

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

C.A. No.: 2022-CP-23-04704

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson dated August 5, 2021 Plaintiff/Respondent,

v.

Greenville County Planning Commission Defendant/Appellant.

MEMORANDUM OF APPEALABILITY

Per the Court’s letter of May 2, 2023, Appellant Greenville County Planning Commission (the “Planning Commission”) submits this memorandum addressing the appealability of the orders on appeal, the March 31, 2023 Order (the “March Order”) and the April 25, 2023 Order (the “April Order”). Judge Price’s orders were issued in an appellate capacity from a decision of the Planning Commission denying a preliminary subdivision application for the proposed Langford Hills subdivision.

BACKGROUND

The Planning Commission has addressed an application for the Langford Hills subdivision at least four times, and counsel for the Respondent (“Developer”) has filed three separate actions appealing decisions of the Planning Commission relative to Langford Hills.

On November 17, 2021, the Planning Commission considered a subdivision application for Langford Hills (the “November Application”). See Minutes of November 17, 2021 Planning Commission meeting, attached as Exhibit 1, at 4-5. A motion to approve the November Application failed by a vote of 3-3. *Id.* at page 5.

On January 26, 2022, the Planning Commission considered another application for Langford Hills (the “January Application”). See Minutes of January 26, 2022 Planning Commission meeting, attached as Exhibit 2, at 11-13. A motion to approve the January Application failed by a vote of 3-4. *Id.* at 5. Mark III Properties, Inc. (“Mark III”) appealed this decision, and the Honorable Letitia H. Verdin denied the appeal. Order attached as Exhibit 3 (“Judge Verdin’s Order”). Mark III did not appeal this order.

On April 27, 2022, the Planning Commission considered yet another Langford Hills application (the “April Application”). See Minutes of April 27, 2022 Planning Commission meeting, attached as Exhibit 4, at 9-12. A motion to deny the April Application passed by a vote of five in favor and four against. *Id.* at 12. Mark III appealed this decision under case caption number 2022-CP-23-02860 but withdrew its appeal prior to a response from the Planning Commission.

On July 27, 2022, the Planning Commission again considered an application for Langford Hills (the “July Application”). See Minutes of July 27, 2022 Planning Commission meeting, attached as Exhibit 5, at 6-9. A motion to deny the July Application passed by a vote of 4-3. *Id.* at 7. This motion was based in large part on the reasons underlying the previous denials, Judge Verdin’s Order, and that the subdivision application was “inconsistent with the Comprehensive Plan.” *Id.* at 8.

Developer appealed, and the matter was heard by Judge Price. Judge Price reversed the decision of the Planning Commission in a sweeping order granting the following relief:

1. The Respondent's motions to dismiss this appeal based on the doctrines of *res judicata* and/or collateral estoppel are denied.
2. The Planning Commission's denial of the Appellant's preliminary subdivision applications considered on July 27, 2022 is hereby **VACATED**.
3. The issue shall be remanded back to the Planning Commission.
4. The Appellant may refile a new application with the Planning Commission for the Langford Hills Subdivision. The Appellant has leave to make modifications to the application to ensure that it substantially complies with relevant statutes, land development regulations, and any applicable ordinances.
5. In its consideration for approval, conditional approval, or denial, **the Planning Commission is barred from (1) using the Comprehensive Plan as a basis for denial, (2) Judge Verdin's June 3, 2022 Order as a basis for denial, and (3) any of the other reason's similar applications were denied previously as a basis for denial.**
6. Should the Planning Commission decide to deny this new application, then the Appellant shall have leave to file an expedited appeal per S.C. Code Ann. § 6-29-1150. I am retaining jurisdiction in this matter and, if Appellant files a subsequent appeal pursuant to this order, then the Planning Commission shall provide my chambers with a detailed list of the reasons and detailed explanations as to why the Planning Commission has denied the Appellant's new application. Should I find that the reasons or basis for denial is or are not supported by law, the facts, are arbitrary, unreasonable, harmless error or an abuse of discretion, then the matter will again be remanded back to the Planning Commission with direct orders to approve the application as filed.

March Order attached as Exhibit 6 (emphasis added). The Planning Commission moved to alter or amend. Motion attached as Exhibit 7. Judge Price denied the motion. April Order attached as Exhibit 8. This appeal followed.

ARGUMENT

"The right of appeal arises from and is controlled by statutory law." *N. Carolina Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986).

Appealability is generally governed by S.C. Code Ann. § 14-3-330, which provides in pertinent part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction[.]

Here, Judge Price's orders either are final orders, involve the merits, affect a substantial right, or have the effect of granting an injunction. Quite simply, the appeal has been addressed and Judge Price has completely tied the Planning Commission's hands and decreed that he will retain jurisdiction to make sure that the exact result he envisions is achieved. The order leaves no doubt as to whether the Developer will prevail.

The Planning Commission has not been able to locate any decision directly discussing the appealability of an order issued by the Circuit Court in an appeal taken pursuant to S.C. Code Ann. § 6-29-1150. It has, however, located a recent, procedurally similar case in which neither this Court nor the South Carolina Supreme Court questioned the appealability of the circuit court's order reversing the decision of the planning commission and remanding the matter for consideration of a new application. *Grays Hill Baptist Church v. Beaufort Cnty.*, 427 S.C. 57, 61, 828 S.E.2d 234, 236 (Ct. App. 2019), *rev'd*, 431 S.C. 630, 850 S.E.2d 29 (2020). In *Grays Hill*, the planning

commission denied a church's requested development permit. The church appealed, and the master (sitting as a special circuit judge) reversed. The county appealed to this Court, which reversed and reinstated the planning commission's decision. The church then sought a writ of certiorari, and the Supreme Court reversed once again and ordered the county to issue a construction permit to the church. Similarly, the Planning Commission here seeks a review of Judge Price's order reversing its decision.

The March Order is a final order as to the requested subdivision application that was the subject of the appeal. Judge Price has ordered that Langford Hills may apply again or may amend its application. There is nothing left to be done with respect to the original application. As such, the March Order is a final order.

