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SC Court of Appeals

September 27, 2022

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The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

Re: *Alliance to Preserve Old White Horse Road Corridor, LLC, and Mary Jean Horney, Appellants v. RP&L, LLC, and the Greenville County Planning Commission, Respondents.*  
*Appellate Case No.: 2022-001301*

Dear Ms. Kitchings:

Please be advised that a copy of the transcript of the July 24, 2022, hearing was received by Appellants on September 27, 2022.

Sincerely,



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STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) 2021-CP-23-03048  
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 )  
ALLIANCE TO PRESERVE THE OLD )  
WHITE HORSE ROAD CORRIDOR, LLC )  
AND MARY JEAN HORNEY, )  
 ) PLAINTIFFS, )  
 )  
vs. ) TRANSCRIPT OF RECORD  
 )  
RP&L, LLC, AND THE GREENVILLE )  
COUNTY PLANNING COMMISSION, )  
 ) DEFENDANTS. )  
 )  
\_\_\_\_\_ )

July 24, 2022  
Greenville, South Carolina

B E F O R E:

THE HONORABLE G. D. MORGAN, JR., JUDGE.

A P P E A R A N C E S:

WILLIAM F. CHILDERS, JR., ESQ.  
Attorney for the Plaintiff

JOHN DEVLIN, ESQ.  
CHRISTOPHER ANTLEY, ESQ.  
Attorney for the Defendants

Proceedings recorded via DCRP  
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

(WHEREUPON, the proceedings were held via WebEx.)

COURT REPORTER'S NOTE: Due to remote platform interruption and video/audio interference throughout the hearing, those instances are denoted with "audio distortion" in the transcript.

MR. CHILDERS: Your Honor, this is Ms. Mary Jean Horney, who is sitting beside me here. Ms. Horney is the owner of a 32-acre horse farm located on 110 Old White Horse Road. This is an appeal from the planning commission regarding a subdivision that is going in just to the south of her.

The subdivision at issue is what's called a cluster development, which is described as a development where there are small lots and then a large area devoted to what's called open space. The subdivision will sit on 43 acres and consist of 73 single-family homes that amounts to 1.7 homes per acre.

Now, under the land development regulations, Greenville County land development regulations, the open space for these cluster developments have to be preserved for some type of ecological, environmental or recreational purpose. It's, basically, because a cluster development is allowed an exception under normal zoning ordinances and allows them to develop the development this way.

1           Now, there are several errors that we assert that  
2 occurred here. The planning commission held a meeting on  
3 the Stables on May 26th, 2021, where there were several  
4 surrounding residents in attendance in opposition to the  
5 subdivision.

6           I was there, along with one other person who's here  
7 with me today, Ms. Shannon Wilson. We were allotted ten  
8 minutes to speak in opposition. The engineer then spoke on  
9 behalf of the Stables for much longer than that. After it  
10 was all said and done, the planning commission voted five in  
11 favor, four against to approve the Stables.

12           And what we're here before you today is to raise  
13 several errors with that. The first being that the planning  
14 commission did not make any findings of fact regarding the  
15 compatibility of the Stables with Article 3.1.

16           Now, Article 3.1 is a land development regulation that  
17 states that any subdivision can only be approved if it meets  
18 three criteria: Adequate existing infrastructure and  
19 transportation systems exist to support the project, the  
20 project is compatible with the surrounding land use density  
21 and the project is compatible with the site's environmental  
22 conditions, such as, but not limited to wetlands, flooding  
23 and endangered species.

24           Now, importantly, there have been several cases in this  
25 courthouse where the courts have ruled that the planning

1 commission must make specific findings of fact delineating  
2 the reason for a subdivision's approval under Article 3.1.

3 THE COURT: Let me ask you about that. Now, I  
4 understand one of those is actually under a motion to  
5 reconsider. Is that right? That's my understanding. And  
6 these are trial court orders, correct?

7 MR. CHILDERS: That's correct, Your Honor. But I  
8 believe that the reasoning applies equally here. Judge  
9 Miller and Judge Gravely in those cases, basically, held  
10 that they could not exercise their statutory duty to review  
11 the appeal without there being sufficient findings of fact  
12 to determine whether any evidence supports the holding of  
13 the planning commission.

