

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
M. Dawes Cooke, Special Referee

Case No. 2017-CP-08-01088
Appellate Case No.: 2020-01118
Opinion No.: 22-UP-402

Todd Olds.....Petitioner,

vs.

Berkeley County and
Berkeley County Planning Commission.....Respondents

MOTION FOR REHEARING *EN BANC*

November 17, 2022

Thomas R. Goldstein, #2186.
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Pursuant to Rule 219 of the *South Carolina Appellate Court Rules*, the Appellant requests that the above case be scheduled for reconsideration, including being set for oral argument, by the entire Court of Appeals. This motion is based on the following grounds.

Rule 219 states that the entire Court of Appeals will consider cases “when consideration by the full court is necessary to secure or maintain uniformity of its decisions.” As set forth in Argument 3 of the companion petition for rehearing, this Court issued its published opinion, *Harbit v. City of Charleston*, 382 S.C. 383, 674 S.E.2d 776 (2009) upholding the City of Charleston’s refusal to rezone Harbit’s property because it was not part of the “Ashley Bridge District” overlay zone adopted by the City of Charleston. In this case, a three-member panel of the Court upheld Berkeley County’s refusal to rezone Old’s property even though the County designated the Olds’ property as properly reclassified to R-3 as part of its detailed fact-finding leading to the adoption of the Comprehensive Plan (and Future Land Use Map), which the County adopted by ordinance. The County reached this legislative decision to reclassify Appellant’s property as R-3 to become consistent with the County’s Comprehensive Plan and consistent with surrounding uses, and to address the County’s critical housing shortage and the current uses of surrounding parcels. However, because of unsupported canards of neighbors—and for no other reason—who voiced opinions about residents of mobile homes as second-class citizens who do not look after their children and cook meth, *etc.*, the County allowed the prejudices of a handful of complaining neighbors to overrule the County’s legislative decision reached in its Comprehensive Plan. Based on these unsupported and vague allegations, and only upon these unsupported and vague allegations, the County disregarded its own legislative findings and decision adopted by ordinance and disregarded its own staff’s recommendations, and turned down the application. This arbitrary decision is in conflict with the *Harbit* holding, and therefore, in an effort to maintain uniformity

of decisions on identical legal issues involving land use, the Appellant respectfully requests that the matter be re-heard and set for oral argument before the entire Court of Appeals.

Respectfully submitted,

November 17, 2022

/s/ Thomas R. Goldstein
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Todd Olds..... Appellant,

vs.

Berkeley County and
Berkeley County Planning Commission..... Respondent,

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing and the motion for hearing *en banc* on the Respondent, Berkeley County, by depositing a copy of it in the United States Mail, postage prepaid, on November 17, 2022, addressed to its attorney of record, John West, West Law Firm, L.L.C., P. O. Box 1869, Moncks Corner, South Carolina 29461 and by electronic mail to jwestlaw@homesc.com.

November 17, 2022

/s/ Thomas R. Goldstein
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November 17, 2022

Hon. Jenny A. Kitchings,
Clerk of Court
ATTN.: Shelby Spencer
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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SC Court of Appeals

Re: Todd Olds vs. Berkeley County, Case No.: 2017-CP-08-01088
Appellate Tracking Number: 2020-001118
Opinion No.: 22-UP-402

Dear Ms. Kitchings,

I am filing a Petition for Rehearing and a separate Motion for Rehearing En Banc. I enclose our firm's check in the amount of \$50.00 for each motion. Please let me know if I need to do anything further to perfect these filings. By copy of this letter, I am providing a copy of each to opposing counsel. I thank you in advance for your attention to this request, and with kind regards, I am

Very truly yours,



BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

enclosure: Checks Nos.: 20147 and 20148

cc:
John S. West, Esq.