In the alternative, this order involves the merits or affects a substantial right because it strips the Planning Commission of its ability to fully and freely consider any subsequent application or amended application (to the extent Judge Price had the authority to order that the application could be amended). An order "involves the merits," as that term is used in S.C. Code Ann. § 14-3-330(1), and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense. *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); *Knowles v. Standard Sav. & Loan Ass'n*, 274 S.C. 58, 261 S.E.2d 49 (1979). Here, the March Order forbids the Planning Commission to consider the evidence and the law which supported its determination to deny the subdivision application and was also one of the bases for its response to the Developer's appeal.

Moreover, the March Order affects a substantial right because it purports to determine several matters that should be within the purview of the Planning Commission. *Thornton v. S.C.*

Elec. & Gas Corp., 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) (“[A]n appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case ...”); *Cooke v. Palmetto Health All.*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (holding in an appeal on subject matter jurisdiction that “the circuit court weighed the evidence and concluded that the exclusivity provision did not apply,” and that, thus, the circuit court “finally determined a substantial matter forming a part of the Hospital’s defense,” and that therefore the order was appealable”); *Collins v. Sigmon*, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989) (holding that an order on a motion to amend was properly appealable because the order reached “the legal substance or merits of certain of [defendant’s] proposed counterclaims” and effectively struck them, the interlocutory order was sufficiently final to be appealed).

Lastly, Judge Price’s order has the effect of granting an injunction in providing that “the Planning Commission is barred from (1) using the Comprehensive Plan as a basis for denial, (2) Judge Verdin’s June 3, 2022 Order as a basis for denial, and (3) any of the other reason’s similar applications were denied previously as a basis for denial.” Orders in the nature of an injunction, such as this one, are immediately appealable whether the words “injunction” or “enjoin” are actually used. *Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) (allowing appeal where “the order was in the nature of an injunction, prohibiting the Landowners from contacting potential members of the plaintiff class.”).

CONCLUSION

For any and all of the above reasons, Judge Price’s orders are immediately appealable and this appeal should be allowed to proceed consistent with the South Carolina Rules of Appellate Procedure.

Respectfully submitted,

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May 12, 2023
Greenville, South Carolina

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Commission*

EXHIBIT 1

**(Minutes of November 17, 2021
Planning Commission Meeting)**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

Greenville County Planning Commission Minutes
November 17, 2021 at 4:30 p.m.
Conference Room D at County Square

Commissioners Present: S. Bichel, Chair; J. Bailey, Vice Chair; M. Shockley; C. Clark; J. Rogers; F. Hammond; E. Forest

Commissioners Absent: M. Looper

County Councilors Present: L. Ballard

Staff Present: T. Coker; T. Stone; J. Henderson; J. Wortkoetter; H. Gamble; K. Walters; A. Lovelace; M. Staton; B. Denny; R. Jeffers-Campbell; N. Miglionico; IS Staff

1. Call to Order

Chairman Bichel called the meeting to order at 4:30 p.m.

2. Invocation

Ms. Clark provided the invocation.

3. Approval of the Minutes of the October 27, 2021 Commission Meeting

Motion: by Mr. Rogers, seconded by Mr. Bailey, to approve the minutes of the October 27, 2021 Commission meeting, as presented. The motion carried by voice vote.

4. Preliminary Subdivision Applications

PP-2021-209: Lakeview

VAR2021-110: Lakeview (Emergency Access Variance)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Lakeview, a cluster subdivision under Open Space, Option 1 of the Zoning Ordinance. The project site is located just north of the intersection of Hunts Bridge Rd and White Horse Rd. The applicant is requesting 40 lots on split zoned properties including R-15 single family and R-S residential suburban zoning district. Access is provided off of Whitehorse Rd – a state road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The proposed subdivision is compatible with the Suburban Edge Character area of the Comprehensive Plan. Suburban Edges are low-density residential areas that offer opportunities for low-intensity development that is well integrated with the natural landscape and agricultural uses. Residential development may occur as individual single family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application proposes 2.7 units per acre.

#VAR2021-110:

The applicant requests a variance emergency access requirements set forth at LDR 8.8.1A. In lieu of a secondary access point, the primary road is 26' wide from the entrance to the first intersection. The Engineering & Maintenance Division supports the variance as requested.

Staff recommends approval of the preliminary plan and variance with the standard and specific

requirements.

Discussion: Ms. Clark asked Mr. Fogleman, the project engineer, where the open space access was located. Ms. Clark explained open space access should not run through the sewer easement and if it was in another location it should be accurately labeled. Mr. Fogleman stated the main access to the open space was located at the end of Thorndike Way. Mr. Fogleman said he would ensure it is labeled correctly in the future.

Motion for PP-2021-209: by Mr. Shockley, seconded by Mr. Forest, to approve PP-2021-209 with a condition to accurately denote the access points. The motion carried unanimously by voice vote with one absent (M. Looper).

Motion for VAR2021-110: by Mr. Shockley, seconded by Mr. Forest, to approve VAR2021-110. The motion carried unanimously by voice vote with one absent (M. Looper).

PP-2021-218: Parker's Summit

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Parker's Summit, a cluster subdivision under Open Space Option 1 of the Zoning Ordinance. The site is located near the Greenville-Spartanburg county line approximately a mile southeast of the intersection of Anderson Ridge Rd & Hwy 296. The applicant is requesting 171 lots on 101 acres in the R-S Residential Suburban zoning district. Access is provided off of White Circle Rd – a county road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The proposed subdivision is compatible with the Suburban Edge Character area of the Comprehensive Plan. Suburban Edges are low density residential areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application proposes 1.6 units per acre.

Staff recommends conditional approval of the plan with the standard and specific requirements.

Approval conditions are as follows:

- Widen White Circle Road to 20 wide with 25 ROW on development side. Road may have to be widened on development side due to ditch-ditch ROW.
- Install a southbound left-turn into the site. Extend a 3-land road section on Anderson Ridge Rd from
- CESA to White Circle so as not to have an "hourglass" design. Exhaust all efforts to obtain ROW from TM #0550020100501, TM#0550020100603, TM# 0550020100600, TM#0550020100604 and TM#0550020100601.
- All required traffic improvements required by the TIS shall be installed once 40 lots have been recorded by final plat.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted.

Discussion: Four nearby residents spoke in opposition of the proposed subdivision. The first speaker, William Hunter, expressed his concerns about the lack of infrastructure in the area.

