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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

McDaniel Jones, LLC, Appellant,

v.

City of Greenville Planning Commission, Respondent.

Appellate Case No. 2025-000416

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Unpublished Opinion No. 2026-UP-428
Heard June 10, 2026 – Filed August 26, 2026

AFFIRMED

Bruce Wyche Bannister, of Bannister, Wyatt & Stalvey, LLC; Luke Anthony Burke, of Burke Law, LLC; and Ryan Whitmore Pasquini, of Pasquini Law, LLC, all of Greenville, for Appellant.

Vincent Clark Price, of Cassidy Coates Price, P.A., of Greenville, for Respondent.

PER CURIAM: The City of Greenville Planning Commission (the commission) denied McDaniel Jones, LLC's (McDaniel's) application to subdivide a 1.86 acre parcel of real property in Greenville County (the Property) into six separate parcels. McDaniel sued the commission, and the case was referred to the Master-in-Equity. The Master granted the commission's motion for summary judgment. McDaniel appeals, arguing the commission's denial of its application to subdivide the Property was a regulatory taking in violation of the Fifth Amendment to the United States Constitution. In addition, McDaniel argues the commission's actions violated its equal protection rights under the Fourteenth Amendment to the United States Constitution. We affirm.

I. FACTS

On July 26, 2018, McDaniel purchased the Property for $1,430,000. At the time of purchase, there was a single-family home on the Property, and it was zoned for single-family residential use. McDaniel is a single asset limited liability company created by Cothran Properties, LLC, a company that purchases and develops commercial and residential real estate. Mark Cothran is McDaniel's sole member.

McDaniel filed two proposed applications with the commission. In the first application, McDaniel proposed subdividing the Property into seven lots. The commission expressed concerns with McDaniel's proposal to remove a magnolia tree located on the Property. In response, McDaniel filed an amended application with the commission on December 12, 2018, reducing the number of proposed lots from seven to six and allowing the magnolia tree to remain on the Property subject to a conservation easement.

The community strongly opposed McDaniel's second proposal. The commission received twenty written statements and a community petition opposing the subdivision. Residents complained that subdividing the Property was incompatible with the existing neighborhood and would increase construction and traffic concerns, worsen storm water drainage, interfere with the tree canopy, and decrease their homes' market values.

On January 17, 2019, the commission conducted a public hearing on the application. One of McDaniel's representatives spoke in defense of the development, and eleven residents spoke in opposition. During the discussion, the commission expressed a willingness to approve a five-lot subdivision. However, McDaniel declined to reduce the number of proposed lots and the commission unanimously voted to deny the application. On February 13, 2019, the commission mailed McDaniel a formal denial letter finding, "the size and configuration of the proposed lots were not compatible with the existing development pattern along

McDaniel and Jones Avenues." The commission reiterated that "[r]educing the number of residential lots could potentially address [its] compatibility concerns."

On February 8, 2019, McDaniel appealed the commission's decision to the circuit court, arguing the commission did not have discretion to deny approval of a preliminary plat that otherwise complied with the applicable zoning ordinances. In response, the commission argued that City of Greenville, South Carolina, Ordinances sections 19-1.3 and 19-6.9.1[1] "evidence an intent [to allow the commission to determine whether] newly-created subdivision lots within established neighborhoods [are] compatible in size and configuration to existing lots in the immediate vicinity."

The circuit court denied McDaniel's appeal and found that the City of Greenville Ordinances gave the commission discretion "to define neighborhood compatibility" and found that the commission "did not abuse its discretion when it acted to deny [McDaniel's] preliminary plat." McDaniel did not appeal this order, and, one month later, McDaniel sold the Property for $1,400,000.

On November 5, 2020, McDaniel filed suit against the commission alleging its actions constituted a regulatory taking. McDaniel later amended its complaint to add an equal protection claim. The case was referred to the Greenville County Master-in-Equity. McDaniel filed a motion for partial summary judgment asking the court to rule that a taking had occurred and to send the issue of damages to a jury. In response, the commission filed a cross motion for summary judgment. The parties filed a stipulation of facts and requested the court make a final ruling.

The Master heard arguments on the motions and granted summary judgment in favor of the commission. This appeal followed.

II. LAW/ANALYSIS

A. Regulatory Taking

McDaniel argues the commission's restriction on the Property constituted a regulatory taking. We disagree.

