THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

APPELLATE CASE NO. 2025-000416

McDaniel Jones, LLC ……..Appellant,

v.

City of Greenville Planning Commission…….…….Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is a regulatory takings case filed by the Appellant McDaniel Jones, LLC against the Respondent City of Greenville Planning Commission.

Appellant purchased 808 McDaniel Avenue on July 26, 2018, for $1,430,000. (R. Vol 2, p. 461). Appellant was a single purpose limited liability company organized for the purpose of purchasing, subdividing, and selling the property, which comprises 1.86 acres. The property fronts McDaniel Avenue but also borders Jones Avenue, which runs roughly parallel to McDaniel Avenue. At the time of the purchase, a single home was situated on the property. (R. Vol 2, p. 462). The property was zoned R-9, Single-Family Residential District. (R. Vol 2, pp. 463-465).

Appellant's owner Mark Cothran desired to raze the existing home and subdivide the property into seven lots, with five lots fronting on McDaniel Avenue and two on Jones Avenue.

Appellant applied to the Respondent for permission to subdivide the property. **This was required under Section 19-2.13 of the Greenville Zoning Ordinance, Section 19-1.1 et seq**. The initial application was submitted on September 14, 2018. (R. Vol 2, pp. 463-465). A large magnolia tree on the property would have been removed under the proposal, but City planning staff determined that the tree was a historical tree and would have to be protected. (R. Vol 2, p. 466).

Public opposition to the application was swift and intense. Written comments against the proposal were submitted by a number of neighborhood residents. (R. Vol 2, pp. 467-503). Appellant revised its plans for the property.

A second application was filed with the Respondent on December 12, 2018. (R. Vol 2, pp. 504-507). The revised application purported to leave the magnolia tree in place protected by a

conservation easement. The number of lots set aside for development was reduced to six, with lots again fronting on both McDaniel and Jones Avenues.

As part of the application process, public notice of the proposed subdivision was published. (R. Vol. 2, pp. 508-509). Public opposition to the subdivision remained ardent.

The Respondent considered the application at a public hearing on January 17, 2019. (R. Vol 2, pp. 562-589). Many opponents attended the hearing. A representative for Appellant presented the application. No one else spoke in favor of the proposal. Eleven neighborhood residents spoke against the application. At the end of the public comments segment, Respondent members suggested to Mr. Cothran that a five-lot subdivision would be approved. Appellant refused to reduce the proposal by one lot. (R. Vol 2, p. 591, lines 10—15; p. 592, line 21 – p. 593, line 9).

The Respondent voted unanimously to deny the application. (R. Vol. 2, pp. 594-595). Written notice of the denial dated February 13, 2019, was mailed to representatives of Appellant. The notice advised Appellant that "reducing the number of residential lots could potentially address [the Respondent's] compatibility concerns…." (R. Vol 2, p. 596). Appellant did not submit a revised application. Instead, Appellant appealed the Respondent's decision to the Court of Common Pleas. The matter was heard and on September 1, 2020, Judge Edward W. Miller entered an order denying the appeal. (R. Vol 2, pp. 597-601).

The Appellant did not appeal Judge Miller's order. Appellant did not pursue the Respondent's suggestion to reapply with a five-lot subdivision. Instead, Appellant sold 808 McDaniel Avenue on October 2, 2020, for $1,400,000. (R. Vol 2, pp. 602-603).

STANDARD OF REVIEW

The parties agreed to refer this case to the Master-in-Equity "to make findings of fact and conclusions of law and to enter a final judgment in the case as to all issues established by the pleadings…." (R. Vol. 1, p. 5). During the hearing, responding to a question by Master-in-Equity, attorneys for both parties confirmed that the court was "to make an ultimate decision on the stipulated facts and exhibits". (R. Vol. 2, p. 621, lines 11-16).

In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law; the trial judge's findings of fact will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Portrait Homes-South Carolina, LLC v. Pennsylvania National Mutual Casualty Insurance Co., 442S.C. 515, 900 S.E.2d 245 (Ct. App. 2023); Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 593 S.E. 2d 170 (Ct. App. 2004).

