

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

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APR 20 2012

SC Court of Appeals

The Town of Hollywood.....Appellant/Respondent,

vs.

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

RESPONDENTS' INITIAL REPLY BRIEF

April 9, 2012

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REPLY TO RESPONDENT'S STATEMENT OF CASE¹

The respondent's brief contains a significant error on page 1, where the Town writes that on June 14, 2007, the Planning Commission "advised that the approval of the subdivision of the tract did, however, require formal approval by the Planning Commission before they could proceed with the project." (Brief at page 1.) As the transcript of the hearing demonstrates, the meeting was chaotic, and while the respondent can argue that is what the Planning Commission intended to say, the record in this case shows that the Planning Commission told the landowners that they received "bad information" (R.O.A. page ___ tr. Page 10]) and directed the landowners back to the Town's Planning Department, which is exactly what they did. On page 5 of the transcript of this meeting (R.O.A. page ___), the Planning Commission tells the landowners: "I would think that you would probably have to get something from the Town of Hollywood." While it is difficult—and counterintuitive—for trained lawyers and judges to imagine a municipality operating in the manner of Hollywood, this record shows that the Town of Hollywood **had no ordinances** and was making up the rules as it went along the process. (We will return to the Town's lack of ordinances in more detail when we address the Town's reliance on *Main v. Corley* for the argument that the landowners' position is "far-fetched.") While Judge Dennis refused to believe that the Town lacked ordinances, the record demonstrates that the Town did not publish any ordinance until 2008. See, for example, the affidavit from Jeff Floyd in the Record on Appeal at page ___ that details his numerous efforts to obtain the ordinances that did not exist:

¹ Because this is a cross-appeal, it is awkward to say appellant/respondent for the Town and respondent/appellant for the landowners. We adopt "Town" and "landowners" as easier on the reader.

I made 3 trips to the City Hall, each time asking for a copy of the Ordinances. At one meeting set up specifically to get the Ordinances, Troy and I met with the mayor's assistant, Beth Carpenter and with Ed Holton, the current Zoning Administrator, and they told Troy and me that the Town could not produce any Ordinances for us because the Town was in the process of "codifying" them and the Ordinances were not in any one place where they could be retrieved.

The lower court gave this affidavit no weight, which is an error of law that requires reversal.

South Carolina law requires that municipalities' ordinances "shall be available for public inspection at reasonable times." § 5-7-290, S. C. Code, ann. If we take the summary judgment standard and stand it on its head, the **best** that can be said for the Town of Hollywood is that it had ordinances, but that they were "unavailable." The evidence in this case is overwhelming that the Town was unable or unwilling to produce them, and when the Town finally did publish them, it was the following year. (See title page to Hollywood municipal ordinances.) The record before Judge Dennis on summary judgment was that the landowners did everything in their power to get access to the Town's ordinances, and throughout the entire process, the Town thwarted them. Thus, there was a genuine issue of material fact as to whether the Town's Zoning Administrator, Kenneth Edwards, did or did not have authority to grant the subdivision application in two phases at the time the landowners submitted their application in 2007.

The respondent then goes on to repeat a mistake it has made to every judge in this case: to wit, that Kenneth Edwards approved the subdivision plats in phases two days before he left his position. As the plats demonstrate, he approved phase I on June 22nd (R.O.A. page ___ and phase II on June 27th (R.O.A. page ___), which the landowners duly recorded in the R.M.C. Office. Relying on the recorded plats, the Town issued two work permits on July 20, 2007 and September 4, 2007 to the landowners to clear the land in conformity with the recorded plat.

(See R.O.A. pages ___ and ___ [plaintiffs' Exhibits 8 and 9]) The argument that follows next is astonishing in light of the record in this case. The respondent writes at page 2: "The Town Code of Ordinances does not give the zoning administrator authority to approve a final subdivision plat without approval from the Planning Commission." This is simply not the case. As set forth above, the Town had no ordinances, and if it did, it would not or could not permit the landowners to see them. The respondents are mindful of how bizarre that sounds, but as is typical with some small municipalities, Hollywood is administered by persons who have no formal training and who are unwilling to apply fundamental precepts of government responsibility to their duties. See comments from Councilwoman Sausser to the Planning Commission on June 14, 2007, at pages ___ of the Record on Appeal. At the summary judgment stage, the landowners were entitled to the reasonable inferences resulting from the Town's refusal to provide the ordinances, and the inescapable reasonable inference from the Town's refusal to produce them was that they did not exist. On the record before him, the only way Judge Dennis could conclude that the Town's statement is true is if, **and only if**, he accepted the Town's testimony as true and rejected Jeff Floyd's testimony as untrue. Trial courts are not permitted to weigh competing affidavits at summary judgment, and this is the error that requires reversal. The Town's whole defense is that the Floyd affidavit is not believable even though credibility is not an issue before the Court on summary judgment. The Town can shout from the rooftops that its putative ordinances prevented Ken Edwards' approval of the landowners' subdivision, but the undeniable truth at the summary judgment stage is that the Town had no ordinances, and if it did, it could not or would not produce them. If the Town cannot or will not produce its ordinances, then they do not exist. Thus, the Town's

statement of case is inaccurate and cannot form the basis for affirming the trial court's failure to apply the correct summary judgment standard. For example, on page 3 of its brief, the Town cites Judge Dennis' decision that "the Defendants have no authorization to or approval under the Municipal Code of Hollywood or the law of the State of South Carolina to subdivide the property or begin development activities on the Bryan Road Property, . . ." On this record, this statement is a palpable error of law, not only because after Ken Edwards left and the landowners recorded their plats, the Town issued permits to the landowners following Edwards' recorded subdivision approval (R.O.A. pps. ____ and ____ [plaintiffs' exhibits 8 and 9]), but also because Judge Dennis failed to apply the correct standard of review to test the record for the existence of a genuine issue of material fact.

In the Town's statement of case, the respondent also cites the Town's stop work order as evidence that the landowners would not comply with the Town's ordinances. (See page ____ of R.O.A. for copy of the Stop Work Order [plaintiff's Exhibit 10].) This argument does not advance the Town's cause because as soon as this Court looks at the Stop Work Order in the Record on Appeal, it will see that it is blank and makes no reference to any putative Town Ordinance as a basis for the Stop Work Order! There are three reasons for the absence of a reference to any ordinance. The first reason is because the Town had no Town Ordinance because if it did, it would have identified it in the Stop Work Order. The second is because the Town issued clearing permits to the landowners on July 20, 2007, and September 4, 2007, after Ken Edwards was no longer the Town's Zoning Administrator. The third is because, as outlined in Jeff Floyd's affidavit (as amplified by testimony at trial), the Town shut down the respondents not because of an alleged violation of any ordinance, but rather because it was flexing its

political muscle for Annette Sausser and Matt Wolf and the privileged millionaires of the gated Stono Plantation, the way small towns do when they operate untethered from any kind of procedural due process. While the detailed description of that day's activities was not before Judge Dennis, the record contains abundant testimony of how Mayor Heyward arrived upon the scene and ordered the landowners to stop working. Like the swallows of Capistrano signaling spring, the Stono Plantation homeowners knew of her arrival in advance because they lined up on the property line with cameras in advance of the Mayor's arrival. This is precisely the type of raw political muscle condemned by our Supreme Court in *l'ON v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), where the Supreme Court made clear that municipalities are supposed to make land use decisions "to promote the rational development of land use, free from undue political pressure." Likewise, the Fourth Circuit Court of Appeals has been out front on this issue for years in cases like *M.L.C. Automotive v. Town of Southern Pines*, 532 F.3d 269 (2008), *A Helping Hand v. City of Baltimore*, 515 F.3d 356 (2008), and especially *G. T. Scott v. Town of Greenville*, 716 F.2d 1409 (1983):

Arbitrariness, abuse of discretion, caprice or unfairness gives rise to a constitutional claim has been found by other courts in various forms of official permit processing actions. For example, in *Cordeco Development Corp. v. Vasquez*, 539 F.2d 256, 260 (1 Cir.), cert. denied, 429 U.S. 978, 97 S.Ct. 488, 50 L.Ed.2d 586 (1976), the First Circuit affirmed a ruling that local official had committed a constitutional violation by singling out a permit applicant for adverse treatment due to "illegitimate political or, at least, personal motives." Such "purposeful discrimination" against a particular individual was held to violate the Constitution even where no recognized class-based or invidious discrimination was involved.

Such purposeful discrimination is apparent in this record. The record demonstrates—see, for example, the Stop Work Order at page ___—that the Town shut down the job because of political pressure of the residents of the adjoining gated community. Jeff Floyd's affidavit

provided a complete description to the lower court of the day the Mayor shut them down, explaining to Judge Dennis how before she arrived, the neighbors from the adjoining gated community gathered on the property line with cameras waiting—because **they** knew the Mayor was on her way to shut the project down. See Record on Appeal pps. _____:

While we were on the site working, the mayor of Hollywood, Jacqueline Heyward, showed up in her car and asked us to stop work. When she pulled up, we noticed a group of neighbors from the adjoining gated subdivision gathered on the property line with cameras. When the Mayor showed up, they all started taking photos. I asked the Mayor why she wanted us to stop work, and she said: "I am asking you to stop work out of respect for me until I can smooth this over." We did not know what she meant and to this day, we do not know what she meant although it seems clear now that Annette Sausser and Matt Wolf used their powers as members of Town Council and the Planning Commission to thwart our project

Judge Dennis gave this affidavit no weight at all, and while the machinations of small town politics often appear as conduct that is "far-fetched," the lower court erred in disregarding the affidavit filed in opposition to summary judgment. In evaluating this record for the existence of a genuine issue of material fact, the lower court is not permitted to evaluate the testimony and make credibility determinations. This is the error that controls the decision on appeal.

There is one more error in the respondents' statement of case that respondents must address. On page 3, the Town describes the constitutional violations as "federal" violations. They are "federal" violations, and Title 42 § 1983 provides a judicial remedy for violations of rights under "color of law." However, the South Carolina State Constitution provides identical remedies, including a mechanism for recover of attorney's fees, and our Supreme Court has not been shy about reminding local government that it must obey the law and comport with

fundamental notions of fairness. See *l'ON v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000); *Harkins v. Greenville County*, 340 S. C. 606, 533 S.E.2d 886 (2000), and *Brown v. Charleston County*, 303 S.C. 245, 399 S.E.2d 784 (1990). Therefore, the Town's violations are both federal and state violations, and it matters little to a citizen being mistreated by a local government whether he is being mistreated under state or federal law.

Reply to Argument I

The arguments here have been fully developed in the preceding briefs, and the Town raises nothing new in its brief. The parties agree that the issue on appeal turns on whether the lower court did or did not apply the correct standard of summary judgment. As this record demonstrates, the lower court gave no weight to the affidavit of Jeff Floyd filed in opposition to summary judgment. The Town argues that it did have ordinances even though it concedes that they were not published or available as required by law. According to the official, published version of the ordinances obtained from Muni-Code—the only source available—the Town of Hollywood published its ordinances through Muni-Code in 2008. The title page reads: “Code of Ordinances/Town of Hollywood, South Carolina, Published by Order of the Town Council, Municipal Code Corporation, Tallahassee, Florida 2008.” This published version includes references to the “1998 Code,” but as this record demonstrates, the Town either could not or would not produce any set of ordinances. Thus, it is a bizarre argument to assert that a citizen is obligated to follow a law he cannot consult. While there are thousands of cases holding that any citizen can challenge any licensing scheme adopted by ordinance, there are no cases

construing secret ordinances because it is such a bizarre set of facts so contrary to common experience. In *Freedman v. Maryland*, 380 U.S. 51, 85 S.Ct. 734 (1965), a Maryland theater owner challenged the Maryland film censorship ordinance after the authorities convicted him of screening a film without the censor's permission. The authorities sought to dismiss the case because the theater owner had not submitted the film for approval. This is the fact that makes *Freedman* applicable to this case—the only difference being that in *Freedman*, the theater owner could see the ordinance. The Supreme Court swept this argument aside, holding that anyone can challenge a licensing statute that infringes on free expression. The parties here agree that the right to own and use private property is just as fundamental as the right to free expression. The difference between this case and the facts in *Freedman* (or any of a thousand other cases holding the same thing) is that despite the landowners' best efforts, they could never obtain the ordinance the Town claims prevented their subdivision. A citizen has a right to see the law in order to conform his or her behavior to obey it. Because Hollywood is such a strange municipality with a well-publicized and flamboyant history, it is impossible to find a case discussing the application of secret laws because there is no other local government that operates on unwritten rules. Thus, we have to take the principle of *Freedman* and apply it to these set of facts to arrive at the conclusion that South Carolina law does not permit a municipality to govern by secret ordinance. At the summary judgment stage, the lower court was required to find that the Town either had no ordinances, or if it did, it refused to provide them. Either way, the landowners raised a genuine issue of material fact, and the lower court erred in granting summary judgment.

The only way the Town can escape this conclusion is by repeating over and over that "In the present case, the Town submitted a copy of the Land Development Ordinance including the provisions governing subdivision approval into the record." (Town's brief at page 7.) This misses the point of the appeal. The landowners stipulate that the Town produced a copy of its ordinance in discovery **after** the landowners sued it. Any party with a computer can produce any document it wants after the fact. The issue is whether the putative ordinance existed at the time of the landowners' subdivision request. We contend it did not, and because courts do not permit *ex post facto* applications of ordinances, the lower court erred in not finding the existence of a genuine issue of material fact. See Article I, § 10, U. S. Constitutional and Article I, § 4, South Carolina Constitution.

The lower court struggled with the concept of a Town without ordinances because it is so contrary to common experience, and the Town seizes upon this struggle in relying upon *Main v. Corley* 281 S.C. 525, 316 S.E.2d 406 (1984) for the proposition that a party resisting summary judgment cannot create a "genuine" issue of fact that is not "reasonable" or that is "far-fetched." (Town's brief at pages 7-8) It certainly is the opposite of reasonable and it certainly is "far-fetched" to imagine a Town operates without ordinances, but yet, that is what happened here. This case is not the first time a reasonable person got hemmed in by what appears implausible because it is human nature to assume rationality. There is a perfect example of this instinct for rationality from the scientific world. Both Henri Poincare and Hendrik Lorentz worked out the special theory of relativity before Einstein sorted it out, and yet, both rejected their formulas because neither could accept that time dilates because, after all, time dilation is "far-fetched." Likewise, Judge Dennis rejected the landowners' theory of

their case because he could not accept that Hollywood operated without ordinances. Like physics, law is compelled to go where the evidence takes it, and sometimes “farfetched” facts are true. It is indisputable that there is a genuine issue of material fact that Ken Edwards was within his authority to approve the landowners’ subdivision.

The Town’s last argument is that the jury verdict could not have been affected by Judge Dennis’ erroneous ruling. This argument is undercut at almost any page of the record on appeal chosen at random. The Town of Hollywood is a municipality that marches to an internalized beat heard by no one else. It represents the outer penumbra of legitimate government action, and it will not and cannot comprehend it has ever done wrong. It is an affront to both the law and to common sense to demand that citizens conform to rules that he or she can neither have nor read.

Reply to Argument 2

The Planning Commission’s failure to act on the application is tantamount to approval.

In every statutory scheme for approval for a subdivision request, there is a limited time to act. This limitation on failing to act stems from the Supreme Court’s requirement that licensing schemes provide for prompt judicial review. See *Freedman v. Maryland* and *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000). The Town’s putative ordinances (published in 2008—the year after the landowner’s subdivision application) follow this judicial requirement:

(e) The planning commission shall approve or disapprove the final plat as soon as possible after it has been submitted for final approval. Approval and the date thereof shall be shown on the plat over the signature of the chairman of the planning commission and the zoning administrator. If no action is taken by the commission at the end of 60 days after submission, the plat shall be deemed to have been approved.

Sec. 30-39 Final Plat

The Town argues that this issue is “not preserved for appellate review” (Brief at page 10), but the landowners do not understand how the status of the Town’s ordinances are not preserved for appellate review when the entire appeal is over the status of the Town’s ordinances. Judge Dennis ruled that the Town had ordinances when the landowners proved it did not. The fact that the Town’s ordinance contains a time limitation undercuts the Town’s legal argument that it is just following its procedure, for if the Town were following its procedure, by its own admission it would have taken a vote on the landowners’ submission, and, if denied, it would state the reasons in writing as required by its own putative ordinance. The Town’s ordinances cannot be a shield and a sword at the same time, and it is astonishing that the Town asks this Court to ignore the language of its putative ordinances while simultaneously criticizing the landowners for not conforming to them. The Town’s dual nature toward its own ordinance is the issue on appeal (as well as the reason a jury returned a verdict against the Town). The Town’s dual nature is evidence of the Town’s bad faith throughout this litigation. Its argument is entirely circular, and it is no different from a police officer defending an excessive force allegation by saying that he or she was just doing his duty. The Town’s assertions about the ordinances it claims control the litigation must be consistent, and clearly, the reviewing court is entitled to look at the Town’s expression of its duty and weigh the Town’s legal position against the backdrop of what it did. The Town cannot ask this Court to

pay attention to what it says and ignore what it does. After all, this cross appeal is from an appeal of summary judgment, and the lower court erred in not finding the landowners had raised a genuine issue of material fact. Thus, the Town's deviation from its own procedure is proper consideration for the existence of a genuine issue of material fact. There is no more clear expression of the Town's hypocrisy on this issue than that contained on page 12 of its brief: "The Town has always taken the position that no formal application for preliminary plat approval has yet been made by the Developers." (Brief at page 12) The Town's Zoning Administrator describes the process as "simple." ("I'm only guessing here. I don't know, coming in the middle of this, but I know it wasn't of his [Edwards'] authority to approve a plat that has got more than three lots, even if someone came to me and said they want to have me approve a plat of two lots, a subdivision and a half of it needed a road to get to that second lot, as simple as that subdivision is, it's a simple planning commission review." (R.O.A. p. ___[tr. Page 100]) This entire case exists because of the hypocrisy of the Town of Hollywood. The Town's subjective, shifting criteria are examples of governmental unbridled discretion condemned by thousands of cases, state and federal. In granting summary judgment, Judge Dennis adopted the Town's shifting, subjective criteria and failed to find a genuine issue of material fact. This was error, and this Court should reverse the decision below.

Respectfully submitted,

April 10, 2012



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*Hortonville Joint School Dist. No. 1 v. Hortonville
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Scott v. Greenville County,
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*Video Gaming Consultants, Inc. v. South Carolina
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Statutes and Rules

S.C. Code Ann. § 15-77-300.

ARGUMENTS

I. The Circuit Court erred in denying the Town of Hollywood's motion for judgment notwithstanding the verdict and motions for directed verdict on the equal protection counterclaim.

The Town of Hollywood contends that the Circuit Court erred in denying its motion for judgment notwithstanding the verdict (JNOV) and motions for directed verdict on the equal protection counterclaim filed by the Respondents-Appellants William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken (hereafter referred to as "Developers"). The Town submits that there is no evidence in the record to support a finding of an equal protection violation. Specifically, the evidence does not support a finding that the Developers were treated differently from the similarly-situated developers of other proposed subdivisions.

In their response brief, the Developers have not refuted the Town's position. Instead, the Developers have insisted that this is "not the traditional equal protection case" and then proceeded to point to "evidence" supporting their *due process* claims rather than their equal protection claim. The Developers have clearly confused their due process claims with their equal protection claim. Yet, the jury has spoken on the due process allegations and rendered a *defense verdict*

on both the procedural due process and the substantive due process causes of action. (Verdict Form).

In their Answer and Counterclaims, the Developers alleged a violation of procedural and substantive due process as follows:

The Town of Hollywood has allowed members of Town Council and members of its Planning Commission who have personal animosity for the defendants' project to misuse their authority as members of Town Council and the Planning Commission to thwart the defendants' project even though the defendants' project conforms to all applicable development standards. The Town of Hollywood has erected a series of constantly evolving standards that are not defined and which are deliberately vague, arbitrary, non-uniform, and capricious in an effort to prevent the defendants' project from moving forward and causing the defendants to fail financially.

(Answer and Counterclaim, p. 6). The purported evidence that the Developers presented on these very allegations is precisely the evidence that the Developers now point to as evidence to support the jury's verdict on the equal protection claim.

For instance, in their brief, the Developers contend that Matt Wolf, a member of the Planning Commission, should have recused himself from considering the Developers' project because he lived in Stono Plantation, an adjacent subdivision. The Developers argue that Wolf "has a direct stake in the outcome of the process and should have been barred by ethical principles from participating." *See*, Developers' Respondents' Brief, p. 23. In essence, the Developers argue that Wolf had a conflict of interest; however, evidence of a

conflict of interest is not evidence of an equal protection violation. Instead, it is evidence of a due process violation. *See, Gai v. City of Selma*, 37 F.3d 1505 (9th Cir. 1994) ("allegations of bias, conflict of interest, ex parte communications, improper procedures, and failure to investigate [plaintiff's] claims all sound in procedural due process"). *See also, Hortonville Joint School Dist. No. 1 v. Hortonville Education Association*, 426 U.S. 482 (1976) (allegations of bias and conflict of interest raise due process issues).

Similarly, in their brief, the Developers point to evidence of improper political influence and the participation of Town Councilwoman Annette Sausser at the Planning Commission meeting on June 14, 2007. The Developers cite the alleged throat-slash gesture and comments made by Sausser prior to that meeting. The Developers claim that "[t]here is no better evidence of disparate treatment and purposeful discrimination on the part of the Town than the contaminating actions of Councilwoman Sausser." *See, Developers' Respondents' Brief*, p. 21. However, the "contaminating" conduct by Sausser of which the Developers complain is not evidence of an equal protection violation; it is evidence of a procedural and substantive due process violation. Yet, the Developer did not prevail on those claims and have not appealed from the defense verdict. Evidence of undue political influence or misuse of authority simply does not support an equal protection claim.

The fallacy of the Developers' position is highlighted by the case law on which they rely. For example, the Developers cite to the Fourth Circuit case of *A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356 (4th Cir. 2008), in support of their equal protection claim, but importantly, *Helping Hand* is purely a due process claim. The Developers, in fact, include in their brief the following quote from *Helping Hand*:

Indications that a governmental body's action is arbitrary, unreasonable and not substantially related to a legitimate governmental interest include, but are not limited to, one, the action is tainted with fundamental procedural irregularity. Two, the action is targeted at a single party. Three, the action deviates from or is inconsistent with the defendant's regular practice.

515 F.3d at 373, n.10. The Developers contend these are the three factors to be used in adjudging an equal protection claim. However, the very next sentence in *Helping Hand* is as follows: "These are precisely the factors that we considered in holding that a *substantive due process claim* existed in *Scott [v. Greenville County]*, 716 F.2d 1409 (4th Cir. 1983)." *Id.* (Emphasis added). Thus, it is clear that these three factors support a substantive due process claim – *not* an equal protection claim.

Similarly, the Developers do not properly cite to the Fourth Circuit's decision in *Scott v. Greenville County*, 716 F.2d 1409 (4th Cir. 1983). The Developers include the following quote from *Scott*:

Arbitrariness, abuse of discretion, caprice or unfairness giving rise to a constitutional claim has been found by other courts in various forms of official permit processing actions. For example, in *Cordeco Development Corp. v. Vasquez*, 539 F.2d 256, 260 (1 Cir.), *cert. denied*, 429 U.S. 978, 97 S.Ct. 488, 50 L.Ed.2d 586 (1976), the First Circuit affirmed a ruling that local officials had committed a constitutional violation by singling out a permit applicant for adverse treatment due to "illegitimate 'political' or, at least, personal motives." Such "purposeful discrimination" against a particular individual was held to violate the Constitution even where no recognized class-based or invidious discrimination was involved.

716 F.2d at 1419-20. This quote, however, is part of the Fourth Circuit's discussion of the plaintiff's due process claims and not his equal protection claim. As for the *Cordeco* cite, the Fourth Circuit by footnote explains that "[a]lthough *Cordeco* speaks technically of a denial of equal protection by 'purposeful discrimination,' it fits more broadly into a line of cases addressing the substantive unfairness of the process by which governmental actors deprive a citizen of a protected interest." 716 F.2d at 1420, n.14. Thus, the Fourth Circuit explains that *Cordeco* is in actuality a substantive due process case.¹

¹ Another of many examples of misquoting of case law in an attempt to support their position is the Developers' claim that the U.S. Supreme Court "condemned undue political influence" in its opinion in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), which is an equal protection case. *See*, Developers' Respondents' Brief, p. 16. However, the *Olech* decision does not mention – let alone condemn – "undue political influence" or any political irregularities or factors. The reason for this is that *Olech* is an equal protection case and not a substantive due process case.

What is missing from the Developers' brief is quite telling – evidence of similarly-situated individuals who were treated differently than the Developers. Ironically, the Developers cite in their brief to the testimony of George Johnson, another developer who testified that dealing with the Town is difficult – a "13" on a scale of one to ten. (Tr. 492-493). Johnson was describing his experiences when building a home in another subdivision several years earlier. However, it is significant that Johnson described similar frustrations with the Town's land use approval process as the Developers alleged. That testimony is not evidence that similarly-situated developers were treated differently than the Developers – that testimony actually shows no equal protection violation.

In order to prevail on their equal protection claim, it is clear that the Developers needed to present evidence in their case-in-chief that they were treated differently from the developers of other proposed subdivisions in the subdivision approval process. The record contains no such evidence, and the Developers have cited to none in their brief.

As the Town has argued, there is barely any mention in the record of any other construction projects or developments. The record simply does not contain evidence of any comparators with the level of specificity required to allow the jury to determine whether there was disparate treatment. In the Town's case-in-chief,

there was brief mention of Wide Awake Park and the Holly Grove project.² The Developers now argue that a traffic study was not required for those projects, while it was required for the Bryan Road project.³ However, as the Town points out in its opening brief, the Developers cannot show that Wide Awake Park and the Holly Grove project are valid comparators. Wide Awake Park was already developed when it was acquired by the Town. (Tr. 638). Furthermore, it was a park, not a subdivision. Moreover, the Holly Grove project was a planned development (PD) which is different from the Developers' project. In addition, there is no evidence that the Holly Grove project, given its location, presented the same traffic and safety concerns as the Bryan Road project such that a traffic study was even needed. (Tr. 651). In short, the record simply does not include any evidence as to the development approval process for Wide Awake Park or the Holly Grove project with the specificity required to allow the jury to compare that process to the approval process for the Developers' project.

² The Court is reminded that the Developers made no attempt to offer any evidence of similarly situated developers or developments during their case-in-chief. In the arguments on the Town's directed verdict motion after the Developers' case-in-chief, the Developers' counsel was unable to point to any evidence that showed disparate treatment in the subdivision approval process. The Developers' counsel did not cite to the Wide Awake Park or the Holly Grove project. Instead, he stated that "[t]he obvious disparity is in the adjoining subdivision, which is Stono Plantation." (Tr. 607). However, the record does not include any evidence regarding the development of Stono Plantation. Indeed, in their brief to this Court, the Developers make no attempt to use Stono Plantation as a comparator.

³ This argument was not made by the Developers' counsel at the directed verdict stage.

In short, there is no evidence to support the jury's verdict on the equal protection claim. The Developers seemingly recognize this. Inexplicably, they use their entire brief to re-argue their due process claims – claims that they lost and have not appealed. The evidence of alleged due process irregularities – i.e., bias, conflict of interest, intimidation by a Council member, arbitrary and irrational rules, changing rules, etc. – is not evidence of an equal protection violation. The Developers were required to show that they were treated differently from the similarly-situated developers of other proposed subdivisions. That showing was not made, and as a result, the jury's verdict should be reversed. Quite clearly, the trial court erred in denying the Town's directed verdict and JNOV motions.

II. The Circuit Court erred in granting attorney's fees and costs to the Respondents-Appellants under S.C. Code Ann. § 15-77-300.

In addressing the attorney's fees issue, the Developers have misapplied the law governing Section 15-77-300. Section 15-77-300 provides that the prevailing party to a civil action may recover attorney's fees against governmental entity only if the entity "acted without substantial justification in pressing its claim against the party" and there are no "special circumstances that would make the award of attorney's fees unjust." *See*, S.C. Code Ann. § 15-77-300. This Court has explained that "[i]n deciding whether a state agency acted with substantial

justification, the courts look to the agency's position in litigating the case to determine whether it one which has a reasonable basis in law and fact." *Video Gaming Consultants, Inc. v. South Carolina Department of Revenue*, 358 S.C. 647, 595 S.E.2d 890, 891-92 (Ct. App. 2004).

Thus, in the event this Court does not reverse the verdict on the equal protection claim,⁴ it will be incumbent on the Court to assess whether the Town's defense on the equal protection counterclaim had a reasonable basis in law and fact. In arguing the absence of "substantial justification," the Developers make the same error as they do in arguing that the jury's verdict is supported by evidence in the record – they rely on evidence of due process violations and not evidence of an equal protection violation. The fact that the record may contain evidence of procedural irregularities, such as bias, conflict of interest, misuse of authority, or improper political influence, that evidence does not show that the Town's defense *of the equal protection claim* was not substantially justified. At best, the Developer's arguments suggest that the Town was not substantially justified in defending the due process claims; however, that argument is immaterial given that the jury returned a defense verdict on the due process causes of action. In effect, the Developers attempt to justify the attorney's fees award with evidence that they

⁴ If the Court reverses the verdict on the equal protection claim, the Developers are not "prevailing parties" and are not entitled to the recovery of attorney's fees under Section 15-77-300.

should have prevailed on their due process claims. The fallacy of such a position is obvious – the Developers did not prevail on those claims.⁵

In sum, there simply is no basis for finding that the Town's defense of the equal protection claim was without substantial justification. Judge Young's order does not explain how or why the Town was not justified in taking the position that no equal protection violation had been shown. And, the Developers fail to offer any such explanation in their brief. Therefore, even if this Court were to uphold the jury's verdict on the equal protection claim, the attorney's fees award under Section 15-77-300 should nonetheless be reversed.

