No. _____

In The
Supreme Court of the United States

WILLIAM FLOYD a/k/a JEFF FLOYD,
TROY READEN, and
EDWARD McCRACKEN a/k/a EDDIE McCRACKEN,

Petitioners,

vs.

THE TOWN OF HOLLYWOOD,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the South Carolina Supreme Court refuse to adhere to the settled precedent of the United States Supreme Court's Opinion in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073 (2000), thereby depriving the Petitioners of their right to equal protection?

2. Did the South Carolina Supreme Court deprive the petitioners of their constitutional right to trial by jury by substituting its view of the evidence for that of the jury?

LIST OF PARTIES TO THE PROCEEDING

All the parties to the proceeding are set forth fully in the caption.

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BASIS FOR JURISDICTION

The South Carolina Supreme Court entered its published opinion on May 15, 2013. (App. 1.) Thereafter the Petitioners filed a petition for rehearing on May 28, 2013. The South Carolina Supreme Court entered a final Order denying the petition for rehearing on July 12, 2013. (App. 35.) The petition for certiorari is due in this Court on or before Thursday, October 10, 2013, pursuant to Rule 13 of the Rules of the Supreme Court. This Court has jurisdiction to review the opinion of the South Carolina Supreme Court pursuant to Rule 10(b) and (c) of the Rules of the Supreme Court, and 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction, thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT VII

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

The underlying facts are almost entirely uncontested. In 2007, the Petitioners purchased a 13.2-acre residential tract located on Bryan Road in the City of Hollywood, South Carolina. On the west side of Bryan Road is the Petitioners' property. On the east side is the gated community known as "Stono Plantation," an exclusive enclave of waterfront homes. Hollywood

is a small "Christian" municipality in Charleston County with a population of approximately 4,800 people. It possesses a long and flamboyant history, swirled in government misconduct and misuse of municipal powers, typical of the evidence in this case. The Town makes no apologies for its religious grounding – it even adopts the Christian cross in the Town's official seal. (App. 137.)

Prior to purchasing the 13-acre tract of residential real property, the Petitioners inquired of the Town as to whether the tract could be subdivided for an affordable housing development. In response to their inquiries, the Town of Hollywood directed the landowners to the Town Planning Commission. As instructed by the Town's staff, the Petitioners appeared before the Town Planning Commission on June 14, 2007. The Planning Commission is dominated by Matt Wolfe, whose property in Stono Plantation is near the Petitioners' property. (Matt Wolfe's property is the shaded lot on Plaintiffs' Exhibit 19-A. App. 136.) Commissioner Wolfe expressed his personal objection to the proposal for affordable housing on smaller lots in close proximity to his exclusive, gated community, Stono Plantation, believing it would adversely impact his neighborhood, even telling a witness following the meeting that he wanted no project there that was "plastic, plastic, plastic":

> Q. Well, after the meeting, did you have any conversation with members of the Planning Commission?

> A. Yes. We were walking out to our cars, and Annette Sausser and Matt Wolfe and I were walking out together. I didn't really know Matt before, but I had known Annette for a long time, and they were saying that they didn't want the guys to have this development with so many lots and if that if they had fewer lots, maybe they would consider it. Matt Wolfe was – he pretty much lives – his house is pretty much across from where the property was, and he sounded like he didn't want a development in there, and he made a remark, which I didn't understand at first, he said, Well, it's all going to be plastic, plastic, plastic, and I didn't really understand what he meant, and then I realized he was talking about vinyl siding. He was kind of inferring that their development was going to be kind of low rent and not the kind of development they wanted in that area.

(App. 104.)

This meeting was confusing and chaotic, but the end result was that the Planning Commission informed the Petitioners that they must submit their application to the Town's Planning Director, Kenneth Edwards. It was at this initial meeting on June 14, 2007, a woman approached them, who turned out to be Annette Sausser, a member of the Town's governing Council and also a resident of Stono Plantation. Councilwoman Sausser approached the Petitioners and asked if they were presenting on the "Bryan Road matter." When they replied in the affirmative, Councilwoman Sausser drew her thumb across her

neck to simulate cutting her throat and told the landowners and their witnesses: "Never happen!" For an unbiased account of this event see the testimony of Mary W. Wolfe at App. 108-128.) Another witness present, Anne Boone, described the same incident this way:

> Q. Did she [Annnette Sausser] say anything unusual to you prior to the commence[ment] of the meeting?
>
> A. When we were walking in, she saw us and she said, Are you here for the Bryan Road thing? And we said, yeah, and she – she said, It ain't going to happen, and then she made a cutting motion, like this, which I was shocked.
>
> . . .
>
> Q. Did she sit with the planning commission?
>
> A. I believe she did.
>
> Q. What did you think about that?
>
> A. The whole meeting was pretty confusing. It was – I thought it was improper, but I had never been to a planning zoning meeting, so –
>
> . . .
>
> A. This [trial] is very orderly, this trial here. Everything is rules and regulations; everybody knows what is happening. That planning zoning meeting was totally confusing.

> Every time the guys [petitioners] tried to present anything or say anything they were – this is just my opinion, obvious, but it was – the commission had decided before anybody even got there that this development was not going through and it was just – they just shot down everything these guys tried to say or do.
>
> I was embarrassed. I was really embarrassed for them, and everybody in there was – it just wasn't – it didn't' seem like they were running things the way meeting like that should be run.

(App. 101-103.)

As set forth above, the first Planning Commission directed the Petitioners to see the Planning Director, Kenneth Edwards. The Planning Director informed the Petitioners that he could approve any subdivision application of 10 lots or fewer and suggested that the Petitioners do that. After consulting with Mr. Edwards, the applicants and their engineer, Curtis Lybrand, submitted their subdivision application to Mr. Edwards in the manner instructed by him. Edwards approved the subdivision in two phases, and stamped Phase 1 on June 22, 2007, and Phase 2 on June 27, 2007. (App. 129 and 130.) The Petitioners then recorded the plats and proceeded to sell lots. On July 1, 2007, the new administration took office and hired a new Planning Director, Ed Holton, to replace Kenneth Edwards. After the Town approved the subdivision, the new Mayor and the new Planning

Director collected the fee for and issued two logging permits to the Petitioners, the first a commercial logging permit on July 23, 2007, and a second tree cutting permit to clear the right-of-way on October 4, 2007. (App. 131-133.)

As the Petitioners prepared the property for home sites, the "significant" neighbors of the adjoining gated community persuaded the newly-elected Mayor to shut down the project and post an official stop work order. The document is important because it comes pre-printed with a blank to identify the basis for the action, but the Town to this day has never identified the basis for shutting down the project other than "by Order of the Mayor." Throughout the trial, the new Planning Director, Holton, referred to the Stono Plantation owners as "significant people," presumably because of their position as authorities with the Town. Because he was a new hire and owed his position to the Town Council, Holton acted less like an independent Planning Director and more like an amanuenses for Annette Sausser and Matt Wolfe.

The Town refused to provide the Petitioners a copy of its ordinances despite repeated requests by the Petitioners. Despite their best efforts to comprehend the Town's unspecified objection to their project, the Town sued the Petitioners, seeking to set aside its original decision to grant the subdivision. Besides withholding its ordinances for the Petitioners' inspection, the Town admitted it imposed arbitrary requirements on the Petitioners not applied to any other applicant, which is just like *Village of*

Willowbrook v. Olech, 528 U.S. 562, 120 S.Ct. 1073 (2000) – holding the Petitioners to an unequal standard not applied to any other landowner. Ed Holton justified this unequal treatment by explaining that he was just trying to get the project moving over the objection of "significant people" (App. 94):

> This [Planning Director's recommendations] was just, like I say, a recommendation, not a requirement, and there was previous dialogue between myself and Troy, in fact, Troy Readon, and not a requirement, just thought because there by this time was a lot of uproar with different people – well, there was significant people around saying they weren't as thrilled with the subdivision.

The Petitioners made repeated attempts to obtain a copy of the Town's governing ordinances, but the Town could not or would not produce them and refused the Petitioners' access to them if they existed at all. Jeff Floyd explained his unsuccessful efforts to get a copy of the Town's ordinances:

> First of all, I made demands in person upon the Town time and time again to show me what Ordinance was preventing us from moving forward. Not only could the Town not identify any Ordinance, but also it could not even provide a copy of its Ordinances to me. I made 3 trips to the City Hall, each time asking for a copy of the Ordinances. At one meeting set up specifically to get the Ordinances, Troy and I met with the mayor's assistant, Beth Carpenter and with Ed Holton, the current Zoning Administrator, and they

> told Troy and me that the Town could not produce any Ordinances for us because the Town was in the process of "recodifying" them and the Ordinances were not in any one place where they could be retrieved.

(App. 38-39.)

The Charleston County Circuit Court granted the Town's motion for summary judgment to set aside Kenneth Edwards' approval of the Petitioners' subdivision application because the Court found the Town's ordinances controlled, and after moving for reconsideration, the landowners appealed on November 10, 2011. On September 8-13, 2010, the Charleston County Circuit Court tried the remaining causes of action before a jury, and after initially deadlocking, the jury returned on September 13, 2010, with a verdict for the Petitioners on their equal protection cause of action for $450,000.00. On March 7, 2011, the Circuit Court granted the Petitioners' application for attorney's fees, and the Supreme Court of South Carolina reversed on May 15, 2013, in a published opinion.

ARGUMENTS

In this case, the South Carolina Supreme Court issued its published opinion in conflict with this Court's holding in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073 (2000). The jury heard the evidence, evaluated the credibility of the witnesses

and found that the Town of Hollywood violated the Petitioners' equal protection rights as supported by the holding of *Village of Willowbrook v. Olech*. The Supreme Court of South Carolina substituted its view of the evidence for that of the jury and overturned the verdict and deprived the Petitioners of their constitutional rights to trial by jury, holding that the Petitioners produced no evidence of dissimilar treatment.

> For it must not be forgotten that where in good faith one has brought into court a cause of action, which, as stated by him, is clearly within its jurisdiction, he has the right to try its merits in the manner provided by the Constitution and law, and cannot be compelled to submit to a trial of another kind. This was clearly stated by Mr. Justice Matthews in *Barry v. Edmunds*, 116 U.S. at page 565, who said: "In no case is it permissible for the court to substitute itself for the jury, and compel a compliance on the part of the latter with a view of the facts in evidence, as the standard and measure of that justice, which the jury itself is the appointed constitutional tribunal to award."

Smithers v. Smith, 204 U.S. 632, 27 S.Ct. 297 (1907).

The South Carolina Supreme Court's willingness to ignore established precedent is not a new phenomenon, and the manner in which South Carolina appoints judges encourages the South Carolina Supreme Court to weigh political consequences of its decisions. Several legal commentators have identified and commented on the abdication of *stare decisis*

in favor of an evolving political standard. See, for example, Kimberly C. Petillo's "*The Untouchables: The Impact of South Carolina's New Judicial Selection System on the South Carolina Supreme Court, 1997-2003*," 67 ALBANY LAW REVIEW 937 (2004). As Kenneth J. Aulet noted in the COLUMBIA JOURNAL OF LAW & SOCIAL PROBLEMS (Vol. 44, Issue 589, 610 (2011)) about South Carolina: "In the ten years prior to these changes [establishment of the Judicial Screening Committee] the Court overruled its precedent only twice, yet after these changes, it overruled its past precedent thirty-six times." The commentators note that, unlike the federal system, the state selection process makes judges beholden to the same legislators who elect and then periodically review them for their performance as part of the reappointment process. These same legislators resist the courts' interference in the legislative area. As Justice Marshall noted in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), the sole function of the court is to operate as a check against unconstitutional government action, but now the legislative branch is appointing the South Carolina judges for set terms and periodically reviewing the judges it appoints to determine if they should remain judges. This process makes it unlikely that the South Carolina Supreme Court will uphold a verdict against government action, and as discussed more fully below, this petition for *certiorari* is necessary only because the South Carolina Supreme Court refuses to obey the settled law on this issue as handed down by this Court in *Village of Willowbrook v. Olech*.

Here, the small municipality called Hollywood misused its corporate powers to thwart the Petitioners' property rights. From the very beginning, the outcome of the Petitioners' application for subdivision of their property was doomed because two government officials – a member of the Town Council, Annette Sausser, and a member of the Town's Planning Commission, Matt Wolfe, were residents of the gated community bordering the Petitioners' property, they personally opposed middle income housing on the Petitioners' parcel, and they used their influence to make sure that the Petitioners' property remains fallow. The animus displayed for the Petitioners in this case makes the animus of the Village of Willowbrook for Grace Olech, as discussed in this Court's 2000 opinion, look benign. As discussed more fully below, at the very first appearance before the Town on the Petitioners' routine request, a member of the Town's governing Council, Annette Sausser, approached the Petitioners waiting in the hallway for their case to be called and informed them that their development would "never happen." Councilwoman Sausser punctuated these remarks by simultaneously making a throat cutting gesture with her hand. Since that time, the Town of Hollywood has persecuted the Petitioners severely enough that a jury awarded them $450,000.00 in damages for the Town violating the Petitioners' equal protection rights. See Appendix for several independent witnesses' accounts of Councilwoman Sausser's acts and Planning Commissioner Wolfe's comments about the project. App. 100-102 (Anne Boone) and App. 113-114 (Mary Wolfe).

The Supreme Court of South Carolina reversed this verdict by substituting its view of the facts for that of the jury in order to hold that the Petitioners had no right to a trial by jury. The South Carolina Supreme Court asserts the Petitioners failed to provide evidence that the Town treated a similarly situated property owner differently. This is an astonishing rationale because this record demonstrates the Town admitted both in sworn testimony and in writing that it held the Petitioners to a standard not required by its ordinances and not required of any other applicant for any rational purpose. (See Town of Hollywood's written admission at Appendix 135 and the Town Planning Director's admission on the stand at Appendix 53.)

In short, in order to vacate a jury verdict against a municipality, the state Supreme Court violated the constitutional guarantee of trial by jury and ignored the holding of this Court in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073 (2000).

Question 1: The South Carolina Supreme Court ignored this Court's holding in *Village of Willowbrook v. Olech* and substituted its view of the evidence for that of the jury where the Town admitted its unequal treatment of the Petitioners.

A. The Town's admission of disparate treatment

The Supreme Court of South Carolina ignored this Court's holding in *Village of Willowbrook v.*

Olech, *ibid.*, and in doing so, it substituted its view of the evidence for that of the jury. This Court could not have been more emphatic than issuing its unanimous opinion in *Village of Willowbrook v. Olech*, reminding local governments that they must feed all their citizens from the same spoon unless there is a rational basis for treating them otherwise. Here, the South Carolina Supreme Court abandoned its most important duty and ignored the record in order to reverse the jury's verdict against the Town for its unequal treatment. The most important responsibility of the Court is to protect individuals from encroachment by the government on their liberty: "The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive or executive officers, perform duties in which they have discretion." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The only way the South Carolina Supreme Court could reverse the jury verdict in this case was to rewrite the evidence and ignore the holding of this Court on this issue. To reverse the jury's verdict, the South Carolina Supreme Court disregarded the jury's findings and found for itself that the record contained no evidence that the Town treated the Petitioners differently from similarly situated landowners. The Supreme Court's reversal of the jury's determination ignores the Town's admission – both in writing and in sworn testimony in the presence of the jury – that the Town treated the Petitioners differently from all applicants and required them to meet arbitrary and irrational standards not imposed on any other applicant.

At oral argument before the South Carolina Supreme Court, the discussion was about whether the record contained sufficient evidence of unequal protection to allow the trial court to submit the case to the jury. The South Carolina Supreme Court took the view that unless the Petitioners could demonstrate that the Town treated differently another landowner exactly situated, then the Petitioners could never make out a claim of equal protection. Proof of unequal protection has never been so narrowly construed by any court, state or federal. The record here contains the ultimate evidence: written and oral admissions by the Town of unequal treatment. See App. 53 and 135 for the Town's written requirements specifically tailored to the Petitioners, where the Town's Planning Director, Edward Holton, presented the Petitioners with his written standards for the Petitioners entitled: "Feb. 21 For March 13 7:00 Plan. Comm." This written list identifies the six criteria the Town demanded from the Petitioners as a condition for granting a subdivision.

The Opinion under review notes "these requirements included approval of a septic system, alternate access routes, and a tree survey, which are required of all developers." The Opinion under review ignores the Town's additional written requirements, which the Town admits are *ad hoc* demands specifically tailored to the Petitioners without statutory authority that it has never applied to anyone other than the Petitioners. The Town justifies these shifting criteria as its attempt to "help" the Petitioners overcome the

opposition of "significant people" who the Town admits are opposed to the development of the property. (The "significant people" are Annette Sausser, Town Council member and Matt Wolfe, member of the Town's Planning Commission – both residents of the gated Stono Plantation.) The Town's arbitrary requirements included a demand that the Petitioners "realign" their project with Annette Sausser's and Matt Wolfe's gated community. In addition, and this next requirement will sound familiar to the authors of *Village of Willowbrook v. Olech*, the Town demanded of the Petitioners a 50-foot buffer "**so people wouldn't see your subdivision**." (Emphasis added. App. 94.) This Court made clear in *Village of Willowbrook v. Olech* that such an arbitrary requirement without a rational purpose is unequal protection. While on the stand in the presence of the jury, Zoning Administrator, Ed Holton, explained that these unusual requirements are not required by Town Ordinances, nor supported by any rational purpose, but were added only to appease the "significant people" who opposed the Petitioners' plans. This is how Ed Holton, the Planning Director, described the Town's *ad hoc* criteria:

> A. This [Plaintiff's Exhibit 13] was just, like I say, a recommendation, not a requirement, and there was previous dialogue between myself and Troy, in fact, Troy Readen, and not a requirement, just thought because by this time was a lot of uproar with different people – **well, there was significant people around saying they weren't so thrilled with the subdivision**.

> Well, maybe you should have some buffering, an avid barrier between them **so people wouldn't see your subdivision**, so that is where that comes from and I'll read it. It says buffer as an excellent show of good faith to the surrounding, close parentheses, leave in place or install a 50 foot wood buffer surrounding the property and that was just a suggestion.
>
> Ten foot would probably have been great, but I just threw that in there for something to have, not just something, but a significant part that would aid their project being successful and the community surrounding it not having such a problem with it. I was trying to help them in that way. That was a suggestion.
>
> . . .
>
> Q. So your recommendation was to be considerate of your neighbors, more or less, is that correct?
>
> A. Yes. And for their benefit, **it would have above and beyond what normal people would do**. I didn't make this suggestion too often at all, but in light of this, I felt like this would make the project go smoothly.

(Emphasis added. App. 94-95.)

The Town demanded a 50-foot buffer from the Petitioners, while conceding that a 10-foot buffer would have been "great," and provided no rational basis for its demand except to appease the "uproar"

of "significant people." The jury heard this admission and observed the manner in which the witnesses delivered the above and other testimony, and they saw and heard exactly what the Town of Hollywood was up to. Whether Holton's written demands involved recommendations or requirements is a question of fact for the jury, which heard and evaluated the credibility of his testimony. As Justice Beatty pointed out at oral argument before the South Carolina Supreme Court, this is an admission of unequal protection across the board. In opposition to this position, the Chief Justice maintained that equal protection claims can succeed only where the Petitioners can show a "comparable comparative." The Chief Justice's narrow construction of "similarly situated" is at variance not only with hundreds of cases, but also with her own dissenting opinion on the same topic in another case. In *Ed Robinson Laundry*, the Chief Justice articulated a definition of equal protection in keeping with the well-established case law on equal protection but inconsistent with her evaluation of the Petitioners' claims in this case. In *Ed Robinson Laundry v. S. C. Dept. of Revenue*, 356 S.C. 120, 588 S.E.2d 97 (2003), the two-justice dissent articulated the universal rule that equal protection claims are determined in accordance with a rational basis standard. The dissent, relying upon established case law, articulated the broader standard traditionally applied to equal protection cases thus:

> In my opinion, there is no rational basis for treating dry cleaning services differently from other services. I would also find that

> when viewed in the light most favorable to Robinson, a genuine issue of material fact exists as to whether the sixty-one exceptions to the sales tax are arbitrary and capricious and thus violate the Equal Protection Clause. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002).
>
> In my view, the sales tax violates the rational basis test and thus violates equal protection. *Lewhnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973); *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998). **Because I believe that dry cleaning services are part of the same class as other service providers, I would hold that the statute treats "similarly situated" entities differently.** Further, I would hold that there is no rational basis for singling out dry cleaners – to the exclusion of other services – for sales tax purposes.

(Emphasis added.)