I. THE COURT'S FINDING THAT NO REGULATORY TAKING OCCURRED WAS REASONABLE AND BASED ON THE EVIDENCE AND APPLICABLE LAW.

A. Overview of regulatory takings law:

Appellant appears to argue that because this appeal deals with the Planning Commission's decision rather than an ordinance passed by City Council, the legal precedents established by cases relied on by the Master-in-Equity regarding regulatory takings and equal protection are inapplicable to this appeal. Appellant did not raise this issue in its motion for summary judgment. Appellant does not cite any case law that holds a planning commission is not bound by nor entitled

to the regulatory takings and equal protection principles relied on by the Master-in-Equity. The Master correctly relied on the cases cited in his order.

Appellant concedes that a regulatory takings analysis is guided by the standards established by Penn Central v. City of New York, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) and its progeny. The Master-in-Equity utilized these cases in reaching his decision. His reasoning is sound and based on his consideration of the evidence and applicable law. The Master-in-Equity noted, and Appellant concedes, that in the regulatory takings context, the question of whether a taking has occurred is a question of law for the court. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 314, 737 S.E.2d 601, 619 (2013); . Columbia Venture, LLC v. Richland County, 413 S.C. 423, 776 S.E.2d 900 (2015). South Carolina courts hold that an inverse condemnation claim is a regulatory taking challenge that is governed by the standards set forth in Penn Central. See Sea Cabins on the Ocean IV Homeowners Association, Inc. v. City of North Myrtle Beach, 345 S.C. 418, 430, 548 S.E.2d 595, 601 (2001); Columbia Venture, LLC v. Richland County, 413 S.C. at 447, 776 S.E.2d at 913.

B. Economic Impact of the Decision on Appellant:

As the Master-in-Equity found, the Takings Clause of the Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. The typical taking that will require just compensation is a direct government appropriation or physical invasion of private property. Dunes West Golf Club, LLC, 401 S.C. 280, 313, 737 S.E.2d 601, 618 (2013). Absent a direct physical invasion, government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster. Such regulatory actions may be compensable under the Fifth Amendment. Clayland Farm Enterprises, LLC v. Talbot County, Maryland, 987 F.3d 346 (4th Cir. 2021).

(Citations omitted.) However, federal and state case law indicate that nearly all the value of property must be taken before a regulatory taking has occurred. Appellant does not cite to any court decision inconsistent with these principles.

Appellant contends that the Master-in-Equity as a matter of law failed to appropriately analyze the impact of the Planning Commission's denial of Appellant's application for a preliminary plat. On the contrary, the Master's analysis is supported by the evidence presented and case law regarding regulatory takings analysis. The Master-in-Equity explained why Appellant's position was not persuasive as to the economic impact that resulted from the Respondent's denial of the application, and the reasonableness of Appellant's investment-backed expectations. The Master's ruling was based on clearly established precedent.

The Master-in-Equity correctly found the evidence presented supported a finding that the denial of Appellant's application for a preliminary plat did not constitute an unconstitutional, regulatory taking. Appellant continues to argue that the reduction of its proposed subdivision to fewer lots than it applied for would be an unconstitutional taking. However, the Master correctly determined that the evidence showed at worst a mere diminution in value, which does not rise to the level of an unconstitutional taking. The evidence supports the Master's findings of fact.

The Appellant did not lose the ability to make money by developing the property. The denial of the application did not prohibit Appellant from developing the property into multiple lots, or from building new homes on the site. The property retained market value. The impact of the denial on Appellant's "bundle of rights" associated with the property was insufficient to establish a taking. The denial of one traditional property right by a governmental act does not necessarily amount to a taking. At least where an owner possesses a full bundle of property rights, the destruction of one strand of the bundle is not a taking, because the aggregate has to be viewed in

its entirety. See Braden's Folly, LLC , 439 S.C. 171, 201, 886 S.E.2d 674, 690 (2023); Andrus v. Allard, 444 U.S. 51, 64-67, 100 S.Ct. 318, 62 L.Ed.2d 201 (1979).

