

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

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SC Court of Appeals

Robert Bonds, Circuit Court Judge

APPELLATE CASE #: 2024-001984

Mare Deckard

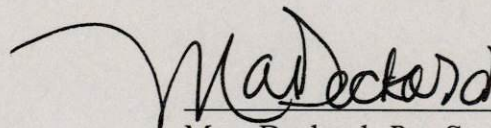
Appellant

v.

Town of Port Royal Zoning Board of Appeals

Respondent

FINAL REPLY BRIEF OF APPELLANT



Mare Deckard, *Pro Se*

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Date: July 28, 2025

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Reply to Respondent's Statement of Facts

Neighborly Dispute

The Respondent has repeatedly mischaracterized this matter as “*a dispute between two neighbors*”. This obfuscates the real issue, the obstruction of the Alley Way from the required fire emergency access, and misleads the courts by suggesting the Appellant is just disgruntled because she can no longer access the Alley Way for her family's boat/trailer business [approved of and licensed by the Town for over twenty years]. In truth, the blame for neighborhood ill will can be laid squarely at the feet of senior town employees and the town attorney, who failed to notify anyone about moving the Alley Way to accommodate the neighbor's addition, then mistakenly approving concreted posts [then a fence] that obstructs the Alley Way.

Due Process Violations

The Respondent's brief also failed to address the elephant in the room, that the Appellant was denied due process by the Town and thus did not have a meaningful opportunity to be heard before the Zoning Board. The Board should expect every decision they make as a result of a grievance to be evaluated by the Courts under the five elements of a legal proceeding, which, over centuries of judicial experience, have come to be recognized as the *sine qua non* of due process: **equality, economy, expedition, evidence** and **equity**. And while the Zoning Board has no power or capacity to constitute itself as a “court of last resort.”, if they can satisfy a court their decision comports with these elements, the court will let the decision on the merits stand.

Here, the Appellant was denied meaningful due process because the [1] Town denied her *equality* by discriminating against her procedurally. The essential requirement for equality is that the system provide a “*level playing field*” for the disputants. Discrimination in appearance or fact

is an anathema to the equality required to satisfy due process. A prime example was the Respondent's withholding of [hearsay] emails from the Appellant's FOIA request they knew, or should have known, must be given to her as they did the Board. Instead, the Respondent sprung them unawares on the Appellant during the hearing in order to sway the tribunal; 2] the system must be designed and function to elicit *evidence*, not assumptions; proof, not presumptions. And while strict rules of evidence in the judicial sense do not apply in a zoning board hearing, there must be control of what is admitted as relevant, and judgment as to what is ***mere speculation and hearsay designed to prejudice rather than inform***. That the Board allowed this hearsay, in the form of emails between unvetted individuals lacking land use expertise to influence their decision, is prima facie evidence of a lack of due process, and [3] The system must produce decisions that reflect a sense and substance of "rightness" and "reasonableness", an important measure of *equity*.

The record makes clear the Appellant was disadvantaged from the start in terms of *equality*, *evidence* and *equity*. The Town did not provide her notice they were moving the Alley Way [defined in the ordinance as a "*vehicular way*"] in December 2022, from where it had been for almost thirty years, while simultaneously permitting unlawful concreted posts that blocked her boat and trailer from accessing the Alley Way. (R. p. 346)

Evidence

The Respondent gives the game away in their brief about bungling the permitting process on more than one occasion. Example: "*The Town in turn offered **photographic evidence** that a seated driver can see over a 3.5' tall obstacle*". In addition to withholding the [hearsay] emails, the Town never provided this photographic evidence to the Appellant for rebuttal. Had they, she

would have argued they should have tested for visibility clearance on the Alley Way *prior* to permitting posts or a fence, and that their testing “protocol” [golf carts and a tape measure] was unsupported by a professional or scientific standard. In failing to disclose this **evidence** to the Appellant, the Town violated an essential element of due process. [**emphasis added**] (R. pp. 170-172)

Equality

I. (a) and (b) The Zoning Board of Appeals correctly determined that the only Relevant Section of the Town Code implicated in this dispute is Section 5

Another example from their brief is the Respondent’s postering that Code Section 2 pertains to new development and is not applicable to the Alley Way in question because it was constructed in 1995 and not grandfathered. However, the Code does not distinguish between existing and future Alley Ways, and the code is implicit that Alley Ways are an alternate route for fire truck access, which makes sense given the Town’s approval of multiple rental additions and carriage house apartments, like the neighbor’s in question, lining the Alley Way. (R. p. 355; lines 36-42)