The equal protection formulation in *Ed Robinson Laundry* is the correct one. There is no requirement in equal protection case law that the unequal protection be based on proof of a "comparable comparative," especially where the evidence includes the municipality's admission of unequal treatment. Whether other landowners are or are not similarly situated is a question of fact that is always determined on a case-by-case basis. In a remarkable anticipation of this Court's decision in *Village of Willowbrook v. Olech*,

the Supreme Court of Connecticut took up an almost identical issue in *Thomas v. West Haven*, 249 Conn. 385, 734 A.2d 535 (1999). One year before this Court's decision in *Village of Willowbrook v. Olech*, the Connecticut Supreme Court noted:

> We are persuaded by this reasoning, and view it as useful in our determination of whether the plaintiffs were "similarly situated" to other zoning applicants. "[E]qual protection does not just mean treating identically situated persons identically." (Emphasis added.) *Id*. Moreover, the requirement imposed upon "[p]laintiffs claiming an equal protection violation [is that they] identify and relate specific instances where persons situated similarly in all relevant aspects were treated differently. *Dartmouth Review v. Dartmouth College*, 889 F.2d 13, 19 (1st Cir. 1989)." (Emphasis added; internal quotation marks omitted.) *Rubinovitz v. Rogato*, 60 F.3d 906, 910 (1st Circ. 1995).
>
> In a situation such as that presented by the facts of this case, which involves the alleged selective treatment by public officials who, under the statutes of this state and the regulations of the city, possess broad discretion in decisions relating to zone changes applications; see footnote 26 of this opinion; the factors that render applicants similarly situated for comparison purposes necessarily are based upon the procedural requirements imposed on those seeking to obtain zone changes. The appropriate group

> for comparison to the plaintiffs, therefore, includes all applicants who were before the commission, requesting a zone change during the same general time period as the plaintiffs, and who thus, theoretically, were subject to the same rules and requirements. Furthermore, given the inherently unique characteristics associated with any parcel of land,[1] and the numerous combination of zone changes that could be requested by an applicant, if we were to adopt the narrow focus undertaken by the trial court and advocated by the defendants, the officials and the process associated with zone changes could be insulated significantly from the purview of the equal protection clause. We do not regard the equal protection clause as so narrow in scope.

As this record demonstrates, the Petitioners not only proved the Town treated two other parcels much more leniently – because they did not impact the connected residents of Stono Plantation – but also the Petitioners proved the Town admits requiring them to do things required of no one else! Even if the Petitioners had offered no evidence of other real estate parcels treated differently – and they offered two, which the jury found sufficient – the Town admitted it was imposing extra requirements on the Petitioners that it required of no one else and for no rational

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[1] This is the same rule in South Carolina as discussed below in reference to the *HHHunt Corp. v. Town of Lexington* case, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010).

purpose. Leaving aside the obvious observation that it was for the jury, and not the appellate court, to weigh the evidence, there can be no clearer expression of unequal protection than the Town's admission it arbitrarily required the Petitioners to do more than anyone else. This is exactly the holding of the unanimous decision in *Village of Willowbrook v. Olech,* and the South Carolina Supreme Court simply ignores the controlling precedent of this Court.[2]

The Opinion under review further deviates from the *Village of Willowbrook v. Olech* holding because it adds a new requirement for equal protection claims, elevating "similar" to "identical," which is at variance with the case law. Leaving aside the obvious point that whether two properties are "similar" is a quintessential jury question, South Carolina has always recognized a parcel of real estate is unique by definition. See *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010). As noted by the Supreme Court of Connecticut in 1999, quoted above at pages 20-21, "given the inherently unique characteristics associated with any parcel of land, and the numerous combination of zone changes that could be requested by an applicant, if we were to adopt the narrow focus undertaken by [the South Carolina Supreme Court in equating similar to

[2] South Carolina has a long history of ignoring federal law. In 1860, the Charleston lawyer, James Petigru, remarking on this State's tendency to make its own path noted: "South Carolina is too small for a republic and too large for an insane asylum."

identical] the officials and the processes associated with zone changes could be insulated significantly from the purview of the equal protection clause." *Thomas v. West Haven, ibid.*

In a small town the size of Hollywood, S. C., there will never be an exact comparison, but a local government does not get a free pass on discrimination because a property owner cannot identify someone identically situated. Regardless, with the admission by Planning Director, Ed Holton, that the Town required the Petitioners to meet standards "above and beyond what normal people would do," the Town proves the case for the Petitioners – the Town required no one else to do what the Town asked the Petitioners to do. With his own words, Holton admitted that the Town required the Petitioners to meet an arbitrary standard. Requiring the Petitioners to install a "50-foot wood buffer surrounding the property" "so people wouldn't see your subdivision" is a unique requirement Holton admits he would not ask "normal people" to do. Tellingly, the Petitioners could never verify any standard for the Town's buffer requirements, nor even the authority of the Town to require them, without the opportunity to examine the Town's Code of Ordinances. The Petitioners had every right to inspect the Ordinances, and the Town's sabotaging pattern of refusing to produce its Code of Ordinances, for the Petitioners only, for the Petitioners could never bear a rational relationship to **any** legitimate government purpose. Just as there can be no rational basis for hiding ordinances, there can be no rational basis for "hiding" a new neighborhood because

"significant people" do not want to see it. This admission of discrimination by the Town regarding disparate treatment of the Petitioners, violates the rational basis test of *Village of Willowbrook v. Olech* and well-developed case law is more than enough evidence to support a jury's decision on the facts. The Town misused its municipal powers through Councilwoman Sausser, Commissioner Wolfe, and Director Holton to impose unequal treatment on the Petitioners for the specific purpose of killing the project. As Councilwoman Sausser said at the outset: "Never happen." There is abundant evidence in this record to support the jury's finding of equal protection violation and the Supreme Court of South Carolina invaded the exclusive province of the jury to weigh evidence and ignored this Court in reversing the verdict. As the State Supreme Court notes on page 10 of the Opinion under review: "Moreover, a JNOV motion may be granted only if no reasonable juror could have reached the challenged verdict." As set forth above, there is an abundance of evidence from which the jury could find a violation of equal protection.

B. Reliance on due process cases

C. South Carolina Supreme Court's use of animus as a necessary element of equal protection claims

In overturning the jury's verdict, the South Carolina Supreme Court commits two additional errors: one, it states that due process cases have no bearing on an equal protection analysis, a palpable error of

law, and two, it states that in order to make out an equal protection claim, the Petitioners must prove an animus, which is likewise an erroneous statement of law.[3] Even though the Petitioners proved the Town's animus by overwhelming evidence, the South Carolina Supreme Court's willingness to ignore this evidence – it demotes an established fact to a mere allegation in footnote 1 – demonstrates the lengths the South Carolina Supreme Court went in order to substitute its view of the evidence for that of the jury. The Petitioners produced five witnesses who saw and heard Councilwoman Sausser make the comment and the cut throat gesture. The Town did not dispute it. Despite this evidence of irrational bias, the South Carolina Supreme Court rewrote these facts and reduced this fact to a mere allegation in a footnote. In addition, the South Carolina Supreme Court erroneously holds that unequal protection claims **must** be supported by proof of animus. The South Carolina Supreme Court held in the 2013 case of *Dunes West Golf Club v. Mt. Pleasant*, 401 S.C. 280, 737 S.E.2d 601 (2013):

> . . . noting that the distinguishing factor between "run of the mill zoning cases and cases

[3] Obviously, the Petitioners proved animus – one could hardly demonstrate a more direct animus than Councilwoman Sausser's deplorable conduct in this case, but as this Court makes clear in *Village of Willowbrook v. Olech*, animus is irrelevant. For that reason, the Petitioners include a brief comment on the correct legal standard.

> of constitutional right" is the presence of a factor demonstrating "vindictive action, illegitimate animus or ill will." *Whatley,* 337 S.C. at 576, 524 S.E.2d at 408 "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. A violation is established only if the plaintiff can prove that the state intended to discriminate." (emphasis in original) *Butler v. Town of Edgefield*, 328 S.C. 238, 250-251, 493 S.E.2d 838, 845 (1997). Plaintiff did not establish Equal Protection claim where he failed to allege or set forth any facts which could establish purposeful or intentional discrimination. (*Dunes West* at page 295 *supra.*)

As this Court made clear in *Village of Willowbrook v. Olech*, the above standard by the South Carolina Supreme Court is incorrect and is – on its own – a sufficient reason to grant certiorari in this case, or at least remand the case back to the South Carolina Supreme Court with instructions to evaluate the present case under the correct legal standard.

In dismissing case law on due process as irrelevant to any analysis of equal protection violations, the South Carolina Supreme Court takes the most narrow view of equal protection imaginable, and in doing so takes another path in rejecting this Court's holding in *Village of Willowbrook v. Olech*. The South Carolina Supreme Court dismisses the Petitioners' reliance on federal cases, such as *A Helping Hand,*

L.L.C. v. Baltimore, 515 F.3d 356 (4th Cir. 2008). As discussed above and as supported by hundreds of cases, the same evidence can support recovery in both due process and equal protection claims. For example, many Fourth Circuit cases adopt and amplify South Carolina State Supreme Court Justice Waller's prescription in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) "that process also contemplates the rational development of land use, free from undue political influence."[4] See also "The New Equal Protection Clause and the Singling Out Prohibition," by Prof. Jan G. Laitos, University of Denver College of Law, April 19, 2001:

> The *Olech* opinion also decided that a claim for relief under traditional equal protection could be stated if the plaintiff could show that the local government's actions were "irrational and wholly arbitrary." This language suggests that the Court might be willing to entertain a substantive due process like argument in the context of an equal protection claim, since rationality is demanded by substantive due process.

Responding to a civil war that cost approximately 620,000 dead and wounded, the Congress amended the Constitution in 1868 to provide, among other things, that the Government would never again treat

[4] The year 2000 was a watershed year for land use cases.

its citizens unequally.[5] After Thomas Jefferson's statement of principles in our Declaration of Independence, the second most important 80 words in American history, Amendment XIV, Section 1 says:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In drafting the Amendment, Congress made no distinction between due process or equal protection, the two clauses separated only by a conjunction "nor."

> But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.

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[5] Louisiana and South Carolina refused to ratify the XIV Amendment.

Bolling v. Sharpe, 347 U.S. 497, 499-500, 74 S.Ct. 693 (1954).

In *A Helping Hand, L.L.C. v. Baltimore*, 515 F.3d 356 (4th Cir. 2008), the Fourth Circuit follows the same prescription that Justice Waller articulated in *I'On v. Mt. Pleasant.* In *A Helping Hand*, the Fourth Circuit, like our Court of Appeals in *Wyndham Enterprises v. North Augusta*, 401 S.C. 144, 736 S.E.2d 659 (2012) made clear that land use decisions should not be controlled by irrational public sentiment. The fact pattern in *A Helping Hand* in which government officials blurred the line between their duties as officials and their advocacy as citizens, a line in which they used their official positions to thwart a citizen's right to use his property, is factually close to this case and demonstrates how the South Carolina Supreme Court drew an artificially narrow line between due process and equal protection that is not supported by case law. Government officials, like Councilman Kamenetz in *A Helping Hand* and Councilwoman Sausser, Commissioner Wolfe, and Planning Director Holton, in this case, are examples of why courts function to protect citizens from encroachment of their civil rights by government officials who use their legislative authority to overreach citizens. As observed by Justice Marshall in *Marbury*, it is the "sole function" of the courts to protect citizens from encroachment of their rights by government officials and agents who misuse their police authority. Thus, this line of cases like *A Helping Hand* should not be ignored merely because they discuss substantive due

process, which is nothing more than a different facet of the same shining principle of equal protection.

Second, the South Carolina Supreme Court insists on adding an element of animus as a prerequisite to an equal protection claim. As set forth by this Court in *Village of Willowbrook v. Olech,* this element is unnecessary. Contrary to the State Supreme Court's Opinion, the Petitioners meet the holding of the United States Supreme Court in *Village of Willowbrook v. Olech*:

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336 (1989). In so doing, we have explained that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the States' jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sioux City Bridge Co., supra*, at 445 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352 (1918).
>
> That reasoning is applicable to this case. Olech's complaint can fairly be construed as

> alleging that the Village intentionally demanded a 33-foot easement as a condition of connecting her property to the municipal water supply where the Village required only a 15-foot easement from other similarly situated property owners. See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The complaint also alleged that the Village's demand was "irrational and wholly arbitrary" and that the Village ultimately connected her property after receiving a clearly adequate 15-foot easement. These allegations, quite apart from the Village's subjective motivation, are sufficient to state a claim for relief under traditional equal protection analysis. We therefore affirm the judgment of the Court of Appeals, but do not reach the alternative theory of "subjective ill will" relied on by that Court.

Village of Willowbrook v. Olech, supra, at 564-565.

Thus, the Opinion under review is controlled by multiple errors of law, which require that this Court either grant the petition for certiorari or in the alternative remand the case back to the South Carolina Supreme Court for redetermination in light of this Court's holdings in *Village of Willowbrook v. Olech*.

Question 2: Did the South Carolina Supreme Court deprive the Petitioners of their constitutional right to trial by jury by substituting its view of the evidence for that of the jury?

The South Carolina Supreme Court substituted its view of the evidence for that of the jury and thereby deprived the Petitioners of their constitutional right to trial by jury. The State Supreme Court ignored the jury's findings of fact and rewrote the evidence to justify its conclusion. In rewriting the record, the State Supreme Court ignored the admissions – oral and written – by the Town of Hollywood that it applied specifically tailored criteria, for no rational purpose, to the Petitioners that it applied to no one else. Further the South Carolina Supreme Court imposed a standard on an unequal protection claim of animus that is contrary to the holding of *Village of Willowbrook v. Olech*. The Supreme Court rewrote the law on unequal protection by elevating the requirement of "similarly situated" to "identical." In doing this, it took away the jury's right to weigh the evidence and determine for itself whether the Town's acts singled out the Petitioners and deprived them of their right to be treated equally.

The South Carolina Supreme Court improperly substituted its view of the evidence for the jury's view and drew its own conclusions as to what the

Petitioners proved and did not prove, which is the function reserved solely for the jury.

CONCLUSION

In conclusion, this petition for certiorari is necessary only because the South Carolina Supreme Court refuses to adhere to the holding of this Court in *Village of Willowbrook v. Olech*. This Court spoke clearly and unanimously that when a municipality misuses its corporate powers to discriminate against a citizen by imposing irrational and arbitrary criteria as a condition of receiving government services, the aggrieved citizen can make out a claim of equal protection as a class of one. Here, the Town of Hollywood admits it imposed arbitrary requirements specifically tailored to prevent the Petitioners from moving forward on a routine subdivision application. The South Carolina Supreme Court rewrote the facts, applied incorrect law, and imposed additional legal requirements on the Petitioners and erroneously reversed a jury's findings of fact. The Petitioners pray, in the alternative, either for an Order granting *certiorari* to review the decision of the South Carolina Supreme Court, or, in the alternative, for an Order of Remand, requiring the Supreme Court of South Carolina to reevaluate the verdict in this case in light of the controlling precedent of *Village of Willowbrook v. Olech* and to apply the correct standard that appellate

courts do not substitute their view of the evidence for that of the jury.

October 2, 2013

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The Town of Hollywood, Appellant/Respondent,

v.

William Floyd, a/k/a Jeff Floyd, Troy Readen and Edward McCracken, a/k/a Eddie McCracken, Respondents/Appellants.

Appellate Case No. 2010-174946

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge
Roger M. Young, Circuit Court Judge

Opinion No. 27252
Heard February 5, 2013 – Filed May 15, 2013

AFFIRMED IN PART AND REVERSED IN PART

Andrew F. Lindemann, of Davidson and Lindemann, P.A., of Columbia, Hugh Willcox Buyck, of Buyck and Sanders, L.L.C., of Mount Pleasant and Kathleen Fowler Monoc, of Pratt-Thomas Walker, of Charleston, for Appellant/Respondent.

Thomas R. Goldstein, of Belk Cobb Infinger and Goldstein, P.A., of Charleston, for Respondents/Appellants.

CHIEF JUSTICE TOAL: The Town of Hollywood (the Town) filed this action against William Floyd, Troy Readen, and Edward McCracken (collectively, the developers) seeking a declaration that the developers may not subdivide their property without approval from the Town's Planning Commission and an injunction prohibiting subdivision of the property until such approval is obtained. The developers filed counterclaims under 42 U.S.C. § 1983 (2006), alleging equal protection and due process violations as well as various state law claims. The circuit court granted summary judgment in favor of the Town on its claims for equitable and declaratory relief, and also granted the Town's motion for a directed verdict on the developers' state law claims. The jury returned a verdict in favor of the Town on the developers' due process claim, but awarded the developers $450,000 in actual damages on their equal protection claim. Both parties appealed. The Town argues the circuit court erred in denying its motions for a directed verdict and judgment notwithstanding the verdict (JNOV) on the developers' equal protection claim, and in granting the developers' motion for attorney's fees and costs. The developers argue the circuit court erred in granting summary judgment in favor of the Town on its claims for equitable and declaratory relief. This Court certified this case for review pursuant to Rule 204(b), SCACR. We affirm in part and reverse in part.

FACTUAL/PROCEDURAL HISTORY

In February 2007, the developers entered into a contract to purchase a thirteen-acre tract located on Bryan Road in the Town of Hollywood. Thereafter, the developers filed an application with the Town's Planning Commission to rezone the property for residential use. The Planning Commission heard the matter on June 14, 2007, at which time the developers presented a "preliminary lot sketch" and indicated their intent to subdivide and develop the property into seventeen residential lots. Commissioner Matthew Wolf informed the developers their plans did not require rezoning; instead, Wolf instructed the developers to file for approval with the Planning Commission to subdivide their property. Wolf further stated that before the Planning Commission could hear a subdivision application, the developers needed to give notice to all landowners within a 300-foot radius of their property and gather information about roadways, drainage, and timber removal. Another Commissioner stated,

> Hopefully you can get all this information together and maybe present it at a later date, possibly, and we can act upon it. But as of tonight, based on what has been presented to this Commission, we would not be doing our job as Commissioners if we were to consider it.

The developers asked for clarification as to whether they needed to present the matter to the Planning Commission, and Commissioner Wolf restated that

the developers should appear before the Commission again and present "a plat for approval." The Planning Commission ultimately tabled the issue based on "inadequate information and the fact that none of the ordinances of the Town [had] been followed."

The Planning Commission then opened the floor for public comments. Councilwoman Annette Sausser stated she did not support the developers' subdivision.[1] Sausser stated Bryan Road was too narrow to handle any additional traffic without improvement and noted the developers' property was located near a dangerous curve where multiple accidents had occurred.[2] Sausser also cited drainage and environmental concerns associated with a nearby marshland and stated the Town's constituents did not support the developers' subdivision.

Other constituents also expressed concern about drainage issues and Bryan Road's ability to withstand additional traffic. One constituent stated, "Bryan Road[ ] is a one-car road. You cannot get two large vehicles past each other. And the idea that there

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[1] The developers assert that prior to their appearance before the Planning Commission, Sausser approached them, ran "her thumb across her neck to simulate cutting her throat," and told them their project would "never happen."

[2] Sausser stated she was familiar with Bryan Road because she formerly resided in Stono Plantation, a residential neighborhood adjacent to the developers' property which was initially approved for subdivision in 1985. Commissioner Wolf also resides in Stono Plantation.

might be another 30 cars coming down through there is just so difficult to imagine." Another constituent stated ingress and egress for residents along Bryan Road would not be satisfactory with additional traffic, and also expressed concern about the ability of emergency vehicles to access the road.

Subsequent to the meeting, the developers met with Kenneth Edwards, the Town's zoning administrator, who indicated he would approve the subdivision himself if the developers applied for it in two phases. Edwards ultimately signed the developers' proposed plats, purporting to approve them, in two stages – half of the lots on June 22, 2007, and the remaining lots on June 27, 2007. Thereafter, the developers closed on the property and recorded the plats in the Charleston County RMC office.

When the developers began working on the subdivision, the Town issued a stop-work order. After the developers indicated they would not comply with the stop-work order, the Town filed this action seeking declaratory and injunctive relief. Specifically, the Town sought a declaration that the developers could not subdivide their property without approval from the Town's Planning Commission and an injunction prohibiting subdivision of the property until such approval was obtained. The developers filed equal protection, due process, and state law counterclaims. Thereafter, the parties struck the case with leave to restore in an effort to resolve the matter through another Planning Commission hearing.

On August 14, 2008, the developers appeared before the Planning Commission a second time to discuss the "preliminary subdivision" of their property. During the meeting, the Planning Commission informed the developers of multiple issues they needed to address before the Commission could approve the subdivision, including an acceptable septic system, a wetlands certification letter, and a traffic study of Bryan Road. Again, constituents expressed concern about Bryan Road's ability to handle a heightened level of traffic and the effect it would have on the dangerous curve adjacent to the developers' property.

In reference to the traffic study, Commissioner Wolf stated, "[N]o one's denying access to the [developers'] lot. No one has ever suggested that there be no access to that lot." Instead, Wolf stated, it is a matter of "commonsense and safety for the Town of Hollywood." Wolf stated Bryan Road is "one of the most dangerous roads in Hollywood" with a high density of traffic. Consequently, Wolf explained, the Planning Commission requested a traffic study to ensure Bryan Road could withstand a heightened level of traffic and that it would not hinder emergency vehicles' access to the properties along Bryan Road. The Planning Commission ultimately tabled the subdivision request until the developers addressed all necessary issues.