14 THE COURT: You're not arguing that as precedential  
15 value, though, are you?

16 MR. CHILDERS: I'm not. I'm arguing that it's  
17 persuasive value and that the logic remains the same here,  
18 Your Honor.

19 THE COURT: As you know, those don't have any  
20 precedential value.

21 MR. CHILDERS: Correct, but I would just respectfully  
22 submit that they had a reason for those rulings and I think  
23 that reasoning was sound as it relates to Article 3.1 and as  
24 it relates to your duty here sitting as an appellate judge.  
25 I mean, you're obviously not a fact finder in this position.

1 You're here to review the findings of the planning  
2 commission and to determine whether any evidence supports  
3 that decision and whether any errors of law were made.

4 We would submit that the planning commission failed to  
5 make those findings of fact under Article 3.1 and that the  
6 matter be remanded to them to make those findings.

7 Should Your Honor disagree with that and address the  
8 merits of the actual case, we think there were several  
9 errors made on the merits of the case.

10 Now, as I said, under Article 3.1, all of these  
11 criteria must be met for the subdivision to be approved, the  
12 adequate existing infrastructure and transportation systems  
13 exist to support the project. That's the first criteria.

14 Now, the planning commission looked at that. The  
15 proposed entrance for the subdivision is going to be on  
16 Meadow Brook Road, which is a dead-end road that only has  
17 ingress or egress onto Old White Horse Road. Therefore, the  
18 de facto entrance for the subdivision is going to be Old  
19 White Horse Road. However, South Carolina Department of  
20 Transportation said we're not going to comment on that  
21 entrance because it's a county road, not a state road. So  
22 there was no input from DOT on whether or not that proposed  
23 entrance was safe and was compatible.

24 Additionally, under the LDR, the planning commission  
25 can order a traffic study. They have the discretion to do

1 that. In this case, the planning commission did not order a  
2 traffic study because they said that under the LDR there has  
3 to be 90 homes for the development to trigger the need of a  
4 traffic study and because the Stables was only ordering 73  
5 homes, they didn't order one.

6 THE COURT: Can you argue add the two when another --  
7 that subdivision or area right there, could you add those  
8 two to come up with the 90?

9 MR. CHILDERS: That's what we argued, Your Honor.  
10 There's another development going in about a mile down the  
11 road that's going to add 40 to 45, I believe, homes and it  
12 would give well above the 90-degree quota that the planning  
13 commission sited. Of course, under the LDR, there's no  
14 requirement that there be 90 homes. They have broad  
15 discretion to order a traffic impact study and the LDR  
16 recommends one with, at least, 90, but it is not a  
17 requirement.

18 Also, the fire department did not comment on this  
19 proposed entrance as to whether or not they would be able to  
20 safely access the subdivision. Planning staff did reach out  
21 to them, but, apparently, they did not return the call and  
22 the planning commission did not delay the boat to get the  
23 fire department input on the proposed entrance.

24 So we believe again that there are no findings of fact  
25 to support whether there's adequate existing infrastructure,

1 but on the merits of that, that there is, in fact, no  
2 evidence to support adequate existing infrastructure exist.

3 The next criteria is compatibility with the surrounding  
4 land use density. This is a very important part of our  
5 case. The area where the Stables is going to sit, is  
6 proposed to sit is agricultural and rural. It is farm land.  
7 It is horse land.

8 My client owns a 32-acre horse farm right there. To  
9 the immediate southeast, I believe, is another 58-acre horse  
10 farm. There's also the equestrian park out there that I  
11 believe is 60-something acres that is in the very close  
12 proximity to the Stables.

13 As opposed, the Stables is going to, as I said, have 73  
14 homes, over 43 acres, with a large majority of those homes,  
15 granted, are crammed on one side of the actual development  
16 and the other part of the land being called open space,  
17 which leads into my next point.

18 The open space for this development, there were several  
19 errors related to that. Under the LDR Article 11, as I said  
20 at the beginning, the open space must have some purpose,  
21 some recreational, environmental or ecological purpose. In  
22 this case, we don't know what the purpose of the open space  
23 is going to be. The LDR requires that the preliminary plan  
24 state the proposed uses for the open space, but to this day,  
25 there are no proposed uses listed on this preliminary plan.