And if the Respondent believed their reading of Code Section 2 was accurate, then the Court might ask why senior town staff, including Town Manager Van Willis, were secretly emailing the City of Beaufort’s Fire Marshal John Badgett and Fire Chief Tim Ogden on January 11, 2024 requesting an in-person inspection of the Alley Way. It would have been unnecessary, unless senior staff were worried about their botched permitting of the posts. And this Court may reasonably infer the Town withheld these emails from the Appellant because Badgett, referring

to the Alley Way said, “*it is too narrow by the mail boxes and the fence post...*”, which proved the Appellant right. Thus, senior staff cited only the part of the emails at the hearing that favored them, thus denying the Appellant **equality**, another due process violation. [**emphasis added**] (R. pp. 156-161)

Equity

Because of the town staff’s testimony about these [secretive] emails, [secretive] golf cart tests and [secretive] site visit, the Board was maneuvered into ignoring the main thrust of the Appellant’s argument, that approving an obstruction on the Alley Way served to eliminate the code required fire protection for tenants in rental units. Therefore, the decision by the Board was not only outside of their authority, it endangered every person, renter and permanent resident alike that lives alongside the Alley Way should a catastrophic fire take place. This Court should have no doubt that if something of this magnitude occurs [think Malibu and Los Angeles fires, as recent examples], future plaintiffs and their attorneys will look to the record in *this case*, along with the actions of town staff, the town attorney, and the Board, who were expressly warned not to make decisions not “*right*” and “*reasonable*”, decisions without **equity**.

III. The Remaining issues raised by Appellant are beyond the scope of her appeal.

The Appellant preserved these issues for the record, alleging that the withholding of evidence and misconduct by the town attorney, Thomas Bendle, undermined the fairness and integrity of the entire process, in violation of the South Carolina Rules of Professional Conduct.

First, in regard to the allegation Bendle withheld evidence from the Appellant, the record reflects that obstruction and bungling by senior staff and Bendle led the Appellant to file two

timely FOIA requests. In reply to her second FOIA, while the aforementioned January 11, 2024 Fire Marshall/Fire Chief emails were withheld, the Town provided Appellant a related email from Town Manager Van Willis from the same day and time about fence/fire access, to Town Council. In this email of record, Willis says **“Because of repeated FOI requests in the past, we created a protocol that requires any/all requests to be reviewed/vetted by our attorney.”** Thus, Bendle can hardly say to the Court today those emails are *“beyond the scope of her appeal”* because, as an officer of the court, he had an obligation to ensure all documents were provided to the Appellant in fulfillment of her FOIA request. **[emphasis added]** (R. p. 341; lines 10-11)

Insofar as the Appellant’s allegations about Bendle’s untruthful testimony before the circuit court, the transcripts are replete with his misleading and/or outright false statements, statements the Appellant impeached using some of the very documents she received from her FOIA requests. (R. p. 310, lines 9-25; R. p. 311, lines 1-25; R. p. 312, line 1-25; R. p. 313, lines 1-25; R. p. 314, lines 1-25; R. p. 315, lines 1-25; R. p. 316, lines 1-25; R. p. 317, lines 1-25; R. p. 318; lines 1-21; R. p. 323, lines 9-25; R. p. 324, lines 1-25; R. p. 325, lines 1-2) And, Bendle also failed to disclose to the Appellant he was representing the Town Manager personally during the pendency of this matter.

There is no question attorney misconduct can have a wide-ranging impact on a case, from directly influencing the outcome to eroding public trust in the legal system. And withholding evidence from one party can significantly undermine the fairness and integrity of the legal process, leading to an unfair decision. Further, when an attorney represents multiple clients whose interest conflict, it can create a situation where one client's interests are not adequately protected, as demonstrated here. Bendle had a fiduciary responsibility to inform the Board about

the Town's legal exposure if they removed this one Alley Way from the code required access should a catastrophic disaster like a rapidly spreading fire occur. But, given the Town Manager's active role in this matter, Bendle may have been protecting him from scrutiny. Hence, why the "remaining issues" are most certainly within the scope of this appeal.

CONCLUSION

For the reasons set forth above, Appellants respectfully request this Court reverse the judgment of the Circuit Court, direct the Respondent to order removal of the obstruction from the Alley Way, and for such other and further relief as this Court, in the interest of justice, may find appropriate under all the circumstances presented.

Respectfully submitted,



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