On March 29, 2010, the parties restored their case in the circuit court. Thereafter, the Town moved for summary judgment on its claims for declaratory and injunctive relief as well as the developers'

counterclaims. In response, the developers submitted an affidavit by William Floyd. Floyd stated that during their first meeting, the Planning Commission instructed the developers they were in the wrong place and directed them to Edwards, the Town's zoning administrator, who subsequently approved their plats. Floyd claimed the Town then took the position that Edwards did not have authority under the Town's ordinances to approve the subdivision, but could not cite to a specific ordinance or produce the ordinances for review. Floyd claimed he made multiple demands for the ordinances, but the Town claimed it could not produce them because it "was in the process of 'recodifying' them and the [o]rdinances were not in any one place where they could be retrieved." Floyd stated, "The Town has never adopted a consistent policy with us. Rather, it evolves as is necessary to stop us." Floyd further stated, "It is shocking that the Town now cites [o]rdinances which did not exist when this controversy began, and if the [o]rdinances did exist, which I doubt, the Town was unable to produce them."

The circuit court granted the Town's motion for summary judgment as to its claims for equitable and declaratory relief, but denied the motion as to the developers' counterclaims. The circuit court found the Town's ordinances did not vest Edwards with the "authority to approve a final subdivision plat of this kind" or to waive compliance with the subdivision-approval process set forth in the Town's ordinances; rather, because the developers intended to subdivide

their property into more than three lots, the circuit court found the Planning Commission must approve the subdivision plats. The circuit court further found that although the Town's ordinances were in the process of recodification during the developers' application process, they were effective during this time because the Town adopted them in 1998 and preserved the original language in the recodified version. Accordingly, the circuit court ruled the developers may not subdivide their property without the Planning Commission's approval, and that the plats Edwards signed were "null, void and of no effect."

At trial, Edward Horton, the Town's current zoning administrator, testified he informed the developers, by way of letter and orally before the Planning Commission, of the requirements they needed to meet before the Commission would approve their subdivision. These requirements included approval of a septic system, alternate access routes, and a tree survey, which are required of all developers. Commissioner Wolf testified the Planning Commission also informed the developers they needed to conduct a traffic study along Bryan Road, noting "traffic is one of the key issues for any development [the Commission] review[s]." Wolf further testified that although the Town's ordinances did not require traffic studies, the Planning Commission requires them as a matter of discretion "where there is a . . . critical juncture like this particular case where you have a dangerous intersection with a . . . road that doesn't conform to any county or state standards."

Mayor Jacqueline Heyward testified the Planning Commission did not require a traffic study for Wide Awake Park, a seven-acre park located on Trexler Avenue, because the park was already developed when the Town acquired it. Mayor Heyward further noted lots were consolidated, rather than subdivided, to make Wide Awake Park possible. Mayor Heyward also briefly testified about Holly Grove, a low-income housing project located on Baptist Hill Road. Mayor Heyward testified Holly Grove was initiated prior to her tenure as mayor and that she did not think the Planning Commission required a traffic study, but stated Holly Grove was a "planned development, which is different from a subdivision." Mayor Heyward explained that although a planned development is subject to the zoning process, including a wetland study, that process is different from the process of subdividing a piece of property. Mayor Heyward further testified that neither Baptist Hill Road nor Trexler Avenue were dangerous roads.

After the developers rested, the Town moved for a directed verdict on all of the developers' counterclaims, arguing they failed to meet their burden of proof. Regarding the equal protection claim, the developers responded,

> The obvious disparity is in the adjoining subdivision, which is Stono Plantation. No one has required Stono Plantation to provide a traffic study or to prove that they have access, and, in fact, the two subdivisions sit side by side and utilize the same access, so it

> is abundantly clear in this record that the two similarly situated property owners are being held to different standards.

Conversely, the Town argued the developers failed to present any evidence concerning the process Stono Plantation, or any other development, underwent to obtain subdivision approval. The developers responded, "Your Honor, I think it's unnecessarily complicated. Bryan Road is either open to the public or it's not." The circuit court granted the Town's motion for a directed verdict on the developers' state law claims, but denied the motion as to the developers' equal protection and due process claims.

After an initial deadlock, the jury returned a verdict for the Town on the developers' due process claim, but awarded the developers $450,000 in actual damages on their equal protection claim. The Town filed a post-trial motion for a JNOV, which the circuit court denied. The developers filed a motion for reconsideration of the circuit court's grant of summary judgment on the Town's claims, and for attorney's fees and costs. The circuit court denied the motion for reconsideration but granted the motion for attorney's fees and costs, finding the developers were entitled to fees under Section 15-77-300 of the South Carolina Code because they were the "prevailing party."

ISSUES PRESENTED

I. Whether the circuit court erred in granting the Town's motion for summary judgment on its claims for equitable and declaratory relief.[3]

II. Whether the circuit court erred in denying the Town's motions for a directed verdict and JNOV on the developers' equal protection claim, and in awarding attorney's fees and costs.

STANDARD OF REVIEW

By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it. *Kurschner v. City of Camden Planning Comm'n,* 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008) (citing S.C. Code Ann. § 6-29-840 (2005)). This Court will uphold the trial judge's decision unless it was based on an error of law or is not supported by the evidence. *Id.* at 174, 656 S.E.2d at 351.

LAW/ANALYSIS

I. Equitable and Declaratory Relief

The developers argue the circuit court erred in granting the Town's motion for summary judgment on its claims for equitable and declaratory relief. The

[3] This issue addresses both of the questions the developers present to this Court.

developers contend the circuit court "erred by not giving any weight" to Floyd's affidavit and refusing to "accept that the Town operates without published ordinances even though the affidavit . . . creates a genuine issue of material fact on this point." The developers assert they presented evidence that the ordinances did not exist at the time they applied for the subdivision of their property, and that "the ordinances came into existence after the fact to bolster the Town's position." The developers argue that because the existence of the ordinances is in doubt, it is impossible for this Court to conclude Edwards' approval of the plats was *ultra vires.* The developers further contend that if the Town's ordinances did exist, summary judgment was nevertheless improper because, under section 30-12 of the Town's Code, their "subdivision application" was automatically approved after the Planning Commission failed to take action on it within sixty days. We disagree.

In reviewing a grant of summary judgment, the appellate court applies the same standard as the trial court under Rule 56(c), SCRCP. *Quail Hill, L.L.C. v. Cnty. of Richland,* 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Id.* (citing Rule 56(c), SCRCP). However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is

not genuine. *Evans v. Stewart,* 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006).

Section 30-7 of the Town's Code states no subdivision plat may be filed or recorded in the RMC Office and no building permits may be issued "until the plat . . . has been submitted to and approved by the town planning commission according to the procedures set forth in this chapter." HOLLYWOOD, S.C., CODE § 30-17 (2008). Section 30-34 provides the Planning Commission's procedure for review and approval of subdivision plats shall consist of two separate steps: (1) review and approval of a preliminary plat, and (2) review and approval of a final plat. HOLLYWOOD, S.C., CODE § 30-34(a) (2008). That section further provides that "the developer may submit a sketch plan for the planning commission's informal review prior to step one." HOLLYWOOD, S.C., CODE § 30-34(b). However, as an exception to the general rule that subdivision plats must be approved by the Planning Commission, section 30-12 states the Town's zoning administrator may approve and sign plats without referring them to the Planning Commission upon a finding that all requirements have been met and the property is being subdivided into "three or fewer lots." HOLLYWOOD, S.C., CODE § 30-12(1) (2008).

We find the circuit court properly granted summary judgment in favor of the Town with respect to its claims for declaratory and injunctive relief. The Town's ordinances clearly state the Planning Commission, rather than the zoning administrator, must approve subdivision plats if the property is

subdivided into more than three lots. *See* HOLLYWOOD, S.C., CODE §§ 30-12, 34. Because the developers intended to subdivide their property into seventeen lots, Edwards did not have authority to approve their plats. *See id.*; *see also Carolina Chloride, Inc. v. Richland Cnty.,* 394 S.C. 154, 166-68, 714 S.E.2d 869, 874-76 (2011) (stating misrepresentations of law made by a zoning administrator are generally not actionable even if made in good faith); *Quail Hill,* 387 S.C. at 236-38, 692 S.E.2d at 506-07 (finding a governmental entity is not estopped from enforcing its ordinances where its employee gives erroneous information or acts in contradiction to an ordinance); *Carolina Nat'l Bank v. State,* 60 S.C. 465, 473, 38 S.E. 629, 632 (1901) (stating a "public officer derives his authority from statutory enactment" and all persons dealing with an officer outside his scope of authority do so at their own peril).

Although the developers claim the Town enacted its ordinances after the developers' subdivision application in an effort to thwart their project, the preface of the Town's Code states it was adopted in 1998 and simply recodified in 2008. HOLLYWOOD, S.C., CODE, Preface (2008), *available at* http://library.municode.com/index.aspx?clientId=14414 (last visited Jan. 30, 2013). Additionally, the 2008 version of the Code lists the section number each ordinance held in the 1998 version. *See, e.g.,* HOLLYWOOD, S.C., CODE §§ 30-12, 34, 37-38. Thus, the Town's ordinances requiring that the Planning Commission approve subdivision plats existed long before the developers sought to subdivide

their property in 2007. Although we are troubled by the Town's inability to produce a copy of its Code on at least one occasion, we find the developers were on notice that their intended subdivision would require approval from the Planning Commission. During their first meeting, the Planning Commission instructed the developers that rezoning was unnecessary, and that the developers would instead need to gather additional information and appear before the Commission at a later date to present a plat for approval. We take this opportunity, however, to remind the Town that its ordinances must be made "available for public inspection at reasonable times" as required by Section 5-7-290 of the South Carolina Code.

We also reject the developers' argument that their subdivision application was automatically approved due to the Planning Commission's alleged failure to approve or deny the application within sixty days. This argument is not preserved for this Court's review because the circuit court did not rule on it and the developers did not include it in their Rule 59(e), SCRCP, motion for reconsideration. *See Elam v. S.C. Dep't of Transp.,* 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004) (stating an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review, and that a party must file a Rule 59(e), SCRCP, motion to preserve an issue the trial court fails to rule on).

Accordingly, we find the circuit court properly granted summary judgment in favor of the Town on its claims for declaratory and injunctive relief.

II. Equal Protection and Attorney's Fees

The Town argues the circuit court erred in denying its motions for a directed verdict and JNOV on the developers' equal protection claim because they failed to demonstrate that the Planning Commission treated them differently than other similarly situated developers. The Town asserts that neither Wide Awake Park nor Holly Grove is similarly situated to the developers' property because one is a park and the other is a low-income planned development. The Town further contends the circuit court erred in granting the developers' motion for attorney's fees and costs because the Town was entitled to a directed verdict or JNOV on the equal protection claim or, at the very least, acted with "substantial justification" in defending that claim. We agree.

When reviewing the trial court's ruling on a motion for a directed verdict or JNOV, this Court applies the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.,* 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Id.* Moreover, a

JNOV motion may be granted only if no reasonable juror could have reached the challenged verdict. *Id.* This Court will reverse the trial judge's ruling only when there is no evidence to support the ruling or it is controlled by an error of law. *Carolina Chloride,* 394 S.C. at 163, 714 S.E.2d at 873.

No person shall be denied equal protection of the law. U.S. CONST. AMEND. XIV, § 1; S.C. CONST. ART. I, § 3; *Sunset Cay, L.L.C. v. City of Folly Beach,* 357 S.C. 414, 428, 593 S.E.2d 462, 469 (2004). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council,* 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. *Vill. of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000); *Dunes W. Golf Club, L.L.C. v. Town of Mt. Pleasant,* 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013); *Sunset Cay,* 357 S.C. at 428-29, 593 S.E.2d at 469. To prevail under the rational basis standard, a claimant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose. *Dunes W.,* 401 S.C. at 293-94, 737 S.E.2d at 608; *Bibco Corp. v. City of Sumter,* 332 S.C. 45, 53, 504 S.E.2d 112, 116 (1998).

In *Dunes West,* the Court clarified that the equal protection clause does not prohibit different treatment of people in different circumstances under the

law. *Dunes W.,* 401 S.C. at 294-95, 737 S.E.2d at 608-09 (quoting *Harbit v. City of Charleston,* 382 S.C. 383, 396, 675 S.E.2d 776, 782-83 (Ct. App. 2009)). In that case, the Dunes West Golf Club (Dunes West) brought an equal protection claim against the Town of Mount Pleasant after it denied Dunes West's petition to rezone a portion of the golf course property for residential use. *Id.* at 286-87, 737 S.E.2d at 604-05. The circuit court granted summary judgment in favor of Mount Pleasant. *Id.* Dunes West appealed, arguing summary judgment was improper because it presented evidence that Mount Pleasant granted another substantially similar rezoning petition and there was no rational basis for the disparate treatment. *Id.* at 293, 737 S.E.2d at 608. This Court affirmed, finding there were material differences between the two rezoning petitions which demonstrated a rational basis for treating them differently. *Id.* at 294-95, 737 S.E.2d at 608-09. Specifically, the Court noted that unlike Dunes West's rezoning petition, the comparator's petition, Snee Farm Country Club, was accompanied by a comprehensive development proposal and a detailed impact assessment, involved virtually no alteration to golf course areas of play, received general support from the community, and stipulated that monies generated from the rezoning were to be applied to specific recreational improvements. *Id.* Dunes West's petition, on the other hand, did not contain an impact assessment, was opposed by the community, and required alterations to wetlands, existing easements, and numerous areas of the golf course. *Id.*

We find the circuit court erred in denying the Town's motions for a directed verdict and JNOV because the developers failed to show the Planning Commission treated them differently than other similarly situated developers in the subdivision application process. Instead, the developers claim "this case is not the traditional equal protection case" and cite arguments in support of their due process claim. Specifically, the developers argue Councilwoman Sausser acted improperly by making a throat-cutting gesture and stating their development would "never happen." The developers further contend Commissioner Wolf should not have participated in the Planning Commission hearings because he lives in the adjoining subdivision. However, while the developers assert these actions alone demonstrate a denial of equal protection, the alleged misconduct relates only to the developers' due process claim, which the jury rejected and the developers did not appeal. The developers' confusion is further highlighted by the fact that they quote *due process* law in support of their equal protection argument, including *A Helping Hand, L.L.C. v. Baltimore,* 515 F.3d 356 (4th Cir. 2008) (discussing the factors to be considered for a substantive due process claim).

The pertinent issue before this Court is whether the developers presented evidence that the Planning Commission treated them differently than other similarly situated developers. *See Dunes W.,* 401 S.C. at 293-94, 737 S.E.2d at 608; *Bibco Corp.,* 332 S.C. at 53, 504 S.E.2d 116; *Grant,* 319 S.C. at 354, 461 S.E.2d

at 391. We find that, like the plaintiff in *Dunes West,* the developers failed to meet their burden of proof.

In response to the Town's motion for a directed verdict during trial, the developers argued the Planning Commission treated the developers of Stono Plantation differently because it did not require a traffic study despite the fact that Stono Plantation is adjacent to the developers' property. However, Stono Plantation is not a "similarly situated" comparator because it was approved for subdivision in 1985, long before the Town adopted its ordinances and created the Planning Commission in 1998.

The developers also argued the Planning Commission treated them differently than the developers of Wide Awake Park and Holly Grove because the Commission did not require traffic studies for those projects. However, there are material differences between those projects and the developers' subdivision. *See Dunes W,* 401 S.C. at 294-95, 737 S.E.2d at 609. Wide Awake Park is a public park rather than a residential subdivision, was already developed when the Town acquired it, and required consolidation rather than subdivision of lots. Holly Grove is a low-income, "planned development" subject to a different approval process than residential subdivisions. Moreover, unlike the developers' subdivision, the community did not oppose either of those projects. *See id.* (stating public opposition furnishes a rational basis for disparate treatment in zoning decisions).

Additionally, neither Wide Awake Park nor Holly Grove is located on Bryan Road and the developers failed to present evidence suggesting the projects posed the same traffic and safety concerns as the developers' proposed subdivision. The Town presented evidence that Bryan Road is "one of the most dangerous roads in Hollywood" and that the developers' property is located along a dangerous curve where multiple accidents have occurred. Commissioner Wolf testified the Planning Commission's purpose behind requiring a traffic study was to ensure Bryan Road could safely support additional travelers. Because the addition of a new residential subdivision on Bryan Road would create a heightened level of traffic, we find the Planning Commission's decision to require a traffic study was rationally related to the legitimate goal of maintaining the safety of its citizens living and traveling along Bryan Road. *See Strickland v. State,* 276 S.C. 17, 21, 274 S.E.2d 430, 432 (1981) (stating the government has a legitimate interest in the safety of those using public roadways). We further find there are material differences between the developers' subdivision and its alleged comparators – Wide Awake Park and Holly Grove – which demonstrate a rational basis for treating them differently. *See Dunes W.,* 401 S.C. at 295, 737 S.E.2d at 609; *Harbit,* 382 S.C. at 396, 675 S.E.2d at 782-83.

Accordingly, we find the circuit court erred in denying the Town's motions for a directed verdict and JNOV on the developers' equal protection claim. Because the developers are no longer the "prevailing

party," we also find the circuit court erred in awarding attorney's fees and costs to the developers. *See* S.C. Code Ann. § 15-77-300(A) (stating the "prevailing party" may recover reasonable attorney's fees).

CONCLUSION

We affirm the circuit court's grant of summary judgment in favor of the Town on its claims for declaratory and injunctive relief, reverse the circuit court's denial of the Town's motions for a directed verdict and JNOV on the developers' equal protection claim, and reverse the circuit court's award of attorney's fees and costs to the developers.

AFFIRMED IN PART AND REVERSED IN PART.

PLEICONES, BEATTY, KITTREDGE, and HEARN, JJ., concur.

IN THE STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
William Floyd a/ka/ Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken, Plaintiffs, vs. The Town of Hollywood, Defendant.	2010-CP-10-2695 **ORDER DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL OR IN THE ALTERNATIVE JUDGMENT NOT-WITHSTANDING THE VERDICT AND GRANTING PLAIN-TIFF'S MOTION FOR ATTORNEY'S FEES AND TAX COSTS** (Filed Mar. 7, 2011)

(This case was originally captioned The Town of Hollywood v. William J. Floyd et al, however during the course of trial Judge Dennis granted Summary Judgment in favor of the Town of Hollywood as to all plaintiff's claims, thereby leaving only defendant's counterclaims for adjudication. Thereafter, the parties were realigned as William J. Floyd et al v. The Town of Hollywood.)

Background

This matter came before this court for trial on September 7-13, 2010. The jury was provided three legal grounds for its verdict: (1) Substantive Due

Process; (2) Procedural Due Process; (3) Equal Protection. After six and one half hours of deliberations and an Allen charge following indication of being a hung jury, the verdict was returned in favor of the Plaintiffs on the Equal Protection grounds for $450,000. On September 22, 2010, the Plaintiff filed Motions for a New Trial of in the alternative for Judgment Not Withstanding the Verdict and for Award of Attorney's Fees and Tax Costs pursuant to Title 42 USCA § 1983 (and comparable state section § 15-77-300, et seq.).

1. Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict.

Standard of Review

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger,* 379 S.E.2d 296, 297 (S.C. Ct.App.1989). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Id.*

Conclusion

I have considered the arguments on both sides, supporting and opposing documents, and based on

same DENY Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict.

2. Plaintiff's Motion for Award of Attorney's Fees and Tax Costs.

Attorney's Fees

This Court finds that Plaintiff is entitled to recover attorney's fees in this action. Plaintiff argues that he is entitled to an award of attorneys' fees under S.C. Code Ann. § 15-77-300, which allows recovery by a prevailing party where a state agency, or other certain entities, has acted without substantial justification in pressing its claim and special circumstances did not exist that would make an award unjust. The Plaintiff is entitled to fees under this section because he was the "prevailing" party under the statute.

Reasonableness of Attorney's Fees

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data System, Inc. v. Loter,* 297 S.C. 382, 377 S.E. 2d 296 (1989); *Dedes v. Strickland,* 307 S.C. 155, 414 S.E.2d 134 (1992).

The award of attorney's fees is made to the party, not his lawyer. *Prevatte v. Ansbury Arms,* 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990). When determining the reasonableness of attorney's fees under a

statute mandating the award of attorney's fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate.

Where a contractual provision in a note provides for attorney's fees at a specific rate, the amount of attorney fees is governed by the contract. *Dedes v. Strickland,* 307 S.C. 155, 414 S.E. 2d 134 (1992), see also *Thomas & Howard Co. v. T.W. Graham and Co.,* 318 S.C. 286, 457 S.E. 2d 340 (1995) and *Nationsbank v. Scott Farm,* 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995).