1 I believe the planning commission would argue that  
2 that's more of an administrative function that can be  
3 remedied, but we would argue that the intent of the LDR is  
4 to make sure that this open space is being used for some  
5 proper purpose and it's not just, you know, tacked on to get  
6 around zoning ordinances related to this. We would submit  
7 that this open space does not have any environmental,  
8 ecological or recreational purpose.

9 There is also an issue in this case that I bring up  
10 because it did cloud the whole proceeding. Going into the  
11 planning commission meeting, the planning commission holds  
12 on its website the preliminary plan that is up for approval  
13 theoretically, the preliminary plan that is going to be  
14 voted on at the upcoming meeting. When we went to access  
15 the preliminary plan on the planning commission's website,  
16 the preliminary plan that was uploaded was dated March 31st,  
17 2021, and we relied on that as being, essentially --

18 THE COURT: The hearing was May 26th, right?

19 MR. CHILDERS: That's correct. That's correct.

20 And when we get to the hearing, it turns out the  
21 preliminary plan is dated April 26th, 2021, and it had  
22 several changes to it. Number one, the second, I'll refer  
23 to it as the revised preliminary plan, it did label some of  
24 the open space as developable, whereas the original  
25 preliminary plan did not list any open space as developable.

1 That's important because under the LDR, you have to have  
2 developable and undevelopable open space.

3 Also, the configuration of the open space, the actual  
4 dimensions changed as well. The original plan had, I  
5 believe, 14 acres of open space, whereas the revised plan --

6 THE COURT: It went down like 12 or something?

7 MR. CHILDERS: 12.9, I believe.

8 THE COURT: 12.9, not a real significant --

9 MR. CHILDERS: Correct, Your Honor, but it did sort of  
10 taint the arguments that we were able to make at the  
11 planning commission because we would have focused rather on  
12 -- we would have obviously focused on the revised plan had  
13 we have had that in advance, we would not have argued that  
14 there was no developable open space labeled when, clearly,  
15 there was on this revised plan that was not made available  
16 on the planning commission's website in advance of the  
17 hearing.

18 THE COURT: Let me ask you, wasn't it filed on April  
19 the 26th? Didn't they have the plans in the planning  
20 commission's files on April 26th? They may not have been on  
21 the website, but.

22 MR. CHILDERS: They did, Your Honor. And I actually  
23 served a FOIA request to request any and all documents  
24 related to the Stables subdivision. Unfortunately, I did  
25 not receive a response to that because it appears that the

1 response was sent to an improper e-mail address. They  
2 inputted my e-mail address incorrectly. That is in the  
3 record at Page 359, I believe -- 353 to 359 covers the FOIA  
4 request.

5 THE COURT: And accepting the FOIA request, could  
6 anybody just go up there and look -- if it was put in the  
7 file on April the 26th, which is a month before the hearing,  
8 were they available to the public? Because I believe those  
9 records are open to the public; are they not?

10 MR. CHILDERS: That's what the planning commission says  
11 and I don't have any reason to dispute that, I would just  
12 argue -- I would just point out, rather, that this plan was  
13 held out to the public as being the preliminary plan up for  
14 approval at the meeting. I would think the public has a  
15 right to reasonably rely on that. If the planning  
16 commission is listing that on their website as the plan that  
17 is up for approval, that the public is reasonable in  
18 assuming that that's the proper plan.

19 And, lastly, I would point out, Your Honor, that this  
20 area is -- the proposed subdivision is incompatible with the  
21 surrounding land use density, but it's also incompatible  
22 with the comprehensive plan of Greenville County.

23 While I recognize that the comprehensive plan is not  
24 binding law, it's more of a guidance, the area where the  
25 Stables is going to be located, is proposed to be located as

1 suburban edge, which provides for zero to one homes per  
2 acre, whereas the Stables, obviously, is 1.7 homes per acre,  
3 but it is not in keeping with the suburban edge nature under  
4 the comprehensive plan, which is rural, which is  
5 agricultural, which is what the area where the Stables is  
6 located is right now. I mean, it's purpose -- it's rural,  
7 it's agricultural. It fits perfectly under suburban edge,  
8 whereas the Stables is more of a suburban --

9 THE COURT: It's out near the Green Valley area?

10 MR. CHILDERS: It's off of Old White Horse Road, which  
11 is like a six-and-a-half-mile stretch. It's not terribly  
12 far from Green Valley, but Green Valley has different  
13 neighborhoods out there, which is sort of what some of the  
14 discussion was at the planning commission meeting.