Dunes West, supra, cited by the Appellant, supports the Master-in-Equity's conclusion. It confirms that an action by the government that restricts a developer's plan to develop property is not a taking merely because it prohibits the most beneficial use of the developer's property. United States Supreme Court decisions have uniformly rejected the proposition that diminution in value, standing alone, can establish a taking, and the taking issue in the context of land use regulations is resolved by focusing on the uses the regulations permit. Dunes West Golf Club, LLC , 401 S.C. 280, 317, 737 S.E.2d 601, 621.

Without citing a case that supports its position, the Appellant contends that the reduction of it proposed subdivision by one lot is an unconstitutional taking. The argument flies in the face of established regulatory takings precedent on this point.

The Takings Clause does not create an affirmative obligation for local governments to make good on speculative private investments or to increase property owners' property values. Pulte Home Corporation v. Montgomery County, Maryland, 909 F.3d 685, 696 (4th Cir. 2018). Neither diminution in property value nor even a substantial reduction of the attractiveness of the property to potential purchasers establishes a taking. Esposito v. South Carolina Coastal Council, 939 F.3d 165 (4th Cir. 1991).

A reduction in the number of houses that an owner may build is a diminution in value and is not a taking. FIC Homes of Blackstone, Inc. v. Conservation Commission, 41 Mass.App.Ct. 681, 673 N.E.2d 61 (1996), citing Moskow v. Commissioner of Dept. of Environmental Management, 427 N.E.2d 750 at 753, which in turn cites Penn Central at 438 U.S. at 130-131, 98

S.Ct. at 2662, where the United States Supreme Court said: "'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole…." Appellant's argument that the loss of a single lot constitutes a taking flies in the face of these precedents.

In this case, Appellant sought to maximize its investment by splitting the existing property into multiple lots; Appellant says in effect that the more lots that Appellant could secure from the Respondent, the more money Appellant would make. However, the mere refusal by the Respondent to assist a developer to enhance the value of its property to its hypothetical maximum potential because of traditional zoning concerns is not a compensable taking. See Henry v. Jefferson County Com'n, 637 F.3d 269, 277 (4th Cir. 2011).

The Fourth Circuit Court of Appeals has explained that local governments must be able to control the density of development in order to prevent overcrowding in schools, clogging of streets, overload on sewer facilities, degradation of the environment, and a host of other concerns. Managing the density of development-even if it disappoints a particular developer-is thus a crucial goal of land use planning and not an unconstitutional taking. Quinn v. Board of County Commissioners for Queen Anne's County, Maryland, 863 F.3d 433, 441 (4th Cir. 2017).

Appellant ignores precedent that the diminution in value to its property purportedly caused by a regulatory decision is not an unconstitutional taking. Appellant bought the property for $1,430,000; it sold the property for $1,400,000. Appellant admitted that after the Respondent's decision, Appellant received offers to purchase the property for $1,730,000 and $1,650,000. (R. Vol 2, p. 605). Assuming Appellant acted reasonably in selling the property at a $30,000 loss,

Appellant sustained only a two percent diminution in value. Such a diminution in value, even if it could be linked to the Respondent's decision, establishes that the property retained 98 percent of its value.

The Appellant's sale of the property for $1,400,000 demonstrates the property retained significant value. The diminution in value, if any, is not significant enough to show a taking. The Fourth Circuit Court of Appeals has found that an 83 per cent diminution in value was insufficient to establish a regulatory taking. See Pulte Home Corp., 909 F.3rd 685, 696 (4th Cir. 2018). In Henry v. Jefferson County Com'n, 637 F. 3d. 269 (4th Cir. 2011), the Court of Appeals observed that the United States Supreme Court has found no regulatory taking when presented with diminutions in value of 75% (Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 384, 47 S.Ct. 114, 71 L.Ed. 303, (1926)) and 92.5% (Hadacheck v. Sabastian, 293 U.S. 394, 405, 36 S.Ct. 143, 60 L.Ed. 348 (1915)). The South Carolina Supreme Court cited these cases while rejecting the developer's regulatory takings argument in Dunes West. 401 S.C. 280, 317, 737 S.E. 2d 601, 621 (2013). Master-in-Equity got it right.