In South Carolina, where a contractual obligation provides only that a party, is to pay "reasonable attorney's fees," the amount is unliquidated and, therefore, requires a finding on the reasonableness of the award. *Nationsbank v. Scott Farm, supra.*

In awarding "reasonable" attorney fees, there are six factors to be considered: (1) the nature, extent, and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingency of compensation, (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained. *Collins v. Collins,* 239 S.C. 170, 122 S.E. 2d 1 (1961); *Blumberg v. Nealco,* 310 S.C. 492, 427 S.E. 2d 659 (1993); *Dedes v. Strickland, supra.*

Reasonableness of Attorney's Fees in This Case

1. The nature, extent, and difficulty of the legal services rendered.

This case arises out of a dispute between The Town of Hollywood and the plaintiff owners of a 13-acre track [sic] of property located on Bryan Road in the town limits of Hollywood regarding the validity of a subdivision plat. The claims and counterclaims involve complex legal issues such as Zoning Ordinances, Municipal Power and Procedures, Substantive Due Process, Procedural Due Process, and Equal Protection. Considering the complexity of the issue raised and the outcome of a favorable result on behalf of the Plaintiff, I find that the amount of attorney's fees to be reasonable.

2. The time and labor necessarily devoted to the case.

I find persuasive the detailed Certificate of Costs filed by Mr. Thomas Goldstein, Esquire, a member of the Charleston bar who is held in high regard. Mr. Goldstein found the time and labor devoted to this case – pre-trial, trial and to some extent post-trial – to be reasonable and necessary. I concur and adopt his findings as my own.

3. The professional standing of counsel.

The Defendant concedes the professional standing and reputation of the Plaintiff's attorneys is of the highest caliber.

4. The contingency of compensation.

Plaintiff's counsel informs the court that the fees charged to their client are not contingent upon the outcome of this case, and I find this case is not the type usually associated with a contingency fee agreement.

5. The fee customarily charged in the locality for similar legal services.

The hourly rates charged by the Plaintiff's attorney are, according to Mr. Goldstein, in line with those charged by attorneys of similar experience and expertise in this community in this type of case, and so again, I adopt his finding as my own in this regard.

6. The beneficial results obtained.

Due to the efforts of its attorney, the Plaintiff achieved a verdict in their favor for $450,000.

Therefore, I find the Defendant's request for attorney's fees which total $42,445.00 and for costs in the amount of $2,629.20 ($1,264.73 in fees and $1,364.47 in costs) to be reasonable.

Conclusion

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion for a New Trial or in the alternative for Judgment Notwithstanding the Verdict in DENIED;

2. Plaintiff's Motion for Award of Attorney's Fees is GRANTED, and hereby award the Plaintiff attorney's fees in the amount of $42,445.00 and costs in the amount of $2,629.20 ($1,264.73 in fees and $1,364.47 in costs).

AND IT IS SO ORDERED.

/s/ Roger M. Young
Roger M. Young
Presiding Judge

7/4 , 2011
Charleston, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE COURT OF COMMON PLEAS	**JUDGMENT IN A CIVIL CASE** (Filed Sep. 23, 2010) CASE NO. **2010-CP-10-2695**
William Floyd et al **v**	**The Town of Hollywood**
PLAINTIFF(S)	DEFENDANT(S)

CHECK ONE:

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*:
☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit) Rule 43(k), SCRCP (Settled); ☐ Other ☐

☐ **ACTION STRICKEN** *(CHECK REASON)*:
☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*:
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☒ Statement of Judgment by the Court:

Cause of Action I: Jury Verdict in favor of Defendant Town of Hollywood
Cause of Action II: Jury Verdict in favor of the Defendant Town of Hollywood
Cause of Action III: Jury verdict in favor of the Plaintiffs and $450,000 in actual damages.

Dated at **Charleston**, South Carolina, this 13 day of September, 2010.

/s/ Roger M. Young
PRESIDING JUDGE

This judgment was entered on the 13 day of September, 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Goldstein	Hugh Buyck & Katie Monoc
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William Floyd a/k/a Jeff Floyd, Troy Readen and Edward McCracken a/k/a Eddie McCracken, Plaintiffs, vs. The Town of Hollywood, Defendant.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT Case No. 10-CP-10-2695 **VERDICT FORM**

Cause of Action I: Violation of Substantive Due Process Rights Under the U.S. Constitution

☐ We, the Jury, find for the **Plaintiffs** against the **Defendant Town of Hollywood** for **Cause of Action I** of **Violation of Substantive Due Process Rights Under the U.S. Constitution** in the amount of $_____ **actual** damages.

_____
FOREPERSON

_____
DATE

☒ We, the Jury, find for the **Defendant Town of Hollywood**.

/s/ [Illegible]
FOREPERSON

9/13/10
DATE

Cause of Action II: Violation of Procedural Due Process Rights Under the U.S. Constitution

☐ We, the Jury, find for the **Plaintiffs** against the **Defendant Town of Hollywood** for **Cause of Action II** of **Violation of Procedural Due Process Rights Under the U.S. Constitution** in the amount of $_____ **actual** damages.

FOREPERSON

DATE

☒ We, the Jury, find for the **Defendant Town of Hollywood**.

/s/ [Illegible]
FOREPERSON

9/13/10
DATE

Cause of Action III: Violation of Equal Protection Rights Under the U.S. Constitution

☒ We, the Jury, find for the **Plaintiff** against the **Defendant Town of Hollywood** for **Cause of Action III** of **Violation of Equal Protection Rights Under the U.S. Constitution** in the amount of $ 450,000.00 **actual** damages.

/s/ [Illegible]
FOREPERSON

9/13/10
DATE

☐ We, the Jury, find for the **Defendant Town of Hollywood**.

FOREPERSON

DATE

The Supreme Court of South Carolina

The Town of Hollywood, Appellant/Respondent,

v.

William Floyd, a/k/a Jeff Floyd, Troy Readen and Edward McCracken, a/k/a Eddie McCracken, Respondents/Appellants.

Appellate Case No. 2010-174946

ORDER

The petition for rehearing filed in the above entitled matter is denied.

/s/ Jean Hoefer Toal C.J.

/s/ Costa M. Pleicones J.

/s/ John W. Kittredge J.

/s/ Kay G. Hearn J.

Justice Donald W. Beatty, not participating.

Columbia, South Carolina

July 12, 2013

[cc Information Omitted In Printing]

State of South Carolina County of Charleston The Town of Hollywood, Plaintiff, vs. Williams Floyd a/k/a Jeff Floyd, Troy Readen, and Edward McCracken a/k/a Eddie McCracken, Defendants.	In the Court of Common Pleas Case No.: 09-CP-10- Formerly Case No. 07-CP-10-4559 AFFIDAVIT OF JEFF FLOYD (Filed Jul. 23, 2010)

Personally appeared before me, Jeff Floyd, who being duly sworn, does depose and say:

I am one of the defendants in the above entitled action. I have read the Town's papers filed in support of the Town's motion for summary judgment. While I am not a lawyer, I think I understand enough about ordinary matters to comprehend what the Town is saying. In essence the Town is saying that we had no right to subdivide our property based on the Town's ordinances. However, in reading the Town's characterization of the events, I feel like I am reading about some other case, because in this case, the Ordinances had nothing to do with what occurred.

Troy, Eddie and I bought the property from Ann Boone in June 2007. Before we paid for the property, we investigated everything connected with developing the property for 17 homes, which included conversations with the Town of Hollywood. In fact, the Town of Hollywood directed us to an appearance before the

Town of Hollywood Planning Commission on June 14, 2007. While we ("we" means my partners, Troy and Eddie, me, our real estate agent, Mary Wolf, and Ann Boon [sic]) were waiting for our appearance, a member of the Town Council, Annette Sausser, came in to the lobby and asked if we were the people there on the Bryan Road matter. We replied we were. She looked at us, made a throat cutting gesture, and said to us "It will *never* happen!" We were shocked.

We went in to the meeting, which was very chaotic. During the meeting, the Planning Commission informed us that we were in the wrong place and directed us to go back to the Town of Hollywood's Planning Director. We followed the Planning Commission's instructions, went to the Town of Hollywood, and asked to see the Planning Director. The Town personnel directed us to the Planning Director, Kenneth Edwards. We met with Mr. Edwards, who informed us that he could approve the subdivision provided we did it in conformity with the Town's zoning requirements and in two phases. We left and instructed our engineer, Curtis Lybrand, to communicate directly with the Town. Mr. Lybrand communicated with the Town, obtained all their requirements, and drew the plans in conformity to what the Town told him. Thereafter, we presented our site plan in two phases. Mr. Edwards stamped Phase one on June 22, 2007, and thereafter approved Phase two on June 27, 2007. Only then did we elect to close on the property and pay our purchase money to Ann Boone.

We took our approved site plans to the R.M.C., which recorded them. Thereafter, the Auditor's office assigned each lot a separate tax map identification number. Then we applied for a logging permit, which included a submission of our approved site plan. The Town of Hollywood approved the permit. While we were on the site working, the mayor of Hollywood, Jacqueline Heyward, showed up in her car and asked us to stop work. When she pulled up, we noticed a group of neighbors from the adjoining gated subdivision gathered on the property line with cameras. When the Mayor showed up, they all started taking photos. I asked the Mayor why she wanted us to stop work, and she said: "I am asking you to stop work out of respect for me until I can smooth this over." We did not know what she meant and to this day, we do not know what she meant although it seems clear now that Annette Sausser and Matt Wolf used their powers as members of Town Council and the Planning Commission to thwart our project.

The Mayor promised to call us on the following day to inform us what deficiency *if any* there was in our project. We are still waiting for that phone call. The Town makes repeated arguments that we violated their Ordinances. This is not true. First of all, I made demands in person upon the Town time and time again to show me what Ordinance was preventing us from moving forward. Not only could the Town not identify any Ordinance, but also it could not even provide a copy of its Ordinances to me. I made 3 trips to the City Hall, each time asking for a copy of the

Ordinances. At one meeting set up specifically to get the Ordinances, Troy and I met with the mayor's assistant, Beth Carpenter and with Ed Holton, the current Zoning Administrator, and they told Troy and me that the Town could not produce any Ordinances for us because the Town was in the process of "recodifying" them and the Ordinances were not in any one place where they could be retrieved.

In short, the Town's position that we violated some Ordinance is a post stop work rationalization. Our engineer, Curtis Lybrand, followed every instruction given to him by the Town of Hollywood. The Town of Hollywood had no written Ordinances that they could provide to us until after this lawsuit. Even now the versions that the Town now produces do not match up. The fact is that we have violated nothing. Our subdivision meets all the requirements of the Town of Hollywood. The explanations from the Town as to why we cannot move forward change from day to day and from person to person. One day it is because of septic tanks. Another day it is because of Bryan Road. Another time it is because we do not have a traffic study. The Town has never adopted a consistent policy with us. Rather, it evolves as is necessary to stop us. For example, the Planning Commission is dominated by Matt Wolf, who is a neighbor of our property and who is violently, personally opposed to our project. Matt Wolf lives in Stono Plantation, an exclusive, gated community. Our project proposes the construction of work force housing. Mr. Wolf and Annette Sausser, a former resident of Stono

Plantation, have characterized our project at various times such "plastic, plastic, plastic." Matt Wolf has stated at various times that he has no opposition *provided the lots are bigger,* which would require a higher price point. The fact is that our project is dead and killed because the Town of Hollywood singled us out for discriminatory treatment. It is shocking that the Town now cites Ordinances which did not exist when this controversy began, and if the Ordinances did exist, which I doubt, the Town was unable to produce them.

Further your deponent saith:

/s/ Jeff Floyd
July 13, 2010 Jeff Floyd

Sworn to before me this

13 day of July 2010

/s/ Thomas R. Goldstein
Notary Public for South Carolina
My Commission expires: April 16, 2020

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	COURT OF COMMON PLEAS 10-CP-10-002695
WILLIAM FLOYD, a/k/a JEFF FLOYD, TROY READEN, and EDWARD McCRACKEN, a/k/a EDDIE McCRACKEN, Plaintiffs, – vs. – THE TOWN OF HOLLYWOOD, Defendant.	TRANSCRIPT OF RECORD DATES: September 8-13, 2010 Charleston, South Carolina

BEFORE:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

APPEARANCES:

Thomas R. Goldstein, Esquire
Attorney for the Plaintiffs

Hugh W. Buyck, Esquire
Katie Monoc, Esquire
Attorneys for the Defendant

[2] INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Edward Holton	42	95	146	155
	*	*	*	
Anne Boone	159	171	176	–
	*	*	*	

Mary Wells Wolf	339	353	357	–

* * *

[42] THE WITNESS: My name is Edward Holton, H-o-l-t-o-n.

BY MR. GOLDSTEIN:

Q. May it please Court, Mr. Holton, you are the current planning director for the town of Hollywood?

A. Yes, sir.

Q. You did not have that position in February through August of 2007; is that correct.

A. Incorrect.

Q. Mr. Edwards was the planning director before you came on board?

A. That is correct.

Q. When did you assume the position?

A. July 25, '07.

Q. All right. July. I missed it by a month. I apologize. So you came on in July, so you were not present for the June 14, 2007 planning commission meeting, correct?

A. That's correct.

Q. All right. And you came to the town of Hollywood from the council of governments?

A. Yes, sir.

Q. Council of governments is that organization up in North Charleston that does regional planning for Berkeley, Dorchester, and Charleston Counties?

[43] A. Yes, sir.

Q. And that is your background as a planner, correct?

A. That's true.

Q. But are you now the full time planning director for the town of Hollywood?

A. Yes, right.

Q. And you inherited this case upon Mr. Edwards' departure, right?

A. That's true.

Q. Okay. And you're familiar with the controversy.

A. Yes.

Q. All right. And the town of Hollywood has a zoning ordinance that allows property owners to subdivide their property?

A. Yes.

Q. And has different zoning classifications that determine the minimum lot size?

A. That's correct.

Q. And on the Bryan Road property that my fellows own, the minimum lot size is 30,000 square feet, correct?

A. Yes, sir.

Q. And the subdivision application that they made to the town of Hollywood provided for 30,000 square feet lots, correct?

A. For the plats I have seen, yes, they were all [44] divided out into 30,000 square feet or more.

Q. All right. Let's take a look at what has been marked as Plaintiff's Exhibits 24 and 25. Are these the subdivision plats that are the controversy involved in this particular case?

A. Yes.

Q. And Mr. Edwards approved that plat, correct?

A. Correct.

Q. And it is stamped and was recorded at the RMC office, correct?

A. Yes.

Q. And those lots as they appear on Plaintiff's Exhibits 24 and 25, they do meet the minimum square foot requirements, correct?

A. Yes.

Q. In fact, the lots as they're laid out meet all the requirements of the town of Hollywood, do they not?

A. Geometrically.

Q. Now, Mr. Buyck said in his opening statement that the planning commission process was a fair and impartial process. Of course you weren't there. You already told us you weren't there, right?

A. That's correct.

Q. And you're aware that one member of that commission is named Matt Wolf?

[45] A. Yes.

Q. And Matt Wolf is a resident of Stono Plantation, a private gated community that sits adjacent to the proposed Bryan Road subdivision?

A. Yes, sir.

Q. And he is a very vocal member of the planning commission, isn't he?

A. He speaks his mind. He is an excellent person on the commission there. It's good to have a variety of folks.

Q. And Annette Sausser, who is still a member of the town of Hollywood town council, is a former resident of Stono Plantation, correct?

A. I'm unaware of that.

Q. You are unaware she used to live there and sold her house for $480,000?

A. I have no knowledge.

Q. Let me see if I can help you with that.

(Deed marked for identification as Plaintiff's Exhibit No. 18.)

BY MR. GOLDSTEIN:

Q. Look at Plaintiff's Exhibit 18.

MR. BUYCK: Your Honor, I'm going to object to the relevancy of this.

THE COURT: He said he's unaware of it. So [46] you're going to have to prove it through some other witness.

BY MR. GOLDSTEIN:

Q. Okay. As a planner, are you familiar with the records of the register of deeds and conveyance of Charleston County?

A. Yes.

Q. And do you know documents that are routinely recorded there?

A. Yes.

Q. And you know the purpose of the RMC is to record deeds and mortgage, reflect title, ownership, and liens of ownership of property?

A. Including easements and rights-of-way.

Q. Okay. And you have – in connection with your duties as a planner, you have occasion to review RMC records from time to time?

A. Yes.

Q. So you know what a deed looks like, in other words?

A. I do.

Q. And you know what recording information looks like.

A. Generally speaking, yes.

Q. Well I, show you what has been marked as [47] Plaintiff's Exhibit 18 –

MR. BUYCK: Your Honor, the same objection.

THE COURT: What is the relevancy?

MR. GOLDSTEIN: The bias of the participation of a city council person in a planning commission subdivision application.

THE COURT: Well, that might be fine if you call her, but you're asking him to impeach somebody who he is not aware of and was not – he wasn't there when this took place. If you want to prove bias, call her and impeach her.

MR. GOLDSTEIN: May I attempt to lay a foundation, Judge?

THE COURT: Go ahead.

BY MR. GOLDSTEIN:

Q. Let's talk about the planning commission so the members of the jury panel will understand how the system works, okay? Fair enough?

A. Certainly.

Q. The town of Hollywood is a South Carolina municipality, correct?

A. Yes.

Q. It's got a mayor; it's got a town council?

A. Yes.

Q. And the South Carolina state legislature requires [48] that the town of Hollywood have a planning commission, correct?

A. I believe so.

Q. And the function of the planning commission, by state statute, is to promote the rational economic development of land, correct?

A. Somewhat. That's not completely true. It's not anti or for or against development of plans or – it's just to administer the ordinances properly. That is their main function.

Q. Okay. Well, I don't want to mislead you, so I'll read you the statute, how about that? The planning commission is established by state law. We're in agreement on that.

A. Yes, sir.

Q. And section 6-29-30, and I don't mind sharing with you, I'm not trying to trick you or anything – may I approach the witness, Your Honor?

THE COURT: Go ahead.

BY MR. GOLDSTEIN:

Q. 6-29-340, functions, powers, and duties of local planning commissions, correct?

A. Yes.

Q. And that would be the planning commission that we're talking about here today?

[49] A. Yes.

Q. If I'm reading it correctly, it is the function – and duty of the local planning commission when created by ordinances – and y'all's is created by ordinance?

A. True.

Q. Passed by the municipal counsel – y'all's is passed by the municipal counsel, right?

A. Right.

Q. You just got to say yes, because the court reporter is taking it down.

A. Sorry.

Q. To undertake continuing planning program for the physical, social, and economic growth development and redevelopment of the area within its jurisdiction.

A. I stand corrected.

Q. So we are on okay on that?

A. No problem.

Q. And the planning commission is appointed by the town council, correct?

A. That's correct.

Q. Okay. And the reason y'all do that is because town council members are elected, right?

A. Yes.

Q. You got to run for politics. If you want to run as mayor for city council, you got to throw your hat in [50] the ring, go out, campaign, campaign for votes, correct?

A. Yes.

Q. And politics is something of a full contact sport, do you agree with that?

A. I have no care on politics.

Q. Okay. But, I mean, it can be a dirty business. Do you agree with that?

A. I don't know anything about politics. I like it that way, thank you.

Q. All right. That is exactly my point, because the planning commission is appointed by town council to act as a buffer between politics and land development. Isn't that the function of it, the purpose of it?

A. I believe it's kind of – they have one agenda to do, things that you don't want to have your eggs in one basket. That is why they're not approving certain things. The planning commission, that is their job to work, not necessarily as agent, but the weight of a project is on – off of council and on a planning commission, just like a board of appeals has its assignment to do. You can't have one body take care of all facets of the town.

Q. Okay. But the point I'm trying to make, so this jury understands – this is the first time they're probably hearing about a planning commission, and it's [51] not exactly a scintillating topic. The planning commission is appointed, not elected?

A. Yes, sir.

Q. All right. And the purpose of that is to sort of minimize – planning commissioners aren't out there trying to say, Vote for me and I'll do this, or vote for me and I'll do that, right?

A. Yes, that's correct.

Q. It's supposed to lend the air of independence to them, correct?

A. I assume so.

Q. Okay. So when you go to these planning commission meetings, now that you are the planning administrator, you kind of preside over them, don't you? You act as order of the liaison?

A. Liaison, yeah, that may be correct in a way, but my official function is to advise – to help guide the planning commission as well as the liaison and council as far as planning matters are concerned, make recommendations, in other words.

Q. And you help the applicants?

A. Yes.

Q. And you help the town?

A. Always.

Q. As Mr. Buyck says, you don't have a friend to [52] reward or an enemy to punish?

A. Right.

Q. And, in fact, in this very case you were kind enough to help Mr. Floyd and Mr. Readen; you gave them a handwritten list of things, deficiencies they needed to correct in order to get their permit through. Do you remember that?

A. Yes. I wish I had the time to type it up, but it seemed like they wanted things right then. That's why it is handwritten as opposed to an official letter.

Q. And no disrespect. I'm not suggesting that anything improper about it being handwritten. I hope you didn't think I was suggesting it, but I show you what has been marked as Plaintiff's Exhibit 13. That is your handwritten list?

A. This is.

Q. And you wrote that up and you gave it to Mr. Floyd and Mr. Readen and Mr. McCracken?

A. Correct.

Q. And the reason you gave this to them was because you were attempting to assist them in going through the process to get their subdivision application approved.

