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SC Court of Appeals

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.

PETITION FOR REHEARING

McDaniel Jones, LLC, Appellant, through his undersigned attorney, petitions per Rule 221(a) SCACR for a rehearing on the factual and legal issues that Appellant respectfully submits were overlooked or misapprehended by this Honorable Court in Opinion No. 2026-UP-428 filed August 26, 2026.

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INTRODUCTION AND CASE HISTORY

This is an action for violations of Appellant McDaniel's rights to just compensation for governmental taking of its property and equal protection pursuant the United States and South Carolina Constitutions. (R pp. 49-50). These violations stem from Respondent Commission's denial of McDaniel's application to divide its property into six residential lots and a conservation easement based on "neighborhood compatibility." (R. p. 324; p. 667 ¶ 29). McDaniel appealed the Commission's decision to the Court of Common Pleas. (R. p. 666 ¶ 27). The court denied McDaniel's appeal, finding the Commission had discretion to define "neighborhood compatibility" with regards to McDaniel's property "to require that newly-created subdivision lots be compatible in size and configuration to existing lots in the neighborhood." (R. pp. 319-20). This order was not appealed. (R. p. 666 ¶ 28).

McDaniel then filed the present case alleging that, while the Commission has discretion to regulate property pursuant to the circuit court's order, it is unconstitutional to take McDaniel's property rights without just compensation. (R. p. 49). Further, McDaniel alleged that the Commission had violated McDaniel's constitutional right to equal protection by treating it differently from all other applicants without a rational basis.

On October 31, 2023, McDaniel filed a Motion for Partial Summary Judgment on the issue of whether the Commission's government action constitutes a regulatory taking of McDaniel's property without payment of just compensation. (R. pp. 63-72). On November 1, 2023, the Commission filed a Motion for Summary Judgment requesting judgment for the Commission as to all causes of action. (R. pp. 435-436). On February 5, 2025, the court filed an Order denying

McDaniel’s Motion for Partial Summary Judgment and granting Respondent’s Motion for Summary Judgment. (R. pp. 5-21).

On March 3, 2025, Appellant timely filed a Notice of Appeal. (R. pp. 670-672). This Court heard oral argument on June 10, 2026. On August 26, 2026, this Court filed its Opinion, which affirmed the Order. McDaniel respectfully asserts that this Court overlooked or misapprehended certain factual and legal issues in rendering its decision, and thus requests that this Court grant rehearing.

I. THE COMMISSION IS NOT A LEGISLATIVE BODY ENTITLED TO MAKE ZONING DECISIONS.

Zoning and rezoning are legislative matters, and the Commission is not a legislative body entitled to pass or change ordinances. *See* S.C. Code Ann. § 6-29-340(B)(2) (a planning commission is empowered to “prepare and *recommend for adoption to the appropriate governing authority . . . zoning ordinances to include zoning district maps and appropriate revisions thereof . . .*” (emphasis added)). Instead, the Commission is an administrative body empowered to enforce the City’s ordinances. *See Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 234-35, 489 S.E.2d 630, 632 (1997) (“[A] municipality may delegate the administration of its ordinances to a board provided the board’s discretion is sufficiently limited by clear rules and standards.”).

McDaniel respectfully submits that this Court incorrectly applied zoning jurisprudence that applies to legislative bodies to an administrative body that is not entitled legislate and is not subject to the political scrutiny of elected officials. All of the South Carolina cases cited by this Court are cases in which an elected City or County Council passed an ordinance.

The judicial deference to municipalities in these cases is rooted in the fact that “[t]he governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the Courts.” *Bob Jones Univ., Inc. v. Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963).

As such:

There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the Planning and Zoning Commission *and the city council of a municipality* has acted after considering all of the facts, the Court should not disturb the finding unless such action is arbitrary, unreasonable, or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority.

Id. (emphasis added).

In this case, there is no presumed judicial deference to the Commission because the commission is not a legislative or governing body. The Commission’s statutory authority is to administrate and enforce the City’s ordinances. As such, where, as here, the Commission exceeds its authority and creates a new regulation, that regulation is not entitled to the deference shown to a municipal ordinance.

II. THE COMMISSION’S GOVERNMENTAL ACTION WAS TO REGULATE MCDANIEL’S PROPERTY BY DEFINING NEIGHBORHOOD COMPATIBILITY.

“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 v. Richland Cnty.*, 413 S.C. 423, 451, 776 S.E.2d 900, 915 (2015) (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 ‘[secures] an average reciprocity of advantage.’” *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 147 (1978) (Rehnquist J., dissenting) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

McDaniel respectfully submits that this Court misconstrued the Commission’s action as simply voting to deny McDaniel’s application based on neighborhood compatibility. However, as correctly stated in the trial court order denying McDaniel’s appeal, the Commission’s government action was “to define neighborhood compatibility to require that newly created lots be compatible in size and configuration to existing lots in the neighborhood.” (R. p. 319). At its January 17, 2019 meeting, the Commission created a new land regulation that specifically applied only to McDaniel’s application. The Commission’s creation of that new land regulation is the government action to be scrutinized.