C. Extent of interference with reasonable, investment-backed expectations:

The evidence presented to the Master-in-Equity supports his finding that the Appellant's investment-backed expectations were not reasonable. A valid regulatory takings claim must be premised on a property right that was in existence at the time the owner purchased the property. Clayland Farms, LLC, 987 F.3rd at 354. Continuation of the existing use of the property is the property owner's primary expectation when considering an owner's investment-backed expectations for the property; a reasonable investment-backed expectation must be more than a unilateral expectation or an abstract need. Dunes West , 401 S.C. 280, 318, 737 S.E.2d 601, 621.

In this case, the Appellant sought to expand the existing use of 808 McDaniel Avenue from a single-family residential lot to a six-lot subdivision. That was a significant change to the existing use of the property, and Appellant was well aware of it. Master-in-Equity found, and case law instructs, that the court should evaluate Appellant's investment-backed expectations through an objective lens.

The subjective expectations of the Appellant are irrelevant. The critical question is what a reasonable owner in Appellant's position *should* have anticipated. Courts are to look at (1) whether the challenged regulation interferes with the existing use of the property; (2) the degree to which the property's general locale is subject to regulation; and (3) whether the property owner acquired the land after the regulation went into effect. Braden's Folly, LLC v. City of Folly Beach, 439 S.C. 171, 886 S.E.2d 674 (2023). It is undisputed that 808 McDaniel Avenue was within the city limits, and that the city's zoning laws applied to the property. The Appellant acquired the property knowing it was in the City, and that the City's zoning and development procedures, including review by the Planning Commission of the proposed preliminary plat, would apply. The Respondent's denial of Appellant's application did not interfere with the property's existing use; Appellant sought to change the existing use by subdividing a single lot into six.

Mark Cothran is an experienced real estate investor, the sole and managing member of Appellant. (R. Vol. 2, p. 609). The Appellant, through Mr. Cothran, was aware at the time it purchased the property that in order to develop it into a subdivision, an application for a preliminary plat would have to be made to the Respondent, and that the Respondent would decide whether to approve or deny such application after receiving input from planning staff and interested members of the public. Appellant was aware prior to the Respondent considering the

application that Appellant would have to participate in a public meeting to discuss and take questions about the proposed subdivision.

The Appellant, through Mr. Cothran, was aware of public opposition early on. (R. Vol. 2, pp. 611-612). Appellant knew the opponents had multiple concerns about the impact a six-lot subdivision would have on what had historically been a single-family residence. The Respondent received at least 20 written statements from individual opponents to the subdivision. A petition opposing the subdivision was submitted to the Respondent on January 2, 2019, which was signed by many residents from the community. (R. Vol 2, pp. 510-542; pp. 543-553).

Opponents expressed concerns about increased traffic congestion; safety issues; stormwater increase; risks to the existing historic magnolia tree on the property; the potential negative impact on the tree canopy on surrounding properties; and proposed lot sizes and homes inconsistent with that of the neighborhood. (R. Vol. 2, pp. 467-503; pp. 510-542; pp. 543-553; pp. 614-660).

The January 2, 2019, petition was presented to the Respondent by residents opposed to the subdivision. The petition identified major areas of concern to the petitioners: neighborhood compatibility; construction issues; traffic; and tree canopy. At least 96 residents signed the petition. The petition quoted from City Code Section 19-6.9.1: *General purpose and intent. This section is intended to achieve neighborhood compatibility, maintain the harmony and character of established single-family areas, and guide residential infill development to occur in an orderly and desirable manner.* (R. Vol. 2, p. 613).