A. Right.

Q. Now, in response to Plaintiff's Exhibit 13, you did later on receive a letter directed to you from their [53] engineer addressing each and every item on your letter, did you not?

A. I did.

Q. Okay. And that is what has been marked as Plaintiff's Exhibit 14; is that correct?

A. Yes, that's right.

Q. Okay. So now, back to my question about Ms. Sausser, Ms. Sausser is a member the town of Hollywood town council? And you were not at the June 14 2007 meeting because that was before your tenure.

A. Yes, sir.

Q. I'm not trying to trick you on that or anything. If Ms. Sausser as a member of town council attends a planning commission meeting, would there be any reason for her to tell the applicant, Never happen?

A. There is no reason for her to do that. I'm embarrassed for anyone that would make that gesture. She can make that gesture, in my opinion, as any citizen of the town, though, improper as it may.

Q. Right.

A. But she has no control over the subdivision at all.

Q. Exactly. But she's not a citizen, is she? She's a member of town council.

A. But she gets to be a citizen too, I believe.

[54] Q. But she appoints the members of the planning commission, right?

A. They are charged to make their judgments regardless of any person who appointed them.

Q. They're not supposed to have any friends to reward or enemies to punish are they?

A. That's correct.

Q. They're supposed to follow procedure, correct?

A. Correct.

Q. And Matt Wolf is a resident of Stono Plantation, correct?

A. Correct.

Q. And Stono Plantation is vociferously opposed to this, aren't they?

A. I don't know to what degree precisely. I have known property owners in front, in front being the property is back behind Dixie Plantation Road. There are three properties in between Dixie Plantation Road and the site in question. One of those members made a point that they didn't want the development, two of the people said they would be in favor of the development, so I assume that is probably standard throughout.

Q. All right. Now, you weren't at the June 14, 2007 meeting. We already established that, right?

A. Yes.

[55] Q. But you were at the August 14, 2008 planning commission meeting, correct?

A. Yes.

Q. And their application didn't get approved then either, did it?

A. It was tabled.

Q. Tabled.

A. Yes.

Q. Okay. Now, let's talk about that a second. At the August 14th, 2008 planning commission meeting, there was a court reporter, was there not?

A. True.

(Transcript marked for identification as Plaintiff's Exhibit No. 17.)

BY MR. GOLDSTEIN:

Q. I show you what has been marked as Plaintiff's Exhibit 17. Is that the transcript from the planning commission meeting?

A. Yes, this is.

Q. Okay. Let me direct your attention to page 26 of it.

A. Yes, sir.

Q. And I apologize to you. I wanted to start two pages earlier. Let me draw your attention to page 24 of it. We'll get to page 26, but let's start with 24. Are [56] you there?

A. I'm ready.

Q. All right. Mr. Wolf is speaking, correct?

A. Where do I pick up?

Q. Line 14.

A. Line 14, yes, sir.

Q. Now, you were present at this meeting.

A. Yes.

Q. And wouldn't you agree Mr. Wolf did most of the talking for the meeting? The transcript will reflect that, won't it?

A. Other than you – yes, sir. I'm sorry.

Q. Okay. Well, I did some talking, right?

A. Yes, you did.

Q. Mr. Wolf didn't like that, did he?

A. I don't know if he liked it or not, honestly.

Q. Are people allowed to hire a lawyer and appear before the planning commission?

A. Certainly.

Q. Is there anything improper about that?

A. In general, no. But –

Q. But in some cases yes?

A. No, no, not in some cases, but it seemed like there was a while back we had a conversation where we wanted to have lawyers stay out and have the plaintiffs [57] and the town to work things out, but then, again, you showed up at this meeting and did all the talking.

Q. And this was improper in your view?

A. Not improper, but surprising.

Q. So you think I pulled a trick on somebody or I was unethical or sneaky or –

A. I'm just saying it was surprising. That's all. We managed. We were fine.

Q. Do other applicants show up with lawyers from time to time?

A. You don't know if – they never introduce themselves as being lawyers or not or representative in any legal aspect.

Q. Okay. Well, on page 24 Mr. Wolf is speaking, and of course he is here under subpoena. Did you know that he was under subpoena to appear?

A. I was made aware of that.

Q. Did Mr. Wolf tell you he was not available for trial this week because he was going to be on vacation?

A. Evidently there was a miscommunication as he was giving dates not available. I believe that he made it known to our town's paralegal that he may not be available certain times and a misunderstanding had occurred, but he certainly was not out of town, and we apologize for any of that.

[58] Q. Let's not mislead the jury. Y'all told me he wasn't going to be here; he was out of town on vacation. Is that what you told me?

A. That's what we thought.

Q. That wasn't true, was it?

A. No.

Q. You got a subpoena on him yesterday, right?

A. Yes. That's what I hear.

Q. Is that kind of thing typical of the way the town of Hollywood conducts its business, telling me the guy wasn't around, he was on vacation, and I sent a process server out to issue him a subpoena?

A. Absolutely not. That's the first time that has happened, to my knowledge.

Q. Mr. Wolf says on page 24, On all of this process, because we've seen you all before, and I was wondering have you made any efforts at all just to talk to the people in Stono Plantation neighborhood and perhaps, maybe, you know, discuss potential, could there be a compromise reached in terms of reduce the density. I mean, you know, let's just say, for example, I know the plat is subdivided for [30,000] square foot lots because that's what the law allows.

Would the neighbors agree? And I'm not suggesting or speaking for the Stono Plantation people, has it ever [59] been suggested to anyone, just in common sense as neighbors, to say, let's sit down with a

neighbor and say, well, what kind of density would people feel comfortable with, you know, maybe reduce the density or something?

I'm not coming up with numbers because I can assure you no one here is antidevelopment. As a planning commission, we have approved many developments. This is about common sense and safety in that intersection and protecting the citizens in that neighborhood. It's a serious issue.

We had a house burn to the ground in that neighborhood and a fire that, you know, I don't know if the entire county showed up because they needed to. It melted the entire metal structure of the roof. Things do happen, you know, and then I don't know who is the chair. I really don't know who the president of our neighborhood association is. I don't get involved with that very much, but, you know, I'm just suggesting before you, you know, I'm not going to speak for the association, but I was going to say maybe you should call that person, whoever it is.

I think it's Beverly Smith, I think is the current, and maybe there is a reasonable density that it can support, I don't know, but, you know – that was [60] Mr. Wolf speaking, wasn't it?

A. Yes, it was.

Q. And that was Mr. Wolf speaking as a neighbor, one lot removed from this proposed subdivision, wasn't it?

A. He's a neighbor. He resides in Stono Plantation, yes.

Q. And well, as a professional planning commission, don't you think he had a direct involvement in the application he was called upon to consider?

A. His involvement meant he had the chance to voice his opinion. He has just one vote, though.

Q. Okay. So you think that his participation in light of being a neighbor opposed to a property is entirely proper?

A. He was not going to gain anything by that, so are you suggesting he recuse?

Q. How big is Mr. – how big are the lots in Stono Plantation?

A. I'm unaware of that.

Q. They're pretty big, aren't they?

A. I think they're larger than – I would hazard a guess, an acre, maybe two.

Q. And most of them have docks that feed into the Stono River?

A. I assume those that are on the Stono would have a [61] dock.

Q. There is also a creek back there too, right?

A. I don't know that.

Q. And it's a gated community, can't go in –

A. I'm sure if we look at GIS real quick and saw a map, I would say yeah, I see a creek there, but I can't remember off the top of my head, sorry.

Q. But it's a tony neighborhood?

A. Sorry?

Q. It's a tony neighborhood, upscale neighborhood?

A. Oh, sorry. Yes, I agree.

Q. And the town of Hollywood does have a need for affordable housing. That is one of your missions?

A. That's true.

Q. I think Mayor Heyward ran on that platform, did she not?

A. I don't know. She was elected before I was hired.

Q. And then Mr. Wolf says, in response to the statement I just read for you, I spoke up. Did I not? And I said, are you asking for an answer to that question? Right?

A. I'm sorry. You lost me.

Q. Page 26, line 4.

A. Okay.

Q. Is that what I said? I said, Are you asking for [62] an answer to that question?

And Mr. Wolf said, No, I'm just speaking to these gentlemen anyway. I don't. Right? He didn't like me being there, did he?

MR. BUYCK: Objection to the form, Your Honor. The relevance, for one, and what he –

THE COURT: Sustained. The statement will speak for itself. You don't need to characterize it. If you're going to put it into evidence, just read it.

MR. GOLDSTEIN: Yes, sir.

BY MR. GOLDSTEIN:

Q. So let's go back. Floyd Readen and McCracken come before the counsel, and they go to a planning commission meeting on June 14, 2007, correct?

A. Yes.

Q. The planning commission sends them to Kenneth Edwards, correct?

A. If that is written down somewhere, okay. I wasn't – I can't say.

Q. All right. Then Kenneth Edwards approves the plats in two phases. They get approved; is that correct?

A. That's what I hear, yes.

Q. And then the town of Hollywood issues a stop work permit once they're out there working in October of 2007, correct?

[63] A. Yes.

Q. You've seen the stop work permit, haven't you?

A. No.

(Stop work order marked for identification and admitted into evidence as Plaintiff's Exhibit No. 10.)

BY MR. GOLDSTEIN:

Q. You haven't? Let me show you what has been marked as Plaintiff's Exhibit 10, ask you if you can identify this document.

A. It says Exhibit 10, stop work order.

Q. Do you recognize that as being a document from the town of Hollywood?

A. It could be.

Q. Okay.

A. Under the certain circumstances, I would say it is.

Q. Okay. Now, both before and after that is possible.

A. I'm sorry. I don't remember everything.

Q. You don't have to. I'll show you Plaintiff's Exhibit 9. Is that the tree cutting permit you issued on October the 4, 2007?

A. Yes.

Q. Okay. You issued that as a planning [64] administrator, correct?

A. Yes.

Q. It bears your signature?

A. Correct.

Q. And it allows clearing for 50 foot right-of-way?

A. Correct.

Q. And the 50 foot right-of-way that you issued the permit to them to clear, is the 50 foot right-of-way that is depicted on the two plats that have been marked Plaintiff's Exhibits 18 and 19, correct?

A. To be clear, it's the Bryan Road 50 foot right-of-way that was being permitted.

Q. Okay. And that is depicted on the plat, correct?

A. Not on these. The right-of-way is depicted, but exactly the tree survey isn't shown on what you show me here.

Q. All right. Let me show you what has been marked as Plaintiff's Exhibit 8. Is that the town of Hollywood logging permit issued on July 23rd, 2007 to Seward Logging Company?

A. It appears to be.

Q. Whose signature is that one issued on?

A. It's Mayor Heyward's.

Q. Okay. Is she authorized to issue a permit as the mayor of the town of Hollywood?

[65] A. I would say no.

Q. She's not?

A. No. It's my job.

Q. Well, that's very interesting, because let me show you Plaintiff's Exhibit 8 again. Does it have a printed line for the issuing officer's signature on the printed form?

A. That's correct.

Q. And read to the jury what the printed form says is the authorized signature.

A. Mayor/associate planner. At the time that is how it was done. So she did have the authority at that time.

Q. So she did have the authority, correct?

A. Yes.

Q. Okay. You agree with me that the rules as adopted and as practiced by the town of Hollywood have to be consistent?

A. Yes.

Q. Got to feed everybody from the same spoon?

A. Sure.

Q. You can't say, Goldstein, I think you're a smart aleck. I ain't approving your plan. I don't like you?

A. Correct.

Q. No matter what you think about me, if I'm entitled to a permit, I get my permit?

[66] A. If you have, the proper information, yes.

Q. That's right. Now, regarding the proper information, you asked the applicants in this case for a lighting survey from SCE&G, correct?

A. Yes.

Q. And they provided that to you?

A. Yes.

Q. You were satisfied with it?

A. Yes.

Q. It meets the ordinance?

A. Yes.

Q. I show you what has been marked Plaintiff's Exhibit 24 and 26. Is this the lighting survey that Troy and Eddie and Jeff brought to you?

A. Yes.

Q. And it's satisfactory, is it not?

A. Yes.

Q. And they also brought you soil sample reports and letters from DHEC, correct?

A. Yes.

Q. And all of the lots passed the traditional perk test, other than five lots, correct?

A. Correct.

Q. Two of those lots because of power lines and three because it required engineered septic systems, correct?

[67] A. I don't know the specifics, but I thought DHEC had said that five didn't because the soil wouldn't perk.

Q. All right. Now, when you have an application for a septic tank, I want to install a septic tank, I go to the Department of Health and Environmental Control and apply, right?

A. That's part of the process.

Q. The town of Hollywood does not issue permits for septic tanks. DHEC does, correct?

A. That's correct.

Q. Likewise, a traffic study, a citizen, I can't walk into the Department of Transportation and say, I need a traffic study on this intersection. The traffic study has to be requested by the town of Hollywood, doesn't it?

A. Maybe.

Q. Okay. Now, I wanted to ask you some questions. You said that the process has to be followed, and y'all have to follow your own rules and your own process. That was your testimony, correct?

A. That's correct.

Q. Well, let's talk about your process. Y'all do have ordinances, correct?

A. Correct.

Q. You don't know if the ordinances existed at the time Jeff, Troy, and Eddie make their initial [68] application, do you?

A. I knew.

Q. You know they did or didn't?

A. I know there were ordinances then.

Q. Did these three fellows make three specific trips to the Town of Hollywood to get specific ordinances and couldn't get them three times?

A. They wanted full copies, and we didn't have anything available. I went to the copier and made copies of the sections of the ordinance that I thought were pertinent that they needed to know, and they got them at that time.

Q. I wanted to ask you some questions about your alleged process for – your alleged process for submitting a subdivision. You claimed that it must be

by – preliminary plat must be approved and then the final plat, correct?

A. Yes.

Q. Okay. And according to your ordinances I think it's 5-6-21, is that right? I'm trying to put my hands on it and can't seem to put my hands on it. Here it is. It's right in front of me. You've got an ordinance article B, platting procedures; is that correct?

A. Yes.

Q. 5-6-21, general requirements; is that correct?

[69] A. Yes.

Q. Let me ask you about this process. According to you – this is your testimony?

A. Right.

Q. The subdividers should prepare a preliminary plat for submission to the planning commission and produce, it says, seven copies one place, and it says one copy another place and six copies another place. What is the number? Not that it matters, but they produced the right number of copies, right?

A. No.

Q. They still haven't given you the right number of copies?

A. Your clients, are you talking about, or people?

Q. No, these fellows, Jeff and Troy and Eddie.

A. No. The lighting plan had the right number of copies, I believe, but any of the plats were not the right number of copies.

Q. You wouldn't turn down an application because they didn't make enough copies; you would tell them to bring more copies, wouldn't you?

A. Yeah.

Q. And it says, The planning commission shall review and shall approve, approve conditionally, or disapprove the preliminary plat as soon as possible after its [70] submission.

Is that what y'all's ordinance says?

A. Yes, it does.

Q. Is that what governs your conduct?

A. It does.

Q. As soon as possible, that's what it says, right?

A. Yes.

Q. And the reason for that is when people got heavy equipment out there and they got the clock ticking and they're trying to get something going and they're trying to make something happen, they need to know as quickly as possible, right?

A. Provided the procedures are being followed, certainly.

Q. Absolutely. I couldn't agree with you more. It says, If no action is taken by the commission at the end of 60 days after submission, the preliminary plat shall be deemed to have been approved. Is that what it says?

A. It says that.

Q. Y'all haven't taken any action on their plat for three years.

A. I disagree.

Q. Okay. Now, it also says before taking final action on the preliminary plat, the planning commission should refer copies of the plat and attachments to those [71] public officials and agencies that are concerned with new development, including those departments responsible for treats, storm water damage, and sanitary sewage, correct?

A. Yes.

Q. That is DHEC, right?

A. Uh-huh.

Q. That is Army Corps of Engineers, right?

A. Right.

Q. That is the South Carolina Department of Transportation, right?

A. Right.

Q. It's not the burden on the applicants to do that. Y'all do that, right?

A. We're looking for that from them.

Q. Well, let me read it again. Maybe I read it wrong. Tell me where I'm going off the track.

Before taking final action on the preliminary plat, right, section A says you're either going to approve or disapprove or conditionally approve the preliminary plat within 60 days, right, if that's what it says?

A. Uh-huh.

Q. So now we're down to C. Before taking final action on the preliminary plat, the planning commission, right, the planning commission – I don't want you to [72] think I'm being unfair, you know – the planning commission shall refer copies of the plat and attachments to those public officials and agencies which are concerned with the new development, right?

A. Yes.

Q. It doesn't say the applicants do it, it says you do it, correct?

A. Including the DHEC, or, rather, the Corps of Engineers?

Q. Sure. These guys don't have any authority to go to DOT and request a traffic study, do they? It has to come from the town of Hollywood, right?

A. Yes. I would say the DOT.

Q. Now, if the preliminary plat is disapproved or approved conditionally, the reasons for disapproval or any conditions required shall be stated in writing and signed by the chairman of the planning commission, correct?

A. Correct.

Q. That is Ms. Salters over there?

A. Yes.

Q. You agree with that. The reasons for disapproval shall refer specifically to those regulations which the plat does not come forth, right?

A. Right.

[73] Q. Okay. So let me show you what has been marked as Plaintiff's Exhibit 27. Is Plaintiff's Exhibit 27 the appropriate regulations that I just asked you about?

A. Yes, sir.

Q. Okay. Now, for three years now y'all have neither disapproved, approved, or conditionally approved Jeff Floyd, Troy Readen, Eddie McCracken's plat; it's tabled, correct?

A. That's right, trying to work with them, telling them what they need.

Q. Tell them what they need. Let's talk about that because it's in the transcript what they need. They need a traffic study, right?

A. Planning commission has it to – can make a request for a traffic study, so –

Q. And the traffic study has to be requested by the town of Hollywood, right?

A. From the planning commission, yeah.

Q. Okay. And then the other – what are the other holdouts? You tell me. What are the other holdouts?

Tell these people. I'm trying to tell these people we don't know why we're held up. Tell them why we're held up. What are we missing?

A. Well, there is a couple of plats here that show a number of lots that has already been stated. They don't [74] have DHEC approved septic. There might not be sewer, by city sewer. There is not going to be any – rather, traditional septic systems. They want to use, to my knowledge, engineered systems, which has been policy for a while, as Mr. Buyck had made mention and now it's been codified as an ordinance, that engineered systems are banned in the town of Hollywood, so that was one issue.

Q. Let me stop you right there. Let me ask you some questions about that. You say there are five of the 17 lots requiring engineered systems, correct?

A. If that is what is being said, that DHEC sent that letter back in June of '07.

Q. And so what your ordinance says, you can conditionally approve a preliminary plat. That is what your ordinance says, right? You can conditionally approve it.

A. It can be.

Q. Okay. So you could have written him a letter. You could have conditionally approved it and say, You know what? We don't like five of your lots. We don't think five of these lots are right. We are going to conditionally approve lots 1, 2, 3, 4, 5, and left out the five and say when y'all get number 5, 11, 12, 15 straightened out, come back and see us. You could have done that.

[75] A. I don't think that would have been the proper thing to do because the geometry would have changed on the site because you've already got it subdivided that [30,000] square foot lots are complete and have a total of 17; therefore, we're leaving holes here. What are you going to do with them? They should be combined in other lots. You might need to reconfigure that, so why mess that up to let you start over?

Q. So when a jury retires to the jury room and it begins its deliberations and it's trying to evaluate

your testimony here today, I want to make sure we understand it, the reason you couldn't conditionally approve the plat and leave the five lots out is because it would change the geometry of the subdivision plat; that's it?

A. I was leaving it open for them to go ahead and say well, I guess we can't do this. We'll try that. You could have combined lots, but I didn't see it on the paper, so I got to go with what is in front of me.

Q. Now, the other thing I heard you say is that since they submitted this application, y'all have now adopted a new ordinance after their application says, we don't allow engineered systems, right?

A. Not because of them. There have been others that wanted to have engineer systems talked about. That's no problem, this parcel, that parcel, and we said, No, it's [76] the policy. Town council doesn't want engineered systems in there. It's a burden to the property owner that it requires additional maintenance and upkeep, so –

Q. Have you ever heard of Myrtle Beach?

A. Yes, sir.

Q. Do you know what it is?

A. Myrtle Beach?

Q. Yeah.

A. I think it's a town on the beach, north.

Q. Have you ever been there?

A. Maybe once or twice.

Q. Have you ever heard anything about them passing a law saying all motorcycle riders have to wear a helmet in the town [of] Myrtle Beach?

A. No.

Q. You heard nothing about that?

A. I don't ride a motorcycle.

THE COURT: Mr. Goldstein, I was going say if we could get to a break point so we can take a rest room break.

MR. GOLDSTEIN: Judge, I'm happy to break now, whenever.

THE COURT: All right. Let's go ahead and take about a ten-minute break so we can go to the rest room. Don't begin deliberations or discussions about the [77] case and we'll see you back in about ten, fifteen minutes.

