

RECEIVED

Nov 22 2021

S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2021-001019

G. Allen Rutter, Petitioner,

v.

City of Columbia Design/Development Review Commission, Respondent.

**PETITIONER’S REPLY TO RESPONDENT’S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

Benjamin C. Bruner
Chelsea J. Clark
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Petitioner

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Reply Argument..... 1

 I. THE DDRC FAILED TO SHOW WHERE THE GUIDELINES HAVE BEEN MADE
 LAW..... 1

 II. THE DDRC FAILED TO ADDRESS EVIDENCE OF BIAS AND IMPROPER
 MOTIVES. 2

Conclusion 3

TABLE OF AUTHORITIES

Cases

<i>Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant</i> , 308 S.C. 205, 417 S.E.2d 579 (1992).....	2
<i>Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees</i> , 287 S.C. 545, 340 S.E.2d 144 (1986).....	2
<i>Kurschner v. City of Camden Plan. Comm'n</i> , 376 S.C. 165, 656 S.E.2d 346 (2008)	2
<i>Quality Towing, Inc. v. City of Myrtle Beach</i> , 345 S.C. 156, 547 S.E.2d 862 (2001).....	1

Statutes

S.C. Code Ann. § 5-7-260.....	1
S.C. Code Ann. § 5-7-270.....	1

REPLY ARGUMENT

The City of Columbia Design/Development Review Commission (“DDRC”) filed its response to the Petition for Certiorari of Allen Rutter (“Rutter” or “Petitioner”) on November 12, 2021. In its response, the DDRC failed to address two material points that bear emphasizing here. On all other issues, Petitioner relies on the arguments in his Petition.

I. THE DDRC FAILED TO SHOW WHERE THE GUIDELINES HAVE BEEN MADE LAW.

The DDRC seeks to distinguish itself from state agencies using the Administrative Procedures Act. In so doing, the DDRC skirts the issue—laws still have to be made law, regardless of which process applies. The DDRC states that “[t]here is nothing evil or arbitrary about the manner in which the Guidelines were adopted by the City.” (Response, p. 23.) The problem is, no one has shown or documented that the Guidelines *were* adopted by the City. There is no ordinance adopting the Guidelines and no resolution adopting the Guidelines has been referenced. The DDRC is using the Guidelines as the only basis for review in certificate of design approval cases such as this one—using them as a binding norm—yet no one can point to where or how, or if, those Guidelines became law. Section 5-7-260 specifically says that the adoption or amendment of an administrative code shall be by ordinance. S.C. Code Ann. § 5-7-260(1). There is no ordinance passing the Guidelines into law. While the procedures for state agency regulations may not be those needed for municipal law, statute nonetheless still have a mandatory process that includes reading the proposed ordinance two times at least sixty days apart. S.C. Code Ann. § 5-7-270. Without following the process, an ordinance does not have “the force of law.” *Id.*

Our case law shows that even city contracts and franchise agreements must comply with the ordinance statutes. *See, e.g., Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001); *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 417

S.E.2d 579 (1992). The bottom line is that, “[r]estrictions on municipal power are created to protect citizens.” *Berkeley*, at 210, 417 S.E.2d at 583. Cities must follow process and procedure just like state agencies or any other political subdivision of the government. Otherwise, they really do commit small tyrannies.

II. THE DDRC FAILED TO ADDRESS EVIDENCE OF BIAS AND IMPROPER MOTIVES.

Another commonality between the DDRC and state agencies is that they must be impartial and unbiased when making decisions. *See Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (stating that due process requires the right to be heard in a meaningful way); *see also Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 552, 340 S.E.2d 144, 148 (1986) (discussing actual bias which offends due process). The record makes it abundantly clear that the DDRC did not review the merits of Petitioner’s appeal with a clear eye. Rather, the DDRC was attempting to make an example out of someone they believed flouted their authority. The DDRC did not enter any findings of fact or conclusions of law that would show a rational decision. But the DDRC did put on the record their reliance on hearsay about he said/she said during a phone call. “I think that the fact that this work was started without approval almost makes the rest of the argument moot.” Youtube, Design/Development Review Committee: January 12, 2017 at 01:09, https://youtu.be/tM_qKxeZRGc (hereinafter “video”). Another Board member said, “I just don’t think, we cannot set a precedent where an owner starts to do work, whether they think it’s an improvement or not, we just cannot set that precedent,” in reference to the procedural posture of the case. (Video at 01:21.) The DDRC should review the merits of the case. The DDRC should not invite applicants to have their agent present their application, rather than them, with no warning that staff and the DDRC will make the hearing about whether or not the supplicant himself has been sufficiently humble in his approach.

CONCLUSION

This case concerns more than the sum of its parts. This case is about whether a municipality has the right to infringe on homeowner property rights without proper process but with improper bias. For these reasons, Petitioner requests that the Court grant a writ of certiorari and review the Court of Appeal's decision.

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

s/Chelsea J. Clark

Benjamin C. Bruner, Bar No. 77544

Chelsea J. Clark, Bar No. 102211

Post Office Box 61110 (29260)

1735 St. Julian Place, Suite 200 (29204)

Columbia, South Carolina

(803) 252-7693

bbruner@brunerpowell.com

cclark@brunerpowell.com

Attorneys for Petitioner

November 22, 2021
Columbia, South Carolina