Mr. Hunter stated it is the duty of the Planning Commission to ensure the roads are appropriately sized for the area's population. The second speaker, Barbara Brown, questioned why article 9 in the LDR was not being used to solve traffic issues and improve roadways. Ms. Brown stated any road improvements would be welcomed in this area. The final two speakers, Cheryl Hurt and Jose de la Llave, echoed the previous speakers' concerns in regards to traffic and the lack of infrastructure.

Ramey Kemp, the traffic engineer, spoke in favor of the proposed subdivision. Mr. Kemp stated the developer agreed to make some road improvements. Mr. Kemp explained he was hired to evaluate the cycle length at the intersection of Anderson Ridge Road and Bennetts Bridge Road. He stated the cycle length needs to be improved. Mr. Kemp said with further analysis there could be simple solutions to providing traffic congestion relief. Mr. Kemp agreed there is traffic back up during peak times in this area, however, it is existing traffic and the proposed subdivision would not add a lot of additional traffic.

Chairman Bichel asked Mr. Kemp if the study included any other roads. Mr. Kemp stated he was not asked to look at any other roads.

Mr. Rogers asked Mr. Kemp why the cycle length has not been improved if it was a simple solution. Mr. Kemp speculated the cycle length was appropriate at the time of installation, however, with traffic increases it likely needs to be readdressed.

Ms. Clark pointed out section 9.2 in the LDR stating the study area shall not exceed adjacent or nearby three intersections within a half-mile radius. Mr. Clark questioned why additional intersections were not evaluated. Ms. Jeffers-Campbell stated it was reasonable for the Planning Commission to request a reevaluation of the traffic study.

Two additional speakers spoke in favor of the proposed subdivision. Waverly Wilkes, the project engineer, provided an overview of the project and stated she would be happy to speak with the developer about expanding the traffic impact study. The final speaker, Sam Tedde, a representative of the developer, explained the proposed subdivision would provide luxury homes that fit within the requested zoning regulations.

Mr. Bailey addressed the traffic impact study recommendation to add two turn lanes at the intersection of Anderson Ridge Road and South Bennetts Bridge Road. Mr. Bailey stated he typically does not recommend putting the burden of road improvements on the developer; however, this area cannot handle any additional traffic. Mr. Bailey requested a firm commitment from the developer to add the turn lanes. Mr. Tedde stated he would explore all options and look into adding the turn lanes.

Ms. Gamble addressed LDR 9.2 concerns. Ms. Gamble explained the scope of work was up to three intersections. It does not have to be a total of three. Ms. Gamble stated intersection improvements are planned for the area that includes three lanes and an upgraded signal.

Ms. Clark explained she is concerned the developer would not be able to obtain the right of way to extend the 150ft of storage into a third lane.

Mr. Kemp stated the developer agreed to improve the traffic study to ensure the best operation possible.

Mr. Forest asked Mr. Kemp if the developer is asking to put a hold on this application. Mr. Kemp responded "Yes."

Chairman Bichel pointed out LDR issues, noting incorrect stormwater hatching and unsuitable access to open space.

Mr. Rogers explained the Planning Commission does not have tax authority or the ability to fix infrastructure. Mr. Rogers stated infrastructure should be repaired at a County-wide level.

Chairman Bichel placed PP-2021-218 on a 60 day hold.

Mr. Hammond recused himself.

PP-2021-219: Langford Hills

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Langford Hills, a rural conservation subdivision located a third of a mile south of the intersection of Garrison and Augusta Rd. The applicant is requesting 176 lots at a density 1.07 on 164.4 acres in the unzoned area of Greenville County. The average lot size is 21,555 square feet. Access is provided off of Garrison Rd and Augusta Rd. Water and sewer will be provided by Greenville Water and septic, respectively.

The proposed subdivision is located in the Rural Living character area of the Comprehensive Plan. Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses. The recommended density is 1 dwelling per 2+ acres. This application proposes 1.07 units per acre.

Staff recommends conditional approval of the preliminary plan with the standard and specific requirements:

- All SCDOT required improvements shall be installed once 40 lots have been recorded by final plat. Specifically, a right turn lane shall be installed at Access 3 or at US 25 and Garrison Rd as directed by SC DOT.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted.

Discussion: Two nearby residents spoke in opposition of the proposed subdivision. The first speaker, John Hill, stated the project was in non-compliance with the clear sight requirements in the LDR. Mr. Hill had additional concerns about traffic, wait times, inconsistencies with the South Greenville Area Plan, and possible water contamination due to the proposed large number of septic tanks. The second speaker, Cristina Griswold, shared the historical relevance of an existing structure. Ms. Griswold explained this structure, the McDavid house, dated back to the 1830s and was eligible for the National Historic Registry.

Waverly Wilkes, the project engineer, was the only person to speak in favor of the proposed

subdivision. Ms. Wilkes provided an overview of the project noting the traffic improvements, wetland buffers, and protection of the existing cemetery.

Chairman Bichel asked Ms. Wilkes if the cemetery would be accessible. Ms. Wilkes stated there is safe access provided through the cul-de-sac. Chairman Bichel read the history of the historic houses located on the property and asked if the developer would be preserving these homes or providing an opportunity for their removal. Darren Webb, the developer, stated he was unaware of the historical nature of the homes but would look into preservation options.

Mr. Rogers stated he will be voting against the application because it is inconsistent with the Comprehensive Plan for this area.

Motion: by Mr. Bailey, seconded by Mr. Shockley, to approve PP-2021-219 with conditions and a commitment to make the best effort in preserving the historic homes on the property as well as providing convenient access to open space. The motion failed by hand vote with three in favor (J. Bailey; M. Shockley; E. Forest) and three in opposition (S. Bichel; C. Clark; J. Rogers) with one recused (F. Hammond) and one absent (M. Looper).

Mr. Hammond returned.

PP-2021-222: River Crest

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for River Crest, a conventional single-family development located north of the intersection of S Bennetts Bridge Rd & Knob Creek Ct near the Greenville-Spartanburg County line. The applicant is requesting 21 lots at a density of 1.05 units/acre in the (R-S) residential suburban zoning district.