⁵ The Developers also appear to interject a new argument in an attempt to justify the attorney's fees award. They argue that the Town should not have sought declaratory and injunctive relief in the Circuit Court but should have first sought an administrative remedy in the Board of Zoning Appeals. This defense – purportedly a failure to exhaust administrative remedies defense – was not pled by the Developers and was never asserted in the lower court. Clearly, the assertion of a new defense – which has no bearing on the equal protection claim at any rate – is not a proper argument for an award of attorney's fees under Section 15-77-300.

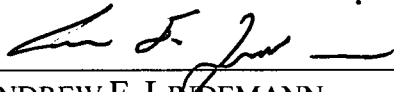
CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Town of Hollywood respectfully requests that this Court reverse the order of Judge Roger M. Young denying the Town's motion for JNOV and motions for directed verdict on the equal protection counterclaim. The Appellant-Respondent Town of Hollywood further requests that this Court reverse Judge Young's order awarding attorney's fees and costs to the Respondents-Appellants.

Respectfully submitted,

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April 4, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge
R. Markley Dennis, Jr. Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

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42 U.S.C. § 1983.

STATEMENT OF THE CASE

This case arises out of a land use dispute. The Respondents-Appellants William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken (hereafter referred to as "Developers") entered into a contract in February 2007, to purchase a 13-acre tract located on Bryan Road within the Town of Hollywood, South Carolina. The Developers submitted an application for rezoning the property to the Planning Commission for the Appellant-Respondent Town of Hollywood ("Town"). The Planning Commission considered the rezoning request at its regularly scheduled meeting on June 14, 2007. At that meeting, the Developers presented a rough sketch of the property and indicated their intent to subdivide and develop the tract into seventeen lots. At the conclusion of the Developers' presentation, the Planning Commission informed the Developers that their plans did not require a rezoning. They were further advised that the approval of the subdivision of the tract did, however, require formal approval by the Planning Commission before they could proceed with the project. The matter was accordingly tabled.

Thereafter, the Developers met with the acting zoning administrator Kenneth Edwards who indicated that he would approve the subdivision himself if the project were divided into two phases. On June 27, 2007, which was two days

before Edwards was leaving his employment with the Town, Edwards "approved" two plats for the subdivision of the Bryan Road property. The Developers then closed on the property on the same day.

The Town Code of Ordinances do not give the zoning administrator authority to approve a final subdivision plat without approval from the Planning Commission. When the Developers began work on the site, the Town issued a Stop Work Order. Because the Developers indicated that they would not comply with the Stop Work Order, the Town filed this action in the Court of Common Pleas for Charleston County seeking declaratory and injunctive relief. Specifically, the Town sought a declaration that (1) the Developers had no authorization or approval under the Town Code of Ordinances or state law to subdivide the property without approval of the Planning Commission and (2) that the plats signed by Kenneth Edwards were null and void. The Town further sought a permanent injunction to cease further development of the property until the appropriate approval was sought and received by the Planning Commission. That action was filed on October 12, 2007.

In response to the Town's Complaint, the Developers filed counterclaims under 42 U.S.C. § 1983 for alleged violations of equal protection and due process, as well as state law claims.

The Town's claims for declaratory and injunctive relief were adjudicated by way of a motion for summary judgment. By order filed September 7, 2010, Circuit Court Judge R. Markley Dennis, Jr. concluded as a matter of law that Kenneth Edwards "lacked authority to either approve Defendants' subdivision or waive the subdivision approval process as set forth in the Town's Municipal Code. Edwards' actions in signing the plats as approved by the Town were without authority and cannot be used to estop the Town from enforcing its ordinances." (R. ____). Judge Dennis further issued a declaratory judgment that "(1) the Defendants have no authorization or approval under the Municipal Code of Hollywood or the laws of the State of South Carolina to subdivide the property or begin development activities on the Bryan Road Property, and (2) the plats signs by Edwards upon which the Defendants have wrongly proceeded to develop the Property are null, void and of no effect." (R. ____).

Judge Dennis denied summary judgment on the Developers' counterclaims, which proceed to trial before Circuit Court Judge Roger M. Young and a jury from September 8, 2010 through September 13, 2010. Only the federal constitutional claims were submitted to the jury. The jury returned a verdict for the Town on the procedural and substantive due process counts. On the equal protection count, the jury found for the Developers and awarded \$450,000.00 in actual damages.

After the trial was completed, the Developers filed a Motion for Reconsideration on September 22, 2010, from Judge Dennis' summary judgment order. That motion was denied by Judge Dennis by order filed October 19, 2010.

The Developers later filed a cross-appeal from the orders issued by Judge Dennis. The Developers have not appealed from the jury verdict nor any trial or post-trial rulings by Judge Young.

ARGUMENTS

I. The Circuit Court was correct in granting summary judgment on the Town's claim for declaratory relief.

The Developers contend that Judge Dennis erred in granting summary judgment on the Town's claim for declaratory relief because he failed to give any weight to the affidavit of Jeff Floyd. In granting a declaratory judgment, Judge Dennis concluded that acting zoning administrator Kenneth Edwards acted without authority when he "approved" two plats for the subdivision of the Bryan Road property.

In his affidavit, Jeff Floyd, who is one of the Developers, attests that he attempted unsuccessfully on three occasions to obtain a copy of the applicable subdivision ordinances. That led him to conclude in his affidavit that "[t]he Town of Hollywood had no written Ordinances that they could provide to us until after this lawsuit" and that "the Town now cites Ordinances which did not exist when this controversy began." (Floyd Affidavit, p. 3). Based on that affidavit, the Developers take the position that there exists a genuine issue of material fact as to whether the Town had subdivision ordinances enacted in 2007.

In his summary judgment order, Judge Dennis acknowledged the existence of the Land Development Ordinance which was adopted in 1998 to implement the

Town's Comprehensive Plan. (Order, p. 4). Judge Dennis also noted that the ordinances had been recodified in March 2007, but the language in the 1998 ordinances remained the same. (Order, p. 4).

Based on those ordinances, Judge Dennis correctly determined that a two-step process must be followed to legally subdivide any parcel into more than three lots, and that that process requires action exclusively by the Planning Commission. *See*, Town of Hollywood Ordinance § 30-34. Judge Dennis also correctly ruled that Kenneth Edwards did not have the legal authority to approve the subdivision of a parcel into more than three lots. *See*, Town of Hollywood Ordinance § 30-12. Importantly, the Developers do not contend that Judge Dennis misinterpreted or misapplied these ordinances. Instead, they contend that Judge Dennis should not have concluded as a matter of law that these ordinances existed in 2007.

The Developers' position is seriously flawed in at least two respects. First, the existence of an ordinance is not an issue of fact. In two recent cases, the South Carolina Supreme Court has held that the zoning designation of a parcel, which is established by ordinance and may only be changed by ordinance, is a matter of law, not fact. *See*, *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 692 S.E.2d 499 (2010); *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 714 S.E.2d 869 (2011). Just as the zoning designation is not an issue of fact, neither is the existence of an ordinance an issue of fact. The existence of an ordinance – just

like the existence of any law -- is clearly a matter of law that is within the province of the court to determine. In the present case, the Town submitted a copy of the Land Development Ordinance including the provisions governing subdivision approval into the record. (R. ____). As a result, the record supports Judge Dennis' reliance on the applicable ordinances in spite of what is contained in the Jeff Floyd affidavit.

Second, even if the Developers were correct that the existence of an ordinance is somehow an issue of fact, that issue does not preclude summary judgment in the present case. In the case of *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984), the Supreme Court explained as follows:

A motion for a summary judgment speaks in terms of "no genuine issue as to material facts." It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine.

316 S.E.2d at 407. The Court further recognized that "[t]he judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine." *Id.* Likewise, this Court has held that "[i]t is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine." *Evans v. Stewart*, 370 S.C. 522, 636 S.E.2d 632, 635 (Ct. App. 2006). The issue of fact is not genuine where the "evidence create[s] a far

fetched inference." *Saluda Motor Lines, Inc. v. Crouch*, 300 S.C. 43, 386 S.E.2d 290, 292 (Ct. App. 1989).

In the present case, the Developers have indeed created a far fetched inference with the affidavit of Jeff Floyd. The Developers do not dispute Judge Dennis' application of the ordinances that on their face were enacted in 1998 and were in effect in 2007. However, in a vain attempt to create an issue of fact in dispute, the Developers question whether the ordinances were in existence. Clearly, they have not presented a genuine issue of fact that would indeed preclude summary judgment.

In short, Judge Dennis committed no error of law in concluding that the ordinances that he cites were indeed in existence in 2007. Contrary to the Developers' claim, Judge Dennis did not weigh evidence; instead, he found as a matter of law that the ordinances existed. That ruling should not be reversed. Likewise, the application of the ordinances by Judge Dennis in granting summary judgment – which the Developers do not even challenge – should be affirmed.

The Developers also make the curious argument that Judge Dennis' ruling on the declaratory portion of the case resulted in a lesser verdict for the Developers on the equal protection claim. This assertion is entirely speculative. The jury found liability and awarded actual damages. The Developers have not appealed the jury's verdict nor any rulings at trial or post-trial. They have not claimed that the jury's

verdict (should it stand) was inadequate in any respect. Indeed, it is not valid to argue that the jury would have awarded greater actual damages if additional allegations of "wrongdoing" could have been shown. The jury presumably awarded the damages to which the Developers were entitled.¹ Moreover, the Developers did not appeal the jury's defense verdict on the due process claims, and hence, they are precluded from arguing any effect of the summary judgment on the litigation of those claims at trial.

In sum, the Circuit Court did not err in granting summary judgment on the Town's claim for declaratory relief.²

¹ Of course, punitive damages were never an issue because a municipality is not liable under 42 U.S.C. § 1983 for punitive damages. *See, City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

² Much of the Developers' "argument" in Argument I of its brief is unrelated to the summary judgment on the Town's claim for declaratory relief. Moreover, the Town objects to the Developers' reliance on testimony and evidence from the trial itself. Obviously, that evidence was not in existence at the summary judgment stage and was not considered by Judge Dennis. Moreover, the Town objects to the entirely unsubstantiated recitation of the jury's deliberations as set forth on page 12 of the Developers' brief. There is absolutely no basis for the Developers' claims with respect to how the jury was deadlocked and the size of the award that was being considered by the jury. The inclusion of such raw speculation by the Developer's counsel is reprehensible and certainly contrary to the Appellate Court Rules. *See*, Rule 210(h), SCACR ("the appellate court will not consider any fact which does not appear in the Record on Appeal").

II. The Circuit Court did not err in failing to rule that the Developers' subdivision should have been approved as a result of the Planning Commission's failure to taken action at its August 2008 meeting.

As a second issue for appeal, the Developers contend that, even if the Court concludes that the Town of Hollywood had its Land Development Ordinance in effect in 2007, their subdivision should have been approved as a result of the Planning Commission's failure to taken action at its August 2008 meeting. Despite the absence of any formal application for a preliminary plat approval at that time, the Developers contend that the motion to "table" the project should have been deemed an approval of the project because the Planning Commission took no action within sixty days. (Plaintiff's Ex. 17, pp. 35-36). This issue is quite simply not preserved for appellate review, and at any rate, does not impact the rulings by Judge Dennis.

It is elementary that an appellant cannot raise an issue on appeal that was not first raised to and decided by the lower court. In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), citing *I'On v. Town of*

Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by*, the trial court." *Id.* (Emphasis in original).

In his summary judgment order filed September 7, 2010, Judge Dennis did not address this issue. Instead, in granting declaratory relief to the Town, Judge Dennis addressed only the legality of the actions of Kenneth Edwards when he "approved" two plats for the subdivision of the Bryan Road property. Judge Dennis specifically wrote:

Edwards lacked the authority to either approve Defendants' subdivision or waive the subdivision process as set forth in the Town's Municipal Code. Edwards' actions in signing the plats as approved by the Town were without authority and cannot be used to estop the Town from enforcing its ordinances.

(R. __).

During the hearing on the motion for summary judgment, the Developers' counsel made cursory reference to the argument that they are now making on appeal. In a mere two sentences, counsel argued: "Under their ordinance, failure to act on a subdivision within sixty days is deemed to be an approval. That's their ordinance, that they're relying on." (Tr. 14). That argument was not mentioned again. When Judge Dennis ruled – both orally and by written order – there was no mention of nor adjudication of this argument, and the Developer's counsel did not raise it again. After the summary judgment order was issued, the Developers did

file a Rule 59(e) motion raising three grounds; however, this argument was not raised or even mentioned.

In short, the issue now raised by the Developers – to the effect that their plat should be deemed approved by the alleged inaction by the Planning Commission for in excess of sixty days – was not decided by Judge Dennis and was not raised by way of a Rule 59(e) motion. As a result, it is abundantly clear that the issue is not preserved for appellate review.

In addition, the issue now raised by the Developers does not impact the summary judgment issued by Judge Dennis. In his oral ruling, Judge Dennis made clear that his order "doesn't stop [the Developers] from having this plat submitted for approval." (Tr. 21). The Town does not disagree. The Town has always taken the position that no formal application for preliminary plat approval has yet been made by the Developers. (Tr. 11). Hence, the Developers have not shown how Judge Dennis' ruling on the legality of Edwards' actions in signing the plats is erroneous based upon the unpreserved issue they now raise. Clearly, the summary judgment should be affirmed.

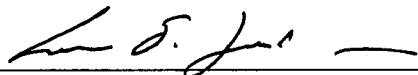
CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Town of Hollywood respectfully requests that this Court affirm the orders of Judge

R. Markley Dennis, Jr. granting summary judgment to the Town on its claims for declaratory relief.

Respectfully submitted,

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March 19, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood.....Appellant/Respondent,

vs.

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

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REPLY TO RESPONDENT'S STATEMENT OF THE CASE

On June 14, 2007, the defendants (who, as explained later, became the plaintiffs after Judge Dennis granted summary judgment for the Town (R.O.A. p. [order]) appeared before the Town of Hollywood Planning Commission for approval to subdivide a 13.2-acre parcel of real estate located on Bryan Road next to Stono Plantation. (This is the "first Planning Commission meeting.") There is no verbatim transcript of this meeting, but the Town did ask a court reporter to listen to an audio tape of the meeting and prepare a rough transcript, which is unreliable. (R.O.A. pps. _____[Defendant's Exhibit 6 transcript and 10 tape] The witnesses testified about the tape's unreliability: "You could hear certain members of the commission, but you couldn't hear hardly the boys, I call them, Troy and Jeff and Eddie, couldn't hear them and you certainly couldn't hear the people that were right behind us." (R.O.A. p. ___[tr. page 343]) "The tape doesn't depict it. I had never been to a town council or a planning commission meeting, and if they were all like that, I would never go back to another one, but people were speaking out of turn. They have a little tiny baby cassette player that was right in front of, I think, Mrs. Salters over there. And the people behind us, they would not shut up, and it was all we could do to even hear what was going on." (R.O.A. p. ___[tr. 544]) The Town of Hollywood directed the respondents to the Planning Commission, and the Planning Commission directed the respondents back to the Town's Planning Director: "Well, this really should not have been presented to Commission by Mr. Edwards at this point. We can't blame you, because it appears to be an in-house problem. But it should not have been presented as is." R.O.A. pps. ___ [tr. pages 7-8]) "Well, you were given bad information, sir." (R.O.A. p. ___, tr. page 10]) As

directed by the Planning Commission on June 14th, the respondents returned to the Planning Director, who approved the subdivision in two phases on June 22, 2007 and June 27, 2007 because the Town's ordinances permitted him to authorize subdivisions of fewer than ten lots without appearing before the Planning Commission. (R.O.A. pps. ____ [plats]) Thereafter, the respondents recorded the plat, and the Town issued two work permits on July 20, 2007, and September 4, 2007, to the landowners to clear the property. See R.O.A. pps ____ and ____ [permits],

The Town of Hollywood filed this action on October 12, 2007, at case number 2007-CP-10-4559, alleging that the Town's Zoning Administrator improperly approved the defendants' subdivision plat because the Town's Ordinances required that the subdivision be approved by the Town's Planning Commission. The Town requested the court to enjoin the landowners from developing their property (R.O.A. p. ____ [motion for injunction]) Reserving all their rights, the parties struck that case with leave to restore to afford the defendants—the landowners—an opportunity to appear before the Planning Commission a second time to gain approval. The landowners did that on August 14, 2008, and the Town's Planning Commission took no action on the subdivision request. (This is the "second Planning Commission meeting," and there is a verbatim transcript of that hearing in the Record on Appeal at pages ____ - ____.[Exhibit 7]) After the second Planning commission meeting, the parties restored the case on March 29, 2010, at Case No. 2010-CP-10-2695.

The Town renewed its motion for summary judgment, which came before Judge Markley Dennis on September 7, 2010. Judge Dennis granted summary judgment for the Town,

which then left the landowners' counterclaims as the only remaining issues. Therefore, the trial court realigned the landowners as plaintiffs for trial. To avoid confusion, we will refer to the landowners as plaintiffs even though they are listed in the caption as defendants. The landowners, who became the plaintiffs, filed their answer and counterclaims on August 29, 2008, alleging a § 1983 violation of equal protection, due process, tortious interference, *etc.*

The Town's Planning Commission includes Matt Wolfe, who lives next door to the plaintiffs' project in the private, gated community called Stono Plantation. Because he is directly impacted by the plaintiffs' subdivision, the ethical rules governing such bodies precluded him from participating. Even though he is directly affected by the subdivision, he participated, and, as demonstrated below, used his position to block the plaintiffs. Both Stono Plantation and the respondents' property have ingress and egress along the same public road called Bryan Road, a road that has existed since at least 1885. (R.O.A. p. ___[tr. Page 395-396]). Mr. Wolfe is personally opposed to the respondents developing their property because he claims the proposed smaller lots will be an adverse impact on his exclusive neighborhood, which features large lots and Stono River waterfront lots. Commissioner Wolf told Anne Boone that he did not want a subdivision next to him that was "plastic, plastic, plastic." (page ___ of the Record on Appeal [tr. Page 166-167])

At the first Planning Commission meeting on June 14, 2007, the first Planning Commission took no action on the application and directed the plaintiffs to see the Town's Planning Director, Kenneth Edwards. The Town Council Member, Annette Sausser, who appoints the Planning Commission members, attended this first Planning Commission meeting.

As attested to by every witness present, and uncontested at trial because the Town declined to call her as a witness, Town Council Member Annette Sausser introduced herself to the plaintiffs and their witnesses prior to the hearing by making a throat slashing gesture, telling them that their application will "never happen!" (See Record on Appeal, pages ___[tr. page - 345]): "First she [Council Member Sausser] tried to identify us, are y'all here with Bryan Road or something like that, and I don't know if we spoke or if we shook our heads, and it all became a little--and then she said, It will never happen, or something like that." Annett Boone described the same incident this way: "When we were walking in, she saw us and she said, 'Are you here for the Bryan Road thing?' And we said yeah, and she—she said, 'It ain't going to happen,' and then she made a cutting motion, like this, which I was shocked." (R.O.A. p. ___[tr. Page 164]) Like Comm. Wolfe, Annette Sausser was also a resident of Stono Plantation, although she sold her home on June 10, 2008.

The plaintiffs' counterclaims against the Town of Hollywood allege that the Town denied their subdivision request for improper purposes and violated the defendants' constitutional rights. On May 5, 2010, the Town filed a motion for summary judgment. On July 23, 2010, the landowners filed an affidavit in opposition to the motion for summary judgment. (R.O.A. p. ___) On September 7, 2010, the Honorable R. Markley Dennis, Jr. granted the Town of Hollywood summary judgment on the issue of the subdivision. Immediately after Judge Dennis granted summary judgment, the Clerk called the case for trial. Since Judge Dennis granted summary judgment for the Town on the relief it sought, the lower trial court realigned the parties, and the landowners became the plaintiffs. The parties tried the case from September 8-13, 2010. On September 13, 2010, the jury deadlocked and informed the court that they

could not reach a verdict. After the court delivered an *Allen* charge, the jury returned a verdict against the Town for \$450,000.00.

On September 22, 2010, the landowners filed a motion for reconsideration of Judge Dennis' Order Granting Summary Judgment. On September 23, 2010, the Town moved for an Order granting a new trial, which the circuit court denied by Order dated October 4, 2010. On March 11, 2011, Judge Young granted the respondents' application of attorney's fees, which the Town also appealed. On October 19, 2010, Judge Dennis denied the landowners' motion for reconsideration. The Town appealed the jury verdict on May 13, 2010, and the landowners appealed Judge Dennis' summary judgment order on May 19, 2011. As a result, the Town became the primary appellant on its appeal from a jury verdict, and the defendants became the secondary appellant on their appeal from Judge Dennis' summary judgment Order.

STATEMENT OF FACTS

The underlying facts are almost entirely uncontested. As may be seen by reference to Jeff Floyd's affidavit, which contains a summary of the material facts (R.O.A. p. ___), he and two partners purchased a 13.2-acre tract located on Bryan Road. Prior to purchasing the property, they inquired of the Town as to whether the tract could be subdivided. In response to their inquiries, the Town of Hollywood directed the landowners to the Town Planning Commission. (R.O.A. p. ___ [Defendant's Exhibit ___]) They appeared before the Town Planning Commission on June 14, 2007, and the Planning Commission directed the landowners to make an application to the Planning Director, Kenneth Edwards. When they appeared before the Planning Commission on June 14, 2007, while waiting for their case to be called, as described in

more detail above, Town Council member Annette Sausser approached them and inquired if they were there on the Bryan Road matter. When they replied in the affirmative, Councilwoman Sausser drew her thumb across her neck to simulate cutting her throat and told the landowners and their witnesses: "Never happen!" For an unbiased account of this event see the testimony of Mary W. Wolf at R.O.A. p. ___[tr. page 344-346], briefly quoted above. Another witness who was present, Anne Boone described the same incident this way:

Q. Did she [Annette Sausser] say anything unusual to you prior to the commence[ment] of the meeting?

A. When we were walking in, she saw us and she said, Are you here for the Bryan Road thing? And we said, yeah, and she—she said, It ain't going to happen, and then she made a cutting motion, like this, which I was shocked.

Q. Did she sit with the planning commission?

A. I believe she did.

Q. What did you think about that?

A. The whole meeting was pretty confusing. It was—I thought it was improper, but I had never been to a planning zoning meeting, so—

A. This [trial] is very orderly, this trial here. Everything is rules and regulations; everybody knows what is happening. That planning zoning meeting was totally confusing. Every time the guys tried to present anything or say anything they were—this is just my opinion, obvious, but it was—the commission had decided before anybody even got there that this development was not going through and it was just—they just shot down everything these guys tried to say or do.

I was embarrassed. I was really embarrassed for them, and everybody in there was—it just wasn't—it didn't seem like they were running things the way meeting like that should be run.

R.O.A. pages [tr. Pages 165-166])

The first Planning Commission informed the applicants that they were in the wrong place and directed them to see the Planning Director, Kenneth Edwards. After consulting with Mr. Edwards, the applicants and their engineer, Curtis Lybrand, submitted their subdivision application to Mr. Edwards in the manner instructed by him. According to Mr. Edwards, he had authority to approve any subdivision involving ten lots or less without going before the Planning Commission. Therefore, he approved the subdivision in two phases, and stamped phase 1 on June 22, 2007 and phase 2 on June 27, 2007. (R.O.A. pages __ and __) The plaintiffs then recorded the plats and proceeded to market the lots. After the Town approved the subdivision, the Town issued two permits to the plaintiffs, a logging permit on July 23 2007, and a second one on October 4, 2007 (R.O.A. pages __ and __[plaintiffs' exhibits 8 and 9] Once the plaintiffs were actively engaged in development, the "significant" neighbors of the adjoining gated

community persuaded the Mayor to shut down the project. See R.O.A. page [tr. Page 117]):

"This [Planning Director's recommendations] was just, like I say, a recommendation, not a requirement, and there was previous dialogue between myself and Troy, in fact, Troy Readon, and not a requirement, just thought because there by this time was a lot of uproar with different people—well, there was significant people around saying they weren't as thrilled with the subdivision." The Mayor posted a stop work order with no explanation on _____, 2007, R.O.A. p. ____ [Exhibit 10]) and thereafter the Town asserted for the first time that Edwards' acts were void based on the Town's ordinances that it could not produce. The plaintiffs responded the Town had no ordinances, and if it did, the Town could not produce them and refused the respondents access to them. (See R.O.A. p. _____ [tr. pages ____]):

"According to the ordinance that we finally got, the first ordinance I had seen was the date of my deposition, and I want to say it was October of 2008 after asking them for it 100 times, but in their ordinances, they're supposed to ask for the traffic study, not us." Also: "Did you ever make an effort to go down to the Town of Hollywood and actually get a copy of the ordinance to review it? I did, and on three occasions I know that I could actually remember, one occasion we had a meeting lined up with Ed Holton and Beth Carpenter, and it was Troy and myself. And we went in there and--you know, 'cause nobody could ever tell us what we done wrong. They could not cite one ordinance that we had broken, and that was our main objective. I even made me a little questionnaire to carry in there with me to try to pinpoint where our problems were at. They told me that the town ordinances were not in any one place where they could retrieve them, and to this day, I mean--and to jump ahead, when we went to my deposition,

the copy that they had supplied you and the copy their attorney had were different." (R.O.A. p. [tr. 551])

As set forth above, Judge Dennis granted the Town summary judgment because he found the Town's ordinances controlled, and after moving for reconsideration, the plaintiffs appealed on May 19, 2011. (R.O.A. p. ____ [Notice of Appeal].

REPLY TO APPELLANT'S ARGUMENT 1

THERE IS SUFFICIENT EVIDENCE IN THE CASE TO SUPPORT THE JURY'S FINDING OF A DENIAL OF THE PLAINTIFFS' EQUAL PROTECTION

The appellant's entire argument is based on its assertion that the present case does not contain any evidence to support a jury's finding an equal protection violation. The standard of review from a jury verdict is that the court looks at the evidence in the light most favorable to the party who obtained a verdict to determine if there is any evidence in the record to support a finding: "On appeal from a jury verdict, the evidence and any inferences to be drawn therefrom must be viewed in the light most favorable to the respondent. Our review is limited to determining if there is any evidence which reasonably tends to support the verdict." *Madden v. Cox*, ___ S.C. ___, 328 S.E.2d 108 (Ct. App. 1985); *McGaha v. Mosley*, 283 S.C. 268, 322 S.E.2d 461 (Ct. App. 1984); *Elders v. Pope*, 286 S.C. 228, 322 S.E.2d 563 (Ct. App. 1985)

One thing is for certain: this case is not the traditional equal protection case because the Town of Hollywood is the only municipality brazen enough and sufficiently contemptuous of the rule of law to announce the outcome of a hearing in advance of it. Because of the egregious facts of this case, the Town of Hollywood has no factual ground on which to stake a

defense because under the facts of this case, the only argument the Town has is equivalent to a general denial. For example, it is easy to highlight the stark and gross impropriety of the Town if one simply imagines the identical exchange taking place in a different forum. For example, if the exchange took place in a court instead of a town hall, the condemnation is predictable. It is impossible to imagine a judge of the circuit court or the Court of Appeals or the Supreme Court meeting the parties in the clerk's office prior to filing and simulating a cut throat accompanied by an emphatic "Never happen!" Such a thing is supposed to be inconceivable in any branch of the government because a constitutional republic is premised upon being a government of laws rather than a government of men. The Town cannot escape these horrible facts, which provide sufficient evidence to support the jury's verdict below because the uncontested facts demonstrate that the Town denied the respondents all protection of the law. Never in the annals of equal protection litigation has there been a case on such a stark set of facts. Likewise, there are no reported cases in which a Town announced in advance of the application that the plaintiffs' subdivision request would "never happen." When less offensive behavior tainted the process, the courts have been quick to condemn it. See the Fourth Circuit's analysis of improper political influence in *Scott v. Greenville County* 716 F.2d 1409 (4th Cir. 1983), *M.L.C. Automotive v. Town of Southern Pines*, 532 F.3d 269 (2008), and *A Helping Hand L.L.C. v. Baltimore*, 515 F.3d 356 (2008) Our Supreme Court held that rational land use decisions must be made "free from undue political influence." *ION v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) And finally, the United States Supreme Court held that when a landowner shows purposeful discrimination, she makes out an equal protection claim as a "class of one." *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073 (2000)

Under Title 6 of the South Carolina Code, the entire purpose of a Planning Commission and land use regulations is to take the “undue political influence” out of the process. When the Town of Hollywood appeared at the plaintiffs’ initial application before the Planning Commission in the form of Councilwoman Sausser, it announced **prior to hearing the application** that it would not only deny the plaintiffs’ request in the present form, but that it would deny any application by the plaintiffs to subdivide their property:

MS. SAUSSER: Yes, ma’am. Thank you for doing your job. There are so many things wrong with this. However, I will tell you this. **As a councilwoman, I don’t even want 12 lots, and I’ll tell you why.** You just said no to another group who had 13 acres on—what’s the name of that?

COMM. WOLF: Plantation Road.

MS. SAUSSER: Plantation. You said no. Why did you say no? First of all, you’ve got that horrible curve right there.

COMM: Whitney’s Curve.

MS. SAUSSER: Whitney’s Curve.¹ We had two people die there. Did you know that? At least one, I know. Horrible accident there. The other thing is that I used to live in Stono Plantation. **And my house—behind my house was a big, huge drain, was drained from over that area. I want you to know, if you were to look at that marsh today, it’s dead. There is a piece of that on my—you’ve seen my property—that is a dying marsh because of—it’s slow.**

UNKNOWN SPEAKER: You’re talking about the drainage ditch by my property over there?