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[1] The City of Greenville Ordinances section 19 has since been amended and does not include section 19-6.9.1. We cite to the prior version of the ordinance as referenced in the record.

The Fifth Amendment to the United States Constitution provides that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. "Government regulation amounts to a per se taking when (1) the owner 'suffer[s] a permanent physical invasion of property,' and (2) a 'regulation denies all economically beneficial or productive use of land.'" *Gulfstream Café, Inc. v. Georgetown County*, 447 S.C. 1, 15, 923 S.E.2d 632, 639 (2025) (alteration in original) (quoting *Dunes W. Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 313, 737 S.E.2d 601, 619 (2025)). "The question of whether a taking has occurred is a question of law that [the appellate court] reviews de novo." *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023).

"[W]here limitations on land fall short of eliminating all economically beneficial use, a regulatory taking still may have occurred depending on a complex set of factors." *Id.* at 16, 923 S.E.2d at 640 (quoting *Dunes W. Golf Club*, 401 S.C. at 314, 737 S.E.2d at 619). "The *Penn Central* test governs cases in which property owners have not been denied all economically viable use of their land." *Id.* (citing *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978)).

> [T]hese constitutional challenges present "essentially ad hoc" inquiries which are largely dependent on the particular circumstances of each case, *Penn Central* identifies the appropriate factors to consider in determining whether a taking has occurred: the character of the government action, the economic impact of the regulation on the claimant, and the extent to which the regulation has interfered with distinct investment-backed expectations.

Dunes W. Golf Club, 401 S.C. at 315, 737 S.E.2d at 619. We address these factors below in the order presented by McDaniel.

1. Economic Impact

McDaniel argues the Master erred by not evaluating "the economic impact on [McDaniel's] investment-backed expectations." We disagree.

The *Penn Central* test makes clear that economic impact and investment-backed expectation are separate and distinct factors in a "takings" analysis. *See Dunes W. Golf Club*, 401 S.C. at 320, 737 S.E.2d at 622 (finding that the investment-backed expectations prong evaluates whether an "[a]ppellant substantially relied or materially altered its position based on the prior . . . zoning"). To prove economic impact, McDaniel must "allege that the challenged regulation caused a *substantial* diminution in value to the regulated property." *Blackburn v. Dare County*, 58 F.4th 807, 812 (4th Cir. 2023); *see also Reyes v. Dorchester County of South Carolina*, No. 2:21-CV-00520-DCN-MGB, 2023 WL 5779534 at *5 (D.S.C. May 11, 2023).

"[T]he extent of diminution [in value] is but 'one fact for consideration' in determining whether governmental action constitutes a taking." *Dunes W. Golf Club*, 401 S.C. at 317, 737 S.E.2d at 621 (alterations in original) (quoting *Keystone Bituminous Coal Ass'n v. Duncan*, 771 F.2d 707, 713 (3d Cir. 1985)). "The United States Supreme Court has uniformly rejected the proposition that a diminution in property value, standing alone, can establish a taking." *Braden's Folly*, 439 S.C. at 199, 886 S.E.2d at 689. McDaniel must also offer evidence "that the value of [its] property has decreased due to the challenged regulation." *Reyes*, 2023 WL 5779534 at *6. "[W]hile a comparison of property values before and after the regulation is relevant, 'it is by no means conclusive.'" *Braden's Folly*, 439 S.C. at 199, 866 S.E.2d at 689 (quoting *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 490 (1987)).

The Master found the economic impact prong weighed in the commission's favor. The Master found that McDaniel did not lose the ability to profit from the Property because the commission did not prohibit McDaniel from developing the Property into multiple lots or from building a new home on the site. The Master considered the Property's purchase price, sales price, and projected value if subdivided into six lots and found that the Property's reduction in value from the date of purchase to the date it was sold was insufficient to amount to a taking. We find the stipulated facts leave no room for doubt that the Property retained market value and that the diminution in value, if any, was not significant enough to constitute a taking. *See Penn Cent.*, 438 U.S. at 129 (stating Grand Central Terminal's land was valuable, "even if not as valuable as the rights to construct above the Terminal"); *Dunes W. Golf Club*, 401 S.C. at 318, 737 S.E.2d at 621 (finding "any change in market value of [Dunes West Golf Club's property] is merely an incident of ownership that is not compensable under the Fifth Amendment"); *Hadacheck v. Sebastian*, 239 U.S. 394, 405, 411 (1915) (determining 87.5% diminution in value caused by zoning law did not constitute a taking); *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 384, 396-97 (1926) (concluding 75% diminution in value did not constitute a taking).