15 The neighborhoods near Green Valley are in keeping more  
16 with the suburban-neighborhood-type look there. They're  
17 allowed greater density for zoning. They're also in a  
18 separate category under the comprehensive plan. And we  
19 believe that one of the commissioner's was under the  
20 mistaken belief that the site of the Stables was more like  
21 these homes out near Green Valley.

22 We have no idea which neighborhood he may be referring  
23 to because it's not clear from the Minutes and there's  
24 obviously no order or written findings, but based on our  
25 view of the surrounding areas that he was comparing it to an

1 improper zoning classification and an improper area under  
2 the comprehensive plan.

3 We would respectfully request that you remand this  
4 matter to the planning commission for them to make detailed  
5 findings of facts under Article 3.1 to support their  
6 decision. If not -- if you address the merits of this  
7 appeal, we would ask that you reverse the decision of the  
8 planning commission.

9 Thank you.

10 THE COURT: Thank you, sir.

11 All right. Mr. Devlin.

12 MR. DEVLIN: Good morning, Your Honor. John Devlin  
13 here on behalf of the County Planning Commission. I have  
14 provided to Your Honor and opposing counsel --

15 THE COURT: Could you move that microphone? We've got  
16 to do it on WebEx, so -- you don't have to lean down, but  
17 just -- there you go, just put it in front of you. That's  
18 good.

19 MR. DEVLIN: Please let me know if my voice wanders.  
20 Staying in one place is not one of my strengths  
21 traditionally.

22 I have provided the Court and opposing counsel with a  
23 notebook prior to this hearing which contains exhibits that  
24 I will or might refer to. I believe that all of them are in  
25 some part already in the record on appeal. If they are not,

1 I can remedy that.

2 I also have, Your Honor, available for your review a  
3 full-size version of the March preliminary plan and the  
4 April revised plan. I've left those out on this table in  
5 case that is something that Your Honor wishes to refer to  
6 and I've provided copies of those to counsel, as well.

7 Before I get into the details of what Mr. Childers has  
8 argued, I need to correct something that is in the brief  
9 that has been filed with the Court. Mr. Childers argues  
10 that the County has conceded error in an exchange of e-mails  
11 between himself and the former assistant county  
12 administrator, Paula Gucker. And that's at transcript 72  
13 and 73 of the record on appeal. It's also Exhibit 7 of the  
14 notebook that I've provided you.

15 I would encourage Your Honor if that is an issue to  
16 review what Ms. Gucker, in fact, said. The word error never  
17 appears. The word mistake never appears. A better reading  
18 of the County's response to Mr. Childers is we hear you and  
19 we will look into it. But unlike what has been stated by  
20 the appellate, there has been no confession of error. There  
21 has been no agreement, as appellate says in its original  
22 brief. At Page 14, it is undisputed that public did not  
23 have access to revised preliminary plat prior to the May  
24 hearing. That simply is not true.

25 As Your Honor already has noted, the April revised plan

1 was available in April to anyone who wanted to look at it.  
2 It might not have been on the website, nor was the website  
3 as far as I can determine held out to be the entire universe  
4 of documents relevant to that particular subdivision.

5 These plats, Your Honor, are an evolving document.  
6 They are various iterations of these plans that come through  
7 and not every one is put up on the website the day that it  
8 comes into the County offices. There is notes here that  
9 what he is complaining violates their due process rights was  
10 available from the day it got to the County until the day of  
11 the hearing.

12 Similarly, there is no possible legal argument that his  
13 FOIA rights or the appellate's FOIA rights were violated.  
14 What Mr. Childers did not tell you because it would not be  
15 good advocacy to tell you is that his FOIA request was made  
16 on May the 17th, 2021. The hearing was nine days later.  
17 I'm sure Your Honor is aware that his FOIA request allows  
18 me, a governmental body ten days in which to respond to say  
19 whether or not they will provide documents. And the County  
20 did respond in a timely fashion to say we will provide  
21 documents, but by that point, the hearing had already  
22 occurred. He asked too late to get the documents via FOIA.

23 So it is simply not accurate to say that we -- because  
24 there was a mistake in his e-mail address three weeks after  
25 the hearing, he was prevented from going to the County and

1 looking at the documents that he complains of not having the  
2 ability to see.