MS. McCLOSSER [SAUSSER]: Uh-huh.

UNKNOWN SPEAKER: That was blocked.

MS. McCLOSSER [SAUSSER] **No, no. No, no, no, ma’am.** One behind my house –

¹ For an expert on the curve, it is surprising that neither the Planning Commission nor Town Council Member Sausser knows the name is Britton’s curve. As to the “horrible wreck,” the plaintiffs explained that wreck occurred as a criminal suspect fled police at high speed. R.O.A. p. ____ [tr. 532-533]

MS. McCLOSSER [SAUSSER]: So you've got a problem with traffic. You've got a problem with the environment. That road is too small. It is very dangerous. **I cannot see—I cannot fathom somebody else coming out on Whitney Curve. I used to live there, and I know people that did. You have to look so careful.** Now, I understand DOT may, down the line, straighten out that curve. That's wonderful. However, I know DOT, and I know how fast they work. **So I would like you to know that this is not something that I am going to support.**

The other thing is, we were loud and clear from our constituents. They do not want R-1. They do not want this big growth and this development. We want to take it slow. We're going to take it methodically. And I think we need to listen to the people and (inaudible).

R.O.A. page ____ [transcript of June 14, 2007, Planning Commission meeting]
Defendant's Exhibit 10) (emphasis added)

This is a critical piece of evidence, and it is so absurd on its face, it is hard to know where to begin because it is all so egregious, so personal and so discriminatory. For example, Town Council Member Sausser says, on the one hand, Britton's curve is so dangerous that no one can exit Bryan Road safely even though just moments before she told everyone she used to live there! Either Council Member Sausser possesses extraordinary driving skills the rest of us lack, or she is so unaware of her own hypocrisy that she can adopt self-contradictory statements without suffering cognitive dissonance. She also tells the Commission that it must deny the application because "They [the constituents] do not want R-1," as if the right to develop property is contingent on popularity. Of course "the City may not defer to the wishes or objections of some fraction of the body politic." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249 (1985) There, the Supreme Court rejected the neighbors' mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding" as a basis to deny use to a home for mentally disabled. First of all, as the Town of Hollywood told the respondents at the "first planning commission meeting," the Town zoned

the plaintiffs' tract R-1 to encourage the development of the very 30,000 square foot lots the plaintiffs proposed. The Town admits that the plaintiffs' subdivision application meets the Town's requirements "geometrically." (R.O.A. p. ___[tr. 44] quoted in more detail below at page ___) Since the Town's zoning was in place prior to the respondents making their subdivision application, and since the Town's zoning permits precisely the kind of project the respondents proposed, Ms. Sausser's comments are exactly the kind of "undue political influence" condemned by the U. S. Supreme Court in *Olech*, the Fourth Circuit Court of Appeals in *Scott, M.L.C.* and *A Helping Hand*, and the South Carolina Supreme Court in *I'ON*.

In analyzing Council Member Sausser's participation in the Planning Commission process, the Court must keep several things in mind. Ms. Sausser is a member of Town Council. As a member she appoints the Planning Commission members. The whole purpose the Planning Commission process is that the members are statutorily required to represent a "broad spectrum of society" in order to provide the mechanism for rational land development free from political pressure. (§ 6-29-340, S. C. Code) The Legislature designed the process so that commissions can decide land use in accordance with established rules. The fact that Council Member Sausser participated in the hearing before the Board to which she appoints the members, and the fact that she declares: "this is not something I am going to support," so taints the process as to be itself a denial of equal protection. This is significant evidence and sufficient to support the jury's finding below. Even the Mayor of Hollywood agrees that she should not participate in the Planning Commission process: "Q. You testified that you do not attend the planning commission meetings. A. No, I don't. Q. And the reason for that is the planning commission is supposed to act as an independent, fact finding body that is not

governed by undue political influence, correct? A. I would say yes.” (R.O.A. pages [tr. Pages 648-649])

The Town of Hollywood demonstrated disparate treatment toward respondents by denying the respondents any opportunity to participate in the process provided all other applicants. It approved more dense projects without any of the trumped up and irrational impediments thrown at the plaintiffs. See testimony of Ed Holton at R.O.A. p. ___[tr. 78]):

Q. And it [Town’s design standards] also provides the planning commission with a certain leeway to liberalize the rules in order to allow a developer some flexibility, if there is a benefit, correct?

A. Sure

Q. In other words, y’all’s hands aren’t tied. You have a little bit of flexibility, a little bit of discretion.

A. Right.

Q. And did the town of Hollywood recently open a housing development called Holly Grove Subdivision on Baptist Hill Road?

A. yes. That’s a new property for the Town.

Q. And that is one of those applications where the planning commission, in fact, did that. It relaxed the rules in order to allow a higher density project because it was deemed to be beneficial for the town, correct?

A. Let me explain that it went through its proper rezoning for a PD, which would allow certain other things, and it was going to have duplexes and therefore it will—it was going to be fine and **what the town wants to have anyway**, but it was not the restriction of a particular zoning as in RA, R1, or particular zoning districts as one home per lot. It was going to be multi-family, so—

R.O.A. p. ___ [tr. 78-79]) (emphasis added)

Compare the above testimony: it was "what the Town wants to have anyway," with Ed Holton's subjective "wish list" in which he required the plaintiffs to do things he concedes are not required by the ordinance to appease the politically connected Stono Plantation residents. (R.O.A. p. ___[plaintiff's exhibit 13] "This was just, like I say, a recommendation, not a requirement, and there was previous dialogue between myself and Troy, in fact, Troy Readen, and not a requirement, just thought because there by that time was a lot of uproar with different people—well, **there was significant people around saying they weren't so thrilled with the subdivision.**" (R.O.A. p. ___[tr. 116-117]) (emphasis added) See also R.O.A. p. ___[tr. Page 21]): By providing extra buffering not required by the ordinance, the landowners could placate the neighbors because "that people didn't want to see the homes going in or whatever they may be. There was an agreement that we could have some buffering between the common land, even though it's residential common—everything's R.A." (R.O.A. p. ___[transcript page 21]) This is identical to the unequal treatment condemned by the U. S. Supreme Court in *Village of Willowbrook v. Olech, supra*.

The record is clear on who these “significant people” are, and this statement all by itself is sufficient evidence to support the jury’s finding of an unequal protection of the law. The Town’s list of demands reads like something out of Lewis Carroll and the legal basis for the demands exists only in the unbridled discretion of its Planning Director. Here are some of the Town’s demands: (1) It wanted a tree survey of stumps! (R.O.A. p. ____ [tr. Page 112]) (2) It wanted the plat to tie in to “align” with the Stono Plantation community road system even though Stono Plantation is a gated community in which no one can enter! (R.O.A. p. ____ [tr. Page 114]) (3) It wanted additional buffering not required by any ordinance as a show of “good faith” to the neighbors—including Annette Sausser and Matt Wolfe. (R.O.A. p. ____ [tr. Page 117]) It declined to approve engineered septic systems even though permitting for septic is a state function handled by D.H.E.C., and Hollywood is the only municipality that has a “policy” of barring engineered septic systems. Once again, the prohibition was not contained in any ordinance, but was the Town’s “policy.” See the testimony of the D.H.E.C. representative, Richard Threatt, at R.O.A. page ____ [tr. Page 193]) (4) The Town demanded traffic study even though only the Town can request a traffic study! (R.O.A. page ____ [tr. Page [tr. Page 233]. Compare this testimony with Hollywood’s putative ordinances, which do not contain such a requirement. Commissioner Wolf conceded that the Town’s demand for a traffic study is “discretionary,” which means entirely subjective. R.O.A. p. ____ and ____ [tr. 233 and 247]) As Commission Wolf explained, this last factor is important because he lives there! (R.O.A. p. ____ [tr. 238]): “Q. You’ve been living there ever since [1999]? A. **Yeah, and that’s one of the key reasons I think it’s [traffic study] a critical project and something we need to take a look at, . . .**” (emphasis added)

All of the above is exactly why the witnesses, Colin Campbell and George Johnson, testified that dealing with the Town of Hollywood is difficult. On a scale of 1-10, Mr. Johnson gave the Town a score of "13":

Q. How would you rate your experience with the town of Hollywood on a one to ten?

A. At the time I did it, I would rate them at about a 13.

Q. And what do you attribute that to?

A. It was just a pain. I don't like having to deal with people who inflict their personal opinion into it. I like to follow a set of rules. There should be a set of rules that you follow. I'm not interested in a specific person's personal feeling about it or the fact that he may live next door to it and have some interest in it. That doesn't mean a thing to me. All I'm interested in doing is following the rules.

R.O.A. p. [tr. 492-493])

When one compares Ed Holton's and Mayor Heyward's testimony about Holly Grove, Wide Awake, and other projects with the manufactured list of deficiencies, Holton's "wish list," this record is bursting at the seams with evidence of the Town's animus for the plaintiffs and its unequal application of its ordinances—if any existed. When the Town entered into a joint venture with a private developer to construct 41 units on six acres, it did not request a traffic study. See testimony of Mayor Heyward at page ____ [tr. Page 646]) Likewise, when the Town paid 4.8 million dollars to acquire a 7.2 acre park on Trexler Avenue, it did not request a traffic study even though the Town rents the park out as a commercial enterprise for \$500.00 a night

and Trexler intersects 162 in nearly the same location as Bryan Road. (R.O.A. pages [tr. Pages 639-640]) So the Town makes its commercial park available to hundreds of visitors, but none of that implicates any of the same concerns the Town has for the plaintiffs' 17 home development. Comparing Holly Grove and Wide Awake and viewing this record in the light most favorable to the respondents prohibits the Town from denying it discriminated against the plaintiffs. It will be interesting to see if the Town attempts to cure this obvious disparate treatment by replying that it adopts as Town policy a program of interfering with the statutory protections afforded by § 6-29-340² and making up the rules for every applicant that appears before it. In logic, the negation of a negation is a positive, and thus should the Town adopt this position—which is unlikely—it can hardly claim a safe harbor from constitutional violations by saying it mistreats everyone. The General Assembly requires that the Town not make an application a political process. See § 6-29-350: "No member of a planning commission may hold an elected public office in the municipality or county from which appointed." This case is the poster child for the reason for the prohibition. As a Council Member, Ms. Sausser's presence and participation in the Planning Commission intimidated members of the Planning Commission whom she appoints and insured she obtained an outcome consistent with her articulated bias, which she demonstrated emphatically by her throat cutting gesture to respondents and their witnesses prior to the hearing. There can be no better evidence of disparate treatment and purposeful discrimination on the part of the Town than the contaminating actions of Councilwoman Sausser, which clearly meets the burden of

² "Functions, powers, and duties of local planning commission

demonstrating and proving an "arbitrary and purposeful discrimination." This Court articulated the necessary elements for an equal protection violation in 2009:

Further, one seeking to show discriminatory enforcement in violation of the Equal Portion Clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced. See *State v. Solomon*, 245 S.C. 550, 574 S.E.2d 818, 831 (1965)

Harbit v. City of Charleston, 382 S.C. 383 675 S.E.2d 776 (Ct. App. 2009)

The record in this case contains abundant evidence of the factors to be considered in evaluating the sufficiency of the evidence for an equal protection violation:

Several factors have been recognized as probative of whether a decision making body was motivated by a discriminatory intent, including: (1) evidence of a "consistent pattern of actions by the decision making body disparately impacting members of a particular class of persons," (2) historical background of the decision, which may take into account any history of discrimination by the decision making body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decision makers on the record or in minutes of their meetings. See *Arlington Heights v. 429 U.S. at 266-68, 97 S. Ct. at 564-65, Talbert, 648 F2d at 929.*

Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 818 (4th Cir. 1995)

Each *Sylvia* factor is present in this case. First, there is overwhelming evidence of a "consistent pattern" of discrimination aimed at the respondents. The United States Supreme Court held that in land use cases, discrimination against a single person is sufficient to make out an equal protection violation. See *Olech v. Village of Willowbrook*, 528 U.S. 562, 120 S.Ct. 1073, (2000). Second, the record in this case contains abundant evidence of a discriminatory historical background throughout the plaintiffs' application process. For example,

Commissioner Wolf has a direct stake in the outcome of the process and should have been barred by ethical principles from participating. As quoted above, he referred to the respondents' application as "plastic, plastic, plastic." (R.O.A. p. ____ [tr. P. 166]) and describes justice as being mere "legalese." (R.O.A. p. ____ [tr. Page 325]) Instead of stepping aside from deliberation in a case in which he had a direct stake, he used his position as a member of the commission to hold the plaintiffs' project hostage. (See colloquy with Commissioner Wolf quoted on the next page.) Likewise, Annette Sausser is not only a member of Town Counsel, but also was a resident of the neighboring gated community at the time of the plaintiffs' application. In addition, everyone else on Bryan Road has received his or her subdivision request. (See R.O.A. p. ____ [plaintiffs' Exhibit 41]) The only Bryan Road subdivision the Town of Hollywood has ever denied is the respondents' application because Matt Wolfe and Councilwoman Sausser have both stated their personal animosity for the project. (See Record on Appeal, pages ____ [tr. August 14, 2008 page 15] Defendant's Exhibit 9):

COMM. WOLFE: The other issue is we've recommended a road study from D.O.T. Bryan Road is one of the most dangerous roads in Hollywood. Because I live there and I live—I leave my windows open at night all winter. I've called 911 twice from my bed. And one of the three accidents on that road in the last 18 months a person was killed.

In all of this process, we've—you know—because we've seen you all before, and I was wondering: Have you made any efforts at all just to talk to the people in the Stono

Plantation neighborhood and, perhaps, maybe, you know, discuss potential—could there be a compromise reached in terms of reducing the density?

...

The point is—is has anybody from the group here representing the development even suggested sitting down with the Stono Planation area and say, look, is there something we can do, you know, on the density to make it more reasonable?

...

That's because the road is not a county road, and there's some issues there. The reason I felt incumbent upon, perhaps, to have discussion is because the road is anise. And Stono Plantation maintains that road.

...

But as far as I know, the road is not a county road, and the Stono Plantation owners have paid for the maintenance of that road for the last 25 years.

R.O.A. p. ____ [August 14, 2008, transcript pages 24, 26, 27]

As for elements 3 and 4, the actions of Councilwoman Sausser a powerful public official with appointment authority over the Planning Commission, acting beyond the scope of her authority and ethical obligations as an elected official demonstrated conduct proving beyond any doubt the Town's purposeful discrimination toward the respondents. This fact alone is sufficient evident to support the jury's finding that the Town treated the plaintiffs differently

from all other similarly situated developments, especially where Ed Holton and Mayor Heyward both testified the Town relaxed the rules for the Holly Grove development, which has a higher density. The inference is clear: because the privileged residents of Stono Plantation are not directly affected by Holly Grove, it gets relaxed rules, while the plaintiffs get the stringent Holton "wish list" that imposes requirements on the plaintiffs that are not found in the Town's land development ordinances. This is clear evidence of discriminatory intent. Moreover, the Town of Hollywood must concede that Councilwoman Sausser's participation is both a "significant departure from normal procedure" and a "contemporary statement by a decision maker on the record." (See *M.L.C. Automotive v. Southern Pines*, 532 F.3d 269 (4th Cir. 2008) and *Scott v. Greenville County*, 716 F.2d 1409 (4th Cir. 1983). In *A Helping Hand v. Baltimore*, the Fourth Circuit, quoting Scott repeated the factors to be considered:

Indications that a governmental body's action is arbitrary, unreasonable and not substantially related to a legitimate governmental interest include, but are not limited to, one, the action is tainted with fundamental procedural irregularity. Two, the action is targeted at a single party. Three, the action deviates from or is inconsistent with the defendant's regular practices.

A Helping Hand, ibid., quoting *Scott v. Greenville County*.

Likewise, *Scott* at page 1419 held that: "Arbitrariness, abuse of discretion, caprice or unfairness giving rise to a constitutional claim has been found by other courts in various forms of official permit processing actions. For example, in *Cordesco Development Corp. v. Vasquez*, 539 F.2d 256, 260 (1st Cir.) cert. den. 429 U.S. 978, 97 S.Ct. 488, 50 L.Ed.2d 586 (1976), the First Circuit affirmed a ruling that local officials had committed a constitutional violation by singling out a permit applicant for adverse treatment due to 'illegitimate official or at least, personal motives.' Such 'purposeful discrimination' against a particular individual was held to violate

the Constitution even where no recognized class-based or invidious discrimination was involved." This record contains abundant evidence of improper "personal motives" the jury used in concluding the Town violated the Developer's equal protection rights.

The United States Supreme Court held in *Olech v. Village of Willowbrook*:

In *Esmail v. Macrane*, 53 F3 176 (7th cir. 1995), we held that the equal protection clause provides a remedy when "a powerful public official picked on a person out of sheer vindictiveness." *Id* at 178.

It is impossible to find a clearer expression of vindictiveness than that exhibited by Annette Sausser and Matt Wolf. The overwhelming and unchallenged evidence in this case demonstrates that the Town of Hollywood denied the respondent's equal protection for reasons wholly unrelated to the "rational development of land free from undue political influence." *I'ON, supra*. When Councilwoman Sausser told respondents their subdivision would "never happen," along with her emphatic physical punctuation, even before the plaintiffs had entered the hearing room, the Town deny the respondent's equal protection. The Town denied respondents a fair hearing that it provides to all others. The Town Council Member's unlawful presence on the dais exceeds the scope of her authority as a City Councilwoman and violated the statutory protections afforded by § 6-29-340 (Powers and duties of the Planning Commission). As an appointing official of the Planning Commission her presence and participation were meant to intimidate the members of the Planning commission and insure that she obtained the outcome consist with her articulated bias. The Town has never subjected another applicant to such purposeful discriminatory intent, and thus the record contains sufficient evidence for the jury to return a verdict.

Reply to Argument II

The lower court did not abuse its discretion in awarding attorney's fees.

In order to make an award of attorney's fees under § 15-77-300, the trial court must find: 1) the party seeking the award was the prevailing party; 2) the state agency acted without substantial justification; and 3) that no special circumstances make an award unjust. [Citations committed] The trial court's decision to award or deny fees under § 15-77-300 will not be disturbed on appeal absent an abuse of discretion. *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006). An agency acts with "substantial justification" within the meaning of the statute when its position has a "reasonable basis in law or fact." *Cornelius* at page 539. Here, the Town did not act with substantial justification because it misused its municipal powers to harass the plaintiffs and thwart their application and did not avail itself of what it asserts is its own administrative procedure.

The entire basis of the appellant's claim here is that the Town was justified in defending the equal protection claim. The Town argues, "the Court should have denied the award of attorney's fees under § 15-77-300 because clearly the Town was justified in taking the positions that it did throughout this litigation--despite the fact the fact that it did not prevail on one of the constitutional claims asserted by the developers. " Brief at pages 16-17. First of all, if the Town stands before this Court and adopts Council Member Sausser's and Commissioner Wolf's actions as legitimate exercises of municipal authority, it will be astonishing. More likely than not, the Town will argue that the activities of Sausser and Wolf were improper and regrettable, but ultimately not material. This rationalization is unpersuasive for several reasons. The first

reason is that it is logically indefensible. Any government can rationalize any act as the history books teach us. Second, the argument is unpersuasive for several factual reasons. First, the Town must concede that it should not prejudge applications before hearing them. There is no substantial justification in denying citizens a right to equal protection of its laws. The whole purpose of the "second planning commission meeting" was to cure the infirmity of the first, but instead, the record shows that the "second planning commission meeting" only continued the abuse through Comm. Wolf's unethical extortion comments quoted above on page 22 and Planning Director Holton's "wish list," containing requirements not found in the Town's putative ordinances. Second, the Town concedes that Council Member Sausser's participation in the "first planning commission meeting" was improper. Third, it will concede that Comm. Wolf's participation in both was improper, especially where the Town admits that the plaintiffs' subdivision request met all the "geometric" requirements of the Town:

Q. In fact, the lots as they're laid out meet all the requirements of the town of Hollywood, do they not?

A. Geometrically.

R.O.A. p. ___[tr. Page 44])

It will, however, deny the Town itself was engaged in the wrongdoing for reasons we have yet to hear. In other words, it is one thing to assert that the Town had "substantial justification" for treating the plaintiffs the way it did, and another thing to point to some evidence in the record that supports the Town's assertion. The Town does an excellent job making the assertion, but fails to identify any evidence of its good faith toward the plaintiffs. Lastly, it must admit that in

adopting its legal position, it deliberately ignored its own administrative remedy provided by § 6-29-1150 that governs an appeal of the decision of the Town's Planning Director. It is highly contradictor to hold the plaintiffs to exacting standards from which it exempts itself. Rather than following the statutory prescription for a remedy, this record shows that the Town of Hollywood adopted an *ad hoc* process designed specifically to thwart the applicants at every stage. Thus, when the respondent writes on page 3 of its brief:

The Town Code of ordinances do not give the Zoning Administrator authority to approve a final subdivision plat without approval from the Planning Commission, (Brief at page 3),

the Town glosses over the evidence that the Town had no ordinances, and if it did, then the Town was obligated to abide by the statutory procedure described therein and required by state law. Instead of suing the plaintiffs and beginning this litigation, the Town should have appealed its Planning Director's decision to its own Board of Zoning Appeals. Even though the respondents concede that this would have been a futile act for them given Hollywood's demonstrated bias against them, the Town cannot claim here that it should escape the reach of § 15-77-300 because it had a "reasonable basis in law or fact." There is no reasonable basis in law or fact for what the Town of Hollywood did to these respondents, and without the benefit of § 15-77-300, no citizen will ever be in a position to stand up for himself or herself against the tyranny of unbridled government action.

Furthermore, the Court should uphold the award of attorney's fees to force the Town to deal honestly with applicants. The Town has an articulated animosity for landowners who seek

legal advice in response to the Town's actions, and this alone punctures the Town's argument that it had substantial justification in adopting the policy it did. Mr. Holton testified it was "surprising" that the plaintiffs sought legal counsel:

Q. Are people allowed to hire a lawyer and appear before the planning commission?

A. Certainly.

Q. Is there anything improper about that?

A. In general, no. But—

Q. But ins some cases, yes?

A. No, no, not in some cases, but it seemed like there was a while back we had a conversation where we wanted to have lawyers stay out and have the plaintiffs and the town to work things out, but the, again, you [counsel] showed up at this meeting and did all the talking.

Q. And this was improper in your view?

A. Not improper, but surprising.

R.O.A. pages [tr. 56-57]

The entire testimony of the Town's current Planning Director demonstrates the Town's lack of substantial justification throughout this entire process. Nowhere is the Town's deplorable conduct more succinctly summarized than in its Planning Director's testimony on page ___ [tr. Page 73] of the Record on Appeal:

Q. Okay. So let me show you what has been marked as Plaintiffs' Exhibit 27. Is plaintiffs' Exhibit 27 the appropriate regulations that I just asked you about?

A. Yes, sir.

Q. Okay. Now, for three years now y'all have neither disapproved, approved, or conditionally approved Jeff Floyd, Troy Readen, Eddie McCracken's plat; it's tabled, correct?

A. That's right, trying to work with them, telling them what they need.

Q. Tell them what they need. Let's talk about that because it's in the transcript what they need. They need a traffic study, right?

A. Planning commission has it to—can make a request for a traffic study, so—

Q. And the traffic study has to be requested by the town of Hollywood, right?

A. From the planning commission, yeah.

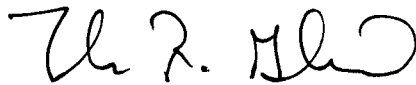
Even though the Town's putative ordinances say that subdivision regulations are automatically approved if the planning commission takes no action on it for 60 days, we are now almost five years later, and the Town has still never requested a traffic study. (See R.O.A. page ___ for the Town's putative subdivision ordinances [Exhibit 28]) The reason is because the traffic study—like everything else the Town threw at the plaintiffs—is a pretext. The purpose of § 15-77-300 is to level the playing field and allow citizens to challenge unlawful government conduct and this record demonstrates that the lower court did not abuse its discretion in making the award.

Conclusion

For the reasons stated above, the respondents respectfully submit that the record in this case contains sufficient evidence on which a jury could find a constitutional violation. Likewise, the lower court did not abuse its discretion in awarding attorney's fees. The verdict below should be affirmed.

Respectfully submitted,

February 23, 2012



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

RECEIVED
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SC Court of Appeals

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.

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42 U.S.C. § 1983.

42 U.S.C. § 1988.

STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err in denying the Town of Hollywood's motion for judgment notwithstanding the verdict and motions for directed verdict on the equal protection counterclaim?

II. Did the Circuit Court err in granting attorney's fees and costs to the Respondents-Appellants under S.C. Code Ann. § 15-77-300?

STATEMENT OF THE CASE

The Appellant-Respondent Town of Hollywood ("Town") appeals from a jury verdict in favor the Respondents-Appellants on their counterclaim alleging a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

This case arises out of a land use dispute. The Respondents-Appellants William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken (hereafter referred to as "Developers") entered into a contract in February 2007, to purchase a 13-acre tract located on Bryan Road within the Town of Hollywood, South Carolina. The Developers submitted an application for rezoning the property to the Planning Commission for the Town of Hollywood. The Planning Commission considered the rezoning request at its regularly scheduled meeting on June 14, 2007. At that meeting, the Developers presented a rough sketch of the property and indicated their intent to subdivide and develop the tract into seventeen lots. At the conclusion of the Developers' presentation, the Planning Commission informed the Developers that their plans did not require a rezoning. They were further advised that the approval of the subdivision of the tract did, however, require formal approval by the Planning Commission before they could proceed with the project. The matter was accordingly tabled.

Thereafter, the Developers met with the acting zoning administrator Kenneth Edwards who indicated that he would approve the subdivision himself if the project were divided into two phases. On June 27, 2007, which was two days before Edwards was leaving his employment with the Town, Edwards "approved" two plats for the subdivision of the Bryan Road property. The Developers then closed on the property on the same day.

The Town Code of Ordinances do not give the zoning administrator authority to approve a final subdivision plat without approval from the Planning Commission. When the Developers began work on the site, the Town issued a Stop Work Order. Because the Developers indicated that they would not comply with the Stop Work Order, the Town filed this action in the Court of Common Pleas for Charleston County seeking declaratory and injunctive relief. Specifically, the Town sought a declaration that (1) the Developers had no authorization or approval under the Town Code of Ordinances or state law to subdivide the property without approval of the Planning Commission and (2) that the plats signed by Kenneth Edwards were null and void. The Town further sought a permanent injunction to cease further development of the property until the appropriate approval was sought and received by the Planning Commission. That action was filed on October 12, 2007.

In response to the Town's Complaint, the Developers filed counterclaims under 42 U.S.C. § 1983 for alleged violations of equal protection and due process, as well as state law claims.

The Town's claims for declaratory and injunctive relief were adjudicated by way of a motion for summary judgment. By order filed September 7, 2010, Circuit Court Judge R. Markley Dennis, Jr. concluded as a matter of law that Kenneth Edwards "lacked authority to either approve Defendants' subdivision or waive the subdivision approval process as set forth in the Town's Municipal Code. Edwards' actions in signing the plats as approved by the Town were without authority and cannot be used to estop the Town from enforcing its ordinances." (R. ____). Judge Dennis further issued a declaratory judgment that "(1) the Defendants have no authorization or approval under the Municipal Code of Hollywood or the laws of the State of South Carolina to subdivide the property or begin development activities on the Bryan Road Property, and (2) the plats signs by Edwards upon which the Defendants have wrongly proceeded to develop the Property are null, void and of no effect." (R. ____).

In the interim, while this action was pending, the Town staff continued to work with the Developers to address issues with respect to the project. These efforts were acknowledged by the Developers' counsel at the August 2008 meeting of the Planning Commission. (Plaintiff's Ex. 17, pp. 5-6). The August 2008

included a discussion of issues that remained including the following: (1) the utilization of engineered septic systems because the proposed development had lots that would not percolate; (2) access issues relative to Bryan Road; (3) a proposed traffic study at the intersection of Bryan Road and Highway 162 because so-called "Brittain's Curve" is a known dangerous intersection; and (4) the failure of the Developers to provide a wetlands certification letter. Although there was actually no application for preliminary plat approval pending, at the close of the August 2008 meeting, a motion was passed to "table this project until we have additional information regarding those particular issues." (Plaintiff's Ex. 17, pp. 35-36).

The litigation continued to proceed forward. After Judge Dennis issued his summary judgment order, the case proceeded to trial on the Developers' remaining counterclaims. The case was tried before Circuit Judge Roger M. Young from September 8, 2010 through September 13, 2010. During the course of the trial, the Town made a motion for directed verdict at the close of the Developers' case-in-chief and again at the end of the Town's case-in chief. While a directed verdict was entered on the state law claims, Judge Young denied the Town's motions on the federal constitutional claims, including the equal protection claim.

The federal constitutional claims were submitted to the jury. After initially being deadlocked, the jury returned a verdict for the Town on the procedural and

substantive due process counts. On the equal protection count, the jury found for the Developers and awarded \$450,000.00 in actual damages.

The Town thereafter made post-trial motions including a JNOV motion. Judge Young denied the Town's post-trial motions by order filed October 4, 2010. (R. ____).

On March 7, 2011, Judge Young also issued an order denying the Developer's post-trial motions. With that order, Judge Young did award to the Developers attorney's fees in the amount of \$42,445.00 and costs in the amount of \$2,629.20. (Order, p. 5). Judge Young awarded the attorney's fees and costs pursuant to Section 15-77-300.

The Town filed a timely appeal to this Court. The Developers have also filed a cross-appeal.