McDaniel also argues that "[t]he impact of [the commission]'s action to reduce even one lot is to completely eliminate [McDaniel]'s expected value of that lot, a 100% diminution in value." We find this argument without merit. *Penn Central* makes clear that the proper subject of the economic impact prong is the parcel as a whole and not its component parts:

> "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, [the appellate c]ourt 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 . . . .

Penn Cent., 438 U.S. at 130–31.

Looking at the parcel as a whole, as the Court instructs in *Penn Central*, we find the stipulated facts show that the Property retained significant value and that the economic impact prong therefore weighed in the commission's favor.

2. Investment-Backed Expectations

McDaniel argues its investment-backed expectations were reasonable, and the Master erred in finding this factor weighed in favor of the commission. We disagree.

McDaniel argues that, at the time of purchase, City of Greenville Ordinances and regulations allowed it to subdivide the Property into six lots and the commission's findings were inconsistent with decisions it made in the past to allow the subdivision of similar properties. McDaniel argues it substantially relied on these past decisions when it invested the money to purchase and develop the Property.

"In evaluating a regulatory taking claim, '[t]he purpose of consideration of plaintiffs' investment-backed expectations is to limit recoveries to property owners who can demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime.'" *Columbia Venture*, 413 S.C. at 449, 776 S.E.2d at 914 (alteration in original) (quoting *Cienega Gardens v. United States*, 331 F.3d 1319, 1345-46 (Fed. Cir. 2003)). "A property owner's reasonable investment-backed expectations are defined at the time the property is purchased." *Id.* (quoting *Norman v. United States*, 63 Fed. Cl. 231, 267 (Fed. Cl.

2004)). "The critical question is what a reasonable owner in the [appellant's] position should have anticipated." *Id.* (quoting *Chancellor Manor v. United States*, 331 F.3d 891, 906 (Fed. Cir. 2003)).

We find the investment-backed expectations prong weighs in favor of the commission. The parties stipulated that McDaniel's principal, Mark Cothran, was an experienced investor who was aware at the time McDaniel purchased the Property that the LLC would have to apply to the commission for approval of the subdivision. As an experienced investor, Cothran was aware that the public would be allowed to provide feedback in relation to the subject property and, in addition, that the City of Greenville Ordinance required new developments to meet "neighborhood compatibility" standards.

The Master found Cothran knew about public opposition to the plan early on and that both the public and the commission favored reducing the number of proposed lots. We find that the investment-backed expectations prong weighed in favor of the commission. *See id.* at 454, 776 S.E.2d at 917 ("Purchasing and developing real estate carries with it certain financial risks, and it is not the government's duty to underwrite this risk as an extension of obligations under the takings clause." (quoting *Taub v. City of Deer Park*, 882 S.W.2d 824, 826 (Tex. 1994)); *Quinn v. Bd. of Cnty. Comm'rs for Queen Anne's Cnty.*, 862 F.3d 433, 442 (4th Cir. 2017) ("A regulation is not a taking merely because it 'prohibit[s] the most beneficial use of the property[]' . . . ." (quoting *Penn Cent.*, 438 U.S. at 125)).

3. Character of the Government Action

McDaniel argues the government action prong weighs in its favor because the burden of the commission's decision applied solely to the Property. We disagree.

"The 'character of the [g]overnment action' prong of the *Penn Central* analysis examines 'the *magnitude or character of the burden* a particular regulation imposes upon private property rights' and 'how any regulatory burden is *distributed* among property owners.'" *Columbia Venture*, 413 S.C. at 451, 776 S.E.2d at 915 (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005)). In evaluating the benefits and burdens of government regulation, "a taking does not take place if the prohibition applies over a broad cross section of land and thereby 'secure[s] an average reciprocity of advantage.'" *Penn Cent.*, 438 U.S. at 147 (Rehnquist J., dissenting) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

"States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city . . . ." *Penn Cent.*, 438 U.S. at 129. "[G]overnment regulation–by definition–involves the adjustment of rights for the public good[.]" *Dunes*, 401 S.C. at 315, 737 S.E.2d at 620 (quoting *Lingle*, 544 U.S. at 538). "[I]n a wide variety of contexts, . . . government may execute laws or programs that adversely affect recognized economic values." *Id.* (quoting *Penn Cent.*, 438 U.S. at 124). "Not all damages suffered by a private property owner at the hands of [a] governmental agency are compensable." *Id.* at 316, 737 S.E.2d at 620 (alteration in original) (quoting *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 170, 714 S.E.2d 869, 877 (2011)).