3 The standard of review in this case, Your Honor, is the  
4 any evidence standard. It's the jury standard. If the jury  
5 tells me I am wrong and my client owes a million dollars and  
6 I think there's evidence in the record that doesn't support  
7 that, ("audible distortion") enough evidence in the record  
8 that does support that. For the appellates to prevail in  
9 this case, they must show that there's no evidence in the  
10 record that supports approval of this subdivision.

11 We provided Your Honor with ("audible distortion")  
12 transcript. We also have as a housekeeping matter the  
13 actual audio recording of that transcript, which I can enter  
14 into the record. It is a CD. ("Audible distortion"). The  
15 written transcript has been made available, Defendant's Tab  
16 3.

17 And if you look at the issues that need to be  
18 ("Inaudible distortion"). At Page 6 of the transcript,  
19 density is addressed. It meets the purpose of the cluster  
20 development. Traffic issues are specifically addressed.  
21 Kevin ("Inaudible distortion"), the engineer for the  
22 ("audible distortion") described the ("audible distortion")  
23 and addressed the concerns that were raised by the planning  
24 commission.

25 They may not agree with his contentions. I sometimes

1 do not agree with the jury when it disagrees with me. But  
2 under the any evidence standard, the fact that they disagree  
3 with evidence that was presented to the planning commission  
4 does not mean that they get to appeal. Homeowner issues,  
5 Page 7, again, of the unofficial transcript of record,  
6 ("Audible distortion") Pages 7 and 8. Consistency with the  
7 surrounding area was addressed on Page 9. The record that  
8 is available to the public is replete with evidence that  
9 supports the decision.

10 Argument counsel makes with regard to the lack of  
11 findings of fact and conclusions of law which they ("Audible  
12 distortion") requires remand or determination of fact.  
13 ("Audible distortion"). It does not say the planning  
14 commission must abide by ("Audible distortion") conclusions  
15 of law. And as pointed out in the brief, if the Greenville  
16 County Council in an act of ordinances wanted to require  
17 findings of fact and conclusions of law, they know how to do  
18 that because the other administrative boards specifically  
19 require that. ("Audible distortion") ordinances of  
20 Greenville County. Now, County Council can require if it  
21 chooses, it did not choose --

22 THE COURT: So your argument is this statute does not  
23 require findings of fact, whereas others, like the zoning  
24 commission do, the statute specifically says findings of  
25 fact are required, is that what your argument is?

1           MR. DEVLIN: Yes, sir. My contention is there needs to  
2 be evidence in the record that supports the decision. And  
3 if they can show that there is a pure error of law that  
4 infects the proceedings, then they have a right to complain  
5 to this Court and seek a reversal and remand.

6           But the only error of law that I am able to ascertain  
7 that has any weight to it, Your Honor, is the claim that  
8 their due process rights were violated by not having the  
9 revised preliminary plan available to them at the hearing in  
10 May. And as I've already discussed, it was available to  
11 them. They just went looking for it in, unfortunately, the  
12 wrong place. There's nothing in the requirements for the  
13 County that mandate everything go onto the website as soon  
14 as it arrives.

15           THE COURT: What about Mr. Childers' argument that the  
16 issue has been, at least -- and it's not precedential value,  
17 but Judge Gravely and Judge Miller apparently looked at  
18 similar issues and have determined that it does need to go  
19 back for findings to the planning commission?

20           MR. DEVLIN: Yes, sir, I recognize that. My firm was  
21 involved in both of those, we are well familiar with that.  
22 I would be happy to let the author on those cases, my now  
23 client, Mr. Antley from the County, address that, if you  
24 wish. Because we do not believe those bind this Court in  
25 any way, fashion or form and we do not believe that they

1 hold much persuasive value under the facts of those cases.  
2 If Your Honor, please, I'd like to let Mr. Antley address  
3 that.

4 THE COURT: I'll hear briefly from Mr. Antley, yes.

5 MR. DEVLIN: Thank you, Your Honor.

6 MR. ANTLEY: Your Honor, unfortunately, I was counsel  
7 for most all of these. With regard to Judge Miller's one,  
8 it was reconsideration for months after he issued that one.  
9 We had oral argument. He knew our position. We expressed  
10 to him that we would probably appeal that because the  
11 statute flatly doesn't require for that. And then it sat  
12 and then, finally, Vickers, the developer, withdrew their  
13 application rendering it moot.