Prior to the hearing, Mr. Cothran met with several members of the neighborhood. Sam Outten, whose home is across the street from Appellant's property, testified that Mr. Cothran

refused to agree to any change in the proposal, including the neighbors' request that the number of proposed lots be reduced. (R. Vol. 2, p. 561).

A neighborhood meeting was conducted by Appellant's representatives on January 9, 2019. Numerous opponents of the proposed subdivision attended and expressed their opposition. Austin Allen, a representative of Appellant who attended the meeting, prepared a summary of the comments made by the opponents. (R. Vol. 2, pp. 556-560). Mr. Allen noted that one of the attendees said that "A 4 lot subdivision would make a lot more sense and be much more reasonable and comparable to what is on McDaniel and Jones." (R. Vol. 2, p. 560).

The public opposition did not sway Appellant, and on January 17, 2019, Appellant presented its six-lot proposal to the Respondent. As noted above, public opposition was again intense. Appellant was offered the opportunity to revise its plan. The Respondent made it clear both at the hearing and in the notice of denial that a five-lot subdivision would be a more acceptable proposal. Appellant declined to adjust the proposed subdivision and instead appealed the Respondent's denial to the Court of Common Pleas. When the appeal was denied, Appellant sold the property soon after. (R. Vol. 1, pp. 335-336).

The Master-in-Equity found that the neighborhood's concerns about changing the use of the property from its historic use as a single residence, and about the proposed subdivision's impact on traffic, safety, and the land management ordinance's purposes, including the admonition to "encourage quality development to blend with existing development" and to "facilitate the creation of a convenient, attractive, and harmonious community" could well have caused a reasonable investor to reduce the number of proposed lots. (R. Vol. 1, p. 14).

D. <u>Character of the government action:</u>

The Master-in-Equity found that the third Penn Central factor, the character of the challenged governmental action, also favored the Respondent. The Master's finding is supported by both the facts and the applicable law.

The regulatory takings doctrine seeks to "identify regulatory actions that are functionally equivalent to the classic taking, in which government directly appropriates private property or ousts the owner from his domain". Dunes West Golf Club, LLC, 401 S.C. 280, 314, 737 S.E.2d 601, 619. The Respondent's decision did not rise to this level. A regulation that is merely a public program adjusting the benefits and burdens of economic life to promote the common good will pass constitutional muster. Braden's Folly, LLC, 439 S.C. 171, 210, 886 S.E.2d 674, 696 (2023).

The "character of the governmental action" in this case is merely a denial of a preliminary plat for the subdividing of 1.86-acre lot into six lots, coupled with the invitation to submit a plan with one fewer lot. The Respondent's decision did not deprive Appellant of its right to own, use, develop, and sell 808 McDaniel Avenue. To amount to a taking, the impact of the denial must be so profound as to be "functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain". The Respondent's denial was not an act so onerous that its effect was tantamount to a direct appropriation or ouster. Dunes West, 401 S.C. at 313-314, 737 S.E.2d at 618-619. Rather the denial was a preliminary zoning decision that affected only the density of the proposed use of the property, not the right of the developer to develop it. The decision was that the size and configuration of the proposed lots were not compatible with the existing development patterns along McDaniel and Jones Avenues and therefore "incompatible with the existing character and development pattern of the established surrounding neighborhood". (R. Vol. 2, p. 596). At the Appellant's Brief, page 12, Appellant appears to argue that Respondent's denial of the preliminary plat wrongfully took a property right

away from Appellant and that compensation for the loss of that right requires compensation to be awarded. (App. Brief p. 12). The argument ignores the "bundle of rights" analysis explained in Braden's Folly and the direct appropriation/ouster requirement cited by Dunes West. Whether or not the Respondent's reliance on the purpose and intent language in the ordinance, and which was affirmed by the Circuit Court, was correct, the Master-in-Equity's finding that the weight of evidence of the Penn Central factors favored Respondent's position was reasonable and supported by the evidence.