The proposed subdivision is compatible with the Suburban Edge Character area of the Comprehensive Plan. Suburban Edges are low-density residential areas that offer opportunities for low-intensity development that is well integrated with the natural landscape and agricultural uses. Residential development may occur as individual single family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application proposes 1.05 units per acre.

Staff recommends conditional approval of the preliminary plan with the standard and specific requirements.

- A left turn lane shall be installed as required by SC DOT prior to the recording of a final plat.

Discussion: There were no speakers in opposition to the proposed subdivision. However, there was one speaker in favor, Waverly Wilkes, the project engineer. Ms. Wilkes provided an overview of the proposed development.

Mr. Bailey expressed his concern about inadequate sight distance coming out of the entrance.

Chairman Bichel asked Ms. Wilkes if the buffer should be included in the size of the lot. Ms. Wilkes explained they felt it was appropriate due to the septic tank requirements.

Mr. Bailey explained he would be voting to deny due to the lack of infrastructure in the area.

Motion: by Mr. Forest, seconded by Mr. Hammond, to approve PP-2021-222. The motion failed by hand vote with three in favor (E. Forest; F. Hammond; M. Shockley) and four in opposition (S. Bichel; J. Bailey; C. Clark; J. Rogers) with one absent (M. Looper).

PP-2021-224: Atlas Acres

VA-2021-225: Atlas Acres (Buffer Variance)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Atlas Acres, a rural conservation subdivision located west of the intersection of Berry and McKelvey Rd in the Pelzer area south of Hwy 418. The applicant is requesting forty seven (47) lots at a density of 1.21 units/acre on 38.84 acres in the unzoned area. The average lot size is 18,556 square feet. Access is provided off of Berry Rd – a state road. An emergency access point is provided off of McKelvey Rd. Water and sewer will be provided by Greenville Water and septic.

The project area is located within the Rural Village character area of the Comprehensive Plan. The recommended land use types for this area are a mix of commercial and residential uses. They are typically in older areas, with development that is automobile-oriented, yet walkable. These character areas are the center of rural life and centers for commercial and civic activities. The recommended density for this character area is 4 to 8 dwellings per acre. Atlas Acres is proposing 1.21 units per acre.

#VA-2021-225

The applicant is requesting a variance from the required 50' privacy screening buffer along the entrance road to provide screening along parcel numbers #0577040103101 and #0577040102900. In lieu of the required 50' buffer, the applicant is proposing to provide a landscape screen of evergreen plant material at least 6' in height capable of performing a continuous screen. There were no SAC comments in opposition to the request as proposed.

Staff recommends conditional approval of the preliminary plan and variance with the standard and specific requirements.

Approval conditions are as follows:

- A visual screen must be accomplished with the proposed buffer. If existing vegetation is not adequate, a landscape screen of evergreen plant material at least 6 ft. in height shall be installed capable of forming a continuous screen.

Discussion: Three nearby residents spoke in opposition of the proposed subdivision. The first speaker, James Moore, stated this proposed subdivision violates the Planning Commission by-laws for being reconsidered. Mr. Moore explained the drawing displayed is inconsistent with the drawing for review on the website, making him uncertain SAC reviewed the correct plan. Mr. Moore had further concerns about inappropriate cul-de-sac size and excessive traffic gridlock due to current conditions and exacerbated by upcoming bridge construction. The second speaker, Carol Gilley, explained the new lot sizes are inconsistent with the surrounding area and the project would diminish the character of the area. The third speaker, James Ruffner, provided pictures and detailed what he believes are inappropriate roadway sightlines.

Ms. Clark stated the soft landscape buffer should be an undisturbed natural buffer and labeled as such. Ms. Clark pointed out there were no common area identification labels on the plat.

Mr. Rogers explained the Planning Commission by-laws state reconsideration of the proposed subdivision should have occurred at the meeting after its original denial. Ms. Gates, the project engineer, said this was a different submission and not subject to the by-law. Ms. Jeffers-Campbell added the proposed subdivision is now subject to Article 22 and is truly a new application.

Mr. Bailey asked Ms. Gates to address the sightline concern. Ms. Gates stated they checked the sightlines using SCDOT sight distance regulations, which will be verified when obtaining the SCDOT permit.

Ms. Clark asked Ms. Gates what the build schedule was in relation to the upcoming bridge construction. Ms. Gates stated most of the construction should be completed by the time the bridge construction starts. Ms. Clark questioned the cul-de-sac radius and if the Fire Department had any safety concerns. Ms. Gates stated the turn is the proper size to meet safety requirements.

Mr. Rogers pointed out the LDR exists as a County ordinance; however, the Planning Commission is bound by the by-laws unless voted to be suspended. Mr. Rogers stated he believes this application violates the by-laws. Ms. Jeffers-Campbell explained this was technically considered a new application and has gone before SAC. Ms. Jeffers-Campbell noted changes to the plan were due to comments received from SAC. Mr. Rogers expressed concerns with the contradiction to the LDR and by-laws enabling developers to return until they receive approval.

Motion for PP-2021-224: by Mr. Forest, seconded by Mr. Shockley, to approve PP-2021-224. The motion carried by hand vote with four in favor (E. Forest; F. Hammond; M. Shockley; J. Bailey) and three in opposition (S. Bichel; C. Clark; J. Rogers) with one absent (M. Looper).

Motion for VA-2021-225: by Mr. Shockley, seconded by Mr. Forest, to approve VA-2021-225. The motion carried by hand vote with four in favor (E. Forest; F. Hammond; M. Shockley; J. Bailey) and three in opposition (S. Bichel; C. Clark; J. Rogers) with one absent (M. Looper).

PP-2021-228: Hartness Phase 3 (Revision)

Rashida Jeffers-Campbell addressed the Commission members with a revision to application #PP-2021-158 approved by the Planning Commission on August 25, 2021. The proposed changes to Hartness Phase 3 includes: the removal of Blanchard and Perrins Alley, lot depth adjustment on Britt Drive, lots and alignment adjustments on Arlyn Place, and townhomes on Alester Square to single family lots.

The project area is located within the Suburban Neighborhood Character Area, which is characterized by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks, and community open space connections. The recommended density for this character area is 3 to 5 dwellings per acre. Hartness Phase 3 is proposing 4.31 units per acre.

Staff recommends conditional approval of the plan with the standard and specific requirements.

