of the properties demonstrating the placement of seven of the nine home sites; Exhibit 3 is an email from Mr. Sample to Henry Moss of SCANA requesting a history of service to the individual home sites; and Exhibit 4 the Beaufort County tax records showing the property as of 2019 with a "Property Class Code" of "ComImp MobileHomePark." (R. pp. 110-166) The tax records also include a portion labeled "Improvements." (R. p. 166) Under a column labeled "Use Code Description," the tax records list the property as "Mobile Home Park-Ms" and under the column labeled "Improvement Size" the number "7" appears, which is presumably the number of home sites Beaufort County recognized as existing in the "mobile home park." (R. p. 166)

The Minutes of the Board Hearing, along with the video of the meeting and the testimony Mr. Sample offered to the Board during the Board Hearing, was considered by the Circuit Court. At no time during the Board Hearing was Mr. Sample's testimony objected to nor any evidence presented which conflicted with his testimony. (See, generally, R. pp. 81-86) During Mr. Sample's testimony as reflected in the Minutes, Mr. Sample detailed the steps he had taken to continue the legal, non-conforming use. For example, Mr. Sample testified to the Board:

[5] The July 24, 2019, email referenced in the Certification begins with a reply email of August 14, 2019, from Mr. Greenway to Mr. Sample's July 24, 2019 email.

> "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. I had an electrical contractor come out to check the viability of the stands, I had No Cuts come out to identify the lines, I had SCE&G come out and I had Beaufort Jasper come out. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."
>
> (R. p. 83)

Mr. Sample also described the current state of the community. (R. pp. 82-84) In response to a question from a board member asking if Mr. Sample had repaired the septic tanks, Mr. Sample responded, "I haven't made any repairs, the septic tanks are pretty good; I was trying to identify where they were." (R. p. 83) When asked how many home sites Mr. Sample had, he replied "[i]ts nine or ten." (R. p. 83). In response to another board member's question of "[h]ow many of those nine or ten sites do you believe are not suitable for repair or usage," Mr. Sample replied "[t]he stands have to be repaired. When the previous owner removed the homes, they messed up the stands." (R. p. 83) Clearly, Mr. Sample's testimony was consistent with the sites being available when the stands were repaired or new stands installed.

The record is replete with evidence presented to and considered by the Board and was subsequently included in the Certification filed with the trial court; no new evidence was presented to the trial court.

## III. EVIDENCE PRESENTED AT THE HEARING AS REFLECTED IN THE CERTIFIED RECORD ON APPEAL FILED WITH AND CONSIDERED BY THE BOARD REASONABLY SUPPORTED THE DECISION OF THE BOARD

The Circuit Court properly found that the Board's decision was neither arbitrary nor capricious, and that the Board did not abuse it discretion in reversing Greenway's determination. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Newton*, 396 S.C. at 117, 719 S.E.2d at 285 (Ct. App. 2001) (*quoting*

*Cnty. of Richland*, 348 S.C. at 668, 560 S.E2d at 904 (Ct. App. 2002)). "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 CDC requires that the Planning Director consider several factors in 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;[6]
> 3. If equipment or fixtures necessary for the operation of the non-conforming use have been removed; if signs advertising the non-conforming use have been removed;
> 4. If business licenses for the non-conforming use have expired or not been renewed;
> 5. If activities generally associated with the non-conforming use are no longer observed on the property; and
> 6. Other actions which, in the opinion of the Director, demonstrate an intention of the part of the owner to abandon the non-conforming use.
>
> (R. pp. 5, 75)

The Park Property continued to have water service and sanitary sewer service to the individual home sites. Although many of the sites did not have active electrical accounts, the property continued to have an active electrical account which continuously provided power to the on-site well system which in turn, provided water service to the sites, including Mr. Pope's. (R. pp. 169-170, 180)

Mr. Sample had taken steps to continue the legal, non-conforming use of the property. Mr. Sample detailed to the Board the steps he had begun to take to continue the non-conforming use of the property. Mr. Sample testified:

[6] It should be noted that the list of "utility services" is not an exhaustive list and fails to address a very important "utility" sanitary sewer, which each home site is improved with individual septic systems.

> "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. **I had an electrical contractor come out** to check the viability of the stands, **I had No Cuts come out** to identify the lines, **I had SCE&G come out** and **I had Beaufort Jasper come out**. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."
>
> (R. p. 83) (emphasis added)

Mr. Sample testified the property maintained several utility services. Greenway failed to consider the existing water and sanitary sewer services as improvements to the Park Property. He focused wrongly on whether each site was actively connected to electricity, while ignoring that the utility services connect to the property. Mr. Sample testified that existing water was provided through an onsite well and sanitary sewer was provided by existing and functioning septic systems. (R. p. 83) It is undisputed the property continued to have electrical service; a SCANA representative emailed Mr. Sample in response to Mr. Sample's request for account information for each site, stating two sites maintained active service through the date of the email. The property continued to have common utility services provided: water by a well, sanitary sewer via septic systems, and active electrical service to the property. (R. p. 83)

The Board received, and the Circuit Court properly considered, evidence and correctly determined that the Park Property continued to meet the requirements of Section 106-1098 and that the legal, non-conforming use was never abandoned. Activities generally associated with the Manufactured Home Community use continue to be observed on the property. The evidence presented to the Board included a plat showing the locations of the "pads," rent rolls showing the 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 sanitary sewer available. Also evidencing

the continued activity of the property as a manufactured home community is the email from SCANA indicating 89 Ball Park has had continual electrical service from July 1994 to the date of the email. (R. pp. 169-170) 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. (R. p. 83) Additionally, the real property tax records that the County continued to describe the Park Property as a manufactured housing site. (R. pp. 208-209) The evidence presented and elicited by the Board clearly addressed the abandonment criteria.

The record in this case clearly shows the Board and the Circuit Court considered evidence presented regarding the criteria for abandonment of the Manufacture Home Community use and determined the standard for abandonment was not met, thus concluding the property maintained its legal, non-conforming use as a Manufactured Home Community. All six criteria were addressed by supporting evidence found in the Certified Record on Appeal.

## CONCLUSION

Appellant fails to demonstrate that the Circuit Court erred in affirming the Board's decision that the legal, non-conforming use as a Manufactured Home Community was not abandoned. For the reasons set forth above, Respondents Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark Place, LLC, respectfully request that this Honorable Court affirm the Circuit Court's Order affirming the decision of Respondent Beaufort County Zoning Board of Appeals.

Respectfully submitted,

August 26, 2021

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

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Appellate Case No. 2021-000139
Case No. 2020-CP-07-0112

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Eric Greenway, as Agent for Beaufort County, . . . . . Appellant,

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Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark Place, LLC, . . . . . Respondents.

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CERTIFICATE OF COUNSEL

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I certify that the Joint Final Brief of Respondents Beaufort County Zoning Board of Appeals, Robert Sample, Jr., and Ballpark Place, LLC complies with Rule 211(b), SCACR.

August 26, 2021

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