

RECEIVED
Sep 18 2026
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, LLCAppellant,

v.

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

RESPONSE TO PETITION FOR REHEARING

V. Clark Price
(S.C. Bar No. 4567)
CASSIDY COATES PRICE, P.A.
P.O. Box 10529
Greenville, South Carolina 29603
864-349-2600
cprice@cassidycoates.com
Attorneys for Respondent

TABLE OF CONTENTS

Table of Authorities.....	3
---------------------------	---

Argument

I. As to the first argument, that “the Commission is not a legislative body entitled to make zoning decisions”:	4
II. As to the second argument, that “the Commission’s governmental action was to regulate McDaniel’s property by defining neighborhood compatibility:	5
III. As to the third argument, that “the reasonableness of investment-backed expectations are determined on the date of purchase”:	7
IV. As to the fourth argument, that “the value of the property is the actual value of the property as opposed to the purchase price”:	7
V. As to the fifth argument, that “the trial court incorrectly applied the ‘fairly debatable’ standard when determining that the Commission did not violate McDaniel’s equal protection rights:	8
Conclusion.....	8

TABLE OF AUTHORITIES

<u>Andrus v. Allard</u> , 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 201 (1979).....	8
<u>Braden’s Folly, LLC v. City of Folly Beach</u> , 439 S.C. 171, 886 S.E.2d 674 (2023).....	6, 8
<u>Columbia Venture, LLC v. Richland Cnty.</u> , 413 S.C. 423, 776 S.E.2d 900 (2015).....	5
<u>Dunes West Golf Club, LLC v. Town of Mount Pleasant</u> , 401 S.C. 280, 737 S.E.2d 601 (2013).....	5, 6
<u>Penn Central v. City of New York</u> , 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978).....	4, 5, 7
<u>Sea Cabins on the Ocean IV Homeowners Assn., Inc. v. City of North Myrtle Beach</u> , 345 S.C. 418, 548 S.E.2d 595 (2001).....	5

INTRODUCTION

Appellant appears to argue that a rehearing is necessary because this Court did not fully consider matters set out in the Petition for Rehearing. On the contrary, a reading of the Opinion shows that a rehearing is not necessary, and that Appellant's petition for rehearing should be upheld.

The issues before the Court are fashioned by the causes of action asserted by Appellant, the applicable law, and the evidence provided to the lower court. This Court has correctly determined that Appellant has not made the case that a regulatory taking occurred. The Master determined under the Penn Central analysis that there was no unconstitutional taking of Appellant's property caused by the Planning Commission's denial of the preliminary plat. Likewise, notwithstanding the arguments of Appellant, the Planning Commission's decision did not rise to the level of an unconstitutional deprivation of equal protection. Appellant's arguments do not overcome the Master's findings or this Court's determination that the Master's decision should be affirmed.

Respondent asserts that this Court's Opinion is based on applicable principles of law and evidence. This Court has found no errors of law so significant as to warrant a reversal of its opinion, because there are none.

I. As to the first argument, that “the Commission is not a legislative body entitled to make zoning decisions”:

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 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 has conceded 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. This Court has correctly found that the Master utilized these cases in reaching his decision. This Court has concluded that the Master's reasoning is sound and based on his consideration of the evidence and applicable law. The Master 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. These principles and the cases cited by the Master and this Court provide the legal framework on which the Master's decision, and this Court's opinion, are based. This Court's holding should be affirmed.

II. As to the second argument, that “the Commission’s governmental action was to regulate McDaniel’s property by defining neighborhood compatibility:

The Master and this Court correctly analyzed the nature of the governmental action as an element in a regulatory taking analysis. Simply put, the Planning Commission's denial of the preliminary plat was a governmental action that was correctly considered by the Master and this Court. 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. This Court has correctly determined that the action of the Planning Commission was not a direct taking of property and did not, in a constitutional sense, significantly diminish the value of the property.

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 Commission’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”. 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 Appellant 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 the Commission’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 Commission’s reliance on the purpose and intent language in the ordinance, and which was affirmed by the Circuit Court, was correct, the Master’s finding that the weight of evidence of

the Penn Central factors favored Respondent's position was reasonable and supported by the evidence.