- Traffic improvements recommended by SC DOT and the required traffic impact study shall be installed as prescribed by SC DOT prior to the recording of any final plats.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted.

Discussion: Ms. Clark asked Ms. Jeffers-Campbell if the drawing showed the corrected alignment as the DOT addressed. Ms. Jeffers-Campbell stated she believed that would be addressed during the permitting process.

Motion: by Mr. Hammond, seconded by Mr. Rogers, to approve PP-2021-228. The motion carried unanimously by voice vote with one absent (M. Looper).

Chairman Bichel adjourned for a five minute recess.

5. **Rezoning Requests**

CZ-2021-104

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-104.

The subject parcel, zoned C-2, Commercial, is located along Palmetto Avenue, a two-lane, County-maintained residential road. Staff is of the opinion that a successful rezoning to R-MA, Multifamily Residential would be consistent with adjacent zoning and would not have an adverse impact on the surrounding established neighborhood.

Based on these reasons, staff recommends approval of the requested rezoning to R-MA, Multifamily Residential.

Discussion: None

Motion: by Mr. Bailey, seconded by Ms. Clark, to approve CZ-2021-104. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-105

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-105.

The subject parcel, zoned R-S, Residential Suburban, is located along Woodruff Road, a four-lane, State-maintained arterial road. Staff is of the opinion that a successful rezoning to R-M8, Multifamily Residential is not consistent with the density recommended for this area in the Plan Greenville County Comprehensive Plan or Five Forks Area Plan.

Based on these reasons, staff recommends denial of the requested rezoning to R-M8, Multifamily Residential.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Shockley, to deny CZ-2021-105. The motion carried

unanimously by voice vote with one absent (M. Looper).

CZ-2021-106

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-106.

The subject parcels, zoned R-S, Residential Suburban, is located along West Georgia Road, a two-lane, State-maintained arterial road, and Rocky Creek Road, a two-lane, State-maintained collector road. Staff is of the opinion that the density allowed within the requested district would be too intense for the existing predominantly single-family residential area and is not consistent with the density recommended for this area in the Plan Greenville County Comprehensive Plan.

Based on these reasons, staff recommends denial of the requested rezoning R-M8, Multifamily Residential.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Forest, to deny CZ-2021-106. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-107

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-107.

The subject parcel, zoned C-2, Commercial, is located along West Blue Ridge Drive, a four-lane, State-maintained arterial road, and Highlawn Avenue, a two-lane, County-maintained residential road. Staff has concerns with the uses that would be permitted under the S-1, Services District. Additionally, the zoning classification and some of its permitted uses would not be consistent with the Future Land Use Map.

Based on these reasons, staff recommends denial of the requested rezoning to S-1, Services.

Discussion: None

Motion: by Mr. Bailey, seconded by Ms. Clark, to deny CZ-2021-107. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-108

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-108.

The subject parcel, zoned S-1, Services, is located along New Easley Highway, a four-lane, State-maintained arterial road. Staff is of the opinion that a successful rezoning to C-1, Commercial is appropriate for this area and would not have an adverse impact on this area. Additionally, the uses permitted in the C-1, Commercial District are consistent with the Riverdale-Tanglewood Area Plan.

Based on these reasons, staff recommends approval of the requested rezoning to C-1, Commercial.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Rogers, to approve CZ-2021-108. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-109

Ms. Denny introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-109.

The subject parcel, zoned R-10, Single-Family Residential, is located along White Horse Road a Six-lane State-maintained Arterial road, and Bent Bridge Road a two-lane county-maintained residential road. Staff is of the opinion that the uses allowed within the S-1, Services district are too intense for this residential area. Further, due to the nature of the parcel and site constraints, the existing zoning classification of R-10, Single-Family Residential is appropriate for the subject property.

Based on these reasons, staff recommends denial of the requested rezoning to S-1, Services.

Discussion: Ms. Clark asked staff why they have recommended denial when the request is consistent with the Area Plan. Ms. Denny explained they recommended denial due to potential customers accessing the property through residential roads.

Motion: by Mr. Bailey, seconded by Ms. Clark, to approve CZ-2021-109. The motion failed by hand vote with three in favor (J. Bailey; C. Clark; J. Rogers) and four in opposition (S. Bichel; M. Shockley; F. Hammond; E. Forest) with one absent (M. Looper).

CZ-2021-110

Ms. Denny introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-110.

The subject parcel zoned R-S, Residential Suburban; located along Harrison Bridge Road is a two-lane state-maintained collector road and Neely Ferry Road a two-lane state-maintained residential road. Staff is of the opinion that rezoning to C-1, Commercial is not appropriate for the area due to the intensity and proximity to single-family residential and the absence of any commercial zoning in the immediate area.

Based on these reasons, staff recommends denial of the requested rezoning to C-1, Commercial.

Discussion: None

Motion: by Mr. Hammond, seconded by Mr. Forest, to deny CZ-2021-110. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-111

Ms. Denny introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-111.

The subject parcel zoned C-2, Commercial and is located along Cedar Lane Road a two-lane state-maintained arterial road, and Orchid Drive, a two-lane county-maintained residential road. Staff is of the opinion that rezoning to S-1, Services is not appropriate for the area due to the adjacent Single-

Family Residential. Further, staff believes that the existing zoning of C-2, Commercial is an appropriate zoning classification for this area.

Based on these reasons, staff recommends denial of the requested rezoning to S-1, Services.

Discussion: Mr. Hammond pointed out some errors in the staff summary and explained the current zoning could result in further undesirable uses in the area. Mr. Hammond noted the requested rezoning has additional requirements the applicant would have to meet.

Motion: by Mr. Hammond, seconded by Mr. Shockley, to approve CZ-2021-111. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-112

Ms. Denny introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-112.

The subject parcel zoned R-15; Single-Family Residential is located along Reid School Road a two-lane state-maintained arterial road. Staff is of the opinion that while a proposed use of a riding academy will produce some commercial traffic; Rezoning to R-S, Residential Suburban will be in keeping with the rural nature of the immediate area.

Based on these reasons, staff recommends approval of the requested rezoning to R-S, Residential Suburban

Discussion: None

Motion: by Ms. Clark, seconded by Mr. Shockley, to approve CZ-2021-112. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-113

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-113.