ARGUMENTS

I. The Circuit Court erred in denying the Town of Hollywood's motion for judgment notwithstanding the verdict and motions for directed verdict on the equal protection counterclaim.

The Town of Hollywood contends that the Circuit Court erred in denying its motion for judgment notwithstanding the verdict (JNOV) and motions for directed verdict on the Developers' equal protection counterclaim. The Town submits that there is no evidence in the record to support a finding of an equal protection violation. Specifically, the evidence does not support a finding that the Developers were treated differently from the developers of other proposed subdivisions.

The Equal Protection Clause "requires that the states apply each law, within its scope, equally to persons similarly situated, and that any differences of application must be justified by the law's purpose. But this does not mean that persons in different circumstances cannot be treated differently under the law." *Sylvia Development Corp. v. Calvert County, Md.*, 48 F.3d 810, 818 (4th Cir 1995). The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

This Court has similarly explained that "[t]he *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate

treatment." *Olson v. South Carolina Department of Health and Environmental Control*, 379 S.C. 57, 663 S.E.2d 497, 504 (Ct. App. 2008). The Equal Protection Clause "does not prohibit different treatment of people in different circumstances under the law." *Harbit v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776, 782-83 (Ct. App. 2008). See also, *Town of Iva ex rel. Zoning Administrator v. Holley*, 374 S.C. 537, 649 S.E.2d 108 (Ct. App. 2007).

The Eleventh Circuit case of *Campbell v. Rainbow City*, 434 F.3d 1306 (11th Cir. 2006), is particularly instructive given its factual similarity to the present case. In *Campbell*, the plaintiff attempted to develop an apartment complex. They sought tentative approval for their project from the city council and the planning commission on numerous occasions, and each time the matter was tabled for further discussion and consideration. The plaintiffs alleged that they were treated differently than other developers because one of the plaintiffs had run for mayor against the incumbent mayor in a prior election. The plaintiffs identified eight separate construction projects or developments that they believed were similarly situated. The case went to trial, and the jury returned a verdict for the plaintiffs. On appeal, the Eleventh Circuit reversed the jury verdict. The Court concluded that the district court should have granted the City's directed verdict motion because "Plaintiffs have not offered any evidence to support an equal protection

claim of similarly-situated individuals who were treated differently." 434 F.3d at 1309.

The Eleventh Circuit in *Campbell* explained that "[t]he analysis of Plaintiffs' equal protection claim requires a finding that there were developments which were similarly situated to the Campbells' proposed development, because different treatment of dissimilarly situated persons does not violate the equal protection clause." 434 F.3d at 1314. Moreover, the Court held that "[a] showing that two projects were similarly situated requires some specificity." *Id.* Citing the Seventh Circuit case of *Racine Charter One, Inc. v. Racine Unified School District*, 424 F.3d 677 (7th Cir. 2005), the Court further explained: "in order for any development to be similarly situated to Plaintiffs' proposed project, it must be *prima facie* identical in all relevant respects." *Id.*

While the Plaintiffs in *Campbell* identified several projects as being similarly situated, the evidence was not sufficient. The Eleventh Circuit explained:

Plaintiff must have shown that the other development sought and received tentative approval of its site from the City. Without a showing that a development sought and received tentative approval, a jury could not conclude that the development was similarly situated to Plaintiffs' development, nor could a jury conclude that the parties were treated differently. With regard to three of the developments that the Plaintiffs contend were similarly situated, Plaintiff did not provide sufficient showing that development sought and obtained tentative approval.

434 F.3d at 1315. Ultimately, in reversing the verdict for the plaintiffs, the Eleventh Circuit concluded as follows: "Because Plaintiffs have not given any evidence of Defendant's different treatment of a development that was similarly situated to their proposed development, they have not met their evidentiary burden in bringing a successful equal protection claim." 434 F.3d at 1317.

The same should be the result in the present case. Indeed, the plaintiffs in *Campbell* at least *attempted* to proffer what they believed to be similarly situated developers or developments. The Developers in the case at bar offered no such evidence. The trial record is simply devoid of evidence of what the Developers contend were similarly situated developments or projects which they contend the Town treated differently in the subdivision approval process.

There is scant mention even of any other construction projects or developments. The record must be carefully dissected to even find a brief reference to other projects, and certainly the record does not contain evidence of any comparators with the level of specificity required to allow the jury to determine whether there was disparate treatment.

The record includes brief mention of the Wide Awake Park in the testimony of Mayor Jacqueline Heyward. That testimony was not offered in the Developers' case-in-chief and was not admitted at the initial directed verdict motion. Mayor Heyward testified that the Town had purchased the 7.2 acre park which had

already been developed as such. The Developers suggested that the Town had treated the park differently from the Developers' property because a traffic study was not required. The Developers are incorrect in suggesting that Wide Awake Park is an appropriate comparator for an equal protection analysis. As the Mayor testified, it is a park and not a subdivision. (Tr. 640). There is no similarity between the projects. Second, the park was already developed when it was acquired by the Town. (Tr. 638) Thus, the lack of a traffic study post-development is clearly a distinguishing factor. Third, and most significantly, the Developers presented no evidence whatsoever regarding the Town's approval process at the time the park was developed. Thus, it was impossible for the jury to examine the Town's approval process for the park property as compared to the Developers' project.

The record also includes brief mention of the Holly Grove project, which is a low income housing complex consisting of nineteen duplexes on a six acre tract. That property was developed by the Town as a joint venture with the Charleston Bank Consortium. (Tr. 641-643). Again, the Developers suggest that the Town treated the Holly Grove project differently from the Developers' property because a traffic study was not required. However, the Holly Grove project was a planned development (PD) which is different from the Developers' project. Moreover, there is no evidence that the Holly Grove project, given its location, presented the

same traffic and safety concerns as the Bryan Road project such that a traffic study was even needed. (Tr. 651). Further, the record simply does not include any evidence as to the development approval process for the Holly Grove project with the specificity required to allow the jury to compare that process to the approval process for the Developers' project.

The testimony regarding the Holly Grove project was not submitted during the Developers' case-in-chief, and thus was not in the record at the initial motion for directed verdict. In fact, the Developers made no attempt to offer any evidence of similarly situated developers or developments during their case-in-chief. This is obvious from a review of the directed verdict arguments. After the Town's counsel moved for a directed verdict on the equal protection claim, the Developers' counsel was unable to point to any evidence in their case-in-chief that showed disparate treatment in the subdivision approval process. The Developers' counsel did not cite to the Wide Awake Park or the Holly Grove project. Instead, he stated that "[t]he obvious disparity is in the adjoining subdivision, which is Stono Plantation." (Tr. 607). He further argued:

No one has required Stono Plantation to provide a traffic study or to prove that they have access, and, in fact, the two subdivisions sit side by side and utilize the same access, so it is abundantly clear in this record that the two similarly situated property owners are being held to different standards.

(Tr. 607). The fallacy in that argument, however, is that the record *does not include any evidence regarding the development of Stono Plantation*. That is clear from the colloquy that followed. Judge Young began asking questions regarding the development of Stono Plantation such as when it was developed. The Developers' counsel could not provide a definitive answer. (Tr. 608). The reason: as the Town's counsel argued, the record does not include *any information* on the development of that subdivision nor any evidence of the subdivision approval process relative thereto. (Tr. 610). Without any evidence as to the development of Stono Plantation and, more importantly, the approval process by the Town for that development, a jury cannot make the comparative analysis required for finding an equal protection violation.

When this lack of evidence was raised by the Town, the Developers' counsel insisted that "it's unnecessarily complicated." (Tr. 610). He then insisted that "[t]here are several plats in the record that show various subdivisions along Bryan Road and the town has never required anybody to furnish anything other than what is required in the ordinance." (Tr. 610). That is a mere assertion by counsel which does not qualify as evidence. *See, Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 551 S.E.2d 588, 590 (Ct. App. 2001) ("arguments of counsel are not evidence"); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (same). The trial record includes no evidence to support that assertion. There is no

evidence that the Town treated the Developers differently from other developers under similar circumstances.

Contrary to the Developers' position at directed verdict, this is not "unnecessarily complicated." Instead, the Town is asking the Court to determine whether the Developers satisfied the burden of proof necessary to prevail on an equal protection claim of disparate treatment. As in the *Campbell* case, the Developers here did not meet their burden of proof. In fact, they have not come remotely close to meeting their burden of proof. The jury quite simply did not have the evidentiary basis for concluding that the Town violated the Developers' equal protection rights. That verdict should be reversed, and judgment as a matter of law should be entered for the Town.

II. The Circuit Court erred in granting attorney's fees and costs to the Respondents-Appellants under S.C. Code Ann. § 15-77-300.

Following the jury verdict and the denial of post-trial motions, the Developers made a motion for attorney's fees and costs. On March 7, 2011, Judge Roger Young issued an order granting attorney's fees in the amount of \$42,445.00 and costs in the amount of \$2,629.20. (Order, p. 5). Judge Young awarded the attorney's fees and costs pursuant to Section 15-77-300. Specifically, he ruled as follows:

This Court finds that Plaintiff is entitled to recover attorney's fees in this action. Plaintiff argues that he is entitled to an award of attorney's fees under S.C. Code Ann. § 15-77-300, which allows recovery by a prevailing party where a state agency, or other certain entities, has acted without substantial justification in pressing its claim and special circumstances did not exist that would make an award unjust. The Plaintiff is entitled to fees under this section because he was the "prevailing" party under the statute.

(Order, pp. 2-3).¹

In accordance with Section 15-77-300, the prevailing party to a civil action may recover attorney's fees against governmental entity only if the entity "acted without substantial justification in pressing its claim against the party" and there are no "special circumstances that would make the award of attorney's fees unjust." *See*, S.C. Code Ann. § 15-77-300. The Supreme Court has defined "substantial justification" to mean "justified to a degree that could satisfy a reasonable person." *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709, 712 (1990). This Court has further explained that "[i]n deciding whether a state agency acted with substantial justification, the courts look to the agency's position in litigating the case to determine whether it one which has a reasonable basis in law and fact." *Video Gaming Consultants, Inc. v. South Carolina Department of Revenue*, 358 S.C. 647, 595 S.E.2d 890, 891-92 (Ct. App. 2004). However, "an agency's loss on

¹ Judge Young did not make an award of attorney's fees and costs pursuant to 42 U.S.C. § 1988, and that ruling has not been appealed.

the merits does not create a presumption that its position was not substantially justified." 595 S.E.2d at 892. In other words, the governmental entity "could take a position that is substantially justified, yet lose." *Id.*

The Town submits that the award of attorney's fees and costs was in error because, for the reasons addressed above, the Developers should not have prevailed on their equal protection claim, and hence, if that verdict is reversed, then the Developers will not qualify as "prevailing parties."

Nonetheless, even if the Court affirms the verdict on the equal protection claim, the Developers are still not entitled to an award of attorney's fees under Section 15-77-300. Judge Young assumed without deciding that the Town had acted without substantial justification in prosecuting its declaratory and injunctive relief claims and in defending the Developers' federal constitutional counterclaims. There is no indication that the Circuit Court exercised any discretion. It is well settled that "[w]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." *Callen v. Callen*, 365 S.C. 618, 620 S.E.2d 59, 64 (2005). That error of law requires a reversal.

If discretion had been properly exercised, the Court should have denied the award of attorney's fees under Section 15-77-300 because clearly the Town was justified in taking the positions that it did throughout this litigation – despite the

fact that it did not prevail on one of the constitutional claims asserted by the Developers. The Town prevailed in its entirety on its declaratory and injunctive relief claims and, in fact, was granted summary judgment on those claims. (R. ____). Moreover, the jury ruled in the Town's favor on the procedural and substantive due process claims. (Verdict Form). There simply is no basis for finding that the Town's defense of the equal protection claim was without substantial justification. Judge Young's order certainly does not explain how or why the Town was not justified in taking the position that no equal protection violation had been shown.

For each of these reasons, the Town submits that the Circuit Court erred in granting attorney's fees and costs under Section 15-77-300.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Town of Hollywood respectfully requests that this Court reverse the order of Judge Roger M. Young denying the Town's motion for JNOV and motions for directed verdict on the equal protection counterclaim. The Appellant-Respondent Town of Hollywood further requests that this Court reverse Judge Young's order awarding attorney's fees and costs to the Respondents-Appellants.

Respectfully submitted,

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November 16, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

APPELLANT'S INITIAL BRIEF

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SC Court of Appeals

November 15, 2011

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STATEMENT OF ISSUES ON APPEAL

Did the lower court err in failing to find that there was a genuine issue of material fact as to whether the zoning administrator did or did not have authority to grant the plaintiffs' application in phases?

Did the lower court err in granting summary judgment when the Town's Ordinances—if they existed—require that the plaintiffs' application be automatically approved after 60 days if the Planning Commission does not act?

STATEMENT OF THE CASE

On June 14, 2007, the defendants (who, as explained later, became the plaintiffs) appeared before the Town of Hollywood Planning Commission for approval to subdivide a 13.2-acre parcel of real estate located on Bryan Road next to Stono Plantation. (This is the "first Planning Commission meeting.") The Planning Commission directed the landowners to the Town's Planning Director,

who approved the subdivision in two phases on June 22, 2007 and June 27, 2007. (R.O.A. pps. ____ [plats]) After issuing two work permits to the landowners to clear the property, the Town of Hollywood filed this action on October 12, 2007, at case number 2007-CP-10-4559, alleging that the Town's Zoning Administrator improperly approved the defendants' subdivision plat because the Town's Ordinances required that the subdivision be approved by the Town's Planning Commission. Reserving all their rights, the parties struck that case with leave to restore to afford the defendants—the landowners—an opportunity to appear before the Planning Commission a second time to gain approval. The landowners did that on August 14, 2008, and the Town's Planning Commission took no action on the subdivision request. (This is the "second Planning Commission meeting.") Therefore, the parties restored the case on March 29, 2010, at Case No. 2010-CP-10-2695.

The Town renewed its motion for summary judgment, which came before Judge Markley Dennis on September 7, 2010. Judge Dennis granted summary judgment for the Town, which then left the landowners' counterclaims as the only remaining issues. Therefore, the trial court realigned the landowners as plaintiffs for trial. To avoid confusion, we will refer to the landowners as plaintiffs even though they are listed in the caption as defendants. The landowners, who became the plaintiffs, filed their answer and counterclaims on August 29, 2008, alleging a violation of equal protection, due process, tortious interference, etc.

The Town's Planning Commission included Matt Wolfe, who lives next door to the plaintiffs' project in the gated community known as Stono Plantation, and who is personally opposed to it because of what he claims will be an adverse impact on his neighborhood. At the first Planning Commission meeting on June 14, 2007, the first Planning Commission took no action on the application and directed the plaintiffs to see the Town's Planning Director, Kenneth Edwards. Town

Council Member, Annette Sausser, attended this first Planning Commission meeting and introduced herself to the plaintiffs and their witnesses by making a throat slashing gesture, telling them that their application will “never happen!” (See Record on Appeal, pages ___ - ___ for the transcript of this first Planning Commission hearing.)

The plaintiffs’ counterclaims against the Town of Hollywood allege that the Town denied their subdivision request for improper purposes and violated the defendants’ constitutional rights. On May 5, 2010, the Town filed a motion for summary judgment. On July 23, 2010, the landowners filed an affidavit in opposition to the motion for summary judgment. On September 7, 2010, the Honorable R. Markley Dennis, Jr. granted the Town of Hollywood summary judgment on the issue of the subdivision. Immediately after Judge Dennis granted summary judgment, the Clerk called the case for trial. Since Judge Dennis granted summary judgment for the Town on the relief it sought, the lower court realigned the parties, and the landowners became the plaintiffs. The parties tried the case from September 8-13, 2010. On September 13, 2010, the jury returned a verdict against the Town for \$450,000.00.

On September 22, 2010, the landowners filed a motion for reconsideration of Judge Dennis’ Order Granting Summary Judgment. On September 23, 2010, the Town moved for an Order granting a new trial, which the circuit court denied by Order dated October 4, 2010. On October 19, 2010, Judge Dennis denied the landowners’ motion for reconsideration. The Town appealed the jury verdict on May 13, 2010, and the landowners appealed Judge Dennis’ summary judgment order on May 19, 2011. As a result, the Town became the primary appellant on its appeal from a jury verdict, and the defendants became the secondary appellant on their appeal from Judge Dennis’ summary judgment Order.

FACTS

The underlying facts are almost entirely uncontested. As may be seen by reference to Jeff Floyd's affidavit (R.O.A. p. ___), he and two partners purchased a 13.2-acre tract located on Bryan Road. Prior to purchasing the property, they inquired of the Town as to whether the tract could be subdivided. They appeared before the Town Planning Commission on June 14, 2007, and the Planning Commission directed the landowners to make an application to the Planning Director, Kenneth Edwards. When they appeared before the Planning Commission on June 14, 2007, while waiting for their case to be called, Town Council member Annette Sausser approached them and inquired if they were there on the Bryan Road matter. When they replied in the affirmative, Councilwoman Sausser drew her thumb across her neck to simulate cutting her throat and told the landowners and their witnesses: "Never happen!" For an unbiased account of this event see the testimony of Mary W. Wolf at R.O.A. p. ___ [tr. page 344-346]

The first Planning Commission informed the applicants that they were in the wrong place and directed them to see the Zoning Director, Kenneth Edwards. After consulting with Mr. Edwards, the applicants and their engineer, Curtis Lybrand, submitted their subdivision to Mr. Edwards in the manner instructed by him. He approved the subdivision in two phases, and stamped phase 1 on June 22, 2007 and phase 2 on June 27, 2007. (R.O.A. pages __ and __) The plaintiffs then recorded the plats and proceeded to market the lots. After the Town approved the subdivision, the Town issued two permits to the plaintiffs, a logging permit on July 20, 2007 and a second one on September 4, 2007 (R.O.A. pages __ and __ [plaintiffs' exhibits 8 and 9] Once the plaintiffs were actively engaged in development, then the Town asserted that Edwards' acts were void based on the Town's ordinances. The plaintiffs responded the Town had no ordinances, and if it did, the Town could not

produce them. As set forth above, Judge Dennis granted the Town summary judgment because he found the Town's ordinances controlled, and after moving for reconsideration, the plaintiffs appealed on May 19, 2011. (R.O.A. p. ____ [Notice of Appeal].

ARGUMENT 1.

The learned trial judge erred by not giving any weight to the plaintiffs' affidavit filed in response to the Town's motion for summary judgment.

It will be difficult to evaluate this case if this Court operates under the normal expectation of how the Town of Hollywood operates. The Town of Hollywood is unique in the history of local government. The Town of Hollywood has never been burdened by deference for the rule of law, and the Town openly flaunts the most fundamental underpinnings of law. Without so much as a pretend nod to the First Amendment, it declares itself a "Christian" town, adopting the Christian cross as its municipal symbol. (See any Town of Hollywood official document, such as correspondence to the plaintiffs at R.O.A. p. ____ [Holton correspondence to Floyd dated October 23, 2007, Plaintiffs' Exhibit 12] The present case is but one chapter in the long, well-documented history of bizarre governmental acts in Hollywood. At the trial of this case, one witness testified that dealing with the Town of Hollywood on a 1-10 scale, with 1 being "excellent" and 10 "horrible" is a "13":

Q. How would you rate your experience with the town of Hollywood on a one to ten?

A. At the time I did it, I would rate them at about a 13.

Q. And what do you attribute that to?

A. It was just a pain. I don't like having to deal with people who inflect their personal opinions into it. I like to follow a set of rules. There should be a set of rules that you follow. I'm

not interested in a specific person's personal feeling about it or the fact that he may live next door to it and have some interest in it. That doesn't mean a thing to me. All I'm interested in doing is following the rules.

R.O.A. pps. ____ - ____ [tr. Pps. 492- 493]

In order to appreciate the background of this controversy, consider the Town's opening salvo to the applicants expressed through the statement of its Town Council member Annette Sausser, who without hearing any of the particulars, told the plaintiffs: "Never happen!" The General Assembly requires local governments to have Planning Commissions in an effort to insulate land use issues from politics. As Justice Waller said in *I'ON v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), land use decisions are supposed to be "rational" and free from "undue political influence." Here, Councilwoman Sausser believes it is appropriate not only to participate in a Planning Commission hearing in violation of the statute, but also to broadcast the end result to the applicants by simulating a throat cutting before they have an opportunity to state their case. Even though she is not a member of the Planning Commission, she had a significant interest in the Bryan Road project since she owned property in the adjoining gated community, Stono Plantation. See Plaintiffs' Exhibit 18 at page ____ of the R.O.A. Because she was so personally interested in killing the project, she sat on the dais with the Planning Commission, which is an additional exclamation point on the Town's disrespect for the rule of law. Her participation as a Town Council member violates the statutory composition of the Planning Commission. See § 6-29-350: "no member of a planning commission may hold an elected public office. . .". All Planning Commission members know this because the statute requires them to undergo training as a member, and this training includes ethics. The purpose of the statutory scheme is to prevent the thing that happened to the plaintiffs in this

case. The Town of Hollywood does not care, and it is free to thwart the General Assembly's mechanism to insulate land use decisions from "undue political influence" despite the clear direction of the courts:

In municipal government, few issues generate as much public interest as the control of land-use development. Zoning ordinances touch people where they live. Sensitive to the intense public interest in local land-use development, **the Legislature has developed an orderly structure for public participation in the process. That process also contemplates the rational development of land use, free from undue political influence.**

ION v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (emphasis added)

As this record demonstrates, the Town of Hollywood openly rejects this idea, and because the wealthy homeowners of the gated Stono Plantation neighborhood next door had the ear of Town Councilwoman Sausser, a former resident of the gated community, the plaintiffs never had a chance.

Thus, the lower court did not evaluate the Town's motion for summary judgment properly because it made the understandable mistake in assuming that the Town of Hollywood at least plays lip service to the rule of law. The error below is that the lower court did not give the plaintiffs' affidavit filed in opposition to summary judgment **any** weight. In short, the lower court rejected the Floyd affidavit and could not accept that the Town operates without published ordinances even though the affidavit filed in opposition to summary judgment creates a genuine issue of material fact on this point. Specifically, with regard to the ordinances that allegedly prohibit the Planning Director from approving a subdivision of less than ten lots, Mr. Floyd states:

First of all, I made demands in person upon the Town time and time again to show me what Ordinance was preventing us from moving forward. Not only could the Town not identify any Ordinance, but also it could not even provide a copy of its Ordinances to me. I made 3 trips to the City Hall, each time asking for a copy of the Ordinances. At one meeting set up specifically to get the Ordinances, Troy and I met with the mayor's assistant, Beth Carpenter and with Ed Holton, the current Zoning Administrator, and they told Troy and me that the Town could not produce any Ordinances for us because the Town was in the process of

"recodifying" them and the Ordinances were not in any one place where they could be retrieved.

The Town of Hollywood had no written Ordinances that they could provide to us until after this lawsuit. Even now the versions that the Town now produces do not match up.

It is shocking that the Town now cites Ordinances which did not exist when this controversy began, and if the Ordinances did exist, which I doubt, the Town was unable to produce them. Affidavit of Jeff Floyd, July 13, 2010 (R.O.A. page ____)

The lower court gave this affidavit no weight and ignored this testimony. See plaintiffs' September 21, 2010, Motion for Reconsideration in the Record on Appeal at page ____: "As may be seen by reference to the affidavit filed in opposition to the Town's motion for summary judgment, the Town of Hollywood had no ordinances in 2007, and if it did, it could not produce them or even identify them. The plaintiffs argue that the existence of the ordinances in June 2007 is in doubt, and at a motion for summary judgment, the Court is not allowed to disregard this testimony because to do so it must weigh competing allegations and decide who to believe. If the existence of the ordinances is in doubt, then this Court cannot possibly conclude that Kenneth Edwards' acts were *ultra vires*." At the summary judgment stage, the Court is not permitted to weigh evidence let alone ignore it. In fact, the Court is required to construe all the facts and the inferences reasonably deducible there from in the light most favorable to the party resisting summary judgment:

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Sumner v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); Rule 56(c), SCRPC. See also *Standard Fire Ins. Co. v. Marine Contracting and Towing Co.*, 301 S.C. 418, 392 S.E.2d 460 (1990) (motion for summary judgment shall be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment

as matter of law). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence

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and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994). See also *Bates v. City of Columbia*, 301 S.C. 320, 391 S.E.2d 733 (Ct.App. 1990) (in determining whether to grant summary judgment, pleadings and documents on file must be liberally construed in favor of nonmoving party who must be given benefit of all favorable inferences that might reasonably be drawn from record). If triable issues exist, those issues must go to the jury. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997); *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Tupper, supra*; *Koester, supra*. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Tupper, supra*; *Baugus, supra*.

Staubes v. Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998)

South Carolina law requires that a municipal government have its ordinances on file and available for inspection and copying by any interested citizen. See § 5-7-290:

Municipal ordinances to be codified; public inspection. Each municipal council shall provide by ordinance for the codification and indexing of all ordinances, either typewritten or printed, and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times.

Here the plaintiffs' evidence—which the lower court erroneously ignored—is that these ordinances did not exist, and if they did exist, the Town was either unable or unwilling to produce them. The plaintiffs contend that the ordinances came into existence after the fact to bolster the Town's position. Either way, the lower court did not give this evidence any weight and thus improperly granted summary judgment. Summary judgment is a drastic remedy that should be cautiously

invoked so as to not deprive a party of his or her fundamental right to trial by jury. An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment. *Id.* Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004). The Order under review (and the Order denying reconsideration) construes all the evidence in the light most favorable to the Town, and for this reason, the Order granting summary judgment must be reversed.

While not dispositive of the issue now before the Court, it is interesting to note that when this case did go to trial, the jury in the case deadlocked 10-2 to award the plaintiffs' 1.5 million dollars in damages. Only after an *Allen* charge by the trial court, did the jury return a compromise verdict of \$450,000.00. "An *Allen* charge, also known as a "Dynamite" or "Hammer" charge, is to be used when the jury has expressed a deadlock and cannot come to a unanimous conclusion. *See Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154." *State v. Kelly*, 372 S.C. 167, 641 S.E.2d 468 (Ct. App. 2007) Had the jury been given an opportunity to hear about the dysfunctional manner in which the Town treated the subdivision of the lots between the Town's Planning Commission and the Town's Planning Director, it is entirely possible that the *Allen* charge would have been unnecessary. The point is that Judge Dennis' Order prevented the jury from hearing the full orchestration of the Town's irregular procedures.

It is thus reasonable to infer that the jury verdict would not have deadlocked and would have been much higher had the lower court not deprived the plaintiffs of the opportunity to present this issue before the jury. Because the lower court gave no weight to the plaintiffs' evidence, and

because there is a clear genuine issue of material fact, the lower court's order should be reversed and remanded for entry of judgment against the Town of Hollywood.

ARGUMENT 2.

Even if the Ordinances did exist, they require that the plaintiffs' subdivision request was approved by the Planning Commission's failure to act.

In perhaps one of the greatest unintended ironies of trial practice, the inescapable fact is that if the Town's ordinances did, in fact, exist at the time of the plaintiffs' application for subdivision, then the plaintiffs' subdivision request became automatically approved on October 15, 2008, at the latest. As set forth above, the landowners appeared before the Planning Commission not once, but twice, first on June 14, 2007, without counsel and then again on August 14, 2008, with counsel. Both times the Planning Commission refused to act on the application. During discovery conducted in the lawsuit, the plaintiffs obtained a copy of what the Town contends its ordinances are. Section 5-6-26 "The Final Plat" sets forth the following procedure:

(e) Action on Final Plat. The Planning Commission shall approve or disapprove the final plat as soon as possible after it has been submitted for final approval. Approval and the date thereof shall be shown on the plat over the signature of the chairman of the Planning Commission and the Zoning Administrator. If no action is taken by the Commission at the end of sixty (60) days after submission, the plat shall be deemed to have been approved.

The irony of the Town's late statutory disclosure is that Councilwoman Sausser¹ previously made clear at the outset the Town's position on the subdivision application. Rather than stick to

¹ James Fennimore Cooper archly commented on untrained people making important political decisions: "The tendency of democracies is, in all things, to mediocrity, since the tastes, knowledge, and principles of the majority form the tribunal of appeal." "On the Disadvantages of Democracy" (1838) Councilwoman Sausser lacked the courage of her convictions and declined to share them at the trial of this case.

their guns, the Town's Planning Commission took a less honorable path and did nothing. While it is impossible to miss the Town's intent, transmitted as a simulated cut throat, accompanied with an emphatic "never happen!", even the most skillful trial lawyer cannot extract evidence from a witness' secret heart, giving rise to the universal proverb that we judge by what we do and not by what we say. Here, of course, Councilwoman Sausser, breaking with the usual political practice of hiding untoward acts, threw in an oral coupe de grace, which no one present mistook for anything other than the outcome was decided in advance. In evaluating this evidence, no one can mistake her or the Town's intentions. Because the Planning Commission was more circumspect, we must evaluate their state of mind in the usual fashion. They chose to do nothing. Passiveness is rarely a good quality, especially where the minority view is under attack. Literature offers a different approach to the analysis of character, and thus gives rise to dramatic renderings of the involuntary agenbite of inwit—remorse of conscience—made most famous by Shakespeare and James Joyce. No amount of metaphorical washing—the literary equivalent of political rationalizing—can wipe clean what the Town of Hollywood was doing—and still is doing—and all of the efforts of the General Assembly to design a statutory procedure to provide a level playing field fail when members appointed to the Planning Commission lack enough conviction to sit out decisions in which they are personally affected or to permit applicants to be heard or to vote projects up or down "free from undue political influence" as the Town's alleged ordinance requires. Matt Wolfe's refusal to step aside from voting on a project that personally affects him, and the Commission's refusal to vote not only speaks volumes about Hollywood's ethical shortcomings, but also provides the unintended ironic background to the legal issue presented in this case. The legal effect of this unintended irony is that the Town of Hollywood told the lower court, and will now tell this Court, that it wants to have its

cake and eat it too.