(Recess taken.)

(In open court, jury present.)

THE COURT: Okay, folks. We are going to resume where we left off with Mr. Goldstein resuming his direct examination.

MR. GOLDSTEIN: Thank you, Your Honor, may it please the Court.

BY MR. GOLDSTEIN:

Q. Mr. Holton, I only have a few more questions for you. I think I already asked you this, and if I did, I apologize for the redundancy.

We didn't have an agreement as to whether I did or didn't ask you this. Under the section for planning and zoning action on preliminary plat, if the preliminary plat is disapproved or approved conditionally, the reasons for disapproval or any conditions required shall be stated in writing and signed by the chairman of the planning commission; is that correct?

A. That's what the ordinance reads.

Q. And the purpose of that is to notify the property owner of the deficiencies so that he can – he or she can address them, correct?

A. Correct.

[78] Q. All right. The rest of the article B platting provisions required the design standards and so forth, in other words, what is required in a subdivision application, correct?

A. I believe so.

Q. And it also provides the planning commission with certain leeway to liberalize the rules in order to allow a developer some flexibility, if there is a benefit, correct?

A. Sure.

Q. In other words, y'all's hands aren't tied. You have a little bit of flexibility, a little bit of discretion.

A. Right.

Q. And did the town of Hollywood recently open a housing development called Holly Grove Subdivision on Baptist Hill Road?

A. Yes. That's a new property for the town.

Q. And that is one of those applications where the planning commission, in fact, did that. It relaxed the rules in order to allow a higher density project because it was deemed to be beneficial for the town, correct?

A. Let me explain that it went through its proper rezoning for a PD, which would allow certain other things, and it was going to have duplexes and therefore [79] it will – it was going to be fine and what the town wanted to have anyway, but it was not the restriction of a particular zoning as in RA, R1, or particular zoning districts as one home per lot. It was going to be multi-family, so –

Q. And the reason that you do that is to meet the goal of providing affordable housing for the town of Hollywood?

A. This is just a procedure.

Q. One of the missions of the town of Hollywood is to provide affordable housing?

A. Yes, it is.

Q. As a planning commissioner, you agree it would not be beneficial for the town if every neighborhood in the town of Hollywood was an exclusive gated community, carried a high price tag, right?

A. I agree.

Q. And the mission of the town, of the planning department, is to provide a wide array of housing that meets the needs of all citizens, correct?

A. Zoning for that, yes.

Q. All right. And there is no question, and I know I asked you this, at least I'm 99 percent sure I asked you this, the zoning requirement for the Bryan Road property, the ones that Jeff and Troy and Eddie, it did [80] specifically allow 30,000 square foot lots?

A. That's correct.

Q. In fact, under the current zoning, they could actually reduce those lots to 12,500 square feet; is that correct?

A. That is not correct.

Q. What is the correct number?

A. 30,000 feet.

Q. If there is city water and city sewer, you can go smaller than that?

A. 30,000 square feet in rural agriculture zoning, which they have.

Q. So they are in the right zoning?

A. Yes, they are We – regardless – their zoning has 30,000 square feet is the minimum lot size, regardless if you have water or sewer. You have to do a rezoning to R1, which its minimum lot size is 30,000 square feet, but you have the opportunity to reduce your lot sizes, your minimum lot sizes to 12,500 if you have water, and if you have both, it goes to 10,000 square feet, but is [sic] that is a R1 zoning district.

Q. And so in the eyes of the legislature, wisdom of the government of the town of Hollywood, this location, this Bryan Road location as reflected on the plats is an appropriate zoning classification for a 30,000 square [81] foot lot?

A. Yes.

Q. All right. I show you what has been marked as Plaintiffs Exhibit 22. I show you what has been marked as Plaintiff's Exhibit 22. Can you identify this document? It's really the other side I'm really interested in.

A. Yes, sir.

Q. And what is that document?

MR. BUYCK: Your Honor, may we approach?

THE COURT: Yes.

(Discussion held at sidebar.)

BY MR. GOLDSTEIN:

Q. And just to be clear, Mr. Holton, at the June 14, 2007 planning commission, the original submission, and at the August 14, 2008 submission, the second submission, the one that we have the transcript from, the town of Hollywood has never provided a written explanation to them as to why their subdivision plat has been denied, correct?

A. I disagree.

Q. Okay. Can you identify the document that you contend satisfies the requirements of the ordinance that the town informed them in writing as to why the plat has been denied?

[82] A. There were numerous letters written pertaining to what would be suggested and then required of them to have submitted as far as getting their plat approved.

Q. Is that the traffic study?

A. No. Well, that may have been included in that.

It was a letter in May and then another one at the end of June, June 20 something in 2008.

Q. I think I know of what you speak. I'll show you what has been marked as Plaintiff's Exhibit 15. Is this the document on which are you relying on the testimony that you just gave? Is that the letter you were making reference to in the testimony you just gave?

A. When I mentioned May, that is correct. There is a June letter as well.

Q. All right. And the May letter identifies the deficiencies as being what?

A. Just to make sure that they understood the next time they needed to provide enough copies for all planning commission to see, but the deficiencies, being the septic issue, access issue on what is considered Bryan Road, the impact for – that's the traffic study part of the turning lane, the street lighting, they provided the street lighting, but –

Q. Okay. Now, let's talk about the access on Bryan Road. Are you contending there is no access to their [83] property?

A. It doesn't appear that there is a legal right-of-way or easement recorded.

Q. Are you a lawyer?

A. No.

Q. Have you searched the title?

A. Done some research with the plats that are recorded.

Q. Are you qualified to give an opinion as to the status of title in the state of South Carolina?

A. Probably not.

Q. Do you normally rely on lawyers or professional title abstractors for such opinions?

A. That's true.

Q. Is Bryan Road shown as being a public county road in the Charleston County road atlas?

A. No it's private.

Q. Let me be real clear about the testimony you're giving now. Do you know what the Charleston County road atlas is?

A. I believe I've seen that, and I believe I've seen it considered private.

Q. And do you rely upon the Charleston County road atlas as being a document published by the county of Charleston as something that is routinely used by the [84] town?

A. I relied on Charleston County and their public works department to fill in whatever I need to know as far as the roadways.

Q. But you are familiar that there is an officially published Charleston County road atlas, correct?

A. Yes.

Q. Okay. Let me show you what is being marked Plaintiff's Exhibit 23, and I don't want to trick you now. So what I'm going to do is I'm going to hand you the entire Charleston County road atlas, and I have Xeroxed a single page from it, which I have marked Plaintiff's Exhibit 23.

MR. BUYCK: Your Honor, I object to the relevancy of this. There has been no testimony that this is a reliable source of providing the lawfulness or the title to this roadway. There is no – and he's actually testified that he is not one that can give that opinion, so I think that this evidence is irrelevant and misleading.

MR. GOLDSTEIN: Your Honor, the witness just testified he checked the Charleston County road atlas and verified it was a private road. That was his testimony, and now I'm going to impeach him.

THE COURT: Overruled. Go ahead.

[85] THE WITNESS: You left out the maintained part.

(Photographs marked for identification and admitted into evidence as Plaintiffs Exhibit No. 23-A to 23-F.)

BY MR. GOLDSTEIN:

Q. We'll get to that in a second. I'm going to hand you the entire atlas, that is the whole thing, and I'm going to hand you just [the one] page I Xeroxed out of it because I didn't want you to think I was being tricky or anything. Do you see Bryan Road listed on that road, page A12?

A. Yes.

Q. Is it listed on map 7?

A. Yes.

Q. Is it listed in St. Paul's Sixth Parrish?

A. That's what it shows here.

Q. Is it listed as being on grid B4?

A. It shows that too.

Q. Is it listed as being in the town of Hollywood?

A. It does.

Q. And is it listed under maintenance county?

A. That's what it seems to be.

Q. Okay. So were you in error when you spoke a few minutes ago?

[86] A. Do you know the date of this? Because I had looked just the other day and seen one published in 2002 that shows privately maintained.

Q. Okay. Well, did you bring it with you here today?

A. I did not.

Q. Do you think I manufactured a Charleston County road atlas?

A. No. I believe they're misleading in information, which is correct. A problem I need to rectify.

Q. So your testimony – let's be sure we understand your testimony. You think the Charleston

County road atlas people made a mistake in this version of the atlas. That is your testimony?

A. It's possible. The county maintenance, what does that really mean? Is it publicly maintained or –

Q. Let's test your knowledge a little bit. Let me show you what has been marked Plaintiff's Exhibit 23. Is that a picture of Bryan Road?

A. That's what we know it as, right.

Q. Bryan Road. That's a picture of it, right?

A. Yes, sir.

Q. Okay. And does that show the entrance to Stono Plantation?

A. Yes.

Q. And Stono Plantation enters off of Bryan Road, [87] does it not?

A. Yes.

Q. All right. And there are 14 lots?

A. I don't know the number, but there are somewhere up there.

Q. All right. Well, here is a map. Do you want to count them and see?

A. We can go on.

Q. Let's be fair to you. There is 10 to 14 lots. How about that? So those 10 to 14 people, they go in

and out of their residences every day across Bryan Road; do they not?

A. I suppose if they're going somewhere outside their subdivision they would travel this way, yes.

Q. There is no other way in or out?

A. Other than water.

Q. Other than water, or unless they got a helicopter.

A. I'm with you.

Q. So if you stood on Bryan Road and took a picture back toward 162, it would look like what is depicted in Plaintiff's Exhibit 23-A, would it not?

A. Further down from the subdivision, yes. They had to get closer toward the roof, yes.

Q. And that is a picture of Bryan Road as you look back –

[88] A. And you intersect Dixie Plantation.

Q. Dixie Plantation Road. Okay. And, again, that is the road that the people in Stono Plantation go in and out of every day, going in and out of their homes, right?

A. Yes.

Q. Okay. And that is the same road that serves the property owned by Jeff, Troy, and Eddie, right?

A. Yes.

Q. And that is the same road that serves Ms. Boone, further back down on the Stono River, right?

A. She has access via Trexler Avenue as well?

Q. She's got two roads, right?

A. Right. I believe her address is Trexler.

Q. And Mr. Condon and the other people back there, or the properties subdivided off Ms. Boone, they go up and down Bryan Road every day, don't they?

A. Yes.

Q. And Plaintiff's Exhibit 23, that is an accurate photo of some of the utilities that are located on Bryan Road, are they not?

A. It could be them, yes. I have seen similar utility markers.

Q. And there are people who live all up and down the Bryan Road, the Bazzells, the Loftuses, Mr. Stewart has a rental house there, correct?

[89] A. I believe so, yes.

Q. And the United States Postal Services go up and down Bryan Road every day delivering the mail, correct?

A. If there is mailboxes there, I assume.

Q. Let's see if there are mailboxes there. Does 23-D show the mailboxes on Bryan Road? It does, doesn't it?

A. Yes, it does.

Q. And I've got about 150 pictures here, so let's just pick one more and call it a day. How about that? Have you ever measured the width of Bryan Road?

A. It seems like it. I don't recall what it is. Maybe, I think, around 18 feet.

Q. Really? That is your testimony?

A. I'm trying to remember. I can't put a factual number on that.

Q. Well, I got a picture here of a tape measure across it, if you want to look at that. You sure it's not more like 35 feet across?

A. I would like to see that, please.

Q. You would? Okay. Well, while I'm hunting for it –

A. Are you saying there is 35 feet of pavement?

Q. Let me show you what's been marked as Plaintiff's Exhibit 23-A. That is a photograph of the sign indicating passersby the location of Stono Plantation and [90] the fire hydrant located on Bryan Road. Correct?

A. Yes.

Q. Okay. So you want to see the picture of the tape measure. I'll find it for you. Were you at the planning commission meeting on August 14, 2008?

A. Yes, I was.

Q. And there were quite a few people there who were speaking up in opposition to the proposed subdivision, were there not?

A. There may have been. If they're on record for public comment, I suppose they would.

Q. And all of those people who spoke in opposition were all residents of Stono Plantation; is that correct?

A. I don't know where they were from.

Q. I show you what has been marked 23-F. You say you want to see a picture of a tape measure on the road. I note you didn't put a tape measure out there, and I got a witness who did, but do you agree that would be an accurate way of determining the width of that road?

A. Accuracy is in question.

Q. Is relative?

A. Yeah.

Q. Okay.

A. But yes, I agree, you can measure things with a tape measure.

[91] Q. And not that you would, but if the town of Hollywood chose to exercise its political will to stop a particular project, they could do it, couldn't they?

A. I'm not following.

Q. I mean, you could continue to put people off if – I'm not saying you would, but –

A. You just stated by law you can't, and we haven't put anybody off. We said let's table, bring these things back. We're trying to help you through.

Q. Okay.

MR. GOLDSTEIN: Thank you, Mr. Holton. That's all the questions I have.

* * *

[109] BY MR. BUYCK:

* * *

[113] Q. What is your number three on your list?

[114] A. Realignment with Stono Plantation Road Landing Creek Lane as indicated on the tree survey plat that I provided for them.

Q. Okay. Was that ever done?

A. No.

Q. And what was the significance there? What were you trying to do?

A. That was if some day in the future that Bryan Road and those folks living on the other side of the fence, Stono Plantation, if they were ever to tear down the wall, as it were, and having another access road, Bryan Road, just kind of leave things open that way.

Landing Creek Lane is offset from their proposed road into their subdivision and SC DOT standards as well as the town of Hollywood standards say no offset can be greater or less than 150 feet, so that [is] why it was wished for, it was proposed thinking it would be a good item to do, not a requirement, but in thinking of the future for connectivity.

* * *

[116] Q. And then the first recommendation, what was that, if you recall?

A. This was just, like I say, a recommendation, not a requirement, and there was previous dialogue between myself and Troy, in fact, Troy Readen, and not a requirement, just thought because there by this time was [117] a lot of uproar with different people – well, there was significant people around saying they weren't so thrilled with the subdivision.

Well, maybe you should have some buffering, an avid barrier between them so people wouldn't see your subdivision, so that is where that comes from and I'll read it. It says buffer has an excellent show of good faith to the surrounding, close parentheses, leave in place or install a 50 foot wood buffer surrounding the property and that was just a suggestion.

Ten foot would probably have been great, but I just threw that in there for something to have, not just something, but a significant part that would aid their project being successful and the community surrounding it not having such a problem with it. I was trying to help them in that way. That was a suggestion.

Q. Okay. Has that suggestion now been heeded to your knowledge?

A. Not to my knowledge.

Q. And you talk about the neighboring landowners. In your role, and in seeing other developments done, even throughout the country in your studies, is public opposition something that needs to be considered?

A. The public has every right to make their position known. It is up to the members of those particular [118] boards to have the opportunity to hear pro and con, looking at the big picture, just not that microcosm of that property, but how it's going to affect the entire community.

Q. So your recommendation was to be considerate of your neighbors, more or less, there; is that correct?

A. Yes. And for their benefit, it would have been above and beyond what normal people would do. I didn't make this suggestion too often at all, but in light of this, I felt like this would make the project go smoothly.

* * *

[158] ANNE BOONE,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: Anne Boone, B-o-o-n-e, A-n-n-e.

[159] BY MR. GOLDSTEIN:

Q. Ms. Boone, tell us a little bit about yourself. Where do you live?

A. I live on the property between – it's basically between Trexler and Bryan Roads down on the water. I've lived out there pretty much my entire life.

Q. Is that in the town of Hollywood?

A. Hollywood.

Q. Do you use Trexler to reach your property?

A. Yes.

Q. Do you use Bryan Road to reach your property?

A. Yes.

Q. How would you contrast the two roads?

A. Bryan is shorter and that is the one I use. It's shorter, quicker, and part of it is paved.

Q. You heard Mr. Holton testify about tying the Bryan Road neighborhood into Trexler?

A. At the time, I didn't even have any legal access on Trexler. I had – over the years we had had, like, just an agreement that I could use the road, but I didn't have legal access, and since then I have gotten legal access, but at the time all this was going on, I did not have any.

Q. Would it be practical for people living in Bryan Road subdivision to use Trexler Drive?

[160] A. Well, they can't now. First of all, it wouldn't be very practical, but when I acquired the access from the Culpas, who subsequently sold Wide Awake to the town of Hollywood, part of the condition was that it could not be a legal access from Bryan over to Trexler because at the time they were trying to develop Wide Awake, and they didn't want more traffic coming through.

Q. Did the town of Hollywood ultimately buy Wide Awake Plantation?

A. Greenbelt funds paid for it. It was paid for with Greenbelt prices.

Q. Do you know what the acquisition price was?

A. 4.8 million.

Q. For how many acres?

A. For, I believe, 7 point something acres.

Q. What road do you use to reach that?

A. Trexler.

Q. And will Trexler allow two automobiles to pass each other?

A. With difficulty.

Q. Would it allow a fire truck?

A. Not to pass. They couldn't pass.

Q. Would it allow an ambulance?

A. Not to pass.

Q. Were you surprised to here [sic] Mr. Holton talk about [161] the need for Bryan Road to be improved to allow those kind of things?

A. Well, Bryan Road has always been an illegally narrow road, I mean, ever since Stono Plantation was developed, but we manage to pass. Two fire trucks would be quite a squeeze.

Q. Let me show you what is marked as Plaintiff's Exhibit 1 and ask you if you can identify this document.

A. That is a contract for these three gentlemen to buy my property.

Q. Did you enter into a contract for them to buy the 13.2 acres?

A. Yes, I did.

Q. And is that the 13.2 acres that is now the subject matter of this lawsuit?

A. It is.

Q. And can we refer to that as the Bryan Road subdivision? Is that okay, just so we have a common –

A. Uh-huh.

Q. Did you – what was the acquisition price for the property?

A. It was $550,000.

MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit 1 into evidence.

MR. BUYCK: Can I see that, please. No [162] objection.

(Contract marked for identification and admitted into evidence as Plaintiff's Exhibit No. 1.)

BY MR. GOLDSTEIN:

Q. Prior of this contract required prior to the closing – what do you want to call them, the fellows, the boys, Jeff, Troy, and Eddie? What do you want to call them?

A. The three musketeers.

Q. Was the agreement they would have a subdivision plat approval prior to closing?

A. That wasn't part of the closing.

Q. Was that part of the agreement?

A. We never – I just basically was selling them 13 agriculture acres, no holds – there were no restrictions, no nothing.

Q. Well, do you recall a contingency which is part of Plaintiff's Exhibit 1 regarding the application – I mean, the approval for a subdivision plat?

A. Well, yeah.

Q. Okay. Did you attempt to assist them during that application for subdivision process?

A. When we went to the planning zoning –

Q. Right.

A. I went along. I wasn't going to say anything. I [163] just felt like, you know, I – we hadn't actually closed on the property, so I was technically still the owner of the property and I should go along. I wasn't planning to say anything and actually when we went into the meeting, I realized later that I couldn't have said anything anyway. There was a little list by the door you're supposed to sign when you come in. Nobody said that we were supposed to do anything. I just went in and sat down and during the meeting. I never said anything.

Q. Okay. Did you run into Annette Sausser on the way into the meeting?

A. Yes. I parked and was walking into the meeting, and Annette was walking in too and I believe

the guys were – we had [all] kind of arrived at the same time and were all walking in.

Q. Do you know who Annette Sausser is?

A. Yes. I've known her for years.

Q. Do you know where she used to live?

A. She used to live in Stono Plantation.

Q. Is Stono Plantation a gated community?

A. Yes, it is.

Q. And it's located where in connection to the Bryan Road property that you sold to the three musketeers?

A. Stono Plantation, basically, my property, including the front I sold to these guys, it's on the [164] left side of Bryan going in, and Stono Plantation is on the right.

Q. Are they separated by a single road?

A. Yeah. They have their own road going in and we have Bryan Road.

Q. Okay. Did you know Annette Sausser was a member of the Hollywood town council?

A. Yes.

Q. Did she say anything unusual to you prior to the commence of the meeting?

A. When we were walking in, she saw us and she said, Are you here for the Bryan Road thing? And we said yeah, and she – she said, It ain't going to happen, and then she made a cutting motion, like this, which I was shocked.

Q. How – that was my next question. How did you respond to that?

A. I was shocked. I just thought that was very unprofessional.

Q. And when you went into the meeting, it was a planning commission meeting?

A. Yes.

Q. And is she on the planning commission or is she on town council?

A. Town council.

[165] Q. Did she sit with the planning commission?

A. I believe she did.

Q. What did you think about that?

A. The whole meeting was pretty confusing. It was – I thought it was improper, but I had never been to a planning zoning meeting, so –

Q. Let me ask you this: You've sat through part of this trial today?

A. Yes.

Q. And you've been seated back there?

A. Yeah.

Q. And you realize Mr. Buyck and I are adversaries and the judge is more or less an umpire referee right, and the jury is listening to the evidence and evaluating the evidence, correct?

A. Uh-huh.

Q. So you've observed the process as it's gone on today.

A. Yes.

Q. How would you characterize the process as it's unfolded before you today versus what you experienced in that room in Hollywood on June 14, 2007?