III. THE REASONABLENESS OF INVESTMENT-BACKED EXPECTATIONS ARE DETERMINED ON THE DATE OF PURCHASE.

“A property owner's reasonable investment-backed expectations are defined at the time the property is purchased.” *Columbia Venture*, 413 S.C. at 449, 776 S.E.2d at 914 (quoting *Norman v. United States*, 63 Fed. Cl. 231, 267 (Fed. Cl. 2004)). “The critical question is what a reasonable owner in the [claimant’s] position should have anticipated.” *Id.* (quoting *Chancellor Manor v. United States*, 331 F.3d 891, 906 (Fed. Cir. 2003)).

McDaniel respectfully submits that this Court incorrectly considered facts that occurred after the date of purchase to determine whether McDaniel’s investment-backed expectations were reasonable.

When McDaniel purchased the property on July 26, 2018, subdivision of the property into six lots was allowed by the City's ordinances and regulations. It was only after the Commission created a new definition of neighborhood compatibility at its January 17, 2019 meeting that subdivision of the property was disallowed. As such, the Commission's new definition of neighborhood compatibility is not a factor to be considered in determining the reasonableness of McDaniel's expectations.

Further, this Court relied upon the trial court's finding that McDaniel "knew about public opposition to the plan early on and that both the public and the commission favored reducing the number of proposed lots." None of those facts existed when McDaniel purchased the property on July 26, 2018. As such, it is improper to consider those facts to determine whether McDaniel's expectations were reasonable at the time the property was purchased.

IV. THE VALUE OF THE PROPERTY IS THE ACTUAL VALUE OF THE PROPERTY AS OPPOSED TO PURCHASE PRICE.

McDaniel respectfully submits that this Court incorrectly presumed the value of the property at the time of purchase was the purchase price where the only evidence submitted was that the property had a value of \$2,510,000. (R. p. 667 ¶¶ 30-31). The Opinion states that the property was purchased for \$1,430,000 and sold for \$1,400,000 but ignores the fact that the property was appraised for \$2,510,000.

The price McDaniel purchased the property for is not relevant to its actual value. At the time the property was purchased, subdivision of the property into six lots and a conservation easement was allowed by the ordinances and regulations in place. As such, the highest and best use of the property was not as a single-family residence but as a subdivision. Based on that subdivision, the property was appraised at a value of \$2,510,000. Therefore, that is the value of

the property that was taken from McDaniel when the Commission acted to create a new regulation to deny McDaniel's application.

V. THE TRIAL COURT INCORRECTLY APPLIED THE “FAIRLY DEBATABLE” STANDARD WHEN DETERMINING THAT THE COMMISSION DID NOT VIOLATE MCDANIEL’S EQUAL PROTECTION RIGHTS.

“Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013). “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, L.L.C. v. Town of Mt. Pleasant*, 401 S.C. 280, 293-94, 737 S.E.2d 601, 608 (2013).

This Court properly held that the correct standard in this case is rational basis. This Court also held that the trial court applied the correct standard to find “there was a rational basis for the commission to deny McDaniel’s application.” However, it is clear from the trial court’s order that it applied the “fairly debatable” standard that is only applicable to zoning decisions.

First, the trial court specifically stated it was applying the fairly debatable standard:

- 1) “The decision was ‘fairly debatable.’” (R. p. 15).
- 2) “There were other reasons presented to the Planning Commission that made the propriety of its decision ‘fairly debatable.’” (R. p. 16).

Second, the trial court relied heavily on the *Harbit* case, a case which applies the “fairly debatable” standard to a City Council’s zoning decision, in its equal protection analysis:

- 1) “The legislative body’s decision in zoning matters is presumptively valid, and the property owner has the burden of proving the contrary.” (R. p. 15) (citing *Harbit v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009)).
- 2) “The Harbit court explained that ‘[while 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.]’” (R. p. 18) (citing *Id.* at 391, 675 S.E.2d at 780).
- 3) “[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’” (R. pp. 18-19) (citing *Id.*).

Third, to the extent the trial court may have applied a rational basis standard, it incorrectly applied cases regarding zoning decisions by elected legislative bodies allowing public opposition to establish a rational basis for denial, *see, supra* § I:

- 1) “The public opposition to the application standing alone establishes a rational basis for the Planning Commission’s denying the application.” (R. p. 19) (citing *Dunes West*, 401 S.C. at 295, 737 S.E.2d at 608-609).
- 2) “Any of the concerns communicated to the Planning Commission 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.” (R. p. 19).

Finally, McDaniel is not required to prove a discriminatory intent by the Commission to prove that its definition of neighborhood compatibility lacks a rational basis. The Commission created a new regulation when it defined neighborhood compatibility as applied to McDaniel's application. The rational basis standard applies to determine if the Commission's new regulation passes constitutional muster. A plaintiff is only required to prove discriminatory intent where a regulation of general applicability has been enforced against the plaintiff, not to challenge the constitutional validity of the regulation itself is challenged. *See Dunes W. Golf Club*, 401 S.C. at 295, 737 S.E.2d at 609 ("To prove that a statute *has been administered or enforced discriminatorily*, more must be shown than the fact that a benefit was denied to one person while conferred on another." (emphasis added)) (quoting *Whaley v. Dorchester Cnty. Zoning Bd. of Appeals*, 337 S.C. 568, 576, 524 S.E.2d 404, 408 (1999)).

CONCLUSION

Therefore, Appellant McDaniel Jones, LLC respectfully petitions for rehearing of the appeal in this case pursuant to Rule 221(a) SCACR or reversal of the decision of the trial court.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I have served the **Petition for Rehearing** upon Counsel of Record, on
this the 10th day of September, 2026, by electronic AIS e-mail only as follows:

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