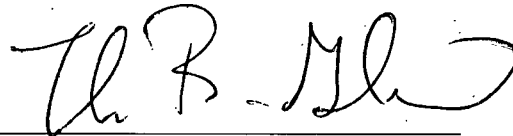
On the one hand, the Town says the subdivision request is denied because it fails to conform to ordinances it could not produce, and on the other hand, the same ordinances—ultimately produced in discovery—determine that the plaintiffs' subdivision request is approved for lack of action. Either way, the lower court erred in concluding that there is no genuine issue of material fact.

CONCLUSION

For the foregoing reasons, the lower court erred in granting the Town summary judgment when there is evidence in the record that the Town's alleged ordinances either did not exist, or if they did exist could not be produced. Either way, the landowners made out a genuine issue of material fact, and the lower court erred in granting summary judgment for the Town.

Respectfully submitted,

November 15, 2011



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The Supreme Court of South Carolina

The Town of Hollywood, Appellant/Respondent,

v.

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

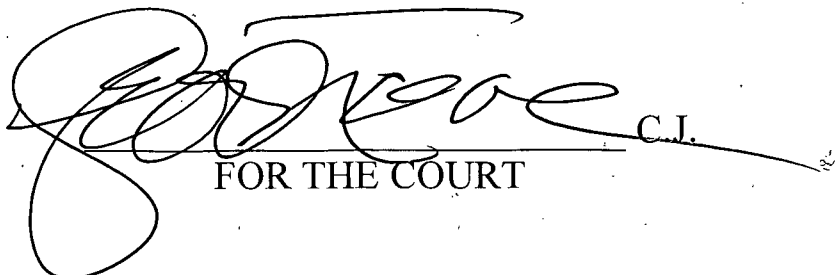
Appellate Case No. 2010-174946

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.

 C.J.
FOR THE COURT

Columbia, South Carolina

September 17, 2012

cc:

Thomas R. Goldstein

Hugh Willcox Buyck

Andrew F. Lindemann

Katie F. Monoc

The Honorable Jenny Kitchings

BELK, BB, INFINGER AND GOLDSTEIN, P.A.

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Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

July 18, 2012

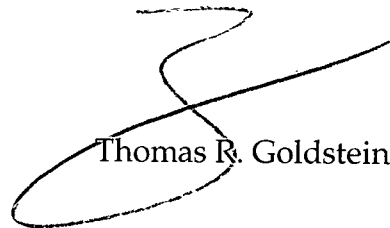
Hon. Jenny Abbot Kitchings
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Kitchings,

I enclose an original and 14 copies of the Respondents/Appellants' Appellants' Brief, Respondents' Brief and Reply Brief along with a certificate of mailing, certificate of compliance and certificate of counsel. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: as stated

cc: Andrew Lindemann, Esq.

Hugh Buyck, Esq.

Jeff Floyd

RECEIVED

JUL 19 2012

SC Court of Appeals

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Plyler
Joël S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

July 9, 2012

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED

JUL 09 2012

SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010-174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Kitchings:

Please find enclosed for filing the originals and fifteen copies each of the three volume **Record on Appeal** in the above referenced matter. Please file the originals and return one clocked-in copy of each volume to me by way of my courier.

By copy of this letter, I am advising all counsel of record that the Record on Appeal has now been filed with the Court. The final briefs and supplemental record on appeal of the appellant-respondent will be filed under separate cover.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
July 9, 2012
Page Two

cc: Thomas R. Goldstein, Esquire (*w/out Enclosure*)
Hugh W. Buyck, Esquire (*w/out Enclosure*)
W. Andrew Gowder, Jr., Esquire (*w/out Enclosure*)
Katie F. Monoc, Esquire (*w/out Enclosure*)

DAVIDSON & LINDEMANN, P.A.

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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

July 9, 2012

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED
JUL 09 2012
SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010-174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Kitchings:

Please find enclosed for filing the originals and fifteen copies each of the below listed documents in the above referenced matter.

1. Appellant's Brief of Appellant-Respondent
2. Respondent's Brief of Appellant-Respondent
3. Reply Brief of Appellant-Respondent
5. Supplemental Record on Appeal

Please file the originals and return one clocked-in copy of each document to me by way of my courier.

By copy of this letter, I am serving a copy of the Supplemental Record on Appeal on counsel for the Appellants-Respondents. I am also serving copies of the briefs on all counsel of record.

The Honorable Jenny Abbott Kitchings
July 9, 2012
Page Two

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Thomas R. Goldstein, Esquire (*w/ Enclosures*)
Hugh W. Buyck, Esquire (*w/ Briefs Only*)
W. Andrew Gowder, Jr., Esquire (*w/ Briefs Only*)
Katie F. Monoc, Esquire (*w/ Briefs Only*)

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

June 5, 2012

Writer's Email: alindemann@dml-law.com

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010-174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the **Certificate of Service** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am advising all counsel of record of this filing with the Court.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED

JUN 07 2012

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
June 5, 2012
Page Two

cc: Thomas R. Goldstein, Esquire (*w/ Enclosure*)
Hugh W. Buyck, Esquire (*w/ Enclosure*)
W. Andrew Gowder, Jr., Esquire (*w/ Enclosure*)
Katie F. Monoc, Esquire (*w/ Enclosure*)

RECEIVED

JUN 07 2012

SC Court of Appeals

The South Carolina Court of Appeals

The Town of Hollywood, Appellant/Respondent,

v.

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

Appellate Case No. 2010-174946

The Honorable Roger M. Young, R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2010CP1002695

ORDER

The time for serving the record on appeal and filing proof of service with the Court is hereby extended until July 9, 2012.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

Thomas R. Goldstein
Hugh Willcox Buyck
Andrew F. Lindemann
W. Andrew Gowder, Jr.

FILED

6-19-12 LAJ

64291

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

May 18, 2012

Writer's Email: alindemann@dml-law.com

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

RECEIVED
MAY 21 2012
SC Court of Appeals

Dear Ms. Kitchings:

This letter is to request a fifteen day extension of time to serve the Record on Appeal and filed proof of service in the above-referenced appeal. The current deadline for service of the Record on Appeal is May 21, 2012.

I need the additional time requested because of other deadlines and obligations. In addition, my paralegal who is assisting me with the preparation of the Record on Appeal was on vacation during the week of May 14, 2012. This is a voluminous Record on Appeal from a multi-day trial with numerous exhibits. As a result, the Record on Appeal is not an easy one to assemble.

I have communicated with Thomas Goldstein, who represents the Respondents-Appellants, and he has kindly consented to the requested extension.

I am enclosing with this letter my law firm's check in the amount of \$25.00 for the filing fee. If you require a formal motion for this extension, please advise.

If you have any questions, please advise. Thank you for your assistance with this matter.

The Honorable Jenny Abbot Kitchings
May 18, 2012
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/
Enclosure

cc: Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

APR 20 2012

SC Court of Appeals

The Town of Hollywood..... Appellant/Respondents,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents/Appellants' Initial Reply Brief upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 19th day of April, 2012, to the following address: Mr. Andrew Lindemann, Esq. at Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568, and Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant/Respondent.



Thomas R. Goldstein, Attorney for
Respondents/Appellants
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

APR 20 2012

The Town of Hollywood.....Appellant/Respondent,

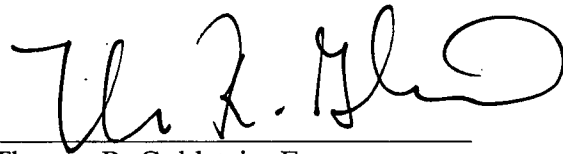
SC Court of Appeals

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF COMPLIANCE

I certify that the Respondents/Appellants' Initial Reply Brief in this case is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.



April 19, 2012

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
Attorneys for Respondents/Appellants

BEL COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@hotmai.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

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CHARLESTON, SC 29405

Mailing Address:
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Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

April 19, 2012

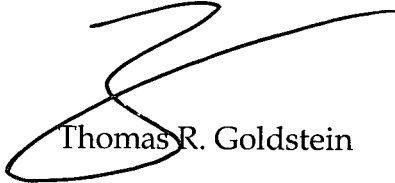
Hon. Jenny Abbot Kitchings
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Kitchings,

I enclose the original and extra copy of the Respondents'/Appellants' Initial Reply Brief, along with a Certificate of Service, Certificate of Compliance and Certificate of Counsel. Would you be so kind as to file the original with the Court and return a copy marked filed in the envelope provided? By copy of this letter to opposing counsel, I am likewise serving a copy of the Initial Reply Brief on them. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/rt
enclosure: as stated return envelope
cc: Andrew Lindemann, Esq.
Hugh Buyck, Esq.
Jeff Floyd

RECEIVED
APR 20 2012
SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 12, 2012

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Re: Town of Hollywood v. Floyd, William.
Case #2010174946

Dear Counsel:

The following Order has been endorsed on your Motion for an Extension in the above entitled case on appeal.

“Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen, by *Jenny Abbott Kitchings*
Deputy Clerk

April 12, 2012.”

Please be advised the Appellant’s Initial Reply Brief of the Appellant/Respondent has been received and accepted as filed.

Very truly yours,

Jenny A Kitchings
CLERK

JAK/jt

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire

The South Carolina Court of Appeals

The Town of Hollywood,

Appellant/Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy
Readen and Edward McCracken a/k/a
Eddie McCracken,

Respondents/Appellants.

The Honorable R. Markley Dennis, Jr.
The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2010-CP-10-02695
2010-CP-10-02695

ORDER

For good cause having been shown, the time for serving and filing the Appellants' Initial Reply Brief of the Respondents/Appellants in the above entitled matter is hereby extended until April 20, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY Jenny A. Kitchens
CLERK

FILED
4/12/12 UAF

Columbia, South Carolina

cc: Andrew F. Lindemann, Esquire
Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 04 2012

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

SC Court of Appeals

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

**APPELLANT-RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Appellant-Respondent Town of Hollywood proposes that the following be
included in the Record on Appeal:

- (1) Trial Transcript
pp. 485-487, 490-493

RECEIVED

APR 04 2012

SC Court of Appeals

We certify that this designation contains no matter which is irrelevant to this appeal.

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

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

*Counsel for Appellant-Respondent
Town of Hollywood*

Columbia, South Carolina

April 4, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

RECEIVED

APR 04 2012

Case No. 2010-CP-10-2695

SC Court of Appeals

The Town of Hollywood, Appellant-Respondent,

v.

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

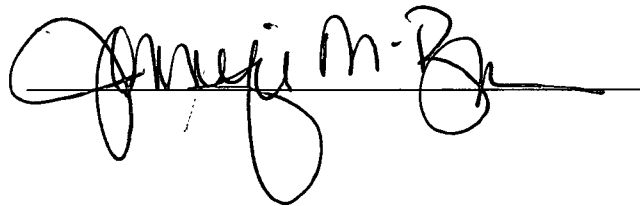
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent Town of Hollywood, does hereby certify that service of the **Initial Reply Brief of Appellant-Respondent and Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter 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 4th day of April 2012:

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

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 "Hugh W. Buyck". The signature is written in a cursive style with a long horizontal line extending to the right.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
Robert D. Garfield
Michael B. Wren

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Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

* Also admitted in North Carolina
† Certified Mediator

April 4, 2012

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Kitchings:

Enclosed for filing please find the originals and one copy each of the **Initial Reply Brief of Appellant-Respondent and Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
APR 04 2012
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
April 4, 2012
Page Two

cc: (w/ Enclosures)

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

RECEIVED

MAR 28 2012

SC Court of Appeals

MOTION FOR EXTENSION

The Respondents/Appellants move for an order of the Court granting the Respondents a twenty day extension to file their initial reply brief and designation of contents of record on appeal. The initial reply brief is due, Friday March 30, 2012. This motion is based on the Respondents/Appellants' counsel's recent illness, causing counsel to become behind on many things. Because of a heavy workload combined with recent illness, the Respondents/Appellants request an extension of twenty days to file their initial reply brief, making the reply brief due on or before Friday, April 20, 2012. I have consulted with opposing counsel who does not oppose this request.

Respectfully submitted,

March 27, 2012

Other counsel of record:

Andrew F. Lindemann, Esq.
Hugh Buyck, Esq.



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291 (843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

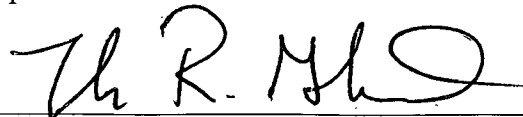
The Town of Hollywood..... Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents/Appellants' Motion for Extension upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 27th day of March, 2012, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, and Mr. Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568 as Attorneys for the Appellant/Respondent.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

March 27, 2012

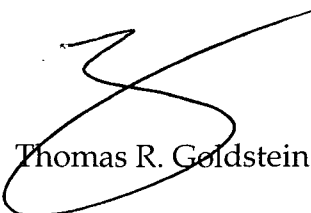
Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Gee,

The Respondents/Appellants' initial reply brief and designation of contents of record on appeal is due Friday, March 30th, and I am respectfully requesting a twenty (20) day extension making the respondent's initial brief due on or before Friday, April 20, 2012. I have set forth the reasons for this in the attached motion. I have also spoken to opposing counsel who do not object to this request, and I likewise, consent to a similar extension for them as well. I enclose our firm's check in the amount of \$25.00 to cover this cost. Please let me know if I need to do anything further in order to perfect this request. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: check, motion, return envelope

cc: Andrew Lindemann, Esq.
Hugh Buyck, Esq.
Jeff Floyd

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
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www.dml-law.com

Lawrence S. Kerr, M.D. †
Kate A. Swedlow
Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

Of Counsel
Kenneth P. Woodington

March 26, 2012

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

RECEIVED

MAR 28 2012

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

This letter is to request an additional seven day extension of time to file the Initial Reply Brief of the Appellant-Respondent Town of Hollywood in the above-referenced appeal.

I am requesting this additional extension because I have not been able to complete the preparation of this Initial Reply Brief due to other obligations and deadlines. In particular, I have recently been involved in a class action trial that began on February 6, 2012 and was just completed on March 23, 2011. In my previous request for an extension, I had advised that the trial would be completed by March 16th. That ended up being incorrect. Closing arguments were just completed this past Friday. Needless to say, my participation in such a lengthy and complex trial has created havoc with my schedule and my other deadlines. I had hoped to have had this Initial Reply Brief completed by today's date, but I am not able to do so.

I was unable to consult with opposing counsel prior to the filing of this extension request; however, I do not anticipate any objection given our prior track record in this appeal.

I am enclosing with this letter my law firm's check in the amount of \$25.00 for the filing fee. If you require a formal motion for this extension, please advise.

Thank you for your consideration of this request.

3/26/12 224
4/2/12

The Honorable Tanya A. Gee
March 26, 2012
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/
Enclosure

cc: Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: Jenny A. Kitching
(Clerk) (~~Deputy Clerk~~)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge
R. Markley Dennis, Jr. Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

MAR 22 2012

SC Court of Appeals

The Town of Hollywood, Appellant-Respondent,

v.

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

**APPELLANT-RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Appellant-Respondent Town of Hollywood proposes that the following be included in the Record on Appeal:

- (1) Order Denying Motion for Reconsideration filed October 19, 2010
- (2) Town of Hollywood's Motion for Summary Judgment

- (3) Town of Hollywood's Memorandum and Points of Authorities in Support of Motion for Summary Judgment filed May 5, 2010
- (4) Town of Hollywood's Notice of Lodgment of Exhibits, with Exhibits I, L, M, and N
- (5) Defendants' Motion for Reconsideration filed September 22, 2010
- (6) Affidavit of Jeff Floyd
- (7) Transcript of Hearing, September 1, 2010, pp. 1-22

We certify that this designation contains no matter which is irrelevant to this appeal.

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

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

*Counsel for Appellant-Respondent
Town of Hollywood*

Columbia, South Carolina

March 19, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

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 **Initial Respondent's Brief of Appellant-Respondent and Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter 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 March 2012:

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

RECEIVED
MAR 22 2012
SC Court of Appeals

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

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 "L. O. Jones", is positioned above a solid horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
Robert D. Garfield
Michael B. Wren

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Telephone: (803) 806-8222
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Lawrence S. Kerr, M.D. †
Kate A. Swedlow
Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

Of Counsel

Kenneth P. Woodington

March 19, 2012

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

Enclosed for filing please find the originals and one copy each of the **Initial Respondent's Brief of Appellant-Respondent** and **Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
MAR 22 2012
SC Court of Appeals

The Honorable Tanya A. Gee
March 19, 2012
Page Two

cc: (w/ Enclosures)

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
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Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
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Charleston, South Carolina 29413

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
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Lawrence S. Kerr, M.D. †
Kate A. Swedlow
Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

Of Counsel
Kenneth P. Woodington

March 5, 2012

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED

MAR 05 2012

SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

This letter is to request a twenty day extension of time to file the Initial Reply Brief of the Appellant-Respondent Town of Hollywood in the above-referenced appeal. The Initial Reply Brief is presently due on March 5, 2012.

I am unable to complete the preparation of my client's Initial Reply Brief because I am currently involved in a multi-week class action trial in the Richland County Court of Common Pleas before Judge Michael Baxley that began on February 6, 2012. That trial will continue through March 16th. As a result, I have not had ample opportunity to prepare the reply brief.

I am enclosing with this letter my law firm's check in the amount of \$25.00 for the filing fee. If you require a formal motion for this extension, please advise.

If you have any questions, please advise. Thank you for your assistance with this matter.

154
3/5/12
3/26/12

The Honorable Tanya A. Gee
March 5, 2012
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood.....Appellant/Respondent,

vs.

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

RESPONDENTS' DESIGNATION OF CONTENTS OF RECORD ON APPEAL

February 23, 2012

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

ORDERS

Order Granting Summary Judgment

Order Denying Motion for New Trial & Granting Attorney's fees and costs

Order Denying Motion for Judgment N.O.V.

Jury verdict

Judgment

PLEADINGS

Complaint

Motion for Injunction

Answer & Counterclaim

Reply to counterclaim

Plaintiff's Motion for Attorney's fees & costs

Affidavit of Jeff Floyd July 13, 2010

Notice of Appeal

TESTIMONY

Testimony of Ed Holton 41-155

Testimony of Jackie Seward 156-158

Testimony of Anne Boone 158-177

Testimony of Richard Threat 177-198

Testimony of Colin Campbell 198-209

Testimony of Matthew Wolf 223-291 & 295-331

Testimony of Mary W. Wolf 339-357

Testimony of Oliver Wood 357-366

Testimony of Michael Rourke 376-402

Testimony of Curtis Lybrand 407-456

Testimony of Eddie McCracken 460-485

Testimony of George Johnson 485-505

Testimony of Troy Readon 506-529

Testimony of William J. Floyd 529-593

Motion for Directed Verdict 594-618

Testimony of Jacqueline Heyward 618-651

Testimony of Althea Salters 652-666

Testimony (Reply) of William J. Floyd 666-669

Motion for directed verdict 670-680

Jury charge 753-776

Jury question 781

Jury question 792

Allen charge 793-796

Verdict 796-797

EXHIBITS

Plaintiffs' exhibits 1-25, 26 (same as 51), 28-32, 34, 36-50, 51 (same as 26—does not need to be included twice), 53-55.

Defendant's exhibits 1-6, 8-11 (include transcript of June 14, 2007 to accompany Defendant's 10 and Court's 1—audio recordings of June 14, 2007 meeting)

Court's 1-9 (No objection to Defendant's 10 and Court's 1—audio recordings—being submitted as single "document" without duplication)

CERTIFICATION

I certify that this designation contains no material which is irrelevant to the appeal.

February 23, 2012



Thomas R. Goldstein I.D. #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
843-554-4291

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood..... Appellant/Respondents,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Initial Brief and Designation of Contents of Record on Appeal upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 23th day of February, 2012, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for
Respondents/Appellants
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF COMPLIANCE

I certify that the Respondents' Initial Brief and Designation of Contents of Record on Appeal in this case is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.

February 23, 2012



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
Attorneys for Respondents/Appellants

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
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CHARLESTON, SC 29405

Mailing Address:
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February 22, 2012


Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Gee,

I enclose the Respondent's original and an extra copy of the Initial Brief along with Designation of Contents of Record on Appeal. I also enclose a certificate of service and a certificate of compliance. Would you be so kind as to file the original and return the clocked copy to me in the envelope provided. By copy of this letter, I am serving a copy on opposing counsel. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/rt
enclosure: as stated, return envelope
cc: Andrew Lindemann, Esq.
Hugh Buyck, Esq.
Jeff Floyd

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

RECEIVED

FEB 16 2012

SC Court of Appeals

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.

**MOTION FOR EXTENSION
TO FILE INITIAL RESPONDENT'S BRIEF**

The Appellant-Respondent Town of Hollywood respectfully moves this Court for a thirty day extension of time until March 19, 2012, by which to file and serve the Initial Respondent's Brief of Appellant-Respondent Town of Hollywood and Designation of Matter to be Included in the Record on Appeal.

The Appellant-Respondent's motion is based on the following grounds:

1. The undersigned counsel requires the additional time to complete the preparation and drafting of the Initial Respondent's Brief in this appeal. In particular, the undersigned counsel is currently in the middle of a five week class action trial in the Richland County Court of Common Pleas which began on February 6, 2012 and is scheduled to run through at least March 9, 2012 and potentially beyond that date.

2. Additionally, the undersigned counsel just received the recently requested motion hearing transcript from the court reporter on Friday, February 10, 2012. This transcript is needed to respond to one of the Respondents-Appellants' arguments which the undersigned counsel has concluded was not raised in the lower court to Judge Dennis who adjudicated the motion for summary judgment. Because of the class action trial the undersigned is currently involved in, he has not had ample time to review the transcript and address the issues raised.

3. In addition, the undersigned counsel has been requested to consent to a similar extension of time being requested by counsel for the Respondents-Appellants for their Initial Respondents' Brief because of a trial their counsel is presently involved in. The undersigned consents to that extension. The extension requested herein will thus keep both the appeal and cross-appeal on the same schedule.

WHEREFORE, the Appellant-Respondent Town of Hollywood respectfully requests that it be allowed until March 19, 2012, by which to file and serve the

Initial Respondent's Brief of Appellant-Respondent Town of Hollywood and
Designation of Matter to be Included in the Record on Appeal.

DAVIDSON & LINDEMANN, P.A.

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

Hugh W. Buyck
Buyck & Sanders, LLC
757 Johnnie Dodds Boulevard
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(843) 377-1400

W. Andrew Gowder, Jr.
Katie F. Monoc
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413
(843) 727-2200

*Counsel for Appellant-Respondent,
Town of Hollywood*

Columbia, South Carolina

February 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

RECEIVED
FEB 16 2012
SC Court of Appeals

The Town of Hollywood, Appellant-Respondent,

v.

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

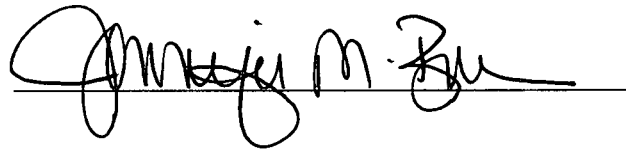
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent, Town of Hollywood, does hereby certify that service of the **Motion for Extension to File Initial Respondent's Brief** in the above-captioned matter 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 16th day of February 2012:

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464

Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413

A handwritten signature in black ink, appearing to read "Hugh W. Buyck", is written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
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Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
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Lawrence S. Kerr, M.D. †
Kate A. Swedlow
Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

Of Counsel

Kenneth P. Woodington

February 16, 2012

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

Enclosed for filing please find the original and seven copies of the **Motion for Extension to File Initial Respondent's Brief** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED

FEB 16 2012

SC Court of Appeals

The Honorable Tanya A. Gee
February 16, 2012
Page Two

cc: (w/ Enclosures)

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
757 Johnnie Dodds Boulevard
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Mount Pleasant, South Carolina 29464

Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
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Charleston, South Carolina 29413

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

MOTION FOR EXTENSION

The Respondents/Appellants move for an order of the Court granting the Respondents a ten (10) day extension to file their final brief. The Respondent's initial brief is currently due, Thursday, February 16, 2012. This motion is based on the inability of counsel to complete Respondents' brief due to being occupied trying a case in the Charleston County Court of Common Pleas for the past seven (7) days. The trial ended approximately 8 p.m. on Tuesday, February 14th. Because of the lengthy trial, which caused counsel to be out of the office for many days and engaged in trial preparation over the weekend, Respondents request an extension of ten (10) days to file their initial brief. I have consulted with opposing counsel who do not oppose this request.

Respectfully submitted,

February 15, 2012

Other counsel of record:

Andrew F. Lindemann, Esq.
Hugh Buyck, Esq.



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

RECEIVED
FEB 16 2012
S.C. Court of Appeals

2-16-12
3-19-12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

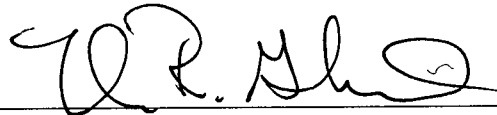
The Town of Hollywood..... Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Motion for Extension upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 15th day of February, 2012, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, and Mr. Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568 as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

RECEIVED
FEB 16 2012
SC Court of Appeals

BEL COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

February 15, 2012

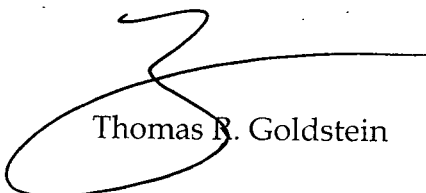
Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Gee,

The respondent's final brief is due February 16th, and I am respectfully requesting a seven (7) day extension making the respondent's initial brief due on Thursday, Thursday, February 23rd. I have set forth the reasons for this in the attached motion. I have also spoken to opposing counsel who do not object to this request, and I likewise, consent to a similar extension for them as well. I enclose our firm's check in the amount of \$25.00 to cover this cost. Please let me know if I need to do anything further in order to perfect this request. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/rt

enclosure: check, motion, return envelope

cc: Andrew Lindemann, Esq.
Hugh Buyck, Esq.
Jeff Floyd

RECEIVED
FEB 16 2012
S.C. COURT OF APPEALS



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 25, 2012

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
2010174946

Dear Counsel:

The following Order has been endorsed on Mr. Lindemann's Request for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 25, 2012."

The following Order has been endorsed on Mr. Goldstein's Request for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 25, 2012."

The following Order has been endorsed on Mr. Lindemann's Motion for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 25, 2012."

The following Order has been endorsed on Mr. Goldstein's Motion for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 25, 2012."

Please be advised the Respondent's Initial Brief and Designation of Matter of both the Appellant/Respondent and Respondents/Appellants must be served and filed no later than February 16, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ma

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

**MOTION FOR EXTENSION
TO FILE INITIAL RESPONDENT'S BRIEF**

RECEIVED

JAN 20 2012

SC Court of Appeals

The Appellant-Respondent Town of Hollywood respectfully moves this Court for a thirty day extension of time until February 16, 2012, by which to file and serve the Initial Respondent's Brief of Appellant-Respondent Town of Hollywood and Designation of Matter to be Included in the Record on Appeal.

The Appellant-Respondent's motion is based on the following grounds:

1-17-12
2-16-12

1. The undersigned counsel requires the additional time to complete the preparation and drafting of the Initial Respondent's Brief in this appeal. In particular, it has been determined that an additional transcript from the lower court is needed to respond to the Respondents-Appellants' arguments. In particular, the Appellant-Respondent has concluded that one of the issues raised by the Respondents-Appellants in their cross-appeal was not raised in the lower court to Judge Dennis who adjudicated the motion for summary judgment. In order to properly address that issue, it is necessary to obtain a transcript from the summary judgment motion hearing, and it is for that reason that the Appellant-Respondent seeks the additional time.

2. In addition, the undersigned counsel has been requested to consent to a similar extension of time being requested by counsel for the Respondents-Appellants for their Initial Respondents' Brief. The undersigned consents to that extension. The extension requested herein will thus keep both the appeal and cross-appeal on the same schedule.

3. As indicated, counsel for the Respondents-Appellants is also requesting the identical thirty day extension. In so doing, he has also consented by email to the extension requested herein.

WHEREFORE, the Appellant-Respondent Town of Hollywood respectfully requests that it be allowed until February 16, 2012, by which to file and serve the

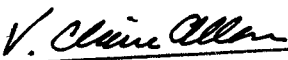
Initial Respondent's Brief of Appellant-Respondent Town of Hollywood and Designation of Matter to be Included in the Record on Appeal.

DAVIDSON & LINDEMANN, P.A.

BY: 

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

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: 
(Clerk) (Deputy Clerk)

Hugh W. Buyck
Buyck & Sanders, LLC
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

W. Andrew Gowder, Jr.
Katie F. Monoc
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413
(843) 727-2200

*Counsel for Appellant-Respondent,
Town of Hollywood*

Columbia, South Carolina

January 17, 2012

FILED


THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

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 **Motion for Extension to File Initial Respondent's Brief** in the above-captioned matter 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 17th day of January 2012:

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

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



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann *
James M. Davis, Jr. †
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Lawrence S. Kerr, M.D. †
Kate A. Swedlow
Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell

Of Counsel
Kenneth P. Woodington

January 17, 2012

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

Enclosed for filing please find the original and seven copies of the **Motion for Extension to File Initial Respondent's Brief** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

SC Court of Appeals

JAN 20 2012

RECEIVED

The Honorable Tanya A. Gee
January 17, 2012
Page Two

cc: (w/ Enclosure)

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

RECEIVED
JAN 19 2012
SC Court of Appeals

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT
MOTION FOR EXTENSION

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Clendinning
(Clerk) (Deputy Clerk)

By: _____
(Clerk) (Deputy Clerk)

The Respondents/Appellants move for an order of the Court granting the Respondents a second thirty day extension to file their initial brief and designation of contents of record on appeal. The initial brief is currently due, Tuesday, January 17, 2012. This motion is based on the inability of Respondents' counsel to finish the brief due to competing deadlines in other cases. Because of a heavy workload, the Respondents request an extension of thirty days to file their initial brief. I have consulted with opposing counsel who does not oppose this request.