The decision of the Master-in-Equity is supported by the evidence. The Master's decision is not the product of an error of law. He correctly relied on regulatory taking jurisdiction in arriving at his decision.

II. THE COURT'S FINDING THAT NO EQUAL PROTECTION VIOLATION OCCURRED WAS REASONABLE AND BASED ON THE EVIDENCE AND APPLICABLE LAW.

The evidence relied on by the Master-in-Equity supports his finding that the Respondent did not violate Appellant's equal protection rights when it denied the application for a six-lot subdivision. His decision is based on applicable law.

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

Conversely, the Equal Protection Clause does not prohibit different treatment of people in different circumstances under the law; instead, the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Id.

To prevail on an equal protection claim, the Appellant must demonstrate that it has been treated differently from others with whom it is similarly situated, and that the unequal treatment was the result of intentional or purposeful discrimination. Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001); Whaley v. Dorchester County Zoning Board of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999.) If this showing is made, the court should proceed to the second step and "determine whether the disparity in treatment can be justified under the requisite level of scrutiny". Morrison, 239 F.3d 648, 654. When a party has not alleged that it was deprived of a fundamental right or that it was subjected to discrimination based on a suspect classification, a court "will uphold the distinctions drawn by [the defendant] if they were 'rationally related to a legitimate state interest.'" Pulte Home Corp. v. Montgomery County, 909 F.3d 685, 693 (4th Cir. 2018). To rebut a defendant's rational reasons for treating an Appellant differently, the Appellant carries the "heavy burden of negating every conceivable basis which might reasonably support the challenged classification." Van der Linde Housing, Inc. v. Rivanna Solid Waste Authority, 507 F.3d 290, 293 (4th Cir. 2007).

As noted earlier in this brief, the Respondent determined "that the size and configuration of the proposed lots were not compatible with the existing development patterns along McDaniel and Jones Avenues…these discrepancies informed the Commission's determination that the proposed subdivision was incompatible with the existing character and development pattern of the established surrounding neighborhood." (R. Vol. 2, p. 596). The denial of the application was supported by neighborhood testimony presented to the Respondent. For example, Tom Snider, a resident of the neighborhood, testified that the proposed subdivision contained lots narrower than those of surrounding homes, and that if permitted they would "create an incompatibility that

destroys the harmony and character of the street". Mr. Snider described the proposed lots as "like a set of piano keys against the rest of McDaniel". (R. Vol. 2, pp. 651-653).

As discussed in the Respondent's argument in opposition to Appellant's regulatory taking claim, there were other reasons presented to the Respondent that supported its decision. Concerns about safety, increased traffic, the potential harm to the magnolia tree and the overall tree canopy of the neighborhood, all supported the decision of the Respondent. The Harbit court explained that "[w]hile all of the residents' concerns might not be well-founded, City Council's response to public opposition does not rise to the level of a constitutional violation". 382 S.C. at 391; 675 S.E.2d at 780. Quoting the court in Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach, 420 F.3d 322,329 (4th Cir.2005), the court wrote, "[T]he Fourth Circuit Court of Appeals determined the city council's improper denial of the zoning application in response to public opposition did not rise to the level of a constitutional violation because 'matters of zoning are inherently political, and it is a zoning official's responsibility to mediate disputes between developers and local residents'". The record in this case reflects that the Respondent tried valiantly to offer a reasonable compromise; however, the compromise attempt was rejected by Appellant. Respondent's decision may not have been perfect, but it did not constitute an equal protection violation.