The subject parcel, zoned R-S, Residential Suburban, is located along Roberts Circle a two-lane County-maintained Local road. Staff is of the opinion that the requested zoning district of R-20, Single-Family Residential is consistent with the surrounding zoning districts and densities, and will promote infill in an area where mixed density residential is already present.

Based on these reasons, staff recommends approval of the requested rezoning to R-20, Single-Family Residential.

Discussion: None

Motion: by Mr. Shockley, seconded by Mr. Bailey, to approve CZ-2021-113. The motion carried unanimously by voice vote with one absent (M. Looper).

Mr. Hammond recused himself.

CZ-2021-114

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-114.

The subject portion of a parcel zoned R-12, Single-family Residential is located along Wade Hampton Blvd a six-lane State-maintained Arterial road. Staff is of the opinion that the requested zoning of C-2, Commercial is appropriate due to the existence of multiple parcels adjacent to the property that also have C-2, Commercial zoning. The rezoning request will also remove a split-zone issue on the overall parcel.

Based on these reasons, staff recommends approval of the requested rezoning to C-2, Commercial.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Forest, to approve CZ-2021-114. The motion carried unanimously by voice vote with one recused (F. Hammond) and one absent (M. Looper).

Mr. Hammond returned

CZ-2021-115

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-115.

The subject parcel zoned R-12, Single-Family Residential is located along White Horse Road, a seven-lane State-maintained Arterial road. Staff is of the opinion that the requested rezoning to C-3, Commercial is appropriate due to all parcels surrounding the property also having Commercial zoning. Additionally, the request aligns with both the Plan Greenville County Comprehensive Plan and the Berea Community Plan.

Based on these reasons, staff recommends approval of the requested rezoning to C-3, Commercial.

Discussion: None

Motion: by Mr. Bailey, seconded by Ms. Clark, to approve CZ-2021-115. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-116

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-116.

The subject parcel zoned O-D, Office District is located along Woodruff Road, a two-lane State-maintained Arterial road. Staff is of the opinion that the requested rezoning to FRD, Flexible Review District would bring more commercial opportunities to this area of Woodruff Rd. while also being consistent with the Plan Greenville County Comprehensive Plan and the Five Forks Area Plan. The proposed development will have to meet the following condition:

1. Submit a Final Development Plan prior to issuance of Land Development or Building Permits.

Based on these reasons, staff recommends approval of the requested rezoning FRD-MC, Flexible Review District Major Change.

Discussion: Ms. Clark stated the traffic study growth rate seemed low. Mr. Hawkins, the applicant, said they are making traffic improvements and the traffic engineer provided the growth rate.

Motion: by Mr. Bailey, seconded by Mr. Hammond, to approve CZ-2021-116 with condition. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-117

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-117.

The subject parcel zoned R-S, Residential Suburban is located along Roper Mountain Road, a two-lane State-maintained Arterial road. This parcel is adjacent to property zoned R-15, Single-Family Residential and aligns with the Plan Greenville County Comprehensive Plan. Staff is of the opinion that the requested zoning district and property constraints limiting what could be placed on this site make the request appropriate.

Based on these reasons, staff recommends approval of the requested rezoning to R-15, Single-Family Residential.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Forest, to approve CZ-2021-117. The motion carried unanimously by voice vote with one absent (M. Looper).

CZ-2021-119

Mr. Lovelace introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2021-119.

The subject parcel, zoned S-1, Services, is located along Cedar Lane Road, a four-lane, State-maintained arterial road. Staff is of the opinion that a successful rezoning to C-3, Commercial is appropriate for this area and would provide housing options not allowed under the current zoning.

Based on these reasons, staff recommends approval of the requested rezoning to C-3, Commercial.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Forest, to approve CZ-2021-119. The motion carried unanimously by voice vote with one absent (M. Looper).

6. Planning Report

Mr. Coker presented the November Planning Report to the Commission.

7. Old Business

8. New Business

Motion: By Mr. Shockley, seconded by Mr. Forest, for Planning Staff to act on behalf of the Planning

Commission unless faced with a controversial issue for the month of December. The motion carried unanimously by voice vote with one absent (M. Looper).

9. Adjourn

Without objection, Chairman Bichel adjourned the meeting at 7:55 p.m.

Respectfully submitted,

Nicole Miglionico

Recording Secretary

EXHIBIT 2

**(Minutes of January 26, 2022
Planning Commission Meeting)**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

Greenville County Planning Commission Minutes
January 26, 2022 at 3:00 p.m.
Council Chambers at County Square

Commissioners Present: S. Bichel, Chair; J. Bailey, Vice Chair; M. Shockley; C. Clark; M. Looper; J. Rogers; F. Hammond; J. Howard

Commissioners Absent: E. Forest

County Councilors Present:

Staff Present: T. Coker; T. Stone; J. Henderson; H. Gamble; K. Walters; M. Staton; R. Jeffers-Campbell; N. Miglionico; IS Staff

1. Call to Order

Chairman Bichel called the meeting to order at 3:00 p.m.

2. Invocation

Chairman Bichel provided the invocation.

3. Approval of the Minutes of the November 17, 2021 Commission Meeting

Motion: by Mr. Looper, seconded by Mr. Bailey, to approve the minutes of the November 17, 2021 Commission meeting, as presented. The motion carried by voice vote.

4. Preliminary Subdivision Applications

PP-2021-218 Parker's Summit

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Parker's Summit, a cluster subdivision under Open Space Option 1 of the Zoning Ordinance. The site is located near the Greenville-Spartanburg county line approximately a mile southeast of the intersection of Anderson Ridge Rd & Hwy 296. The applicant is requesting 171 lots on 101 acres in the R-S Residential Suburban zoning district. Access is provided off of White Circle Rd – a county road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The proposed subdivision is compatible with the Suburban Edge Character area of the Comprehensive Plan. Suburban Edges are low density residential areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application proposes 1.6 units per acre.

Staff recommends conditional approval of the plan with the standard and specific requirements.

Approval conditions are as follows:

- Widen White Circle Road to 20 wide with 25 ROW on development side. Road may have to be widened on development side due to ditch-ditch ROW.
- Install a southbound left-turn into the site. Extend a 3-land road section on Anderson Ridge Rd from CESA to White Circle so as not to have an "hourglass" design. Exhaust all efforts to obtain ROW from TM# 0550020100501, TM# 0550020100603, TM#

0550020100600, TM# 0550020100604 and TM# 0550020100601.

