

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jun 22 2023

APPEAL FROM THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

SC Court of Appeals

THE HONORABLE MARVIN H. DUKES III

Appellate Case No. 2020-000617

Beachwalk Hotel & Condominium Association, Inc.
and Beachwalk Hilton Head, LLC

Appellants,

vs.

The Town of Hilton Head Island and/or The Town
of Hilton Head Island Board of Zoning Appeals and
SDC Properties, Inc.,

Respondents.

APPELLANTS' PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellant Court Rules, Appellants hereby file this petition for rehearing.

Appellants respectfully request a rehearing on Unpublished Opinion No. 2023-UP-232, which was filed on June 7, 2023.

The basis for the request for rehearing is that the Court erred in finding that there is evidence in the record to support Respondents' determination of sufficient acreage remaining within the Waterside PD-2 District for construction of a new commercial facility. In particular, the Court fails to take into account the statutory requirement that the

average density for the PD-2 Overlay District shall not exceed the maximum density permitted in the base zoning district. LMO Section 16-3-105.G.4.a.

The PD-2 Overlay District must be viewed as a whole when considering development of Parcel E. This would include consideration of density. Parcel E cannot be developed in a vacuum separate from the rest of the PD-2 Overlay District.

At a maximum density of 16 dwelling units per acre, the Town requires at least 12.375 acres to support the exist 198 dwelling units. At a maximum density of 8,000 gross floor area per acre, the Town requires at least 0.658 acres to support the existing 5,262 gross floor area of nonresidential development. At a maximum density of 35 rooms per acre, the Town requires 2.600 acres to support the 91 existing hotel rooms. That adds up to an acreage requirement under the current LMO of 15.633 acres to support the current development. This already exceeds the 15.100 acres within the Waterside PD-2 District; therefore, there is no remaining density for the development of the proposed welcome center, and the development of the Spinnaker Welcome Center cannot be permitted. Respondents argued, and the Court appears to agree, that the definition of density found at LMO Section 16-10-102.B.1 permits a parcel by parcel, use by use calculation of density. This interpretation runs afoul of Section 16-3-105.G.4, which requires a density analysis across the entire PD-2 Overlay District. Respondents' interpretation also contradicts the BZA's determination that development of Parcel E must consider the existing development within the PD-2 Overlay District.

This Court also erred in failing to reverse the circuit court's consideration of economic utility in reviewing this matter. It was an error of law for the circuit court to

interpret the zoning ordinance so as to avoid the possibility of Respondent Town of Hilton Head Island facing a regulatory taking claim.

Based upon the foregoing Appellants request that this Court amend its decision and find that Respondent SDC Properties, Inc. is precluded from developing Parcel E as proposed for its proposed commercial purpose.

Respectfully submitted,

s/Kathleen McDaniel

Kathleen McDaniel (SC Bar No. 74826)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7913
Facsimile: (803) 904-7910

ATTORNEY FOR APPELLANT

June 22, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
THE HONORABLE MARVIN H. DUKES III
Trial Court Case No. 2016-CP-07-02712

APPELLATE CASE NO. 2020-000617

Beachwalk Hotel & Condominium Association, Inc.
and Beachwalk Hilton Head, LLC

Appellants,

vs.

The Town of Hilton Head Island and/or The Town
of Hilton Head Island Board of Zoning Appeals and
SDC Properties, Inc.,

Respondents.

PROOF OF SERVICE

I certify that **APPELLANTS' PETITION FOR REHEARING** was served on counsel for Respondents on June 22, 2023, via email under Paragraph (d)(1) of Order Re: Methods of Electronic Filing and service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), Appellate Case No. 2020-000447.

s/Kathleen M. McDaniel
Kathleen McDaniel (SC Bar No. 74826)
Counsel for Appellants

Amy L. Abercrombie

From: Amy L. Abercrombie
Sent: Thursday, June 22, 2023 4:42 PM
To: hulbertbk@hargray.com; gregg@alfordlawsc.com; barry@jd-pa.com; lamar@jd-pa.com
Cc: Kathleen M. McDaniel (she/her)
Subject: Beachwalk Hotel & Condominium Assoc., et al. v. The Two of Hilton Head Island, et al. (Appellate Case No. 2020-000617)
Attachments: 2023-06-22 Petition for Rehearing.pdf

Dear Counsel:

I have attached Appellants' Petition for Rehearing which is being filed today with the SC Court of Appeals.

Kind regards,
Amy