

IN THE SUPREME COURT OF TEXAS

No. 02-0260

ANNE BALLANTYNE, MARY MCCOMB, JON SANDIGE, RICHARD SCHIMPF, AND
SUSIE WILLERSON, PETITIONERS,

v.

CHAMPION BUILDERS, INC. AND PRIMERO PROJECTS, L.L.C., RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued on January 22, 2003

JUSTICE O'NEILL filed a concurring opinion, in which JUSTICE HECHT and JUSTICE JEFFERSON joined.

I agree with the Court that the standard for official immunity is objective good faith. But I write separately to note that challenging the board members' deliberative actions in this case in negligence terms, when the claim is that the board members acted with bad intent, is inappropriate. If the members' decision was arbitrary or irrational, Champion might assert a substantive due-process claim. *See, e.g., Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 938 (Tex. 1998). Had Champion been treated differently from other similarly situated developers absent a rational basis, they might assert an equal-protection violation. *See id.* at 939. And if Champion was denied an appropriate and meaningful opportunity to be heard, procedural due process might be implicated.

See id. But negligence simply has no application here where the board members' actions are alleged to be intentional. With this notation, I fully join the Court's opinion and concur in its judgment.

Harriet O'Neill
Justice

OPINION DELIVERED: July 9, 2004.