Respectfully submitted,

Thomas R. Goldstein

January 13, 2012

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

Other counsel of record:

Andrew F. Lindemann, Esq.
Hugh Buyck, Esq.

FILED
1/13/12

1-17-12
2-16-12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695
Tracking No.: 2010176647 (Judge Young)
Tracking No.: 101074946 (Judge Dennis)

RECEIVED
JAN 19 2012
SC Court of Appeals

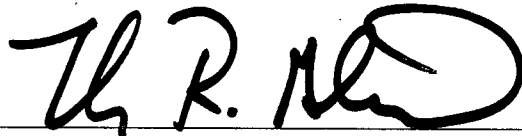
The Town of Hollywood..... Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Motion for Extension upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 13th day of January, 2011, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, and Mr. Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568 as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BEL COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

January 13, 2012

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

RECEIVED
JAN 19 2012
SC Court of Appeals

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010176647 (Judge Young)
Case Tracking Number: 2010174946 (Judge Dennis)

Dear Ms. Gee,

I enclose an original and six copies of respondent/appellant's motion for thirty day extension in the primary appeal (tracking number 2010176647). My initial brief and designation of contents of record on appeal are due Tuesday, January 17. Since this is my request for a second thirty day extension, I am making it by way of formal motion. I also enclose our firm's check in the amount of \$25.00 along with a certificate of mailing. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/

enclosure: Motion for 30 day Extension, certificate of service, firm check #14754

cc: Hugh Buyck, Esq.
Andrew Lindemann, Esq.
Jeff Floyd

BEL COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

December 16, 2011

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Gee,

The respondent's initial brief is due today, and I am respectfully requesting a thirty day extension making the respondent's initial brief due on Tuesday, January 17th (the 30th day being a national holiday). I have spoken to opposing counsel who does not object to this request, and I likewise, consent to a similar extension for him as well. I enclose our firm's check in the amount of \$25.00 to cover this cost. Please let me know if I need to do anything further in order to perfect this request. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.

Thomas R. Goldstein

TRG/
enclosure: check 14717, return envelope
cc: Andrew Lindemann, Esq.
Hugh Buyck, Esq.
Jeff Floyd

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

1/25/11

SC COURT OF APPEALS

DEC 19 2011

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12-16-11
1-17-11

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
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Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

December 15, 2011

* Also admitted in North Carolina
† Certified Mediator

Writer's Email: alindemann@dml-law.com

RECEIVED

DEC 15 2011

SC Court of Appeals

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

This letter is to request a thirty day extension of time to file the Initial Respondent's Brief of the Appellant-Respondent Town of Hollywood in the above-referenced appeal. The Initial Respondent's Brief is presently due on December 15, 2011.

I am unable to complete the preparation of my client's Initial Respondent's Brief because of other deadlines and court appearances. Within the past two weeks, I had a week-long trial in a wrongful death case in Greenwood County as well as three briefs due in the Court of Appeals. I also have another brief due on this same date in the Fourth Circuit Court of Appeals. I have also been involved in the "Occupy Columbia" litigation which has taken substantial time this past week.

I have received consent by email from counsel for the Respondents-Appellants to this requested extension. I also understand that the Respondents-Appellants will be requesting a similar extension for their Initial Respondents' Brief, to which I consent.

I am enclosing with this letter my law firm's check in the amount of \$25.00 for the filing fee. If you require a formal motion for this extension, please advise.

If you have any questions, please advise. Thank you for your assistance with this matter.

12-15-11
1-10-12

The Honorable Tanya A. Gee
December 15, 2011
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

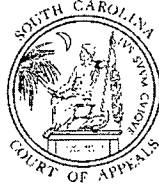
AFL/

cc: Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

~~FILED
1/25/12~~



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 28, 2011

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William

Dear Mr. Goldstein:

We have received your Appellant's Initial Brief and Designation of Matter on behalf of the Respondents/Appellants in the above entitled case on appeal.

According to our records, the caption for this appeal should read as follows:

The Town of Hollywood,	v.	Appellant/Respondent,
William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken,		Respondents/Appellants.

All future filings by any party to this appeal must feature the above caption.

Pursuant to Rule 267 of the South Carolina Appellate Court Rules, only the attorney information for the party submitting the brief should appear on the initial brief and final brief. Please keep this rule in mind while preparing your final briefs.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ma

cc: Andrew F. Lindenmann, Esquire
Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

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.

**APPELLANT-RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Appellant-Respondent Town of Hollywood proposes that the following be included in the Record on Appeal:


- (1) Order Granting Summary Judgment to Plaintiff
- (2) Order Denying Plaintiff's Motion for a New Trial or in the Alternative Judgment Notwithstanding the Verdict and Granting Plaintiff's Motion for Attorney's Fees and Tax Costs

- (3) Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial, or in the Alternative, for New Trial Nisi Remittitur
- (4) Jury Verdict
- (5) Form 4 Judgment Form (filed September 23, 2010)
- (6) Complaint
- (7) Answer and Counterclaim
- (8) Town of Hollywood's Reply to Defendants' Counterclaims
- (9) Defendant's Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial, or in the Alternative, for New Trial Nisi Remittitur
- (10) Plaintiff's Motion for Attorney's Fees and Motion to Tax Costs (with attachments)
- (11) Trial Transcript

pp. 1, 41-44, 47-52, 55, 62-68, 81-82, 95-118, 594-615, 632, 636-637, 640-643, 648, 650-680, 702, 767-769, 796-797. 801
- (12) Plaintiff's Exhibit 17, 21, 22, 28
- (13) Defendants' Exhibit 1, 2, 3, 4, 6, 9, 11
- (14) Court's Exhibit 3

We certify that this designation contains no matter which is irrelevant to this appeal.

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

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

*Counsel for Appellant-Respondent
Town of Hollywood*

Columbia, South Carolina

November 16, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

The Town of Hollywood, Appellant-Respondent,

v.

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

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 **Initial Appellant's Brief of Appellant-Respondent and Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter 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 16th day of November 2011:

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464

Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

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Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

November 16, 2011

* Also admitted in North Carolina
† Certified Mediator

RECEIVED

Writer's Email: alindemann@dml-law.com

NOV 21 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

Enclosed for filing please find the originals and one copy each of the **Initial Brief of Appellant-Respondent** and **Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

November 16, 2011
Page Two

cc: (w/ Enclosures)

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464

Katie F. Monoc, Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood..... Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Appellants.

APPELLANT'S INITIAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL

November 22, 2010

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

Here print the Order Granting Summary Judgment
Here print the Order Denying Reconsideration

Here print the complaint
Here print the answer and Counterclaims
Here print the motion for reconsideration
Here print the Notice of Appeal

Here print the testimony of Mary Wolf
Here print the testimony of George Johnson
Here print the affidavit of Jeff Floyd
Plaintiffs' Exhibit 1 (contract)
Plaintiffs' Exhibit 2 (Rezoning Application)
Plaintiff's Exhibit 4 (Preliminary Sketch)
Plaintiffs' Exhibit 12 (correspondence Holton to Floyd)
Plaintiff's Exhibit 18 (deed Sausser to May)
Plaintiffs' Exhibit 24 (phase 1 plat)
Plaintiffs' Exhibit 25 (phase 2 plat)

CERTIFICATE OF COUNSEL

I certify that this designation contains no matter irrelevant to this appeal.

November 15, 2011



Thomas R. Goldstein I.D. #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
NOV 17 2011
SC Court of Appeals

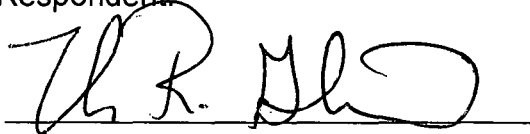
The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

CERTIFICATE OF MAILING

I certify that I served a true and conformed copy of Appellant's Initial Brief and Designation of Contents of Record on Appeal to opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 15th day of November, 2011; to the following address: Hugh Buyck, Esq., P.O. Box 2424, Mt. Pleasant, SC 29465, Attorney for Respondent.



November 15, 2011

Thomas R. Goldstein, Esq., Attorney for
Respondents/ Appellants
Beik, Cobb, Infinger & Goldstein, P.A.
P. O. Box 711121 , N. Charleston, S. C. 29415-1121
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

BEL COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbblaw.net

Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

November 14, 2011

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S.C. 29211

RECEIVED

NOV 17 2011

SC Court of Appeals

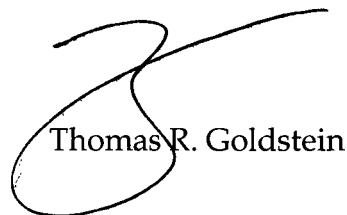
Re: Case No. Case No. 2010-CP-10-2695
The Town of Hollywood vs. Floyd
Case Tracking Number: 2010176647

Dear Ms. Gee,

I enclose the original and an extra copy of the Appellant's Initial Brief, Designation of Contents of Record on Appeal and Certificate of Mailing. Would you be so kind as to file the originals and return clocked copies of each to me in the envelope provided? By copy of this letter, I am serving a copy on opposing counsel. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: as stated

cc: Hugh Buyck, Esq.
Andrew Lindemann, Esq.
Jeff Floyd



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 31, 2011

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
Case #2010174946

Dear Counsel:

The following Order has been endorsed on your Motions for Extensions in the above entitled case on appeal.

“Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

October 28, 2011 .”

Please be advised the Appellants’ Initial Brief and Designation of Matter of the Appellant/Respondent and the Respondents/Appellants must be served and filed by November 16, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/jt

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

The Town of Hollywood.....Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants

FILED
10/28/11
RECEIVED
OCT 19 2011
SC Court of Appeals

MOTION FOR EXTENSION

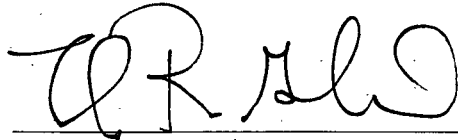
The Respondents/Appellants move for an order of the Court granting the Respondents thirty days to file their initial brief. This motion is based on the inability of Respondents' counsel to finish the brief due to competing deadlines in other cases. Because of a heavy workload, the Respondents request an extension of thirty days to file their initial brief. I have consulted with opposing counsel who do not oppose this request.

Respectfully submitted,

October 17, 2011

Other counsel of record:

Andrew F. Lindemann, Esq.
Hugh Buyck, Esq.



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

202
10/17/11
11/16/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

The Town of Hollywood.....

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken

RECEIVED
Appellant/Respondent

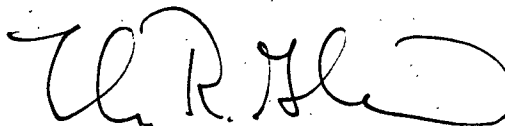
OCT 19 2011

SC Court of Appeals

Respondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Motion for Extension upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 17th day of May, 2011, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465; and Mr. Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568 as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

October 17, 2011

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S.C. 29211

Re: Case No. Case No. 2010-CP-10-2695
The Town of Hollywood vs. Floyd
Case Tracking Number: 2010176647

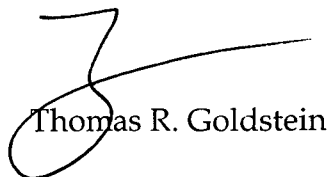
RECEIVED
OCT 19 2011
SC Court of Appeals

Dear Ms. Gee,

I enclose the original and an extra copy of the respondents/appellants' motion for extension along with our firm's check in the amount of \$25.00 and a certificate of service. Would you be so kind as to file the original with the Court and return a clocked in copy to me in the envelope provided? With kind regards, I am

Very truly yours,

BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/rt

enclosure: motion for extension
check #14584

cc: Hugh Buyck, Esq.
Andrew Lindemann, Esq.
Jeff Floyd

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

RECEIVED
OCT 17 2011
SC Court of Appeals

The Town of Hollywood, Appellant-Respondent,

v.

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

**MOTION FOR EXTENSION
TO FILE INITIAL APPELLANT'S BRIEF**

The Appellant-Respondent Town of Hollywood respectfully moves this Court for a thirty day extension of time until November 16, 2011, by which to file and serve the Initial Appellant's Brief of Appellant-Respondent Town of Hollywood and Designation of Matter to be Included in the Record on Appeal.

The Appellant-Respondent's motion is based on the following grounds:

10/17/11 2:23
11/16/11

1. The undersigned counsel requires the additional time to complete the preparation and drafting of the Initial Appellant's Brief in this appeal. The appeal is from a week long trial involving federal constitutional claims under 42 U.S.C. § 1983, which necessitate the review of a lengthy trial transcript and numerous trial exhibits. The additional time as requested will also allow for trial counsel to be able to review the draft of the brief before filing. The undersigned has been delayed in completing the brief because of other deadlines and obligations, including other appellate briefs, court appearances, and mediations.

2. The undersigned counsel has been requested to consent to a similar extension of time being requested by counsel for the Respondents-Appellants for their Initial Appellants' Brief. The undersigned consents to that extension. The extension requested herein will thus keep both the appeal and cross-appeal on the same schedule.

3. As indicated, counsel for the Respondents-Appellants is also requesting the identical thirty day extension. In so doing, he has also verbally consented to the extension requested herein.

WHEREFORE, the Appellant-Respondent Town of Hollywood respectfully requests that it be allowed until November 16, 2011, by which to file and serve the Initial Appellant's Brief of Appellant-Respondent Town of Hollywood and Designation of Matter to be Included in the Record on Appeal.

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
757 Johnnie Dodds Boulevard
Post Office Box 2424
Mount Pleasant, South Carolina 29464
(843) 377-1400

W. Andrew Gowder, Jr.
Katie F. Monoc
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413
(843) 727-2200

*Counsel for Appellant-Respondent,
Town of Hollywood*

Columbia, South Carolina

October 17, 2011

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

By: _____
(Clerk) (Deputy Clerk)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

RECEIVED
OCT 17 2011
SC Court of Appeals

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.

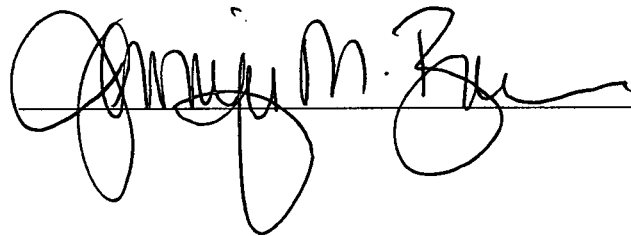
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent Town of Hollywood, does hereby certify that service of the **Motion for Extension to File Initial Appellant's Brief** in the above-captioned matter 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 17th day of October 2011:

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

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 "Hugh W. Buyck". The signature is written in a cursive style with large, overlapping loops and a long horizontal flourish extending to the right. It is positioned above a thin horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

October 17, 2011

* Also admitted in North Carolina
† Certified Mediator

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

Please find enclosed for filing the original and seven copies of the **Motion for Extension to File Initial Appellant's Brief** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED

OCT 17 2011

SC Court of Appeals

The Honorable Tanya A. Gee
October 17, 2011
Page Two

cc: (w/ Enclosures)

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

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

The South Carolina Court of Appeals

The Town of Hollywood,

Appellant/Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy
Readen and Edward McCracken a/k/a
Eddie McCracken,

Respondents/Appellants.

The Honorable R. Markley Dennis, Jr.
The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2010-CP-10-02695
2010-CP-10-02695

ORDER

For good cause having been shown, the time for serving and filing the Appellants' Initial Brief of the Respondents/Appellants (William Floyd, Troy Readen, and Edward McCracken), including the Designation of Matter, in the above entitled matter is hereby extended until October 17, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

FILED

Warter 9/23/11

Columbia, South Carolina

cc: Andrew F. Lindemann, Esquire
Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX (803) 734-1839
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September 23, 2011

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
Case #2010174946

Dear Counsel:

Please be advised in this cross appeal, the party filing the first Notice of Appeal, Town of Hollywood, has been designated as the primary appellant, called Appellant/Respondent, and is responsible for serving and filing the Record on Appeal. The party filing the second Notice of Appeal, William Floyd, Troy Readan, and Edward McCracken, have been designated as the secondary appellants, called Respondents/Appellants.

The briefing schedule for both appeals shall be as set forth in Appellate Court Rules 208 and 209. Each party is allowed to serve and file an Initial Appellant's Brief along with Designation of Matter to be included in the Record on Appeal, a Respondent's Brief, and a Reply Brief.

In order to avoid any unnecessary delays in this appeal, the title of the briefs should state exactly what document is being filed and exactly which party is filing it. For example:

Appellant's Initial Brief of Appellant/Respondent Town of Hollywood

Appellant's Initial Brief of Respondents/Appellants William Floyd, Troy Readen, and Edward McCracken

All parties are advised that the case caption has been amended to read as follows:

The Town of Hollywood,

Appellant/Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy Readen
and Edward McCracken a/k/a Eddie
McCracken,

Respondents/Appellants.

All future filings with this court should reflect these changes.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/jt

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

September 15, 2011

Mr. Seth Tucker,
Docketing Specialist
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211


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SEP 19 2011
SC Court of Appeals

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Mr. Tucker,

Thank you for taking the time to discuss the briefing schedule with me. I agree with you that cross appeals are confusing. Please allow this letter to serve as a request for a thirty day extension to file the respondent's initial cross appeal brief. I have spoken to opposing counsel who does not oppose this request. I also enclose our firm's check in the amount of \$25.00 to cover this request. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/
enclosure: check No. 14533
cc: Hugh Buyck, Esq.
Jeff Floyd
Andrew Lindeman, Esq.

9/15/11
10/17/11

The South Carolina Court of Appeals

The Town of Hollywood,

Appellant/Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy
Readen and Edward McCracken a/k/a
Eddie McCracken,

Respondents/Appellants.

The Honorable R. Markley Dennis, Jr.
The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2010-CP-10-02695
2010-CP-10-02695

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of the Appellant/Respondent The Town of Hollywood in the above entitled matter is hereby extended until October 17, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allan, Deputy
CLERK

Columbia, South Carolina

cc: Andrew F. Lindemann, Esquire
Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire

2/16/11
~~FILED~~

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

September 14, 2011

* Also admitted in North Carolina
† Certified Mediator

RECEIVED

SEP 14 2011

SC Court of Appeals

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readan and
Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

This letter is to request a thirty day extension of time to file the Initial Appellant's Brief of the Appellant-Respondent Town of Hollywood in the above-referenced appeal. The Initial Appellant's Brief is presently due on September 15, 2011. This extension is needed because I am currently in trial in Horry County. The trial began on Monday and is expected to last the entire week. In addition, I have the first case for trial next week in Richland County which is a wrongful death case that is also expected to take a full week to try. Because of these trials, I am unable to complete preparation and drafting of my client's Initial Appellant's Brief.

I have received consent by email from counsel for the Respondents-Appellants to this requested extension.

I am enclosing with this letter my law firm's check in the amount of \$25 for the filing fee. If you require a formal motion for this extension, please advise.


If you have any questions, please advise. Thank you for your assistance with this matter.

1/2
9/15/11
10/17/11

The Honorable Tanya A. Gee
September 14, 2011
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.

A handwritten signature in cursive script that reads "Andrew Lindemann /al".

Andrew F. Lindemann

AFL/

cc: Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 16, 2011

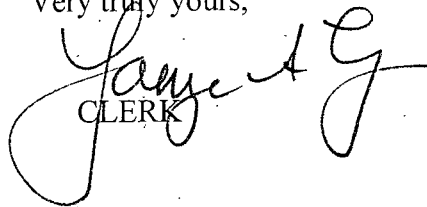
Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Re: Town of Hollywood v. Floyd, William
Case #2010174946

Dear Counsel:

We have received the correspondence regarding the transcript for the above case. Please be advised the Appellant's Initial Brief and Designation of Matter must be served and filed by September 15, 2011.

Very truly yours,


CLERK

TAG/jt

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
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Columbia, South Carolina 29202-8568
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Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

July 18, 2011

* Also admitted in North Carolina
† Certified Mediator

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUL 18 2011

SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

Dear Ms. Gee:

This letter is in response to the request from Claire Allen that I provide the Court with an update on the ordering and receipt of the transcripts in the above case on appeal.

I have now had the opportunity to clarify these matters with my co-counsel who handled the trial in the lower court. I am advised by Hugh Buyck that the trial transcript was ordered and has been received. I am enclosing a copy of a letter that Mr. Buyck sent to the Court on March 25, 2011, advising that the trial transcript had been received although the appeal was still stayed at that time.

Thomas Goldstein, who represents the Respondents-Appellants, sent the Court a letter dated June 17, 2011, advising that he had received the trial transcript but was unable to open it because it was sent electronically. I have not heard from Mr. Goldstein as to whether he has remedied this situation and therefore now has a copy of that transcript as well.

In my letter dated June 16, 2011, I indicated that I was trying to determine whether there was a subsequent hearing held on the post-trial motions and motion for attorney's fees. I have

The Honorable Tanya A. Gee
July 18, 2011
Page Two

since learned that there was no additional hearing, and as a result, there is not any additional transcript that I believe is needed for this appeal to proceed.

In the event that Mr. Goldstein has now received a functioning copy of the transcript, I believe that a briefing conference may be scheduled with Chief Judge Few. If no briefing conference is to be scheduled, please let us know when we should begin the thirty day deadline for the filing of both sides' initial appellant briefs.

I apologize for any confusion and appreciate your assistance and patience in getting this appeal back on the proper timeline.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/
Enclosure

cc: (w/Enclosure)

Thomas R. Goldstein, Esquire
Hugh W. Buyck, Esquire
Katie F. Monoc, Esquire

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

TELEPHONE: (843) 377-1400
FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

March 25, 2011

RECEIVED

JUL 18 2011

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: William Floyd a/k/a Jeff Floyd, Troy Readon, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood; C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
BSLF File No. 10.63

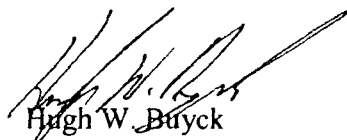
Dear Ms. Gee:

We have received the transcript of the trial in this matter. It is our understanding, however, that the appeal has currently been remanded to the Circuit Court while awaiting Judge Young's further ruling on the respondents' post-trial motions. I have communicated with Mr. Goldstein, who has acknowledged the same. We, therefore, anticipate that we will then reinstate the appeal but probably need to order an additional transcript of the post-trial hearing, if any.

Should there be any misunderstanding in this regard, please do not hesitate to contact me.

With kind regards,

Yours truly,


Hugh W. Buyck

HWB:adm

cc: Thomas R. Goldstein, Esquire
Katie Monoc, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
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www.sccourts.org

July 6, 2011

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Rè: Town of Hollywood v. Floyd, William
Case #2010174946

Dear Counsel:

The following Order has been endorsed on your Motion to order the transcript out of time in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

July 05, 2011."

Please provide the written update regarding the ordering and receiving of the transcript within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/jt

cc: Hugh Willcox Buyck, Esquire
W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Thomas R. Goldstein, Esquire

BELK, COBB, INFINGER AND GOLDSSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

June 17, 2011

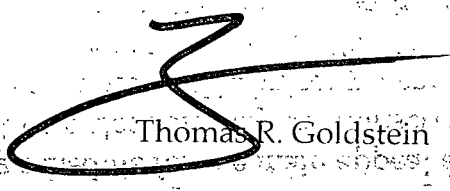
Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readon, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010176647 (Judge Young)
Case Tracking Number: 2010174946 (Judge Dennis)

Dear Ms. Gee,

I am in receipt of Andrew Lindemann's letter requesting an extension to which I have no objection. In fact, I join in his request for a briefing conference on the case so that we can establish a briefing schedule for the main appeal and the cross appeal. The court reporter previously sent to me electronically the transcript of this case, but to date, I have not been able to open the document. (Technically, I can open it, but the pages are skewed, and some pages have few words on them—the document does not appear in any usable form. I am going to contact the court reporter and ask if she can either reformat it as a pdf and resend it or deliver a paper transcript in the old fashioned way.) Please let me know if you require anything further from me in order to request a status conference to establish the briefing schedule. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

cc: Hugh Buyck, Esq.
Andrew Lindemann, Esq.
Jeff Floyd
Troy Readon

RECEIVED

JUN 20 2011

SC Court of Appeals

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

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Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
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Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

June 16, 2011

* Also admitted in North Carolina
† Certified Mediator

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

JUN 16 2011

SC Court of Appeals

RE: The Town of Hollywood v. William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken
SCCA Tracking Number: 2010174946
Civil Action Number: 2010-CP-10-2695
Claim Number: 54721
Our File Number: 103.8743

*return
7-13-11*

Dear Ms. Gee:

As indicated in the Notice of Appearance filed last month, I have been associated to assist with this appeal for the Appellant-Respondent Town of Hollywood. I am actually out of state right now on vacation but am trying to get an understanding of the briefing deadlines. To my knowledge, Chief Judge Few has not held a briefing conference and issued a briefing order, but I am not certain of that. I am also trying to determine if there is any pending transcript requests. My co-counsel Hugh Buyck is presently in trial and so I have not been able to follow up with him at this time.

To be on the safe side, I am sending this letter to the Court to request a 30 day extension of time to file the Initial Brief of the Appellant-Respondent which will enable me to sort out the precise status of the appeal and cross-appeal and any briefing deadlines. If you require a formal motion, please let me know. I am enclosing a \$25 check for the filing fee for this request.

If you have any questions, please advise. I apologize for my confusion.

6/13/11

7/13/11

155

The Honorable Tanya A. Gee
June 16, 2011
Page Two

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/

cc: Thomas R. Goldstein, Esquire *(via Facsimile Only)*
Hugh W. Buyck, Esquire *(via Facsimile Only)*
Katie F. Monoc, Esquire *(via Facsimile Only)*

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
~~(Clerk)~~ (Deputy Clerk)

7/1/11
~~FILED~~

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

TELEPHONE: (843) 377-1400
FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

May 31, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: William Floyd a/k/a Jeff Floyd, Troy Readon, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood
C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
Appeal Tracking No. 2010176647
BSLF File No. 10.63

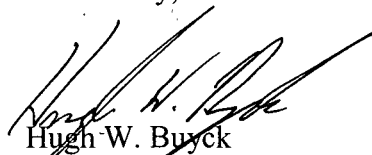
Dear Ms. Gee:

Enclosed please find a \$100.00 Notice of Appeal filing fee pursuant to the letter dated May 25, 2011 in the above referenced matter. Please note, though, that we previously submitted a \$100.00 filing fee on or about November 1, 2010. The trial court subsequently requested that the case be returned to consider outstanding motions that had inadvertently been overlooked when entering its final order so my apologies for any confusion that this may have caused concerning the filing fee.

Should you need anything further, please do not hesitate to contact me.

With kind regards,

Yours truly,


Hugh W. Buyck

HWB:enb
Enclosure

cc: Thomas R. Goldstein, Esquire (w/o enclosures)
Andrew Lindemann, Esquire (w/o enclosures)
Katie Monoc, Esquire (w/o enclosures)
Julie Armstrong, Charleston County Clerk of Court

✓ #
1242
18002



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
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May 25, 2011

Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Hugh Willcox Buyck, Esquire
Buyck and Sanders Law Firm, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465

W. Andrew Gowder, Jr., Esquire
Katie Monoc, Esquire
Pratt-Thomas & Walker, PA
P O Drawer 22247
Charleston, SC 29413-2247

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
2010174946

Dear Counsel:

We have received a Notice of Appeal from each of you in the above matter. Please be advised that these appeals filed from the written order of The Honorable Roger M. Young dated March 3, 2011, will be combined with the Notice of Appeals previously filed in this matter. The time limits for perfecting the appeal will run from the date of service of the latest Notice of Appeal.

Upon review, it will be necessary that The Town of Hollywood provide the Notice of Appeal filing fee according to Rule 203 of the South Carolina Appellate Court Rules within ten (10) days of the date of this letter.

Furthermore, the caption should read as follows:

The Town of Hollywood,

Appellant/Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy Readen
and Edward McCracken a/k/a Eddie McCracken,

Respondents/Appellants.

Any future filings by any party to this appeal must feature the above caption.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/laf

Pm - 5/17/11
POS - 5/17/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
MAY 19 2011
SC Court of Appeals

The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

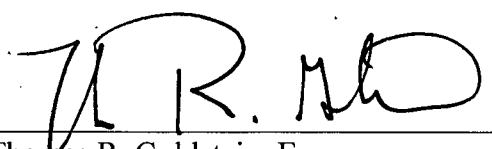
NOTICE OF APPEAL

William J. Floyd a/k/a Jeff Floyd, *et. al.*, appeal the Order Denying New Trial signed by
the Honorable Roger M. Young and filed March 7, 2011 and received by counsel on April 29,

2011.

May 16, 2011

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465


Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondents
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291 (843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

MAY 19 2011

SC Court of Appeals

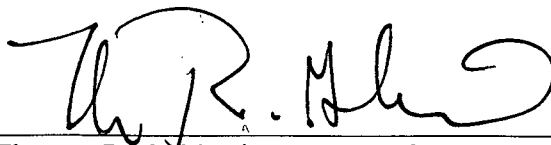
The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Notice of Cross Appeal upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 17th day of May, 2011, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

May 16, 2011

RECEIVED

MAY 19 2011

SC Court of Appeals

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010176647

Dear Ms. Gee,

I enclose a Notice of Appeal (Cross Appeal) filed on behalf of the Respondents' in the above case. This is an appeal from an order in a case that is already on appeal (see the above tracking number). I ask that you file the original and return a stamped copy to me in the envelope provided. By copy of this letter to Mr. Buyck, I am advising him of this filing and providing a copy to him as well. Inasmuch as we have previously ordered the transcript on appeal, I will not be ordering any further transcripts in conjunction with this cross appeal. I also enclose our firm's check in the amount of \$100.00 for the filing fee. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.