14 Judge Gravely's order happened -- which as we've  
15 discussed in here, we're discussing a ghost. Article 3.1  
16 under the LDR no longer exist. It was repealed many years  
17 ago. The Stables was in before it. Judge Gravely's order  
18 had a case in which the planning commission had been told  
19 while 3.1 existed that it did not apply to the portions of  
20 the county. So the planning commissioners flatly did not  
21 consider the 3.1 factors for that particular neighborhood.

22 When Judge Gravely had it, he's looking at the record  
23 and he's saying -- if you look at the actual order, he's  
24 like, look, I can't even tell if these guys were considering  
25 the factors or not considering these factors because some of

1       them don't think 3.1 applies, so they're not going to  
2       consider it at all. So he finds that -- and mind you, he  
3       doesn't say I'm remanding you to file written findings of  
4       fact or anything, he just says I can't tell from this record  
5       what y'all decided, so he sent that back. And that's  
6       actually pending.

7               I also point out that -- and we can provide you with  
8       citation after citation where Judge Gravely himself has on  
9       the record gone back and looked at the transcript or  
10      whatever and found any evidence to support a case we did  
11      with (inaudible), I don't remember the name of it. You  
12      might have been involved with that, too, with Judge Verdin.  
13      I mean, we can hit you with order after order after order.  
14      Just recently, the Langford Hills) case, Judge Verdin held  
15      up a -- I believe that was a denial, but nonetheless, was an  
16      any evidence and she goes back in her order and she says, I  
17      see this here, this here and this here.

18             And the reason why, Your Honor, the any evidence  
19      standard, again, points out that it's the jury standard. We  
20      don't know why 12 people exactly decided what they decided.  
21      We don't poll them. We don't make them have a consensus  
22      opinion they write. We just look back and see is there  
23      evidence to support it. I would also point out the reason  
24      why is because the planning commission is given this kind of  
25      discretion because the court is kind of told this is really

1 a local planning matter and the court really needs to be  
2 careful about when it steps in. And so that's it.

3 And if you do recognize statute, which you just said,  
4 the statute on zoning and the statute on -- the state  
5 statute on land development regulations, they mirror each  
6 other right up until you get to this process. Zoning goes  
7 into the findings of fact, all kinds of stuff. State  
8 legislature just said different thing for the planning  
9 commission.

10 Thank you.

11 THE COURT: All right.

12 MR. DEVLIN: Your Honor, very briefly.

13 Thank you, Mr. Antley.

14 Counsel has argued that 3.1 was violated in a number of  
15 manners, particularly with regard to the open space  
16 requirements in a cluster development. They claim that the  
17 cluster -- that the open space area is not situated  
18 carefully and, in effect, seek to substitute their judgment  
19 as to how to configure the subdivision for that of the  
20 developer. And they -- that cluster zoning ordinance  
21 requires only that there be reasonable practical access.  
22 And I have the plats before you which you can see where the  
23 reasonable practical access is.

24 And Your Honor would recall that one of the  
25 requirements for the open space is that it be contiguous.

1 In order to have contiguous space in a cluster-zoned area,  
2 you've got to put it in one lump. And that pretty much  
3 means that it's going to be on one side or the other.  
4 You're not going to have a 40-lot neighborhood with 40 lots  
5 having access to the open space. That's just difficult and  
6 it's a case-by-case analysis. It's based on the land and  
7 what the topography is, basically.

8 With regard to the argument that there was no proposed  
9 use provided, there is under 11.3.2 regarding cluster  
10 developments -- and that's at Tab 10A of my notebook -- a  
11 statement that says: The Developable and undevelopable  
12 acreage of open space shall be shown on the preliminary plan  
13 and proposed uses for these areas shall be shown on the  
14 plan.

15 The first iteration did not have a proposed use. The  
16 second iteration said developable. I would submit that that  
17 meets the requirements of 11.3.2. But it does not mandate  
18 that a developer have a plan to develop the open space. It  
19 simply says a proposed use must be shown. Well, this  
20 developer apparently did not have an idea for what it was  
21 going to do with the open space, although there is evidence  
22 in the record from an engineer who does this for a living  
23 that it was easily developable.