Although not essential to Respondent's position, it is noteworthy that Appellant did not appeal Circuit Judge's denial of Appellant's Circuit Court appeal of the Planning Commission's decision. In the present case, it is the degree to which the Planning Commission's denial of the plat was the equivalent of a physical taking of the property. As this Court has determined, it was not.

III. As to the third argument, that "the reasonableness of investment-backed expectations are determined on the date of purchase":

Respondent stands by its position set forth in its brief, and by this Court's analysis of the issue in its Opinion. Respondent's principal Mr. Cothran was fully aware at the time of purchase that the changes he planned to make in developing the property, turning a single lot into six, would cause intense opposition by the neighborhood. The evidence supports this Court's position on this issue.

IV. As to the fourth argument, that "the value of the property is the actual value of the property as opposed to the purchase price":

Respondent stands by its position set forth in its brief, and by this Court's analysis of the issue in its Opinion. The Master and this Court have cited evidence that 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).

This Court has correctly found that “the 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.” (Opinion at p. 6.)

V. **As to the fifth argument, that “the trial court incorrectly applied the ‘fairly debatable’ standard when determining that the Commission did not violate McDaniel’s equal protection rights:**

Respondent stands by its position set forth in its brief, and by this Court’s analysis of the issue in its Opinion. Whether or not the “fairly debatable” standard would strictly apply to the equal protection analysis, the evidence clearly supports the Master’s decision, and this Court’s affirmance. Respondent refers to this Court’s reasoning at pages 10 through 13 of its Opinion.

CONCLUSION

The Master and this Court made the correct findings of fact and applied the law appropriately to the evidence. This Court’s Opinion should be affirmed, and the Petition for Rehearing denied.

Respectfully submitted,

CASSIDY COATES PRICE, P.A.

s/V. Clark Price

V. Clark Price, SC Bar No. 04567

cprice@cassidycoates.com

P. O. Box 10529

Greenville, SC 29603

P: (864) 349-2600

F: (864) 349-0303

Attorneys for Respondent

September 18, 2026

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Sep 18 2026

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

APPELLATE CASE NO. 2025-000416

McDaniel Jones, LLCAppellant,

v.

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

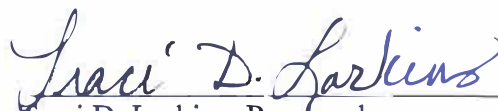
PROOF OF SERVICE

I hereby certify that I have served *Respondent's Response to Petition for Rehearing* submitted to the Court for electronic filing, on this 18th day of September, 2026 and by electronic AIS e-mail only as follows:

Bruce W. Bannister, Esquire
bbannister@bannisterwyatt.com
Counsel for Appellant, McDaniel Jones, LLC

Ryan W. Pasquini, Esquire
ryan@pasquinilawfirm.com
Counsel for Appellant, McDaniel Jones, LLC

Luke A. Burke, Esquire
lburke@gvlattorney.com
Counsel for Appellant, McDaniel Jones, LLC



Traci D. Larkins, Paralegal
Cassidy Coates Price, PA
1052 North Church Street (29601)
P.O. Box 10529
Greenville, South Carolina 29603
Phone: 864-349-2600
tlarkins@cassidycoates.com



CASSIDY
COATES
PRICE

V. Clark Price
cprice@cassidycoates.com
864.349.2604

September 18, 2026

South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

Sep 18 2026

SC Court of Appeals

RE: McDaniel Jones, LLC vs. City of Greenville Planning Commission
Appellate Case No. 2025-000416

Dear Madam Clerk,

Enclosed please find Respondent's Response to Petition for Rehearing along with the Proof of Service for filing with regards to the above referenced matter.

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

With kind regards, I am,

Sincerely,

CASSIDY COATES PRICE

Traci D. Larkins

Paralegal to V. Clark Price, Counsel for the Respondent

Enclosures

cc: Luke A. Burke, Esquire (via e-mail only)
Bruce W. Bannister, Esquire (via e-mail only)
Ryan W. Pasquini, Esquire (via e-mail only)