- All required traffic improvements required by the TIS shall be installed once 40 lots have been recorded by final plat.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted.

Discussion: Four nearby residents spoke in opposition of the proposed subdivision. The first speaker, Barbara Brown, provided a picture showing the traffic congestion in the area. Ms. Brown expressed concerns for the ability to obtain right-of-way, what would occur if the right-of-way was not obtained, and the timeline of road improvements. The second speaker, Cheryl Hurt, was concerned with traffic congestion and narrow roads. The third speaker, Jackie DeCarr, echoed the concerns of traffic congestion and requested the Planning Commission be aware of the resident's desires for the area. The final speaker, Doug Stewart, provided a petition in opposition of the proposed subdivision with signatures from over twenty homeowners in the area. Mr. Stewart believed the improvement to the traffic light was not sufficient and the road needed to be widened.

Waverly Wilkes, the project engineer, spoke in favor of the proposed subdivision. Ms. Wilkes provided a brief description of the proposed subdivision and noted an in-depth traffic study was conducted for the area that will help alleviate traffic problems. Ms. Wilkes explained the proposed subdivision would not be developed immediately and the timeline would likely take longer than residents expect.

Ms. Clark explained open space must be accessible to the largest practical number of lots and in this design, only about 25% of the lots are directly accessible. Ms. Clark expressed concern with the ability to obtain right-of-way and asked staff what happens if the developer is unable to obtain the necessary right-of-way. Rashida Jeffers-Campbell explained obtainment of the right-of-way was a condition of approval by staff.

Mr. Rogers asked how property owners without direct access to the open space would gain access. Ms. Wilkes pointed out a few access points and noted they were hesitant to add access points in-between lots.

Genita Jones, a property owner where the proposed subdivision will be placed, explained she can no longer take care of the property and understands her neighbor's concerns but she needed to sell the land. Ms. Jones stated she offered the property to Greenville County but received no response.

Mr. Bailey asked for clarification on the date she offered the property to Greenville County. Ms. Jones stated 2019.

Patrick McNair, a representative of the developer, explained they would be building a larger and nicer product. Mr. McNair stated it would take five to six years to build all of the homes and the true impact would not be realized until 2026 or 2027.

Mr. Rogers asked staff the timing of road improvements and clarification on the conditions of approval by staff. Ms. Jeffers-Campbell explained the conditions are to widen White Circle

Road and acquire the right of way from CESA to White Circle Road. The only recommendations are the recommendations recommended by the County Traffic Engineer. The intent is if they are not able to obtain the right of way, they have not met the approval condition because that is needed for the southbound left-turn lane to the site. Ms. Gamble stated if the "C" Funds are approved, construction should be underway by the end of 2022.

Chairman Bichel stated traffic was a major concern in the area. Chairman Bichel explained he was unhappy with no interconnecting pathways to the common area with only 29% of homes having direct access and believed this design is taking a cluster development to a level it should not be and therefore cannot support it. Mr. Hammond suggested Chairman Bichel request additional access points. Chairman Bichel explained he would like to see at least 60% access to open space. Ms. Clark stated the current design could not become a true cluster design. Mr. Hammond suggested they offer the developers a solution. Ms. Wilkes stated they can add additional access points through the lots if needed. Ms. Clark explained in a true cluster design the parcel should be touching the open space not only having access to it.

Chairman Bichel stated he does not believe the proposed subdivision meets LDR 11.4 and is not in favor of the application.

Mr. Bailey asked staff to clarify if any of the traffic improvements go back to the intersection of Bennett's Bridge Road and Anderson Ridge Road. Ms. Jeffers-Campbell stated they do not go back to the intersection.

Mr. Rogers stated he moves to deny the proposed subdivision based on insufficient traffic improvements and insufficient access to open space.

Motion for PP-2021-218: by Mr. Rogers, seconded by Ms. Clark, to deny PP-2021-218. The motion carried by hand vote with six in favor (S. Bichel; J. Bailey; C. Clark; M. Looper; J. Rogers; J. Howard) and two in opposition (M. Shockley; F. Hammond) with one absent (E. Forest).

PP-2021-269: Woodcrest Hills

VAR2021-113 Woodcrest Hills Variance

VAR2021-114 Woodcrest Hills Variance

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Woodcrest Hills, a single family subdivision under Open Space Option 2 of the Zoning Ordinance. The site is located ¾ of a mile east of the intersection of Woodruff Rd & Anderson Ridge Rd in the unincorporated area of Simpsonville near the Greenville-Spartanburg county line. The applicant is requesting 40 lots in the Residential Suburban zoning district (R-S). Access is provided off of Anderson Ridge Rd – a county road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

VAR2021-113

The applicant is requesting a variance from LDR 8.8.1A of LDR (emergency access point) due to limited road frontage and steep slopes along Woodruff Rd.

VAR2021-114

The applicant is requesting a variance from LDR Table 5.1 which requires a minimum horizontal radius of 155' for access roads.

The proposed subdivision is compatible with the Suburban Neighborhood Character area of the Comprehensive Plan. Suburban Neighborhoods are generally shaped by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks and community open space connections. The recommended density is 3 to 5 dwellings per acre. This application calls for a density of 1.7 units per acre consistent with the R-S zoning district.

Staff recommends approval of the plan and variances with the standard and specific requirements.

Discussion: Three nearby residents spoke in opposition of the proposed subdivision. The first speaker, Cheryl Hurt, stated the road this subdivision would be on is too narrow, damaged, and experiences deadly traffic conditions. The second speaker, Doug Stewart, provided a visual demonstration of the narrowness of the road. The final speaker, Barbara Brown, echoed concerns of the narrow roads and explained it was a danger to public safety to have the ingress and egress on the curve of the road.

Chairman Bichel asked Ms. Brown if she would have an issue with access coming from Woodruff Road. Ms. Brown explained she did not believe SCDOT would allow that. Chairman Bichel asked Ms. Brown her opinion on the proposal only having 40 lots. Ms. Brown stated the roads could not support any additional traffic.