A. This is very orderly, this trial here. Everything is rules and regulations; everybody knows what is happening. That planning zoning meeting was totally [166] confusing. Every time the guys tried to present anything or say anything they were – this is just my opinion, obviously, but it was – the commission had decided before anybody even got there that this development was not going through and it was just – they just shot down everything these guys tried to say or do.

I was embarrassed. I was really embarrassed for them, and everybody in there was – it just wasn't – it didn't seem like they were running things the way a meeting like that should be run.

Q. Were you intimidated?

A. Very, yes. I was kind of glad I hadn't signed the little list because I didn't want to open my mouth. I was the bad person selling this property to these evil developers so –

Q. Well, after the meeting, did you have any conversation with members of the planning commission?

A. Yes. We were walking out to our cars, and Annette Sausser and Matt Wolf and I were walking out together. I didn't really know Matt before, but I had known Annette for a long time, and they were saying that they didn't want the guys to have this development with so many lots and if they had fewer lots maybe they would consider it.

Matt Wolf was – he pretty much lives – his house is pretty much across from where the property was, and he [167] sounded like he didn't want a development in there, and he made a remark, which I didn't understand at first, he said, Well, it's all going to be plastic, plastic, plastic, and I didn't really understand what he meant, and then I realized he was talking about vinyl siding. He was kind of inferring that their development was going to be kind of low rent and not the kind of development they wanted in that area.

Q. Okay. How would you characterize the development in Stono Plantation?

A. It's very nice, very tasteful.

Q. Do you know what the price point is? If somebody wanted to get in there, do you know what it would cost?

A. I don't know what the price is now, no.

MR. BUYCK: I would object to the relevance of the Stono Plantation.

THE COURT: She says she doesn't know.

BY MR. GOLDSTEIN:

Q. Did Matt Wolf make any comment about your residence?

A. He said something very strange. I hardly know the man, but I had a very old house on the water where I grew up, and it's just a sweet old house, and, anyway, he said, Well, isn't your house – isn't your place worth at least a million?

[168] And I said, Well, yeah, I'm sure it is. It's on the water.

He said, Why don't you sell it and build your dream house?

And I was, like, I'm living in my dream house. It's a sweet old brick house, but I thought it was a very strange thing for him to say.

Q. Based on the manner in which he approached you and the questions he was asking you and the comments he was making to you, what was

your opinion about his demeanor? What conclusions did you draw?

A. I don't want to make an enemy of Mr. Wolf. He's my neighbor, but I thought he was pretty arrogant. He was assuming these guys would have this tasteless development, and he liked a very tasteful development. That is the whole impression I was getting.

Q. Do you know what the proposed price point was for Jeff and Troy and Eddie's project?

A. No. I don't know anything about any of that.

Q. Okay. Now, in an ideal world, would you prefer – in an ideal, perfect world, if everybody had everything everybody wanted, would you prefer that the 13.2 acres just remain untouched?

A. Of course, of course. Nobody wants to live near a development, and when my mother lived out there, she [169] owned 80 acres, all undeveloped except for her house, and when Stono Plantation was being developed next door, she was furious. She was, like, A development next door.

Nobody wants a development next door, but I needed the money. That is why I was selling the property, and I've learned that you adapt. I mean, progress is progress, and you can't live out in the wilderness all your life. Things are going to happen, things are going to change, so –

Q. As you sat through the meeting on June 14, 2007, do you think that Jeff, Troy, and Eddie were treated fairly?

A. It was my opinion they were not. I felt like they were intimidated. They acted like they were intimidated. I mean, I was really embarrassed.

Q. Do you think the conduct of the decision of the planning commission at that meeting was capricious?

A. I don't know if it was capricious or not. I can't say.

Q. Do you think the decision reached by the planning commission that night, whatever it did, however they treated these guys, do you think it was based on reason and rational analysis of their application?

A. I think there was an awful lot of emotion in there and sort of who knows who and who is a neighbor of who [170] and it wasn't – well, that was my impression.

Q. Okay. Based on your observation of the property since – you live there, right?

A. Yes.

Q. 365 days a year?

A. Yeah.

Q. Do you think that Mr. Wolf would be directly impacted by the development of the property?

A. Well, the people in Stono Plantation, ever since it's been developed, they've been looking across the fence, across Bryan Road at my property, and they've seen nothing but woods and horse pastures. It's lovely. It's pastoral, it's beautiful, and looking across at developments is going to be a lot different.

Q. Do have you any friends to award or enemies to punish by your testimony here today?

A. No.

Q. Are you here under a subpoena?

A. Yes.

Q. And I take it you're not particularly excited about testifying today.

A. Not at all Nobody wants to testify in court.

Q. Okay.

MR. GOLDSTEIN: No further questions.

* * *

[339] DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. Ms. Wolf, your name – you just told us your name. Your occupation?

A. Realtor.

Q. How long have you been a realtor?

A. Eight years.

Q. Where do you live?

A. Charleston.

Q. Are you married?

A. Yes.

Q. Children?

A. Yes.

Q. Tell us a little bit about where you grew up, your educational background.

A. I group up west of the Ashley, and I graduated [340] from Middleton High School and attended the College of Charleston.

Q. Are you a licensed real estate agent and broker?

A. Correct.

Q. How long have you been so licensed?

A. I've been licensed for eight years.

Q. Okay. What are some of the duties of a real estate agent/broker?

A. You assist in the purchase and sale of properties, primarily.

Q. Were you involved in the purchase of the 13.2 acre tract that is the subject of this litigation?

A. Yes.

Q. You weren't the listing agent for that?

A. No.

Q. You just found it.

A. Correct.

Q. Okay. And how did you know that Troy and Jeff and Eddie would be interested in it?

A. We looked at several properties. We walked a lot of properties, and this one suited them, their needs. It was a great location and the size that they were interested in.

Q. And what were you looking for?

A. Property that – that they could subdivide and [341] finish out the lots and then resell those.

Q. Okay. Do you remember what the original listing price for the property was?

A. I feel like it was closer to 700, 699 maybe.

Q. Did you make an offer on the property?

A. Yes.

Q. And the offer for the property was what? I can show it to you if you don't remember. It's not a memory test.

A. The agreed upon price was 555,000.

Q. Okay. And you entered into a contract?

A. Yes.

Q. Did you enter into a contract?

A. Yes.

Q. And did Ms. Boone accept the contract?

A. Yes.

Q. Did you close?

A. Yes.

Q. All right. How long was it from the time that you sold – you got a signed contract to the time you closed, do you remember?

A. We made the offer in early February. I think we agreed on all the terms maybe in the 1st of May, and then it closed –

Q. Does June sound right?

[342] A. June is good.

Q. It's not a memory test. You can look at it. It's right up there.

A. June.

Q. Were there any contingencies?

A. Yes.

Q. And what were the contingencies?

A. Fairly standard, the availability of, you know, utilities and water and the prelim plat approval from the town of Hollywood was the stipulation.

Q. Did you assist them during the preliminary plat approval process?

A. That's more the developer's responsibility. I did need to keep tabs on the timeline for Mrs. Boone and her agent, so if we needed an extension, we would be following a due diligence.

Q. Did you go to the June 14, 2008 meeting with them?

A. Yes.

Q. Were you physically present?

A. Yes.

Q. You went with Jeff and Troy and Eddie?

A. Yes.

Q. And was Ms. Boone there?

A. Yes.

Q. You just heard an audiotape of the meeting.

[343] A. Yes.

Q. Were you sitting back there when he played it?

A. Yes.

Q. Was that an accurate depiction of how the meeting went?

A. You could hear certain members of the commission, but you couldn't hear hardly the boys, I call them, Troy and Jeff and Eddie, couldn't hear them and you certainly couldn't hear the people that were right behind us.

Q. And the people right behind you, what kind of things were they expressing?

A. It was a lot of chatter back there. It was – it didn't seem to be friendly.

Q. Okay. Was it a calm, professional meeting?

A. No. It was very relaxed. I don't go to town planning meetings, so it may be ordinary, but I didn't feel that it was well –

Q. You're trying to be diplomatic.

A. Yes.

Q. Were you comfortable there?

A. No.

Q. Did you think somebody needed to watch your back?

A. Yeah.

Q. Okay. Do you remember having an encounter with a member of the Hollywood town council before the meeting?

[344] A. Yes.

Q. Can you tell us how that came about.

A. We arrived early, and I think the boys misunderstood protocol, and they signed a piece of paper as a sign-in sheet and we walked back outside to wait for the meeting to start, and then a lady kind of brushed past us and she turned around and came back and gave us this little cut-throat gesture and said something, that it wasn't going to happen or –

MR. BUYCK: Your Honor, I object to the hearsay.

THE COURT: It's against a town council member that she's saying made a gesture?

MR. BUYCK: Not in her scope as official capacity.

THE COURT: She later identified herself as being there, and besides there have already been three people testified to it so far, so overruled.

BY MR. GOLDSTEIN:

Q. Did the person identify herself as a member of town council?

A. No.

Q. When you went in the meeting did you learn she was a member of town council?

A. Right.

[345] Q. Was she sitting up there with the commissioner?

A. She was.

Q. Did that strike you as odd as all?

A. Yes, it did.

Q. Well, you seem a little nervous sitting here today. Are you?

A. Yes.

Q. Is it because you have a bad memory of that event?

A. Well, this is unnerving anyway, but it wasn't pleasant, no.

Q. All right. And the gesture that – was it Annette Sausser? Is that who made the gesture?

A. Yes.

Q. And what kind of gesture was it? Was it a thumb across the neck?

A. I think it was a finger, but it could have been a thumb, but I'm pretty sure it was a –

Q. And what did you – what words did she use in accompanying this gesture, this cut-throat gesture?

A. First she tried to identify us, are y'all here with Bryan Road or something like that, and I don't know if we spoke or if we shook our heads, and it all

became a little – and then she said, It will never happen, or something like that.

Q. All right. Did she say it would never happen as [346] she was delivering the gesture?

A. Oh, Lord –

MR. BUYCK: I'll object to the leading.

THE COURT: Rephrase.

THE WITNESS: I don't remember.

BY MR. GOLDSTEIN:

Q. How did it happen?

A. Just like I said, it was pretty quick. You know, she pushed past us and went in, came right back out, asked us if we were there for the Bryan Road and then – I don't remember if it was before or after or during.

Q. Well, how did you react to that?

A. I was a little shocked.

Q. Okay. Have you been involved in other subdivision applications before?

A. Not in the applications, no.

Q. Do you know who it was that told y'all you had to appear before the planning commission on June 14, 2007?

A. I'm told that it was Kenneth Edwards.

Q. Okay. Do you remember what day of the week was it? Does Thursday sound right?

A. Sure, Thursday sounds great.

Q. You're just agreeing with me. You don't have an independent recollection.

A. I don't remember.

[347] Q. Okay. That's fine. Do you remember what time the meeting was? And I don't mean the exact time.

A. I think it was 6:00 or right in that time.

Q. Now, were you relying on what the town of Hollywood had told you was the reason for being there?

A. Yes.

Q. Okay. Why did you think you were there?

A. Because it had been indicated to Troy, Jeff, and Eddie that they needed to rezone from an agricultural zoning to a residential.

Q. Did the town of Hollywood provide consistent answers to y'all when you were there trying to get answers to your questions?

A. No.

Q. I'm sorry?

A. No.

Q. Okay. Did the town provide contradictory information?

A. Yes.

Q. Have you ever seen a government official make a cut-throat gesture before?

A. No.

Q. Do you know what it means?

MR. BUYCK: Your Honor, I object to it being cumulative.

[348] THE WITNESS: No, I don't.

THE COURT: Overruled. Go ahead.

BY MR. GOLDSTEIN:

Q. You don't know what it means?

A. It didn't seem like a happy one.

Q. Have you ever done that to anyone before?

A. No.

Q. Now, when Councilwoman Sausser told you it will never happen, did you believe her?

A. I'm not sure what I believed at that point. It was hard to say. We were trying to find out what to do so they could proceed. That was the whole purpose of being there.

Q. Do you know who appoints the planning commission?

A. I do not.

Q. The manner which the meeting was conducted, was it professional?

A. It seemed to be very casual, and lax, the attire of the council people. Some of them looked as if they may have come from a gym, at least one person, and it didn't seem that the council even knew why we were there, some of the members.

Q. Was it orderly?

A. No.

Q. Was it quiet?

[349] A. No.

Q. You've sat through some of the process of this case in this courtroom today.

A. Yes.

Q. How would you compare this process, as you've watched it unfold through the day? How would you compare what is happening today with what you were observing on June 14th, 2007?

A. Well, this I would consider orderly.

Q. Okay. Did the planning commission know its own policies?

MR. BUYCK: Your Honor, I don't know that she can testify –

THE COURT: Sustained.

BY MR. GOLDSTEIN:

Q. Did it appear to you as someone there making an application to the town of Hollywood planning commission that it was well informed and knew of its own policies?

A. No.

Q. Did it act capriciously in your view?

MR. BUYCK: Your Honor, I object. How can she testify as to how they acted in regards to –

THE COURT: He can ask the question; she can answer. You may want to elicit further depending on what her answer was.

[350] THE WITNESS: Yes.

BY MR. GOLDSTEIN:

Q. Did it appear to you as if they were acting arbitrary?

A. Yes.

Q. In what way would you describe the meeting as being arbitrary?

A. There were – it was kind of a random thought, on the panel, and then Mr. Wolf did – he was the one that gave the good bit of information that I felt that the buyers of the property could go forward with.

Q. Okay. He's the one that told y'all you needed 30,000 square foot lots?

A. Correct.

Q. And you relied on that information?

A. Correct.

Q. It sounded right. Did they tell you – let me ask you this: The people in the audience, were they talking out of turn?

A. Yes.

Q. Were they shouting things behind you?

A. Loud, maybe not shouting, but very loud, and it felt like a very hostile environment.

Q. Did that intimidate you?

A. Yes.

[351] Q. Did you feel like you needed to watch your back?

A. Yes.

Q. Have you ever been through anything like that either before or since?

A. No.

Q. Do you know where Matt Wolf lives?

A. I do.

Q. Where does he live?

A. Stono Plantation.

Q. How far is Stono Plantation – how far is his house from this property that was the subject matter of the planning commission meeting?

A. It's an adjoining property.

Q. Okay. How does one gain entry to Stone Plantation?

A. It's a gated community.

Q. And the proposed subdivision that Jeff and Troy and Eddie were proposing, was it going to be a gated community?

A. No.

Q. Did you think that y'all were getting treated fairly while you were there?

A. No.

Q. You feel like you were being treated fairly?

A. No.

[352] Q. Did you feel like you were being treated unfairly?

A. Yes.

Q. Did you ever learn or hear or get any information at all about the town of Hollywood posting a stop work order on this project?

A. Yes.

Q. How did you come about that information?

A. Troy Readen shared that with me.

Q. Have you ever seen it?

A. Yes. The order? No. I saw the property. I rode by one day.

Q. As the property currently sits unsubdivided, is it marketable?

A. No.

Q. What keeps it from being unmarketable?

A. It's not – you don't have a clear use for the property at this point, so whether or not it could be subdivided or only one home or would this property just need to be left undeveloped.

Q. Okay.

MR. GOLDSTEIN: Thank you, ma'am. That's all the questions I have. If you would, answer any questions Mr. Buyck may have for you – I'm sorry, Ms. Monoc.

CROSS-EXAMINATION

BY MS. MONOC:

[353] Q. All right. I guess I'll start with a few things that Mr. Goldstein went over with you. Could you define capriciously for us.

A. Random, out of order, disorderly.

Q. And you said the process was arbitrary. Could you tell us what that is compared to.

A. It didn't seem to follow an order at all. It was random people speaking.

Q. But you have no other experience to compare that to?

A. No.

Q. So it's arbitrary as to what you would imagine?

A. Correct.

Q. And you were engaged by the defendants to the realtor in January of 2007, correct?

A. Correct.

Q. And in February of 2007, the defendants began looking into the 13 acre property, the Bryan Road property; would that be correct?

A. Yes.

Q. And then they entered the contract to purchase the land from Anne Boone on February 9, 2007?

A. They made the offer, yes.

Q. And then there was an addiction [sic] – an initial addendum was signed on February 12 of 2007?

[354] A. Yes.

Q. And then on May 1, the defendants amended the contract to condition the purchase on the following: Buyers to present project to the town of Hollywood for rezoning and preliminary plat approval at the May meeting. Buyers to release due diligence contingency from the agreement to buy and sell real estate contract, the new closing date to be on or before 8/10/07, correct?

A. Yes.

Q. And then the – rather, I'm sorry, the plaintiffs in this case, we were opposite last week – the plaintiffs stipulated a contingency that they should present the project to the town of Hollywood at the preliminary plan approval at the May or June meeting?

A. Correct.

Q. Okay. Would it make sense that a preliminary plat approval naturally comes before a final plat approval?

A. Correct.

Q. And the version of the contract was signed by the buyers and was witnessed by you, it looks like, on May 2, correct?

A. Yes.

Q. And you said this was your first time going before a planning commission, right?

A. Yes.

[355] Q. When you were there and the commission told you that you did not need to rezone –

A. Correct.

Q. And you would need to go through the subdivision process, right?

A. Yes.

Q. And that you needed a preliminary plat to start, right?

A. Correct.

Q. And did you know what was required to file a preliminary plat?

A. I represent them in the purchase and the sale and future resale of this property. I would not be involved in the development part of this. I attended that meeting to be able to keep the other realtor and Mrs. Boone informed of the timeline because it kept being pushed back.

Q. And also you had a financial interest in getting the commission and –

A. Absolutely.

Q. And the property closed after that day, right?

A. Sure.

Q. And you all – did y'all hire – you didn't hire an attorney at that point to help with the preliminary plat approval process?

[356] A. I did not.

Q. But they did hire Mr. Lybrand, their engineer, right?

A. Yes.

Q. Was he engaged at that point?

A. For the June meeting?

Q. Uh-huh. Was he with you?

A. He was not with us.

Q. Okay. But I guess – were you relying on Mr. Lybrand in figuring out what needed to happen so that this preliminary plat approval, which was a contingency in your contract, that that would take place?

A. That would be typical for the –

Q. Okay. And do you know if Mr. Lybrand knew what the – what its ordinance required?

A. I don't.

Q. And to your knowledge, have the plaintiffs ever complied with the town of Hollywood ordinances?

A. I don't.

Q. And one last thing. This famous gesture that we keep talking about, that happened before the meeting, correct?

A. Yes.

Q. Okay.

MS. MONOC: I think that's all I have Thank [357] you so much for your time.

THE COURT: Redirect?

MR. GOLDSTEIN: If I could have just one moment. Just one question, Judge.