> [W]hile most burdens consequent upon government action undertaken in the public interest must be borne by individual landowners as concomitants of "the advantage of living and doing business in a civilized community," some are so substantial and unforeseeable, and can so easily be identified and redistributed, that "justice and fairness" requires that they be borne by the public as a whole.

Id. (quoting *Kirby Forest Indust. v. United States*, 467 U.S. 1, 14 (1984)); *see also Penn Cent.*, 438 U.S. at 130-31 ("In deciding whether a particular governmental action has effected a taking, [the appellate c]ourt focuses . . . both on the character of the action and on the nature and extent of the interference with the rights in the parcel as a whole . . . .").

The Master found that the character of the governmental action was to deny the subdivision of an existing 1.86 acre lot into six lots, coupled with an invitation to submit a plan with one fewer lot. He characterized the commission's decision as affecting only the density of the proposed use, not the right of the developer to develop the Property. He further found that the decision did not deprive McDaniel of the right to own, use, develop, or sell the Property and that any diminution in the value of the Property was not substantial enough to constitute an unconstitutional taking. We agree with the Master's findings. McDaniel sold the Property at a loss one month after the commission denied its application. Cothran testified that McDaniel had multiple offers to purchase the Property for significantly more than the $1,400,000 sale price and admitted he "would have gotten a lot more money" for the Property had he not sold the Property so quickly. We find the commission's denial of the application "did not disadvantage [McDaniel] in a constitutionally significant way." *Dunes W. Golf Club*, 401 S.C. at 317, 737 S.E.2d at 620.

McDaniel argues that the commission treated its application as different from others that were similar, giving as an example a lot of similar size that was previously approved for subdivision in a different neighborhood. However, the ordinances in this case apply to all residential lots. Any developer in McDaniel's situation must apply to the commission before subdividing the property, and the ordinance allows the commission to evaluate whether the new subdivision is compatible with the existing lots in the neighborhood.

Based on the factors assessed above, we find that the commission's action did not constitute a governmental taking.

B. Equal Protection

McDaniel argues the Master erred in (1) finding the commission's decision was presumptively valid pursuant to *Harbit v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009), and (2) applying the "fairly debatable" standard rather than the rational basis test. Notwithstanding the Master's references to presumptive validity and the "fairly debatable" standard, we find the Master utilized the proper standard in evaluating McDaniel's equal protection claim.[2]

"The Equal Protection Clause provides 'nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws.'" *Dunes W. Golf Club*, 401 S.C. at 293, 737 S.E.2d at 608 (alteration in original) (quoting U.S. Const. amend. XIV, § 1). "This 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*, 382 S.C. at 396, 675 S.E.2d at 782

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[2] *Harbit* involved a direct appeal of the City's denial of the landowner's request to rezone property. In that context, the court held that zoning is strictly a legislative matter, and a legislative body's decision in zoning matters is presumptively valid and must be left undisturbed if the wisdom of the decision is even "fairly debatable." *Harbit*, 382 S.C. at 390-91, 675 S.E.2d at 779-80. In analyzing McDaniel's equal protection claim, the Master quoted *Harbit* for the proposition that the commission's decision was "fairly debatable" and that "[t]he legislative body's decision in zoning matters is presumptively valid, and the property owner has the burden of proving to the contrary."

(quoting *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 818 (4th Cir. 1995)). "It does not prohibit different treatment of different people in different circumstances under the law." *Id.* at 396, 675 S.E.2d at 782-83. "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.* at 396, 675 S.E.2d at 783 (quoting *Town of Iva ex. rel Zoning Adm'r v. Holley*, 374 S.C. 537, 541, 649 S.E.2d 108, 110 (Ct. App. 2007)).

"Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used." *Floyd*, 403 S.C. at 480, 744 S.E.2d at 168. "Under the rational basis test, the [appellate c]ourt must determine: [(]1) whether the law treats similarly situated entities differently; [(]2) if so, whether the legislative body has a rational basis for the disparate treatment; and [(]3) whether the disparate treatment bears a rational relationship to a legitimate government purpose." *Dunes W. Golf Club*, 401 S.C. at 293-94, 737 S.E.2d at 608. To rebut the government's rational reason for treating a plaintiff differently, the plaintiff carries the "heavy burden of negating every conceivable basis which might reasonably support the challenged classification." *Van der Linde Hous., Inc. v. Rivanna Solid Waste Auth.*, 507 F.3d 290, 293 (4th Cir. 2007).

The Master recited and applied the correct standard for evaluating equal protection claims: McDaniel had to demonstrate it was treated differently from others similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination. If treated differently, the Master correctly stated that the court should determine whether the disparity can be justified under the requisite level of scrutiny. Applying the rational basis standard, the Master found no evidence that the commission's actions were motivated by discriminatory goals. The Master found there was a rational basis for the commission to deny McDaniel's application because the "[proposed] subdivision was incompatible with the existing character and development pattern of the established surrounding neighborhood." The Master relied on the findings in the circuit court's prior order that the commission had discretion to find the Property was incompatible with the existing neighborhood.

McDaniel argues it received disparate treatment because the commission had never previously denied a proposal based solely on neighborhood compatibility. Additionally, McDaniel argues the Master erred in finding there was "no evidence of similarly situated property owners who applied for a subdivision plat and were granted the application." McDaniel argues its application was similar to Cothran

Properties, LLC's previous subdivision project (the Cothran project) that the commission approved which subdivided a 2.16-acre property into eight lots.[3]

In this case, McDaniel's application received significant dissent regarding increased traffic, stormwater management, harm to the Property's magnolia tree, and the overall tree canopy of the neighborhood. We find these concerns may properly serve as the basis for the decision to deny an application. *Dunes W. Golf Club*, 401 S.C. at 295, 737 S.E.2d at 608-09 ("[P]ublic opposition furnishes a rational basis for differential treatment in zoning decisions[.]" (citing *Sowers v. Powhatan County*, 347 Fed. App'x. 898, 903-04 (4th Cir. 2009))). Although the lot size in this case is similar to the lot size in the Cothran project, we find this similarity does not mean the commission cannot deny the application on other valid grounds. *See Harbit*, 382 S.C. at 396, 675 S.E.2d at 782-83 ("[The Equal Protection Clause] does not prohibit different treatment of people in different circumstances under the law."). The Master upheld the commission's decision because the Property "was not similarly situated to other permit applications in the area" because (1) the Property uniquely "bordered both McDaniel and Jones Avenues[] and [is in] close proximity to Augusta Street," (2) the proposal to divide the Property into six lots would require six new curb cuts, and (3) the Property included a historic magnolia tree. We agree with the Master's conclusion that the commission provided a rational basis to deny McDaniel's application and find there was no disparate treatment between the Cothran Project and McDaniel's proposed project. However, even if there was any disparate treatment, it was justified by the different characteristics of the two properties.

Lastly, we find that McDaniel did not produce evidence showing the commission's denial of its application "was motivated by discriminatory goals." *Dunes W. Golf Club*, 401 S.C. at 295, 737 S.E.2d at 609; *see id.* ("To prove that a statute has been administered or enforced discriminatorily, more must be shown than the fact that a

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[3] The commission approved the amended application for the Cothran project on August 16, 2018. The initial application was presented on June 21, 2018. At the hearing regarding the initial application, neighbors complained about "the number of lots, size of lots, a share front access drive, stormwater management[,] and the existing tree canopy." The commission raised similar concerns but was also concerned with "parking on shared access drive, maintenance of the common area[,] and homes disengaged from the street." Based on these concerns, the commission forwarded the application to a subcommittee for review. The application was later approved with amendments to address the commission's concerns.

benefit was denied to one person while conferred to another. A violation is established only if the plaintiff can prove that the state *intended* to discriminate." (quoting *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 576, 524 S.E.2d 404, 408 (1999))). We find no error in the Master's decision.

C. CONCLUSION

For the above reasons, the decision of the Master-In-Equity is

AFFIRMED.

GEATHERS, HEWITT, and CURTIS, JJ., concur.