

IN THE COURT OF APPEALS OF VIRGINIA

ANNE EDWARDS HARTLEY,)	
ET AL.,)	
)	
Appellants,)	
)	Record No. 1298-22-2
v.)	
)	
BOARD OF SUPERVISORS OF)	Brunswick County Circuit Court
BRUNSWICK COUNTY,)	No. CL20000073-00
VIRGINIA,)	
)	
Appellee.)	

APPELLANTS’ ASSIGNMENTS OF ERROR

Pursuant to Rule 5A:25(a) and (d) of the Rules of the Supreme Court of Virginia, the Appellants, Anne Edwards Hartley et al., by counsel, hereby submit their Assignments of Error:

1. The trial court erred in concluding that the Appellee, Board of Supervisors of Brunswick County, Virginia (the “Board”), established that the reasonableness of its decision to grant the business developer’s application to directly rezone the subject property from A-1 Agricultural to B-1 Business was fairly debatable when the evidence showed that the Board failed to comply with its statutory obligation under Virginia Code § 15.2-2232 to follow the Brunswick County Comprehensive Plan then in effect. (Preserved at Appendix (“App.”) at

1933-1939, 1964-1972; App. Addendum (Add.”) at 102-103, 118, 126-129, 131-133, 142-143.)

2. Due to the timing of the Board’s motion for summary judgment, the trial court erred in denying Appellants’ motion for a stay and allowing the hearing on the Board’s motion to proceed on June 3, 2022. (Preserved at App. Add. at 96-98, 104.)

3. The trial court erred in allowing the hearing on the Board’s motion for summary judgment to proceed on June 3, 2022, because the motion was made at the opening of fact discovery, before the trial entered any pretrial scheduling order, and before Appellants had an adequate opportunity to conduct pretrial discovery on the Board or on nonparties with knowledge of the underlying facts. (Preserved at App. Add. at 98-99, 104.)

4. The trial court erred in granting the Board’s motion for summary judgment because the court failed to apply the correct standard of review under *Newberry Station Homeowners Ass’n v. Bd. of Supervisors*, 285 Va. 604, 740 S.E.2d 548 (2013). Under *Newberry Station*, summary judgment could not have been properly entered in the Board’s favor, as the record evidence showed that the

Board wholly failed to meet the requirements of Virginia Code §§ 15.2-2283 and -2284 prior to granting the business developer's rezoning application and, therefore, the Board's action was by definition arbitrary and capricious, not fairly debatable, and void. (Preserved at App. at 1933-1934, 1939, 1964-1965, 1971-1972; App. Add. at 102-103, 118, 126-129, 131-133, 142-143.)

5. In granting the Board's motion for summary judgment, the trial court erred in rejecting Appellants' contention that the Board's decision to grant the business developer's rezoning application was arbitrary and capricious on the grounds that the Board's failed to follow the Brunswick County Comprehensive Plan last revised in 2017 and did not utilize the correct process to amend the Plan. (Preserved at App. 1971-1972; App. Add. at 102-103, 131-133, 142-143.)

6. In its interlocutory order that partially granted and partially denied the Board's demurrer, the trial court erred in ordering the dismissal of the procedural claims made in the Amended Petition, including the claims that (a) the Board failed to conform with applicable Virginia Department of Transportation guidelines and conduct a proper traffic study prior to granting the developer's rezoning application; (b) the developer failed to subdivide the subject property prior to its submission of the rezoning application, as required by the Brunswick

County Subdivision Ordinance, Brunswick County Code, App’x A – Subdivisions, §§ 2-32, 4-4, and 7-2-3; and (c) the Board exceeded its authority under the Brunswick County Zoning Ordinance, Brunswick County Code, App’x B – Zoning, Articles 2-1, 4, 4-1-18, 9, 9-1-1, in approving the direct rezoning of the subject property from A-1 Agricultural to B-1 Business. (Preserved at App. 1947, 1954-1955, 1961; App. Add. at 8-9, 14-15, 38, 42-46, 102.)

Finally, Appellants note that under Va. Sup. Ct. R. 5A:25(a), no separate appendix is required in this case because the clerk of the trial court has filed the record electronically. Thus, a “Designation of the Contents to the Appendix” is not required under Va. Sup. Ct. R. 5A:2(d).

Dated: December 16, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2022, I filed the foregoing Appellants' Assignments of Error with the Clerk of the Court using the ECF System which sent notification of such filing to all counsel. In addition, I certify that a true and exact copy of the foregoing Appellants' Assignments of Error was served via electronic mail to the following:

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