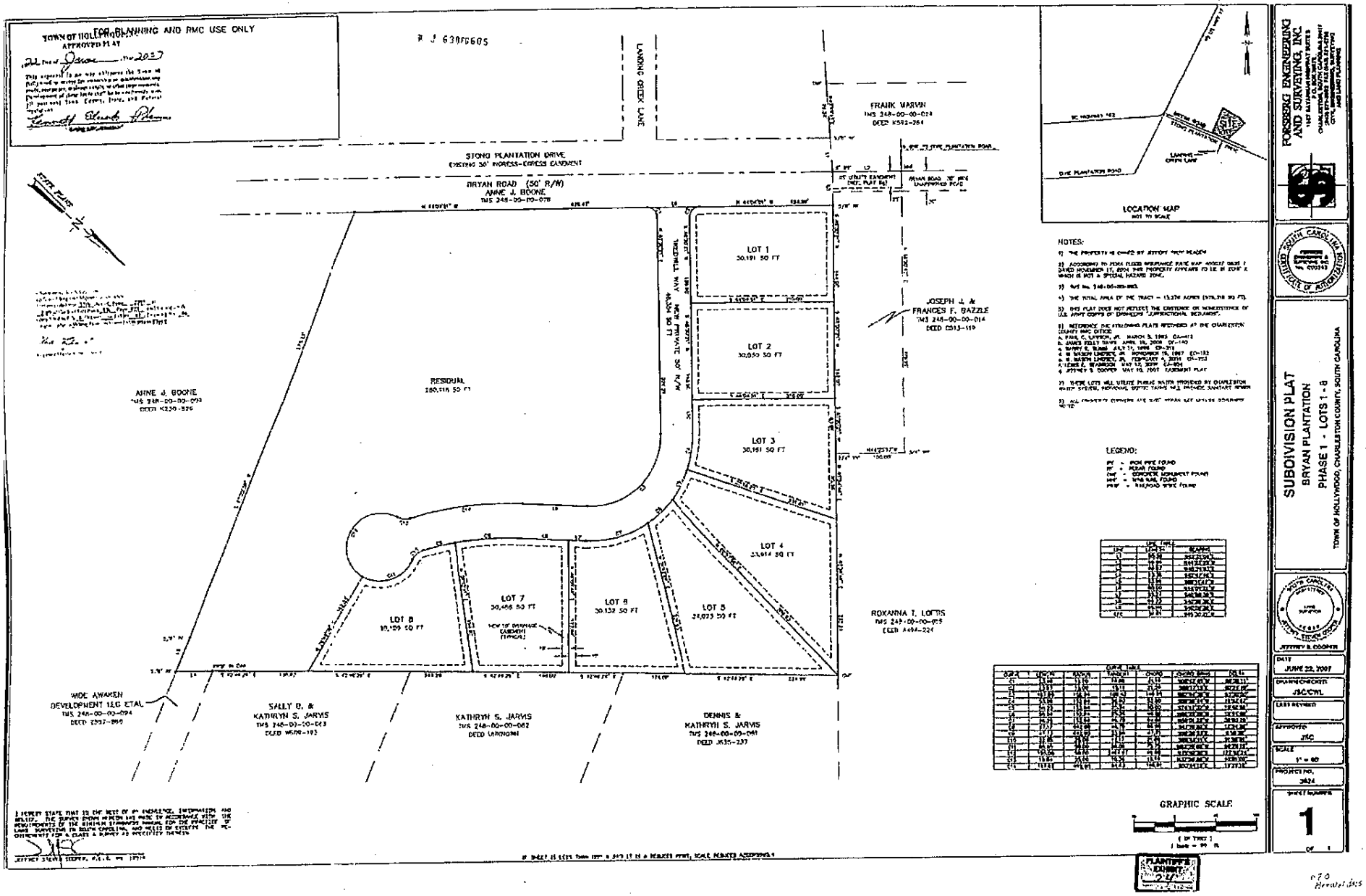
REDIRECT EXAMINATION

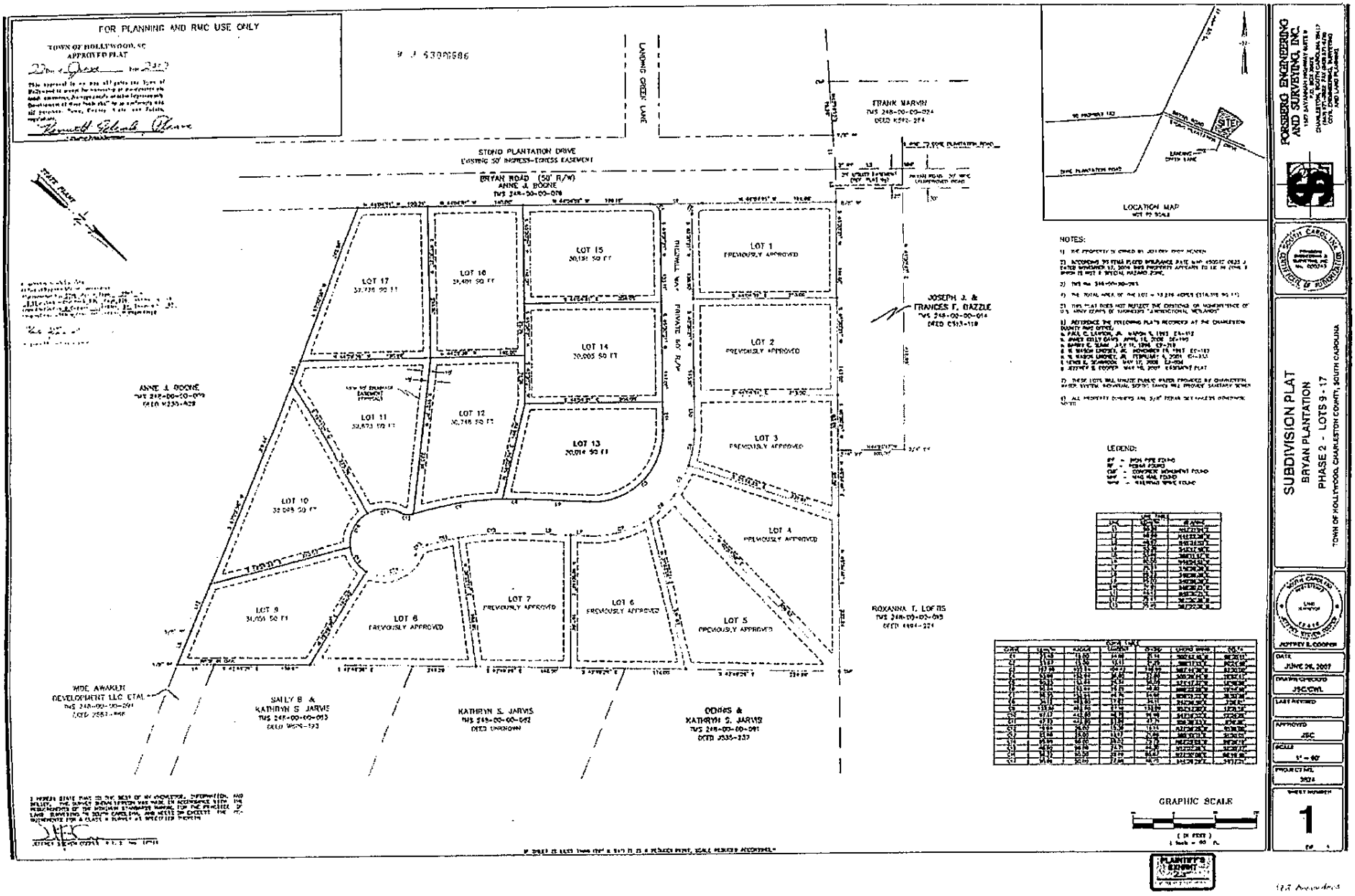
BY MR. GOLDSTEIN:

Q. The famous gesture. The famous gesture was made by someone who then went into the meeting and sat with the planning commission; is that right?

A. Yes.

* * *


FOR PLANNING AND RMC USE ONLY
APPROVED PLAT
R J 630P660S
LANDING CREEK LANE
FRANK MARVIN
TMS 248-00-00-028
DEED K592-264
STONO PLANTATION DRIVE
EXISTING 50' INGRESS-EGRESS EASEMENT
BRYAN ROAD (50' R/W)
ANNE J. BOONE
TMS 248-00-00-078
LOT 1
30,191 SQ FT
LOT 2
30,050 SQ FT
LOT 3
30,151 SQ FT
LOT 4
33,614 SQ FT
LOT 5
28,023 SQ FT
LOT 6
30,109 SQ FT
LOT 7
30,456 SQ FT
LOT 8
30,132 SQ FT
RESIDUAL
280,418 SQ FT
JOSEPH J. &
FRANCES F. BAZZLE
TMS 248-00-00-014
DEED C513-119
ROXANNA T. LOFTIS
TMS 248-00-00-015
DEED A494-224
ANNE J. BOONE
TMS 248-00-00-078
DEED K230-329
WIDE AWAKEN
DEVELOPMENT LLC ETAL
TMS 248-00-00-094
DEED 2597-890
SALLY B. &
KATHRYN S. JARVIS
TMS 248-00-00-043
DEED W698-193
KATHRYN S. JARVIS
TMS 248-00-00-062
DEED UNKNOWN
DENNIS &
KATHRYN S. JARVIS
TMS 248-00-00-061
DEED J635-237
LOCATION MAP
NOTES:
LEGEND:
GRAPHIC SCALE
SUBDIVISION PLAT
BRYAN PLANTATION
PHASE 1 - LOTS 1 - 8
TOWN OF HOLLYWOOD, CHARLESTON COUNTY, SOUTH CAROLINA
FORSBERG ENGINEERING AND SURVEYING, INC.
JEFFREY B. COOPER
DATE
JUNE 22, 2007
DRAWN/CHECKED
JSC/CWL
APPROVED
JSC
SCALE
1" = 60'
PROJECT NO.
3624
SHEET NUMBER
1
OF 1
PLAINTIFF'S EXHIBIT
27


FOR PLANNING AND RMC USE ONLY
TOWN OF HOLLYWOOD, SC
APPROVED PLAT
STONO PLANTATION DRIVE
EXISTING 50' INGRESS-EGRESS EASEMENT
BRYAN ROAD (50' R/W)
ANNE J. BOONE
TMS 248-00-00-076
FRANK MARVIN
TMS 248-00-00-074
DEED K593-284
JOSEPH J. & FRANCES T. GAZZLE
TMS 248-00-00-014
DEED C513-119
ROXANNA T. LOFTIS
TMS 248-00-00-013
DEED K894-224
ANNE J. BOONE
TMS 248-00-00-079
DEED K253-429
WIDE AWAKE DEVELOPMENT LLC ETAL
TMS 248-00-00-091
DEED 0557-448
SALLY B. & KATHRYN S. JARVIS
TMS 248-00-00-063
DEED 0604-193
KATHRYN S. JARVIS
TMS 248-00-00-062
DEED UNKNOWN
ODDIES & KATHRYN S. JARVIS
TMS 248-00-00-091
DEED J535-237
LOT 1 PREVIOUSLY APPROVED
LOT 2 PREVIOUSLY APPROVED
LOT 3 PREVIOUSLY APPROVED
LOT 4 PREVIOUSLY APPROVED
LOT 5 PREVIOUSLY APPROVED
LOT 6 PREVIOUSLY APPROVED
LOT 7 PREVIOUSLY APPROVED
LOT 8 PREVIOUSLY APPROVED
LOT 9 30,059 SQ FT
LOT 10 30,048 SQ FT
LOT 11 32,873 SQ FT
LOT 12 30,748 SQ FT
LOT 13 20,014 SQ FT
LOT 14 20,005 SQ FT
LOT 15 20,151 SQ FT
LOT 16 31,491 SQ FT
LOT 17 32,736 SQ FT
LOCATION MAP
NOTES:
LEGEND:
GRAPHIC SCALE
PORSBERG ENGINEERING AND SURVEYING, INC.
SUBDIVISION PLAT
BRYAN PLANTATION
PHASE 2 - LOTS 9 - 17
TOWN OF HOLLYWOOD, CHARLESTON COUNTY, SOUTH CAROLINA
JEFFREY B. COOPER
DATE
JUNE 26, 2007
DRAWN/CHECKED
JSC/CWL
LAST REVISED
APPROVED
JSC
SCALE
1" = 60'
PROJECT NO.
3024
SHEET NUMBER
1
PLAINTIFF'S EXHIBIT

PLAINTIFF'S
EXHIBIT
8

TOWN OF HOLLYWOOD
TREE CUTTING PERMIT

6322 Highy 162, Hollywood SC 29449
Office 843-889-3222 – Fax 843-889-3636

Seaward Logging Co.
PERMIT HOLDERS NAME

Bryan Road TNS 248-00-00-093
SITE LOCATION

TELEPHONE NUMBER: 810-1540 or 810-1861

Jackie Seaward	7/23/07
Application Signature	Date

SIGNATURE OF APPROVAL

Jacquelyn Heyward	7/23/07
Mayor/Associate Planner Signature	Date

PLAINTIFF'S
EXHIBIT
9

TOWN OF HOLLYWOOD

TREE CUTTING PERMIT
FEE $25.00

Date: 10/4/07

Location: Bryan Rd Row

Property Owner: Floyd/Readen/McCracken

Telephone: 843-224-3549

Person applying for permit: William Floyd

Reason for request:

Clearing 50' Row

Signature of Approval

Edward P. Holton	10/4/07
~~**Mayor**~~ Planning & Zoning Administrator	**Date**

TOWN OF HOLLYWOOD
TREE CUTTING PERMIT
6322 Highy 162, Hollywood SC 29449
Office 843-889-3222 – Fax 843-889-3636

William Floyd
PERMIT HOLDERS NAME

Bryan Rd Right Of Way
SITE LOCATION

TELEPHONE NUMBER: 843-224-3549

William J. Floyd	10-4-2007
Application Signature	Date

SIGNATURE OF APPROVAL

Edward P. Holton	10/4/07
Mayor/Associate Planner Signature	Date

PLAINTIFF'S
EXHIBIT
10

LEGAL NOTICE

WHEREAS, VIOLATIONS OF

[Article ___, Section ✓, of the Zoning Ordinance]
[Article ___, Section ___ of the Building Code]
[Article ___, Section ___ of the ___ Code]

have been forund [sic] on these premises, IT IS HEREBY ORDERED in accordance with the above Code that all persons cease, desist from, and

STOP WORK

at once pertaining to construction, alterations or repairs on these premises known as Bryan Road Sub Division

All persons acting contrary to this order or removing or mutilating this notice are liable to arrest unless such action is authorized by the Department.

By Order of Mayor /s/ Frank [Illegible]
CODE OFFICIAL

PLAINTIFF'S EXHIBIT 13

Feb. 21 For MARCH 13 7:00 Plan. Comm.

1 New tree survey to include cut trees' stumps with diameter & species included in current tree survey revised date – 9/4/07

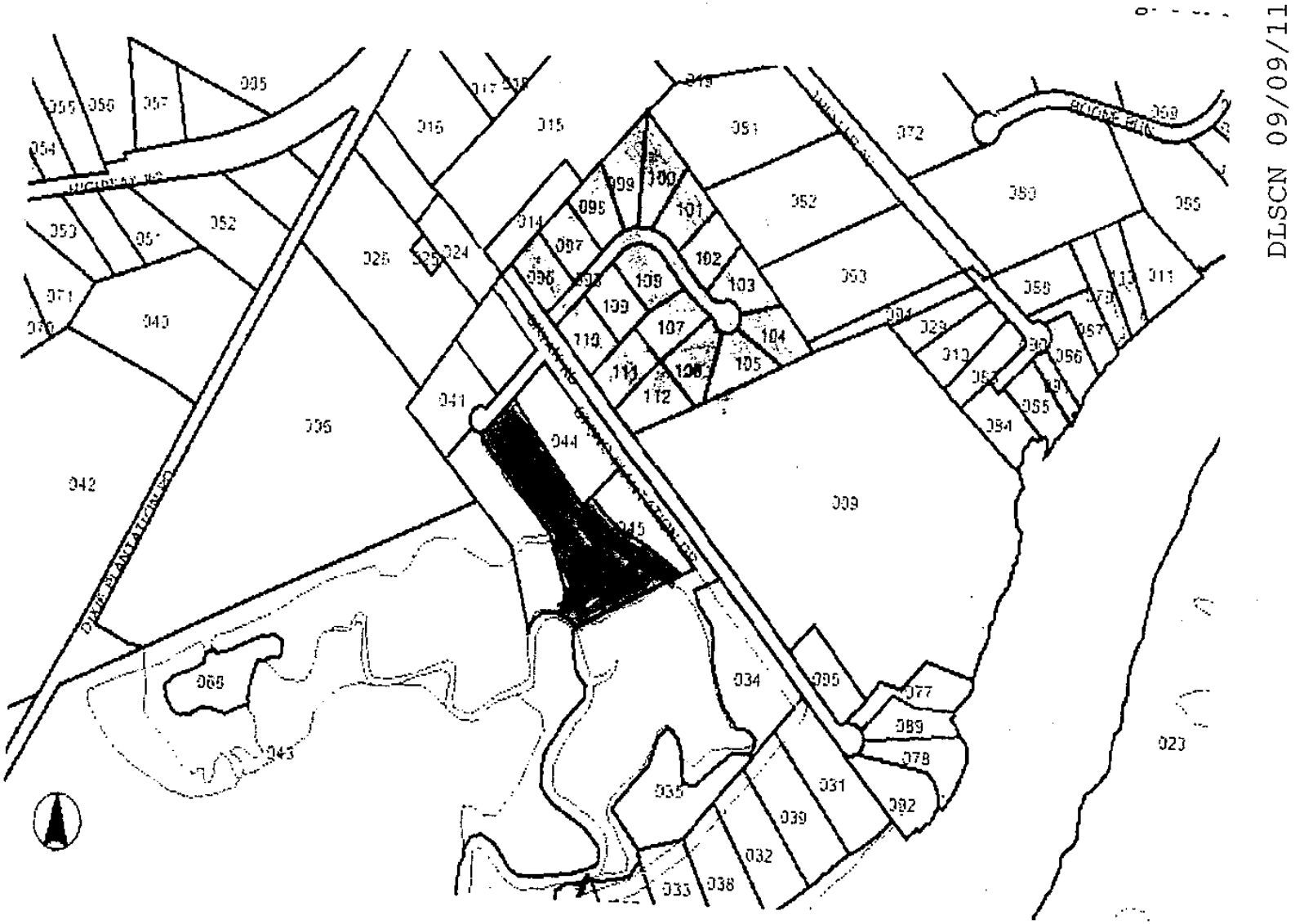
2 DITEC approved lots identified as well as any new configuration

3 Re-alignment with Stono Plantation Road named "Landing Creek Lane" – as indicated on tree survey.

4 Provide legal access – dedicated R.O.W explore → utilize as entrance/exit through to Trexler

5 Buffer (as an excellent show of good faith to the surrounding community) leave in place or install a 50' wide buffer surrounding the property.

6 Letter from OCRM & Corp of Engineers stating there are no wetlands or if present, show their delineation –



PLAINTIFF'S EXHIBIT 19A

PLAINTIFF'S EXHIBIT 20

"SMALL BUT PROGRESSIVE"
TOWN OF HOLLYWOOD
6316 HIGHWAY 162
P.O. BOX 519
HOLLYWOOD, SOUTH CAROLINA 29449-0519
(843) 889-3222
FAX (843) 889-3636
1-800-735-8583 TTY

September 6, 2000

James Loftis
5160 Bryan Road
Hollywood, SC 29455

Dear Mr. Loftis:

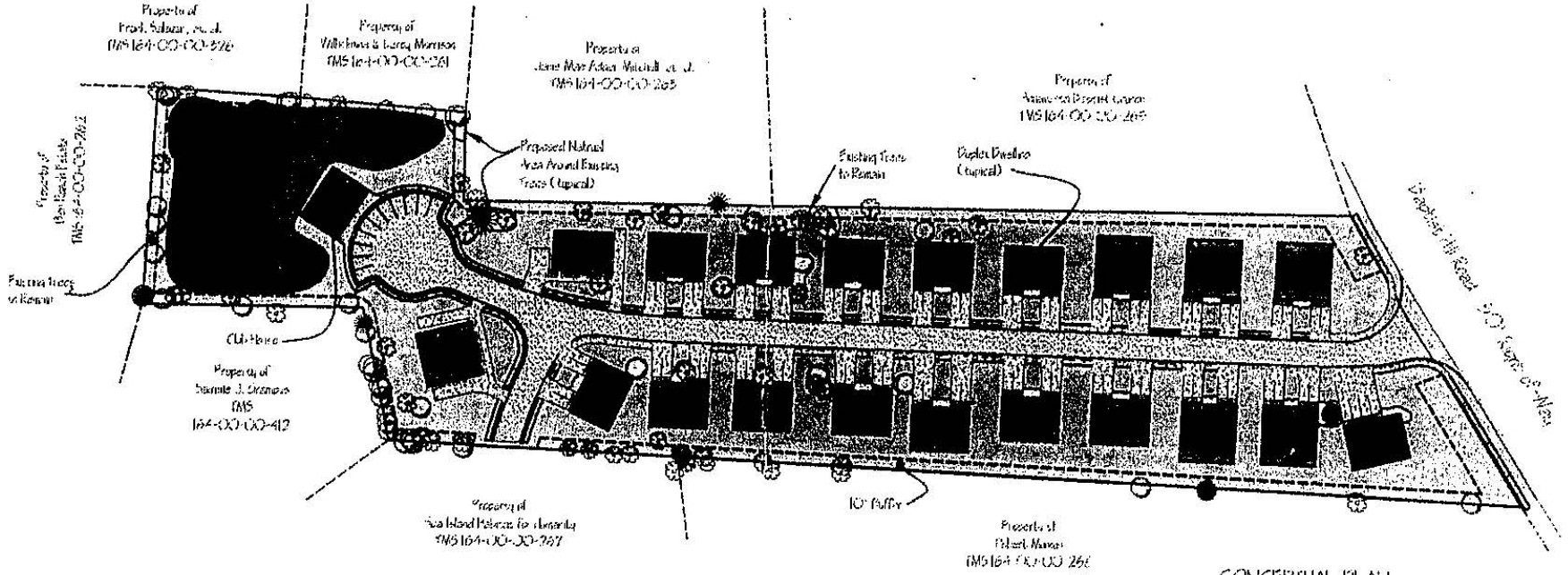
It has come to my attention that you are attempting to construct a fence across a public right-of-way. Please understand this is not permitted and if you attempt to do so the Town of Hollywood will take all

legal action available to be certain the road remains open.

Sincerely,

/s/ N. Steven Steinert
N. Steven Steinert

NSS/dm
cc: Mayor Herbert Gadson



CONCEPTUAL PLAN
FOR AFFORDABLE HOUSING AT THE
BAPTIST HILL ROAD SITE TMS No. 164-00-00-256
OWNED BY THE TOWN OF HOLLYWOOD

GEORGE A.Z. JOHNSON, JR., INC.
ENGINEERS · PLANNERS · LAND SURVEYORS
8171 SAVANNAH HIGHWAY
RAVENEL, SOUTH CAROLINA 29470
(843) 889.1492 · Charleston No. 722.3892 · Edisto No. 889.1415

Job No. 2.2.5.6 Drawn By: Barb Sterrill