

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge

Opinion No. 27252
(S.C. S.Ct. filed May 15, 2013)

RECEIVED
JUN 19 2013
S.C. Supreme Court

The Town of Hollywood, Appellant-Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy Readan and
Edward McCracken a/k/a Eddie McCracken, Respondents-Appellants.

**RETURN TO RESPONDENTS-APPELLANTS'
PETITION FOR REHEARING**

On May 15, 2013, this Court issued a unanimous published decision affirming the Circuit Court's grant of summary judgment in favor of the Appellant-Respondent Town of Hollywood on its claims for declaratory and injunctive relief and reversing the Circuit Court's denial of the Town's motions for directed verdict

and JNOV on the equal protection claim brought by the Respondents-Appellants (hereafter "Developers").

The Developers have now filed a petition for rehearing. In response, the Town submits that this Court correctly addressed each of the issues raised by the Developers in their petition for rehearing. The Town submits the following discussion with respect to the arguments raised in the petition:

As an initial argument, the Developers assert that this Court applied an incorrect standard of review and ultimately viewed the evidence in a light most favorable to the Town. Clearly, that is incorrect. The Court set forth in its opinion the correct standard of review when reviewing a trial court's ruling on motions for directed verdict and JNOV. The Court further applied the correct standard of review and reversed on the equal protection claim because there was no evidence to support the jury's verdict.¹

The Developers further argue that this Court narrowed the allegations of their equal protection claim by focusing on the actions of the Planning Commission rather than the Town as a whole. This argument is without merit. The Court obviously recognized that by statute and local ordinance the Planning Commission is granted the authority to administer subdivision regulations and laws

¹ The Developers have not raised any issue in their petition for rehearing disputing or challenging the Court's affirmance of the trial court's grant of summary judgment on the Town's claims for declaratory and injunctive relief.

and to approve the subdivision of property. *See*, S.C. Code Ann. § 6-29-340. Consequently, it was appropriate for the Court to focus on the actions of the Planning Commission in assessing whether the Developers were treated differently from other similarly situated developers in the development of their property. The Court did not fail to consider the conduct of other Town officials, including Councilwoman Sausser and Commissioner Wolf, but rather concluded that their "alleged misconduct relates only to the developers' due process claim, which the jury rejected and the developers did not appeal."

The Developers suggest in their petition that the Town admitted disparate conduct based upon Edward Holton's testimony regarding a handwritten list of items that he provided to Developers to consider. *See*, Exhibit 13. (R. 833). That list included some required items and some additional suggestions or recommendations. The Developers argue in their petition for rehearing that the Court disregarded certain of these items which the Developers claim to be "criteria the Town demanded from the petitioners as a condition for granting a subdivision." *See*, Petition for Rehearing, p. 9. The Developers misstate and mischaracterize Holton's testimony. Holton explained quite clearly that certain items such as a tree survey and approval of the septic system are requirements while the others were recommendations. (R. 230-236). Holton specifically described the other items as "recommendations" or "suggestions" and "not requirements," including a proposed

buffer and the re-alignment of the roads. (R. 232, 234-235). He made those recommendations or suggestions only to assist the Developers in addressing the public opposition to their project. (R. 234-236). This testimony is not, however, evidence of disparate treatment. These were not "extra requirements" (as Developers characterize them) imposed on the Developers as compared to other similarly situated developments.

The Developers further argue that the Chief Justice required evidence of a "comparable comparative" and that her construction of "similarly situated" is "narrow" and contrary to the dissent. *See*, Petition for Rehearing, p. 11. The Developer's argument is both unclear and meritless. First, there is no reference to the term "comparable comparative" in the Court's opinion nor is there even a dissenting opinion. Moreover, the Court has properly applied the rational basis test for an equal protection claim. The Court searched for evidence of a valid "similarly situated" comparator, and quite simply the Developers failed to present any evidence of a development similarly situated to the Developers' proposed project. The Court correctly concluded that neither Stono Plantation, Wide Awake Park or Holly Grove are "similarly situated" comparators. Consequently, this Court correctly ruled that "the developers failed to show the Planning Commission treated them differently than other similarly situated developers in the subdivision application process."

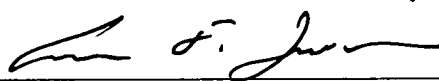
Furthermore, this Court correctly found that "there are material differences between the developers' subdivision and its alleged comparators – Wide Awake Park and Holly Grove – which demonstrate a rational basis for treating them differently." The Developers make no attempt to challenge this ruling in their petition.

Finally, the Developers argue that the Town's alleged failure to provide the Developers with a copy of the Town ordinances is evidence of "unequal protection." While certainly not an argument made in response to the directed verdict motion at trial, it is also an argument that makes no sense. The alleged unavailability of the ordinances could potentially be evidence of a due process violation, but it certainly is not evidence of a violation of the Equal Protection Clause. However, the Town has prevailed on the due process claims, and the jury's verdict on those claims was not appealed.

Based on the foregoing discussion, the Appellant-Respondent Town of Hollywood respectfully requests that this Court deny the petition for rehearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

HUGH W. BUYCK
Buyck & Sanders, LLC
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

KATIE F. MONOC
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413
(843) 727-2200

*Counsel for Appellant-Respondent
Town of Hollywood*

Columbia, South Carolina

June 18, 2013

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CERTIFICATE OF SERVICE

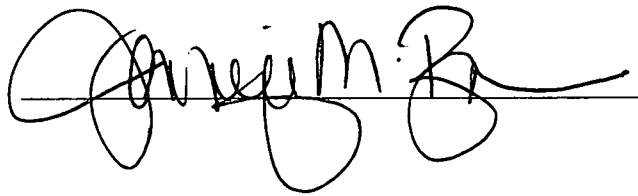
The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent Town of Hollywood, does hereby certify that service of the below listed appeal documents was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 19th day of June 2013:

1. Motion for Further Extension and to File Out of Time
2. Return to Respondents-Appellants' Petition for Rehearing

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121

Hugh W. Buyck, Esquire
Buyck & Sanders, LLC
Post Office Box 2424
Mount Pleasant, South Carolina 29464

W. Andrew Gowder, Jr., Esquire
Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413

A handwritten signature in black ink, appearing to read "W. Andrew Gowder, Jr.", written over a horizontal line. The signature is highly stylized and cursive.