24 Finally, Your Honor, the first tab in my notebook is  
25 from the definitions in the Greenville County LDR. And I

1 point out to you something that is significant and that  
2 hasn't been discussed very much in this. A preliminary plan  
3 is defined as a tentative plan showing a proposed  
4 subdivision design submitted to the planning commission for  
5 preliminary consideration and approval. It is not the final  
6 plat. That this plat was approved in May of 2021 is not  
7 gospel that it will be built in accordance with that plat.  
8 Before any house can be built, before any -- before this  
9 plat can be subdivided in any way at all, a final plat must  
10 be approved.

11 And we have in the record here at Exhibit 9, Tab 9 a  
12 letter to the developer dated June 27 as to what the  
13 requirements are. And significantly, because the appellates  
14 complain, the fire department never even said anything for a  
15 final plat to be approved, that June 27, 2021, letter makes  
16 clear that approvals from the following agencies must be  
17 received prior to granting final plat approval. And the  
18 fourth one is North Greenville fire district.

19 This part of the process of approving subdivisions is  
20 not the final end all, be all of the construction process.  
21 It gives a developer the right to go in and begin to do work  
22 while it is in the process of getting the rest of the  
23 necessary approvals. And sometimes they can and sometimes  
24 they can't. But a lot of the rabbits we have been chasing  
25 in this appeal have to do with things that would be approved

1 at the final plat approval if the developer has met its  
2 burden at that point.

3 We believe there is ample evidence in the record that  
4 is public and has been available to the appellate to sustain  
5 this. We do not see any reason for this to be remanded. We  
6 do not believe that there is any requirement that findings  
7 of fact be written down and provided or conclusions of law  
8 be written down and provided to the public when, in fact,  
9 the public record shows what they discussed, what the record  
10 was and the process by which they went about it. I believe  
11 this is a decision for the planning commission, which needs  
12 to be sustained.

13 Thank you, Your Honor.

14 THE COURT: Mr. Childers, anything?

15 MR. CHILDERS: Yes, sir, briefly, Your Honor.

16 I just would like to note that Article 3.1 was  
17 repealed, but that was on August 19th of 2021, and the  
18 repeal was shall apply perspective only. So it was in  
19 place at the time of this meeting. It would apply to this  
20 subdivision. And any repeal of Article 3.1 was perspective  
21 only. I'd like to, at least, offer that ordinance into  
22 evidence as an exhibit.

23 There were a couple cases mentioned where Mr. Antley  
24 talked about cases where there were no specific requirements  
25 for findings of fact. One of those was included in their

1 notebook. It's marked Three Properties vs. Greenville  
2 County Planning Commission 2022-CP-23-01106. Notably, that  
3 appeal, the meeting was held after Article 3.1 had been  
4 repealed. It was held on January 26, 2022. You can see  
5 from the order that 3.1 was not an issue in that case. The  
6 only remand we're seeking here deals with Article 3.1, so we  
7 think that that case is easily distinguishable.

8 I would just note again that for this Court to exercise  
9 its appellate duty to review this decision, we believe that  
10 there must be adequate findings of fact to support the  
11 approval under 3.1. I believe that's what Judge Miller and  
12 Judge Gravely were going for and we ask you to do the same  
13 in this case.

14 Thank you.

15 THE COURT: Thank you both for your arguments. I read  
16 the whole file last night and I will reread it again after  
17 your arguments. I will take it under advisement and let you  
18 know my decision.

19 Thank you both for your arguments.

20 MR. DEVLIN: Thank you, Your Honor.

21 MR. CHILDERS: Thank you, Your Honor.

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CERTIFICATE OF TRANSCRIBER

1  
2  
3  
4 I, PENNY M. JOHNSON, do hereby certify that the  
5 foregoing transcript is a true and correct record of the  
6 recorded proceedings; that said proceedings were transcribed  
7 to the best of my ability from the audio recording and  
8 supporting information; and that I am neither counsel for,  
9 related to, nor employed by any of the parties to this case,  
10 and I have no interest, financial or otherwise, in its  
11 outcome.  
12

13 September 26, 2022  
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15

16 *Penny M. Johnson*  
17 Penny M. Johnson  
18 Court Reporter III  
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