Thomas R. Goldstein

TRG/rt

enclosure: Notice of appeal, return envelope
cc: Honorable Julie Armstrong, Clerk of Court
Honorable Roger M. Young
Hugh Buyck, Esq.
Jeff Floyd, Troy Readen

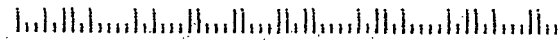
Elk Cobb Infinger & Goldstein, P.A.
P.O. Box 71121
N. Charleston, SC 29415-1121



02 1P \$ 000.64⁰
0004428951 MAY 17 2011
MAILED FROM ZIP CODE 29415

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

2521131629 6012



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

William Floyd a/k/a Jeff Floyd, Troy Readen, and
Edward McCracken a/k/a Eddie McCracken, Respondent,

v.

Town of Hollywood, Appellant.

NOTICE OF APPEARANCE


The undersigned counsel for the Respondent Town of Hollywood hereby gives notice of appearance to all parties and to all counsel of record. The undersigned counsel will represent the Respondent in association with its current counsel of record.

RECEIVED

MAY 17 2011

SC COURT OF APPEALS

DAVIDSON & LINDEMANN, P.A.

BY:  _____

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

Counsel for Appellant Town of Hollywood

Columbia, South Carolina

May 16, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2010-CP-10-2695

William Floyd a/k/a Jeff Floyd, Troy Readen, and
Edward McCracken a/k/a Eddie McCracken, Respondent,

v.

Town of Hollywood, Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Notice of Appearance** in the above-captioned matter 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 16th day of May 2011:

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

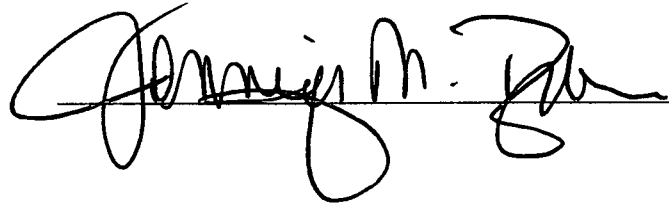
RECEIVED

MAY 17 2011

SC Court of Appeals

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 "James M. Gowder". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
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Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

May 16, 2011

* Also admitted in North Carolina
† Certified Mediator

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a
Eddie McCracken v. The Town of Hollywood
Civil Action Number: 2010-CP-10-2695
Claim Number:
Our File Number: 103.8743

Dear Ms. Gee:

Please find enclosed for filing the original and one copy of the **Notice of Appearance** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
MAY 17 2011
SC Court of Appeals

The Honorable Tanya A. Gee
May 16, 2011
Page Two

cc: (w/ Enclosure)

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

POS 5-12-11
POS 5-12-11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas
Roger M. Young, Circuit Court Judge

RECEIVED
MAY 13 2011
SC Court of Appeals

Case No. 2010-CP-10-2695

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken,

Respondents,

v.

The Town of Hollywood,

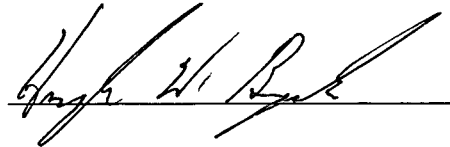
Appellant.

Notice of Appeal

The Town of Hollywood appeals from the judgment entered on September 13, 2010, in favor of the Plaintiffs on the jury's verdict. The Town of Hollywood timely filed post-trial motions for judgment notwithstanding the verdict, or in the alternative, for a new trial, which were denied by order of Judge Roger M. Young, filed October 4, 2010. Counsel received written notice of the order denying the post-trial motions on October 18, 2010 with a timely filed appeal.

Subsequently, the trial court obtained a remand of the appeal to consider additional post-trial motions of the Respondent. Judge Roger M. Young entered an order denying Respondent's motion for a new trial or in the alternative judgment notwithstanding the verdict and granting motion for costs and attorney fees on March 7, 2011. Counsel, however, did not receive written notice of the entry of this order until receipt of an e-mail from plaintiff's

counsel on or about April 29, 2011. The Town of Hollywood appeals hereby that portion of the Order granting costs and attorney fees and reinstates its earlier appeal.



BUYCK & SANDERS, LLC
Hugh W. Buyck
Post Office Box 2424
Mount Pleasant, S.C. 29465-2424
(843) 377-1400; (843) 377-1403 (fax)
hwb@buyckfirm.com

DAVIDSON & LINDEMANN, PA
Andrew Lindemann
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Columbia, SC 29202
(803) 806-8222; (843) 801-6929 (fax)
alindemann@dml-law.com

PRATT-THOMAS WALKER, PA
W. Andrew Gowder, Jr.
Katie Monoc
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2200; (843) 727-2238 (fax)
wag@p-tw.com

Attorneys for the Appellant
The Town of Hollywood

May 12, 2011

Other Counsel of Record:

Belk, Cobb, Infinger & Golstein, PA
Thomas R. Goldstein
P.O. Box 71121
Charleston, SC 29415-1121
(843) 554-4291 (843) 544-5566 (fax)
tgoldstein@cobblaw.net

Attorney for Respondents
William Floyd, et al.

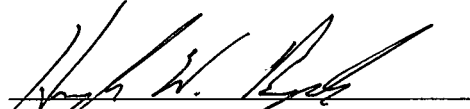
Certificate of Service

I, Hugh W. Buyck, attorney for the Appellant, The Town of Hollywood, do hereby certify that on May 12, 2011, I served a copy of the Notice of Appeal on Counsel for Respondents, via U.S. Mail, first class, postage prepaid to the following address:

Belk, Cobb, Infinger & Golstein, PA
Thomas R. Goldstein
P.O. Box 71121
Charleston, SC 29415-1121

I further certify that I mailed a copy of the Notice of Appeal to the Clerk of the Court for Charleston for filing on this same date:

Julie Armstrong, Clerk
Charleston County – Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258



Hugh W. Buyck

RECEIVED
MAY 13 2011
SC Court of Appeals

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

TELEPHONE: (843) 377-1400
FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

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MAY 13 2011

SC Court of Appeals

May 12, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: William Floyd a/k/a Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood; C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
BSLF File No. 10.63

Dear Ms. Gee:

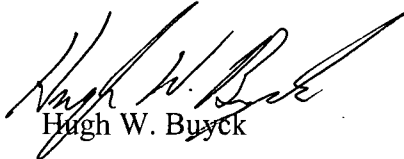
Enclosed for filing is a renewed Notice of Appeal on behalf of The Town of Hollywood in the above referenced case. Also enclosed are:

1. Our Certificate of Service upon Counsel for the Respondents; and
2. A copy of the judgment and the second order denying in part and granting in part the Respondents post-trial motions which are also being challenged on appeal in addition to those matters within the previously filed appeal;

We have not included a filing fee as we presume the initial fee submitted for the appeal on November 1, 2010 would cover this expense. Should this be incorrect, please reply so that we may comply. Also, please allow this letter to serve as a reply to your correspondence dated May 5th requesting an update as to the status of the remanded appeal.

With kind regards,

Yours truly,


Hugh W. Buyck

HWB:adm
Enclosures

cc: Thomas R. Goldstein, Esquire (w/ enclosures)
Andrew Lindemann, Esquire (w/ enclosures)
Katie Monoc, Esquire (w/ enclosures)
Julie Armstrong, Charleston County Clerk of Court



BUYCK & SANDERS, LLC

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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MAY 13 2011

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

William Floyd a/ka/ Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a
Eddie McCracken,)

Plaintiffs,)

vs.)

The Town of Hollywood,)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2010-CP-10-2695

**ORDER DENYING PLAINTIFF'S
MOTION FOR A NEW TRIAL OR
IN THE ALTERNATIVE JUDGMENT
NOTWITHSTANDING THE VERDICT
AND GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND TAX COSTS**

BY _____
JULIE J. ARMS, TRONC
CLERK OF COURT
2011 MAR -7 PM 4:37
FILED

(This case was originally captioned The Town of Hollywood v. William J. Floyd et al, however during the course of trial Judge Dennis granted Summary Judgment in favor of the Town of Hollywood as to all plaintiff's claims, thereby leaving only defendant's counterclaims for adjudication. Thereafter, the parties were realigned as William J. Floyd et al v. The Town of Hollywood.)

Background

This matter came before this court for trial on September 7-13, 2010. The jury was provided three legal grounds for its verdict: (1) Substantive Due Process; (2) Procedural Due Process; (3) Equal Protection. After six and one half hours of deliberations and an Allen charge following indication of being a hung jury, the verdict was returned in favor of the Plaintiffs on the Equal Protection grounds for \$450,000. On September 22, 2010, the Plaintiff filed Motions for a New Trial of in the alternative for Judgment Not Withstanding the Verdict and for Award

of Attorney's Fees and Tax Costs pursuant to Title 42 USCA § 1983 (and comparable state section § 15-77-300, et seq.).

1. Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict.

Standard of Review

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law. Umhoefer v. Bollinger, 379 S.E.2d 296, 297 (S.C. Ct.App.1989). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." Id.

Conclusion

I have considered the arguments on both sides, supporting and opposing documents, and based on same DENY Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict.

2. Plaintiff's Motion for Award of Attorney's Fees and Tax Costs.

Attorney's Fees

This Court finds that Plaintiff is entitled to recover attorney's fees in this action. Plaintiff argues that he is entitled to an award of attorneys' fees under S.C. Code Ann. § 15-77-300, which allows recovery by a prevailing party where a state agency, or other certain entities, has acted without substantial justification in pressing its claim and special circumstances did not

A handwritten signature in black ink, appearing to be a stylized 'R' or similar character, located in the bottom right corner of the page.

exist that would make an award unjust. The Plaintiff is entitled to fees under this section because he was the “prevailing” party under the statute.

Reasonableness of Attorney’s Fees

The general rule is that attorney’s fees are not recoverable unless authorized by contract or statute. Baron Data System, Inc. v. Loter, 297 S.C. 382, 377 S.E. 2d 296 (1989); Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992).

The award of attorney’s fees is made to the party, not his lawyer. Prevatte v. Ansbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990). When determining the reasonableness of attorney’s fees under a statute mandating the award of attorney’s fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate.

Where a contractual provision in a note provides for attorney’s fees at a specific rate, the amount of attorney fees is governed by the contract. Dedes v. Strickland, 307 S.C. 155, 414 S.E. 2d 134 (1992), see also Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 457 S.E. 2d 340 (1995) and Nationsbank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995).

In South Carolina, where a contractual obligation provides only that a party is to pay “reasonable attorney’s fees,” the amount is unliquidated and, therefore, requires a finding on the reasonableness of the award. Nationsbank v. Scott Farm, *supra*.

In awarding “reasonable” attorney fees, there are six factors to be considered: (1) the nature, extent, and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingency of compensation, (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained. Collins v. Collins, 239 S.C. 170, 122 S.E. 2d 1 (1961); Blumberg v. Nealco, 310 S.C. 492, 427 S.E. 2d 659 (1993); Dedes v. Strickland, *supra*.



Reasonableness of Attorney's Fees in This Case

1. The nature, extent, and difficulty of the legal services rendered.

This case arises out of a dispute between The Town of Hollywood and the plaintiff owners of a 13-acre track of property located on Bryan Road in the town limits of Hollywood regarding the validity of a subdivision plat. The claims and counterclaims involve complex legal issues such as Zoning Ordinances, Municipal Power and Procedures, Substantive Due Process, Procedural Due Process, and Equal Protection. Considering the complexity of the issue raised and the outcome of a favorable result on behalf of the Plaintiff, I find that the amount of attorney's fees to be reasonable.

2. The time and labor necessarily devoted to the case.

I find persuasive the detailed Certificate of Costs filed by Mr. Thomas Goldstein, Esquire, a member of the Charleston bar who is held in high regard. Mr. Goldstein found the time and labor devoted to this case - pre-trial, trial and to some extent post-trial - to be reasonable and necessary. I concur and adopt his findings as my own.

3. The professional standing of counsel.

The Defendant concedes the professional standing and reputation of the Plaintiff's attorneys is of the highest caliber.

4. The contingency of compensation.

Plaintiff's counsel informs the court that the fees charged to their client are not contingent upon the outcome of this case, and I find this case is not the type usually associated with a contingency fee agreement.



5. The fee customarily charged in the locality for similar legal services.

The hourly rates charged by the Plaintiff's attorney are, according to Mr. Goldstein, in line with those charged by attorneys of similar experience and expertise in this community in this type of case, and so again, I adopt his finding as my own in this regard.

6. The beneficial results obtained.

Due to the efforts of its attorney, the Plaintiff achieved a verdict in their favor for \$450,000.

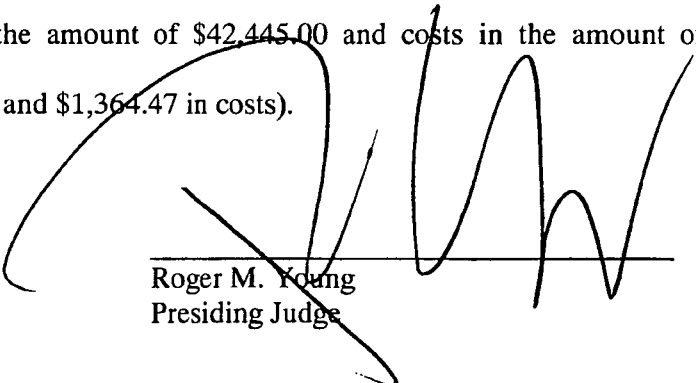
Therefore, I find the Defendant's request for attorney's fees which total \$42,445.00 and for costs in the amount of \$2,629.20 (\$1,264.73 in fees and \$1,364.47 in costs) to be reasonable.

Conclusion


THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict in DENIED;
2. Plaintiff's Motion for Award of Attorney's Fees is GRANTED, and hereby award the Plaintiff attorney's fees in the amount of \$42,445.00 and costs in the amount of \$2,629.20 (\$1,264.73 in fees and \$1,364.47 in costs).

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

, 2011
Charleston, South Carolina.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

May 4, 2011

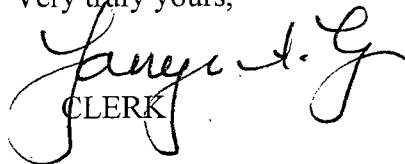
Hugh Willcox Buyck, Esquire
Buyck and Sanders Law Firm, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465

Re: Town of Hollywood v. Floyd, William
2010174946

Dear Mr. Buyck:

Please provide this Court with an update on the status of this matter in the lower court within ten days of this letter.

Very truly yours,


CLERK

TAG/laf

cc: Thomas R. Goldstein, Esquire

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

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FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

March 25, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

MAR 28 2011

SC Court of Appeals

Re: William Floyd a/k/a Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood; C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
BSLF File No. 10.63

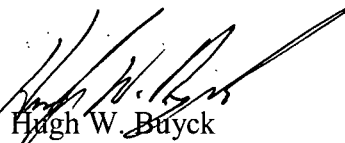
Dear Ms. Gee:

We have received the transcript of the trial in this matter. It is our understanding, however, that the appeal has currently been remanded to the Circuit Court while awaiting Judge Young's further ruling on the respondents' post-trial motions. I have communicated with Mr. Goldstein, who has acknowledged the same. We, therefore, anticipate that we will then reinstate the appeal but probably need to order an additional transcript of the post-trial hearing, if any.

Should there be any misunderstanding in this regard, please do not hesitate to contact me.

With kind regards,

Yours truly,


Hugh W. Buyck

HWB:adm

cc: Thomas R. Goldstein, Esquire
Katie Monoc, Esquire

BEI COBB, INFINGER AND GOLD IN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
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Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

February 7, 2011

Honorable Roger Young,
Ninth Judicial Circuit Court,
Charleston County Courthouse
100 Broad Street, Suite 368
Charleston, S.C, 29401

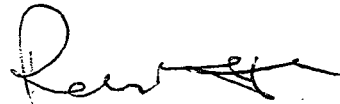
RECEIVED
FEB 10 2011
SC Court of Appeals

Re: Hollywood vs. Floyd, et. al.; Case No.: 2010-CP-10-02695

Dear Judge Young,

I enclose a copy of the February 3, 2011, order of the South Carolina Court of Appeals. As you can see, the Court is holding the appeal in abeyance pending your decision on the Plaintiffs' (now Respondents/ Appellants') Motion for New Trial and Motion for Attorney's fees. Please let me know if you require anything further. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: Order

cc: Hon. Tanya A. Gee, Clerk, S.C. Court of Appeals
Hugh W. Buyck, Esq.
Jeff Floyd
Troy Readen



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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February 3, 2011

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
2010174946

RECEIVED
FEB 10 2011
SC Court of Appeals

Dear Counsel :

Enclosed is a copy of an Order of the Court regarding your Motions in the above case.

The two appeals have now been consolidated. The caption should read as follows:

The Town of Hollywood, Appellant/Respondent,
v.

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

Any future filings by any party to this appeal must feature the above caption.

Please be advised that this appeal will be held in abeyance pending the trial court's ruling on the post-trial motions.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Hugh Willcox Buyck, Esquire

The South Carolina Court of Appeals

The Town of Hollywood,

Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy
Readen and Edward McCracken a/k/a
Eddie McCracken,

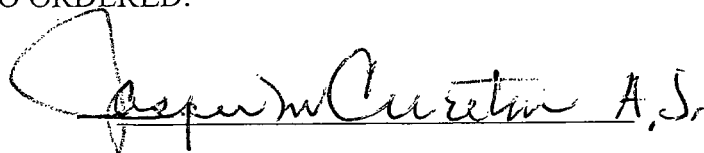
Appellants.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2010-CP-10-02695

ORDER

William Floyd a/k/a Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken move to remand this case to the trial court in order for the court to rule on certain post-trial motions. The motion is granted and the appeal will be held in abeyance pending the trial court's ruling on the post-trial motions. In addition, the parties' two appeals pending at this Court are hereby consolidated.

AND IT IS SO ORDERED.


Jasper McCracken A. Sr.

Columbia, South Carolina

cc: Thomas R. Goldstein, Esquire
Hugh Willcox Buyck, Esquire

FILED

2/3/11 



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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www.sccourts.org

February 3, 2011

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
2010174946

Dear Counsel :

Enclosed is a copy of an Order of the Court regarding your Motions in the above case.

The two appeals have now been consolidated. The caption should read as follows:

The Town of Hollywood,	v.	Appellant/Respondent,
William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken,		Respondents/Appellants.

Any future filings by any party to this appeal must feature the above caption.

Please be advised that this appeal will be held in abeyance pending the trial court's ruling on the post-trial motions.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Hugh Willcox Buyck, Esquire

The South Carolina Court of Appeals

The Town of Hollywood,

Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy
Readen and Edward McCracken a/k/a
Eddie McCracken,

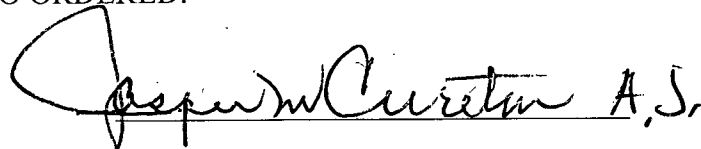
Appellants.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2010-CP-10-02695

ORDER

William Floyd a/k/a Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken move to remand this case to the trial court in order for the court to rule on certain post-trial motions. The motion is granted and the appeal will be held in abeyance pending the trial court's ruling on the post-trial motions. In addition, the parties' two appeals pending at this Court are hereby consolidated.

AND IT IS SO ORDERED.



Joseph M. Curran, A.S.

Columbia, South Carolina

cc: Thomas R. Goldstein, Esquire
Hugh Willcox Buyck, Esquire

FILED

2/3/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
JAN 24 2011
SC Court of Appeals

The Town of Hollywood..... Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

MOTION FOR LEAVE TO FILE OUT OF TIME AND HOLD APPEAL IN ABEYANCE
MOTION TO CONSOLIDATE APPEALS

The Respondents/Appellants move for an order of the Court authorizing William J. Floyd, *et. al.* (referred to herein as “Respondents/Appellants”) to file their initial brief and designation of contents of record on appeal out of time and holding the appeal of Judge Dennis’ Order filed September 7, 2010, in abeyance pending this Court’s decision on the Respondents’ January 6th Motion to Remand Appeal to Circuit Court. Likewise, the “Respondents/Appellants” request the Court to consolidate the appeals for briefing to promote orderliness and judicial economy. This motion is based on the following grounds.

This trial of this case came before Judge Young and a jury during the week of September 7, 2010.

The jury returned a verdict on September 13, 2010.

Judge Dennis issued a written Order granting the Town of Hollywood partial summary judgment on September 7, 2010, during the trial of the case.

All parties timely moved for reconsideration.

The Town of Hollywood (“Appellant/Respondent”) timely appealed Judge Young’s Order on November 1, 2010.

Floyd, *et. al.* (“Respondents/Appellants”) timely appealed Judge Dennis’ Order on November 15, 2010, calling it a “cross appeal” because the appeal of Judge Dennis’ Order arose from the same case as the Town of Hollywood’s appeal.

Floyd, *et. al.*, moved this Court on January 6, 2011, for an Order of the Court, remanding the appeal back to the circuit court and holding the time limits for perfecting the appeal in abeyance to allow Judge Young to rule on Floyd’s *et. al.*’s outstanding motions.

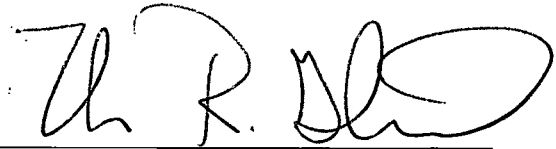
The Motion to Remand inadvertently failed to ask that the appeal of Judge Dennis’ Order likewise be held in abeyance so that the appeals in the same case can be consolidated and governed by the same briefing schedule.

Based on the foregoing, the “Respondents/Appellants,” Floyd, *et. al.*, respectfully request that the “Respondents/Appellants” be given leave to file their initial brief and designation of contents of record on appeal out of time, and that such time period be held in abeyance pending the outcome of this Court’s consideration of the January 6, 2011, Motion to Remand and to allow the appeals to be consolidated so that the parties brief all the issues at the same time to prevent a fragmented review of a single case that involving the same parties, facts and legal issues arising from the same occurrence. The “Respondents/Appellants” show further that by consolidating the appeals and allowing the parties to file briefs on all the issues at the same time avoids needless repetition and promotes judicial economy.

Respectfully submitted,

January 21, 2011

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465

A handwritten signature in black ink, appearing to read 'Th R Goldstein', written over a horizontal line.

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

JAN 24 2011

SC Court of Appeals

The Town of Hollywood..... Appellant/Respondents,

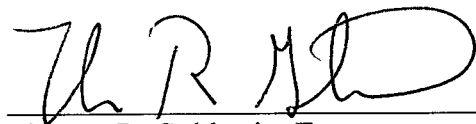
vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

RULE 11 CERTIFICATE OF COUNSEL

I have consulted with opposing counsel concerning the contents of this motion and
counsel for the Appellant/Respondent consents.

January 21, 2011



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
Attorneys for Respondents/Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
JAN 24 2011
SC Court of Appeals

The Town of Hollywood.....Appellant/Respondent,

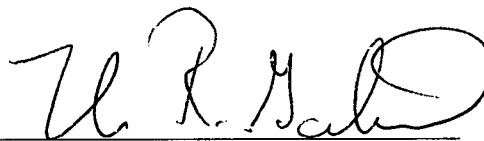
vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellants.

CERTIFICATE OF COMPLIANCE

I certify that the Respondents'/Appellants' Motion to File Initial Brief and Designation of Contents of Record on Appeal out of time in this case are in compliance with the August 13, 2007 order of the South Carolina Supreme Court.

January 21, 2011



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
Attorneys for Respondents/Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED

JAN 24 2011

SC Court of Appeals

The Town of Hollywood..... Appellant/Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents/Appellant.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents'/Appellants' Motion to file Initial Brief and Designation of Contents of Record on Appeal out of time upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 21st day of January, 2011, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for
Respondents/Appellants
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbblaw.net

Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
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Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

January 19, 2011

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

RECEIVED

JAN 24 2011

SC Court of Appeals

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken

Case No.: 2010-CP-10-2695

Case Tracking Number: 2010176647 (Judge Young)

Case Tracking Number: 2010174946 (Judge Dennis)

Dear Ms. Gee,

I am in receipt of your letter of January 18th, and as you requested, I enclose the Respondents'/Appellants' (William Floyd's, *et. al.*) Motion to File Out of Time and Hold Appeal in Abeyance. I apologize for the confusion, but the procedure of this case became fragmented when two judges were presiding over different aspects of the same case at the same time. In an effort to correct this fragmentation, I filed a motion on January 6, 2011, to remand this appeal back to the circuit court. I hope the enclosed motion will further aid in curing the confusion.

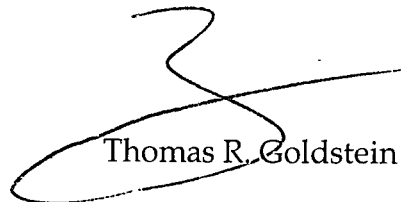
For your convenience, let me summarize for you here why this case is procedurally complicated. During the jury trial of this case, Judge Dennis entered an Order on the one cause of action filed by the Town. During the trial before Judge Young, we received Judge Dennis' written Order (filed September 7, 2010). William Floyd, *et. al.* then timely filed a Motion for Reconsideration. Meanwhile, the jury returned a verdict on the remaining causes of action, and both the Appellant/Respondent (Town of Hollywood) and the Respondent/Appellant (William Floyd, *et. al.*) filed motions for new trials. Floyd, *et. al.* also filed a motion for attorney's fees. Judge Young ruled on the Appellant's motion for new trial, but not the Respondents' motions. Before Judge Young took up Floyd's motions, the Town of Hollywood filed a notice of Appeal on November 1, 2010. After Judge Dennis denied reconsideration, Floyd, *et. al.* filed a "cross appeal" on November 15, 2010. (Technically,

it is not a "cross appeal," but only because the Rules of Appellate Procedure do not address two judges simultaneously addressing the same case. Therefore, to prevent the case from becoming fragmented, I filed a motion with the Court of Appeals on January 6th to remand the case on appeal back to the lower court to allow Judge Young to dispose of the remaining unresolved motions. I failed to include language in that January 6th Motion to Remand or to hold the appeal of Judge Dennis' Order in abeyance so that the parties can get on a consolidated briefing schedule and this Court can consider the various appeals and cross appeals as a consolidated case rather than having two or three separate appeals on the same case. I take full responsibility for that error, and I hope the enclosed Motion to File Out of Time will be consolidated with my January 6th motion. If so, perhaps the Court will agree that various appeals arising from the same case should be consolidated.

I apologize for the confusion, and I hope my explanation here has not made it worse.

Lastly, I also enclose our firm's check in the amount of \$25.00 and a certificate of service. I ask that you please file the original of this motion with the January 6th motion and return the extra copies marked filed to me in the envelope provided. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/

enclosure: Motion to Remand, certificate of service, firm check, return envelope

cc: Hugh Buyck, Esq.
Jeff Floyd

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
JAN 18 2011
SC Court of Appeals

The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

MOTION TO REMAND

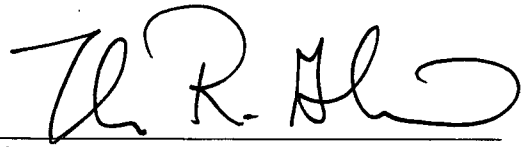
The Respondent moves for an order of the Court remanding this case to the lower court in order to allow the lower court to enter an order on Respondent's Motion for New Trial and Motion for Attorney's fees. This motion is based on the ground that both parties filed simultaneous motions for new trial. The lower court issued an order on the Appellant's Motion for New Trial, but not the Respondent's. Before the lower court issued its order on the Respondent's motions, the Appellant filed a notice of appeal thereby divesting the lower court of jurisdiction. For that reason, the Respondent requests that the Court enter an order, remanding this action to the lower court to allow the lower court to enter an order on Respondent's motions to avoid the case being fragmented. The Respondent respectfully requests that in remanding the case to the lower court, the Court of Appeals grant to the

Appellant the right to amend his previously filed appeal within 30 days of the date that the lower court issues its order on Respondent's pending motions.

Respectfully submitted,

January 14, 2011

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415
(843) 554-4291 (843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
JAN 18 2011
SC Court of Appeals

The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCracken Respondents.

RULE 11 CERTIFICATE OF COUNSEL

I have consulted with opposing counsel concerning the contents of this motion and
counsel for the Appellant consents to the relief requested.

January 14, 2011



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
JAN 18 2011
SC Court of Appeals

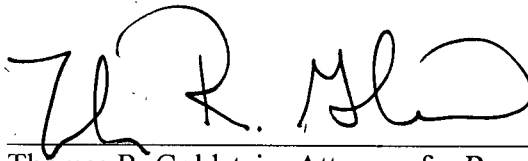
The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Motion to Remand upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 14th day of January, 2011, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDS' N, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

January 6, 2011

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010176647

Dear Ms. Gee,

I enclose the Respondent's Motion to Remand. I also enclose our firm's check in the amount of \$25.00 and a certificate of service. I ask that you please file the original and return the extra copies marked filed to me in the envelope provided. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: Motion to Remand, certificate of service, firm check, return envelope

cc: Honorable Roger M. Young
Hugh Buyck, Esq.
Jeff Floyd

RECEIVED

JAN 18 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

January 18, 2011

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston, SC 29415

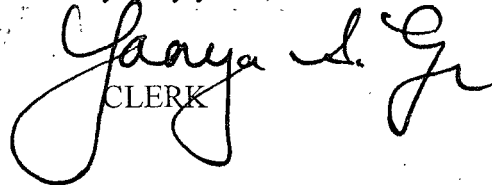
Re: Town of Hollywood v. Floyd, William
2010174946

Dear Mr. Goldstein:

Our records indicate that the transcript in the above matter should have been ordered by December 2, 2010. As of today's date we have not received notification of the request or the Appellants Initial Brief and Designation of Matter.