The Fourth Circuit Court of Appeals, in Van Der Linde Housing, Inc. v. Rivanna Solid Waste Authority, 507 F.3d 290 at 293 (4th Cir.2007), underscored the political nature of the job of Respondent, and shows why Appellant was unable establish an equal protection claim: "The [United States] Supreme Court has described the rational basis standard of review as 'a paradigm of judicial restraint.' It is emphatically not the function of the judiciary to sit as a 'super legislature' to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights, nor proceed along suspect lines." Van Der Linde explains that a property

owner claiming a violation of equal protection rights "bears the heavy burden of negating every conceivable basis which might reasonably support the challenged classification." Id. Thus, the Appellant in this case was required to prove that there was no evidence submitted to the Respondent on which it could base its decision to deny the application. The Master correctly found there was evidence to support the decision. The community opposition by itself establishes a rational basis for the decision which defeats Appellant's equal protection claim. See Dunes West Golf Club, LLC, 401 S.C. 280, 295-296, 737 S.E.2d 601, 608-609.

The Fourth Circuit Court of Appeals has explained why courts are loathe to involve themselves in local property and zoning matters like this one:

> While an equal protection claim must be rooted in an allegation of unequal treatment for similarly situated individuals, **a showing of such disparate treatment, even if the product of erroneous or illegal state action, is not enough by itself to state a constitutional claim**…If disparate treatment alone were sufficient to warrant a constitutional remedy, then every blunder by a local authority, in which the authority erroneously or mistakenly treats an individual differently than it treats another who is similarly situated, would rise to the level of a federal constitutional claim…. Zoning is inescapably a political function. Indeed, it is the very essence of elected zoning officials' responsibility to mediate between developers, residents, commercial interests, and those who oppose and support growth and development in the community…
>
> …Land-use decisions are a core function of local government. Few other municipal functions have such an important and direct impact on the daily lives of those who live or work in a community. The formulation and application of land-use policies, therefore, frequently involve heated political battles, which typically pit local residents opposed to development against developers and local merchants supporting it. Further, community input is inescapably an integral element of this system. Subdivision control is an inherently discretionary system that allows—indeed, sanctions—compromise and negotiation between developers and the planners who represent the community. Resolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts.... Accordingly, federal courts should be extremely reluctant to upset the delicate political balance at play in local land-use disputes.

Sylvia Development Corp. v. Calvert County, Md ., 48 F.3d 810 (4th Cir. 1995), at pp. 825, 828-829. (Citation omitted; emphasis supplied by Respondent.)

The Appellant's equal protection claim against the Respondent is fundamentally flawed. The Master correctly determined that there was no evidence that the Respondent intended to discriminate against Appellant by denying its application. The Respondent had a rational basis for denying the application for a six-lot subdivision. Intense public opposition was a factor that caused the Respondent to suggest a five-lot subdivision to which Appellant, fully aware of the public opposition, said no. Whether or not the Appellant was treated differently than similarly situated owners might have been treated, such disparate treatment did not rise to the magnitude of an unconstitutional deprivation of equal protection.

Here, there is no evidence that the denial of the Appellant's application was motivated by discriminatory goals, such as revenge, illegitimate animus, or ill will on the part of the Respondent. Dunes West, 401 S.C. at 295, 737 S.E.2d at 609). One seeking to show discriminatory enforcement in violation of the Equal Protection clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced. Even assuming a governmental entity is not enforcing an ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation. Harbit, 382 S.C. at 396, 675 S.E.2d at 783. The Respondent's written notice of denial shows the Respondent was letting Appellant know that a reasonable alternative to the six-lot proposal was available. The letter of denial advised Appellant that "The Commission's discussion further indicated that reducing the number of residential lots could potentially address their compatibility concerns and bring the development into closer compliance with the City's Infill Standards". The Respondent's denial of the application was not based on purposeful discrimination and did not "rise to the level of a constitutional equal protection violation".

The Appellant's equal protection argument also fails because the evidence did not persuade the Master-in-Equity that there were similarly situated property owners who applied for a subdivision plat and were granted an application. "Similarly situated" means the other entities "are in all relevant respects alike" to Appellant. Nordlinger v. Hahn, 505 U.S.1,10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992).

The Master correctly determined that the Appellant's proposal for 808 McDaniel Avenue was not similarly situated to other permit applications in the area. The property's location, bordering both McDaniel and Jones Avenues, and its close proximity to Augusta Street, were unique features. It was also unique that a single lot containing one house was proposed to be divided into six much smaller lots requiring six new curb cuts affecting two streets. The magnolia tree requiring preservation was another unique feature of the application.

The Master-in-Equity reasonably determined that the Appellant could not negate every rational or conceivable basis that might reasonably support the denial. The public opposition to the application standing alone established a rational basis for the Respondent's denying the application. See Dunes West Golf Club, LLC, 401 S.C. 280, 295, 737 S.E.2d 601, 608-609 (citing with approval Sowers v. Powhatan County, 347 Fed.Appx. 898, 903-904 (4th Cir. 2009), "holding public opposition furnishes a rational basis for differential treatment in zoning decisions". Any of the concerns communicated to the Respondent by opponents to the application, e.g., increased traffic flow, proximity to existing busy intersection, potential stormwater runoff, risks to tree canopy, safety concerns from increased traffic flow and retention of stormwater, and incompatibility with the neighborhood, are rational reasons that would support the denial of the application.

The Master-in Equity's finding as to the equal protection cause of action should be sustained.

III. THE COURT'S RULING WAS NOT BASED ON AN ERROR OF LAW.

The Master-In-Equity's order shows that that the Master based its decision granting judgment for the Respondent on evidence presented to the court without objection by the Appellant. It follows that the factual findings of the Master are reasonable and supported by the evidence that was presented.

The Master's order was not based on any error of law. The Master correctly applied the Penn Central factors and weighed them in order to determine that no regulatory taking occurred. To the extent that the Appellant argues that the Master erred in not giving proper weight to the character of the government action factor, the evidence presented at the hearing clearly demonstrates that the impact of the Planning Commission's denial of the plat application did not so affect the property as to cause either a categorical or a regulatory taking. At worst, Appellant's property sustained a diminution in value. As the Respondent has pointed out elsewhere in this brief, such diminution does not rise to a taking in violation of the Constitution.

The Master-In-Equity also did not err by ruling in favor of the Respondent on the Equal Protection claim. As set forth earlier in this brief, even if the Planning Commission made an error in denying the application for a preliminary plat, which is denied, such an error would not be so significant as to constitute a denial of equal protection. Sylvia Development Corp., supra.

The Appellant made a strategic decision not to appeal Circuit Court Judge Miller's finding that the Planning Commission was permitted to utilize the purpose and intent provisions of the land management ordinance when considering the proposed plat. Instead, the Appellant chose to sell the property instead of developing it, and to seek damages based on allegations of a regulatory taking and violation of Equal Protection. The Master-In-Equity correctly concluded that, based on

the evidence presented and the elements of each cause of action, the Appellant failed to prove its case. The Master's decision is supported by the evidence and the law and should be affirmed.

CONCLUSION

The Master-in-Equity's findings were reasonable, based on the evidence presented, and in accord with applicable law. The Master's decision should therefore be affirmed.

Respectfully submitted,

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Dated: August 6, 2025

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

APPELLATE CASE NO. 2025-000416

McDaniel Jones, LLC…….Appellant,

v.

City of Greenville Planning Commission……Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I hereby certify that I have served *Respondent's Final Brief submitted to the Court for electronic filing, on this* on this 7th day of August, 2025 and by electronic AIS e-mail only as follows:

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August 7, 2025

South Carolina Court of Appeals
1220 Senate Street
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RE: McDaniel Jones, LLC vs. City of Greenville Planning Commission
Appellate Case No. 2025-000416

Dear Madam Clerk,

Enclosed please find the bound copy of Respondent's Brief, Certificate of Counsel and Proof of Service with regards to the above referenced matter pursuant to Rules 211 and 267, SCACR.

Please let me know if you have any questions regarding the enclosed.

With kind regards, I am,

Sincerely,

CASSIDY COATES PRICE

Traci D. Larkins

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Paralegal to V. Clark Price, Counsel for the Respondent

Enclosures

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