You must file a Motion to Order Out of Time within ten (10) days of this letter, or your appeal may be dismissed.

Very truly yours,


CLERK

TAG/laf

cc: Hugh Willcox Buyck, Esquire

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

TELEPHONE: (843) 377-1400
FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

RECEIVED

DEC 17 2010

SC Court of Appeals

December 15, 2010

Amanda Haffendon
P.O. Box 424
Summerville, SC 29483


Re: William Floyd a/k/a Jeff Floyd, Troy Readon, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood; C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
BSLF File No. 10.63

Dear Ms. Haffendon:

In order to pay the \$2,718.65 cost for the entire trial transcript in the above-referenced matter, please forward a copy of your W-9 form to my office. Should you have any questions or concerns, please do not hesitate to contact me.

With kind regards,

Yours truly,


Hugh W. Buyck

HWB:efs

cc: Thomas R. Goldstein, Esquire
Katie Monoc, Esquire
Tanya Gee, Clerk - S.C. Court of Appeals
Tracy Garrett, Circuit Court Reporter Coordinator - S.C. Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 24, 2010

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
Case Tracking #: 2010174946

Dear Mr. Goldstein:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within 10 (ten) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK

VAG
TAG/khh

cc: Hugh Willcox Buyck, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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TELEPHONE: (803) 734-1890
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November 24, 2010

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
Case Tracking #: 2010174946

Dear Mr. Goldstein:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/khh

cc: Hugh Wilcox Buyck, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
NOV 23 2010
SC Court of Appeals

The Town of Hollywood..... Respondent,

vs.

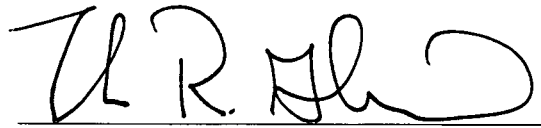
William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Appellants.

AMENDED NOTICE OF APPEAL

William J. Floyd a/k/a Jeff Floyd, *et. al.*, appeal the Order Granting Partial Summary Judgment of the Honorable R. Markley Dennis dated September 7, 2010, and thereafter the Order Denying Reconsideration filed October 19, 2010, and received by counsel on November 5, 2010.

November 22, 2010

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 23 2010

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

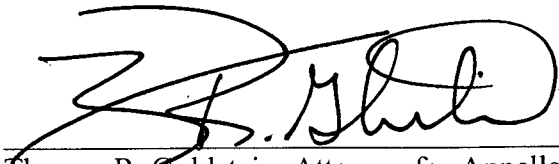
The Town of Hollywood..... Respondent,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCracken Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Appellants' Amended Notice of Appeal upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 22nd day of November, 2010, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Respondent.



Thomas R. Goldstein, Attorney for Appellants
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@hotmai.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
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CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip: 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

November 22, 2010

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010174946

Dear Ms. Gee,

I enclose an original and an extra copy of the appellants' Notice of Appeal in the above referenced case. Would you be so kind as to file the original and return a clocked in copy to me in the envelope provided? I also enclose our firm's check in the amount of \$100.00, and a certificate of service. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: Amended Notice of Appeal, certificate of service, check No. 13965, return envelope

cc: Hon. Julie A. Armstrong, Clerk of Court

Hugh Buyck, Esq.

Jeff Floyd

RECEIVED

NOV 23 2010

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 19, 2010

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Town of Hollywood v. Floyd, William
Case Tracking #: 2010174946

Dear Mr. Goldstein:

This will acknowledge receipt of your Notice of Cross Appeal in the above referenced matter.

The Court notes, however, that this is not a cross appeal and pursuant to Rule 203, SCACR, there are several deficiencies in your Notice that must be corrected before this Court will consider this appeal as filed.

Within 14 days of the date of this letter, you must provide the following documents:

1. \$100.00 filing fee
2. Amended Notice of Appeal containing the correct case caption. The case caption should read as follows:

The Town of Hollywood,

Respondent,

v.

William Floyd a/k/a Jeff Floyd, Troy Readen
and Edward McCracken a/k/a Eddie
McCracken,

Appellants.

3. Amended Notice of Appeal removing "Cross"
4. Proof of Service on opposing counsel that they have been served with the Amended Notice of Appeal.

Failure to provide the requested information could result in the dismissal of your appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/khh

cc: Hugh Willcox Buyck, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

NOV 15 2010

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2010-CP-10-2695

The Town of Hollywood..... Appellant,

vs.

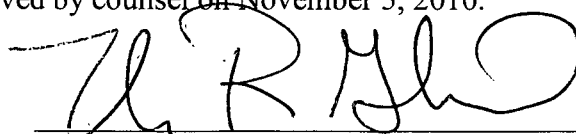
William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

NOTICE OF CROSS APPEAL

Respondent, William Floyd cross appeals the Order Granting Partial Summary Judgment of the Honorable R. Markley Dennis dated September 7, 2010, and thereafter the Order Denying Reconsideration filed October 19, 2010, and received by counsel on November 5, 2010.

November 10, 2010

Other counsel of Record:
Hugh Buyck, Esq.
P.O. Box 2424
Mt. Pleasant, SC 29465



Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291(843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-2695

RECEIVED
NOV 15 2010
SC Court of Appeals

The Town of Hollywood..... Appellant,

vs.

William J. Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken Respondents.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents' Notice of Cross Appeal upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 11th day of November, 2010, to the following address: Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant.



Thomas R. Goldstein, Attorney for Respondents
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121, N. Charleston, S. C. 29415-1121
(843) 554-4291; (843) 554-5566 fax

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

November 9, 2010

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

RECEIVED

NOV 15 2010

SC Court of Appeals

Re: The Town of Hollywood vs. William J. Floyd a/k/a Jeff Floyd, Troy
Readen, and Edward McCracken a/k/a Eddie McCracken
Case No.: 2010-CP-10-2695
Case Tracking Number: 2010176647

Dear Ms. Gee,

I enclose a Notice of Cross Appeal in the above referenced case. Would you be so kind as to file the original and return a clocked in copy to me in the envelope provided? I also enclose a certificate of service. With kind regards, I am

Very truly yours,
BELK, COBB, INFINGER & GOLDSTEIN, P.A.



Thomas R. Goldstein

TRG/rt

enclosure: Notice of Cross Appeal, certificate of service, return envelope

cc: Hugh Buyck, Esq.
Jeff Floyd

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Chas., S. C. 29415-1121

Hon. Tanya A. Gee
Clerk of Court,
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-10-2695

(Formerly Case No. 07-CP-10-4559)

THE TOWN OF HOLLYWOOD,

PLAINTIFF,

WILLIAM J. FLOYD, a/k/a JEFF FLOYD,
TROY READEN and EDWARD
MCCRACKEN, a/k/a EDDIE MCCRACKEN,

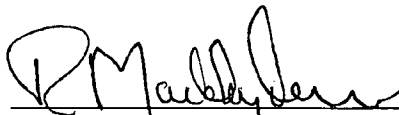
DEFENDANTS.

ORDER

FILED
OCT 19 2010
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

This matter comes before me upon Motion for Reconsideration filed by Thomas R. Goldstein, Esquire, Attorney for Plaintiff, The Town of Hollywood. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is denied;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

October 11, 2010

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

GOLDSTEIN, THOMAS R
P O BOX 71121
CHARLESTON , SC 29415

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFF'S MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 19TH DAY OF OCTOBER , 2010 AND A COPY MAILED
FIRST-CLASS THIS 3RD DAY OF NOVEMBER , 2010 TO ALL COUNSEL OF RECORD AND/OR
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GOLDSTEIN, THOMAS R
P O BOX 71121
CHARLESTON , SC 29415

2010-CP-10-002695
HOLLYWOOD TOWN OF THE
VS.
FLOYD, WILLIAM ETAL

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
C/A No. 10-CP-10-002695

THE TOWN OF HOLLYWOOD)
)
 Plaintiff)
)
)
 v.)
)
 WILLIAM FLOYD a/k/a JEFF FLOYD,)
 TROY READEN and EDWARD)
 MCCRACKEN a/k/a EDDIE)
 MCCRACKEN,)
)
 Defendants)

**ORDER GRANTING SUMMARY
JUDGMENT TO PLAINTIFF**

FILED
2010 SEP - 7 PM 1:14
JULIE T. ARMSTRONG
CLERK OF COURT

This matter comes before the court on the Town of Hollywood's ("Town") motion for summary judgment. The Town brought this action to challenge the validity of two recorded plats filed in Charleston County by the defendants, seeking a declaration that the plats were not filed or effective to accomplish a subdivision of property, and seeking a permanent injunction against their use to develop the property in question. After reviewing the pleadings, discovery, the motion for summary judgment and other evidence before the court, I find that there is no genuine issue of material fact as to the causes of action stated in the Town's complaint, and it is clear that the Town is entitled to a judgment as a matter of law:

FACTS

In February 2007, Defendants Floyd, Readen and McCracken entered into a contract for the purchase of a 13-acre tract on Bryan Road (hereinafter "Property") in Hollywood, South Carolina. Defendants stipulated a contingency that they must present the project to the Town of

RWS

Hollywood (hereinafter "Town") for rezoning and preliminary plat approval at the May or June meeting. Defendants retained civil engineer Curtis Lybrand in March of 2007.

Defendants submitted an application for rezoning to the Hollywood Zoning and Planning Commission (hereinafter "Commission") on June 6, 2007 for presentation at the Commission's June 14, 2007 meeting. At that meeting, defendants presented a rough sketch of the property and indicated their intent to subdivide and develop it into seventeen lots. The Commission instructed defendants they did not need to rezone the property, but that defendants needed formal Commission approval to subdivide. Chairperson Salters tabled the issue and asked defendants to return at a later date when the Commission could act on their request, pursuant to town ordinances.

Less than two weeks later, Readen called Lybrand to say that the then-acting zoning administrator, Kenneth Edwards, would approve the subdivision if divided into two phases. Lybrand immediately phoned Edwards who confirmed he would personally approve plats 1 through 8, and then plats 9 through 17 if Lybrand came in before June 29, 2007 --- Edwards' last day of work.

On June 27, 2007, two days before Edwards's employment ended, Edwards signed off on the defendants' seventeen plats in two "phases." Defendants closed on their property the same day.

The Town's ordinances do not give the zoning administrator (in this case, Edwards) authority to approve a final subdivision plat of this kind without prior approval of the Commission. Hollywood, S.C., Municipal Code § 30-12. When defendants began developing the property, the Town issued a Stop Work Order.

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The Town seeks a declaration that (1) defendants are neither authorized nor approved to subdivide or develop the property pursuant to Hollywood Municipal Ordinances and South Carolina law, and (2) the plat signed by Edwards is null, void, and of no effect. The Town requests both a preliminary and permanent injunction against defendants' continued development of the property based on the recorded plats. The Town now moves this Court for summary judgment on the causes of action it states in its Complaint, as well as dismissal of defendants' counterclaims.

LAW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), S.C.R.C.P. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Summary judgment is proper where plain, palpable, indisputable facts exist on which reasonable minds cannot differ. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). In a motion for summary judgment, where the facts are not in dispute, the question before the court becomes one of law. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 356, 628 S.E.2d 902, 910 (Ct. App. 2006).

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The applicable ordinances were adopted in 1998¹ to implement the Town's Comprehensive Plan pursuant to S.C. Code § 6-29-1110, *et seq.* The purpose of the land development regulations, well within the Town's police power, "are designed to protect and accomplish the public health, safety, economy, good order, appearance, convenience, morals and general welfare through the harmonious, orderly, and progressive development of land within the Town of Hollywood." Hollywood, S.C., Municipal Code § 30-2.

To legally subdivide property containing more than three plats, potential developers must follow a formal two-step process. Hollywood, S.C., Municipal Code § 30-34. First, the Commission must review and approve the preliminary plat; and second, the Commission must review and approve the final plat. Id. Would-be subdividers may informally engage the Commission by submitting a sketch plan for review before the formal approval process. Id. The formal process must be complete before subdivision lots may be sold. Id.

The Zoning Administrator has the limited authority to divide:

any tract that is in one ownership, into three (3) or fewer lots, provided that no new street right-of-way dedications are involved; no utility or drainage easements are necessary, the lots meet the Health Departments requirements for the installation of sewage disposal, and no new residual parcels are created which do not conform to this ordinance.

Hollywood, S.C., Municipal Code § 30-12. Edwards's apparent attempt to approve a subdivision of plats of ten lots or less exceeded his statutorily-granted authority.

"Estoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute." Morgan v. S. Carolina Budget & Control Bd., 377 S.C. 313, 319, 659 S.E.2d 263, 267 (Ct. App. 2008); Quail Hill, LLC v. Richland County, No. 26788 (S.C. Mar. 22, 2010). "A public officer derives his authority from statutory

¹ On March 26, 2007, these ordinances were recodified, but the language of the 1998 ordinances remains in the recodified ordinances. The ordinance numbers pursuant to recodification will be used in this Order.

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enactment, and all persons are in law held to have notice of the extent of his powers, and therefore, as to matters not really within the scope of his authority, they deal with the officer at their peril.” Carolina Nat’l Bank v. State, 60 S.C. 465, 38 S.E. 629, 632 (1901). See, e.g., Goodwine v. Dorchester Dep’t of Soc. Servs., 336 S.C. 413, 420, 519 S.E.2d 116, 119 (Ct. App. 1999) (looking to statutory law to determine the scope of a DSS caseworker’s authority); Oswald v. Aiken County, 281 S.C. 298, 302-03, 315 S.E.2d 146, 150 (Ct. App. 1984) (citing statute to determine whether County had power to pay its employees for overtime).

South Carolina law is well-settled: the doctrine of equitable estoppel does not apply to unauthorized conduct or statements by government officers or agents. See Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001) (“As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.”); Sullivan’s Island v. Byrum, 306 S.C. 539, 544, 413 S.E.2d 325, 328 (Ct. App. 1992) (“The acts of government agents acting within the scope of their authority can give rise to estoppel against the government, but unauthorized conduct or statements do not give rise to estoppel.”).

For example, in DeStefano v. City of Charleston, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991), the Court held a landowner’s plat was erroneously recorded after town administrators acted outside the scope of their authority in its approval. “No estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of . . . one of its officers or agents” Id. Similarly, in McCrowey v. Zoning Board of Adjustment, 360 S.C. 301, 306, 599 S.E.2d 617, 619-20 (Ct. App. 2004), the court held that the zoning administrator lacked authority to alter or waive the

RW/s

zoning ordinance in question. Id. Rather, the zoning administrator had only the power to administer and enforce the code. Id. The court mandated that equitable estoppel would not frustrate the City of Rock Hill's attempts to enforce its zoning code as written. Id.

Compliance with the applicable ordinance is the condition precedent to lawful approval. Martel Inv. Group v. Town of Richmond, 982 A.2d 595 (R.I. 2009). To rule otherwise would render the ordinance "a mere empty formality." Id. Martel, though non-binding, is instructive. There, a permit was unlawfully issued and the court held that the applicant's failure to comply with the ordinance was neither mitigated nor excused by the mere fact that the town official had also erred. These rules support the longstanding policy that it is improper to estop a government entity when to do so would contravene state law.

Summary judgment in the present case is proper because it "is consistent with our state's jurisprudence regarding the applicability of the doctrine of equitable estoppel to a government entity." Quail Hill, LLC v. Richland County, 387 S.C. 223, 692 S.E.2d 499 (2010). In, Quail Hill, the South Carolina Supreme Court affirmed the circuit court's grant of summary judgment to Richland County in a case factually similar to this case. In that case, the developer bought, surveyed, platted, and prepared property for a subdivision development based on a zoning official's erroneous opinion that the property was zoned RU and would allow for the developer's intended for the property as a manufacturing housing community. Quail Hill, 692 S.E.2d at 501-502. The developer marketed and sold several lots. Id. Once the official's error was discovered, a year and a half later, the developer was ordered to cease all development inconsistent with the correct zoning classification, which did not allow manufactured housing uses. Quail Hill, 692 S.E.2d at 502. When developer sued the County on various theories, the trial court granted the County summary judgment concluding that equitable estoppel could not frustrate the County's

Rnd/6

attempts to enforce its zoning ordinances. Quail Hill, 692 S.E.2d at 503. Because the zoning map and ordinances were public record, the developer could not have been misled. Id. The South Carolina Supreme Court held that because the developer relied on erroneous information conveyed by unauthorized individuals, as a matter of law, equitable estoppel could not be invoked against the County. Quail Hill, 692 S.E.2d at 506-508. The Court further held, “[m]ore importantly, we agree with the County’s argument that the RU zoning classification was a mistaken statement of the law and, thus, could not be used to estop the County from enforcing it.” Quail Hill, 692 S.E.2d at 507.

“Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.” Am. Legion Post 15 v. Horry County, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009). “A party claiming estoppel against a public body must show: (1) a lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the conduct of the party estopped; and (3) a prejudicial change in position.” Midlands Util., Inc. v. S.C. Dep’t of Health & Envtl. Control, 298 S.C. 66, 71, 378 S.E.2d 256, 259 (1989). Justifiable reliance, a necessary element, is impossible for Defendants to show because Edwards committed an ultra vires act. See Martel Investment Group v. Town of Richmond, 982 A.2d 595 (R.I. 2009). The Defendants had means to know the proper approval procedure because it is outlined in the ordinances.

Edwards lacked the authority to either approve Defendants’ subdivision or waive the subdivision approval process as set forth in the Towns’ Municipal Code. Edwards’ actions in signing the plats as approved by the Town were without authority and cannot be used to estop the Town from enforcing its ordinances. Viewing all facts in the light most favorable to Defendants, the Town is entitled to a declaration by this Court that (1) the Defendants have no

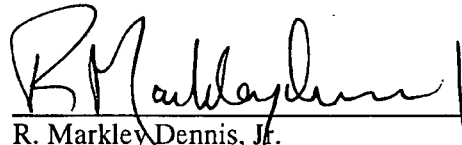
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authorization or approval under the Municipal Code of Hollywood or the laws of the State of South Carolina to subdivide the property or begin development activities on the Bryan Road Property, and (2) the plats signed by Edwards upon which the Defendants have wrongly proceeded to develop the Property are null, void and of no effect.

Summary judgment as to all causes of action stated by the Town in its Complaint is GRANTED.

The Town's motion for summary judgment as to the Defendant's counterclaims is denied.

IT IS SO ORDERED.


R. Markley Dennis, Jr.
Presiding Judge, Ninth Judicial Circuit

September 1, 2010
Moncks Corner, South Carolina

RWD/s



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 4, 2010

Hugh Willcox Buyck, Esquire
Buyck and Sanders Law Firm, LLC
P.O. Box 2424
Mt. Pleasant, SC 29465

Re: Floyd, William v. The Town of Hollywood
2010176647

Dear Mr. Buyck:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

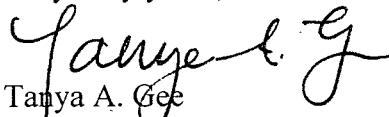
PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as

amended June 1, 1999, no the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,


Tanya A. Gee
CLERK

TAG/laf

cc: Thomas R. Goldstein, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
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V. CLAIRE ALLEN
DEPUTY CLERK

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November 4, 2010

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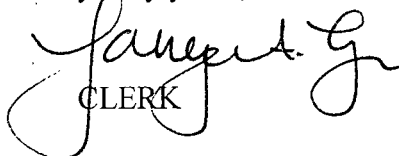
Re: Floyd, William v. The Town of Hollywood
2010176647

Dear Mr. Buyck:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,


CLERK

TAG/laf

cc: Thomas R. Goldstein, Esquire

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/Jean H. Toal _____ C.J.

s/James E. Moore _____ J.

s/John H. Waller, Jr. _____ J.

s/E.C. Burnett, III _____ J.

s/Costa M. Pleicones _____ J.

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

PM 11/1/10
POS 11/1/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas
Roger M. Young, Circuit Court Judge

Case No. 2010-CP-10-2695

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SC Court of Appeals
Respondents,

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCracken,

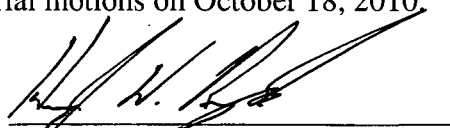
v.

The Town of Hollywood,

Appellant.

Notice of Appeal

The Town of Hollywood appeals from the judgment entered on September 13, 2010, in favor of the Plaintiffs on the jury's verdict. The Town of Hollywood timely filed posttrial motions for judgment notwithstanding the verdict, or in the alternative, for a new trial, which were denied by order of Judge Roger M. Young, filed October 4, 2010. Counsel received written notice of the order denying the posttrial motions on October 18, 2010.



BUYCK & SANDERS, LLC

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(843) 377-1400; (843) 377-1403 (fax)
hwb@buyckfirm.com

PRATT-THOMAS WALKER, PA
W. Andrew Gowder, Jr.
Katie Monoc
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2200 (843) 727-2238 (fax)
wag@p-tw.com

November 1, 2010

Attorneys for the Appellant
The Town of Hollywood

Other Counsel of Record

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Thomas R. Goldstein
P.O. Box 71121
Charleston, SC 29415-1121
(843) 554-4291 (843) 544-5566 (fax)
tgoldstein@cobblaw.net

Attorney for Respondents
William Floyd, et al.

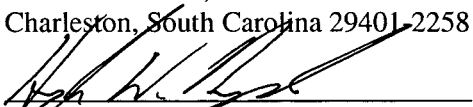
Certificate of Service

I, Hugh W. Buyck, attorney for the Appellant, The Town of Hollywood, do hereby certify that on November 1, 2010, I served a copy of the Notice of Appeal on Counsel for Respondents, via U.S. Mail, first class, postage prepaid to the following address:

Belk, Cobb, Infinger & Golstein, PA
Thomas R. Goldstein
P.O. Box 71121
Charleston, SC 29415-1121

I further certify that I mailed a copy of the Notice of Appeal to the Clerk of the Court for Charleston for filing on this same date:

Julie Armstrong, Clerk
Charleston County – Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258



Hugh W. Buyck

BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

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MT. PLEASANT, SC 29465-2424

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Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

November 1, 2010

RECEIVED

NOV 02 2010

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: William Floyd a/k/a Jeff Floyd, Troy Readon, and Edward McCracken a/k/a Eddie McCracken v.
The Town of Hollywood; C/A No. C/A No. 10-CP-10-002695 (Charleston Co.)
BSLF File No. 10.63

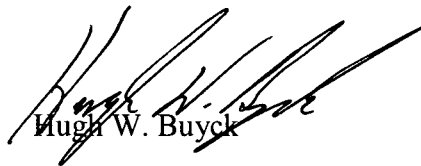
Dear Ms. Gee:

Enclosed for filing is the Notice of Appeal on behalf of The Town of Hollywood in the above referenced case. Also enclosed are:

1. Our Certificate of Service upon Counsel for the Respondents;
2. A copy of the judgment and the order denying the post-trial motions which are to be challenged on appeal; and
3. \$100.00 filing fee.

With kind regards,

Yours truly,

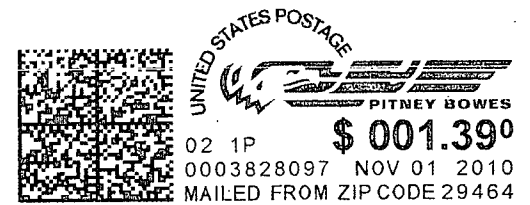

Hugh W. Buyck

HWB:adm
Enclosures

cc: Thomas R. Goldstein, Esquire (w/ enclosures)
Katie Monoc, Esquire (w/ enclosures)
Julie Armstrong, Charleston County Clerk of Court

BUYCK & SANDERS, LLC

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424.
MT. PLEASANT, SC 29465-2424



THE HONORABLE TANYA A. GEE
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SC 29211

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-2695

William Floyd et al

v

The Town of Hollywood

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit) Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

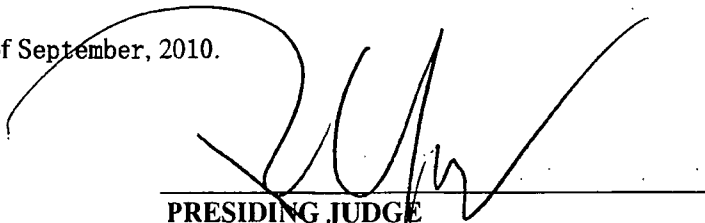
FILED
2009 SEP 23 PM 2:48
JULIE J. ARNSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
- Statement of Judgment by the Court:

Cause of Action I: Jury Verdict in favor of Defendant Town of Hollywood
Cause of Action II: Jury Verdict in favor of the Defendant Town of Hollywood
Cause of Action III: Jury Verdict in favor of the Plaintiffs and \$450,000 in actual damages.

Dated at Charleston, South Carolina, this 13 day of September, 2010.



PRESIDING JUDGE

This judgment was entered on the 13 day of September, 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Goldstein
ATTORNEY(S) FOR THE PLAINTIFF(S)

Hugh Buyck & Katie Monoc
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
William Floyd a/k/a Jeff Floyd, Troy)
Readen and Edward McCracken a/k/a)
Eddie McCracken,)
)
Plaintiffs,)
)
vs.)
)
The Town of Hollywood,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
Case No. 10-CP-10-2695

VERDICT FORM

Cause of Action I: Violation of Substantive Due Process Rights Under the U.S. Constitution

We, the Jury, find for the **Plaintiffs** against the **Defendant Town of Hollywood** for **Cause of Action I of Violation of Substantive Due Process Rights Under the U.S. Constitution** in the amount of \$ _____ actual damages.

FOREPERSON

DATE

We, the Jury, find for the **Defendant Town of Hollywood**.



FOREPERSON

9/13/10

DATE

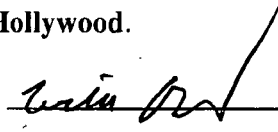
Cause of Action II: Violation of Procedural Due Process Rights Under the U.S. Constitution

We, the Jury, find for the **Plaintiffs** against the **Defendant Town of Hollywood** for **Cause of Action II of Violation of Procedural Due Process Rights Under the U.S. Constitution** in the amount of \$ _____ **actual damages.**

FOREPERSON

DATE

We, the Jury, find for the **Defendant Town of Hollywood.**



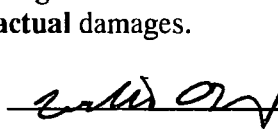
FOREPERSON

9/13/10

DATE

Cause of Action III: Violation of Equal Protection Rights Under the U.S. Constitution

We, the Jury, find for the **Plaintiff** against the **Defendant Town of Hollywood** for **Cause of Action III of Violation of Equal Protection Rights Under the U.S. Constitution** in the amount of \$ 450,000.00 **actual damages.**



FOREPERSON

9/13/10

DATE

We, the Jury, find for the **Defendant Town of Hollywood.**

FOREPERSON

DATE

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2010-CP-10-2695

William Floyd a/ka/ Jeff Floyd, Troy)
Readen, and Edward McCracken a/k/a)
Eddie McCracken,)

Plaintiffs,)

vs.)

The Town of Hollywood,)

Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
MOTION FOR A NEW TRIAL, OR
IN THE ALTERNATIVE, FOR A
TRIAL NISI REMITTITUR**

2010 OCT -4 PM 4:05
JULIE J ARMSTRONG
CLERK OF COURT

FILED

This matter came before this court for trial on September 7-13, 2010. The jury was provided three legal grounds for its verdict: (1) Substantive Due Process; (2) Procedural Due Process; (3) Equal Protection. After six and one half hours of deliberations and an Allen charge following indication of being a hung jury, the verdict was returned in favor of the Plaintiffs on the Equal Protection grounds for \$450,000. On September 23, 2010, the Defendant moved for a Judgment Notwithstanding the Verdict, New Trial or in the alternative, for Trial Nisi Remittitur.

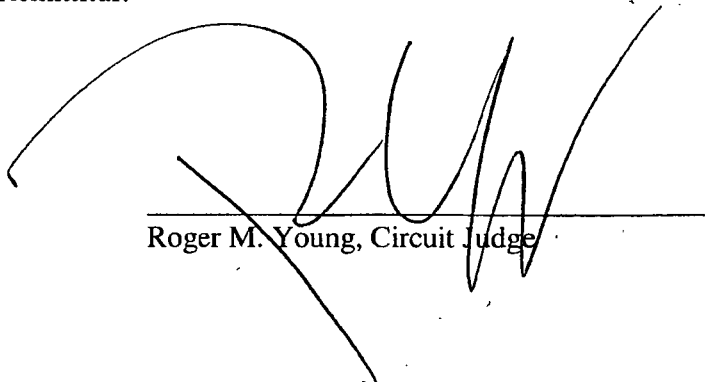
Standard of Review

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law. Umhoefer v. Bollinger, 379 S.E.2d 296, 297 (S.C. Ct.App.1989). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." Id.

Conclusion

I have considered the arguments on both sides, supporting and opposing documents, and based on same DENY Defendant's Motion for a Judgment Notwithstanding the Verdict, New Trial or in the alternative, for Trial Nisi Remittitur.

AND IT IS SO ORDERED.



Roger M. Young, Circuit Judge

October 4, 2010
Charleston, South Carolina.