Paul Harrison, the project engineer, explained the majority of Greenville County roads are not as wide as the roads being proposed inside of subdivisions. Mr. Harrison explained wide roads tend to encourage speeding and narrow roads don't directly relate to frequent accidents. Mr. Harrison stated they requested the emergency access variance as a result of conversations with DOT and having limited access point options. Mr. Harrison explained the Fire Chief was in agreement with their emergency access plan. Mr. Harrison detailed changes to the proposed subdivision and believes the design meets the spirit of the open space cluster regulations.

Mr. Bailey asked if there are turn lanes into the development. Mr. Harrison stated there were not. Mr. Bailey stated a right turn lane would help alleviate safety concerns. Mr. Harrison stated if staff recommends a traffic study, they will provide one.

Ms. Clark asked if the Fire Department had any concerns with the narrow radius of the road and if the sight distances were going to provide enough visibility. Mr. Harrison stated he ran vehicle traffic software to ensure emergency vehicles could navigate the roads appropriately and there were no concerns from the Fire Department. Mr. Harrison explained there was plenty of sight distance due to the road being uphill and there was a factor of safety built into their calculations.

Chairman Bichel stated a petition with twenty signatures was presented in opposition to the proposed subdivision.

Motion for PP-2021-269: by Mr. Hammond, seconded by Mr. Shockley, to approve PP-2021-269. The motion carried unanimously by voice vote with one absent (E. Forest).

Motion for VAR2021-113: by Mr. Hammond, seconded by Mr. Shockley, to approve VAR2021-113. The motion carried unanimously by voice vote with one absent (E. Forest).

Motion for VAR2021-114: by Mr. Hammond, seconded by Mr. Shockley, to approve VAR2021-114. The motion carried unanimously by voice vote with one absent (E. Forest).

PP-2021-279: Miller's Crossing Subdivision

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Miller's Crossing, a conventional development located a quarter of a mile east of the intersection of Ridge Rd and Dallas Rd. The applicant is requesting five (5) single family lots at a density of 1.25 units/acre in the Residential Suburban (R-S) zoning district. Access is provided off of Dallas Rd – a state road. Water and sewer will be provided by Greenville Water and Septic, respectively.

The proposed subdivision is compatible with the Suburban Mixed Use Character area of the Comprehensive Plan. Suburban Mixed-Use place types include a variety of single family (detached and attached) and multifamily building types. Housing types should be designed as a cohesive, connected neighborhood, rather than isolated subareas. Buildings should be of a high-quality design, and developments should include common neighborhood amenities and open space connections. The recommended density is .6 to 20 dwellings per acre. This application proposes 1.25 units per acre.

Staff recommends approval of the plan with the standard and specific requirements.

Discussion: There were no speakers in opposition to the proposed subdivision. However, there was one speaker in favor, Stephanie Gates, the project engineer. Ms. Gates explained the proposal is a conventional subdivision and it meets all of the requirements.

Ms. Clark stated general notes are missing from the drawings and asked if there would be a neighborhood HOA. Ms. Gates stated the notes are missing because they are not required for a conventional subdivision and there would be an HOA.

Mr. Bailey asked why they were coming before the Planning Commission for five lots. Ms. Jeffers-Campbell explained it was due to major structures and infrastructure being placed on a private road.

Motion for PP-2021-279: by Mr. Bailey, seconded by Mr. Looper, to approve PP-2021-279. The motion carried unanimously by voice vote with one absent (E. Forest).

PP-2021-290: Villaggio Di Montebello

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Villaggio Di Montebello Phase 11, a single family infill development under the Planned Development requirements of the Zoning Ordinance. The applicant is requesting ten (10) single family lots in the Villaggio Di Montebello subdivision. The site is located north of the Cherrydale shopping center and east of the intersection of Worley Rd and Hwy 253. Access is provided off of Arezzo Drive – an existing private road. Water and sewer will be provided by Greenville Water and Parker Sewer, respectively.

The proposed subdivision is compatible with the Suburban Neighborhood Character Area of the Comprehensive Plan. Suburban Neighborhoods are generally shaped by residential subdivisions of

medium-lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks and community open space connections. The recommended density is 3 to 5 dwellings per acre. This application calls for a density of 2.1 units per acre.

Staff recommends conditional approval of the preliminary plan with the standard and specific requirements. Approval conditions are as follows:

- Add a note on lot 10 designating the parcel for “future commercial development” to match the approved final development plan dated 11.5.2021. The revised plan must be submitted in Cityworks before February 2, 2022. Failure to submit the revised plan by said deadline will result in a default denial of the application.

Discussion: There were no speakers in opposition to the proposed subdivision. However, there was one speaker in favor, Austin Allen, the land planner for the developer. Mr. Allen provided a brief overview of the project and stated he believed the development will improve the community. Mr. Allen explained Lot 10 is required for the commercial development of the project but does not believe there will be any commercial interest in the near future.

Ms. Clark asked if there are any sidewalks. Mr. Allen stated there were no sidewalks due to them not being required. Ms. Clark stated it seemed like a bad idea to not provide sidewalks when the rest of the community has them. Mr. Allen explained this section of the development is a different look and unlike other sections provides additional guest parking to the residents.

Motion for PP-2021-290: by Mr. Bailey, seconded by Mr. Looper, to approve with condition PP-2021-290. The motion carried unanimously by voice vote with one absent (E. Forest).

Mr. Rogers recused himself

PP-2021-291: Millspring Village

VA-2022-012: Millspring Village (2nd Full Access)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Millspring Village, a townhome development under the Flexible Review District (FRD) requirements of the Zoning Ordinance. The site is located in the Berea area, south of the intersection of Hunts Bridge Rd and SC-183. The applicant is requesting 115 single family attached lots at a density of 8.04 units/acre. Access is provided off of West Parker Road – a state road. Water and sewer will be provided by Greenville Water and Berea Sewer, respectively.

The proposed subdivision is compatible with the Transitional Corridor Character area of the Comprehensive Plan. Transitional Corridors are older, primarily commercial corridors with a wide range of land uses and development patterns. These places developed in the first wave of automobile-oriented design, and currently consist of extensive surface parking, numerous vehicular curb cuts, and inconsistent development patterns. Older, underutilized sites are candidates for reuse and redevelopment with improved access management, higher quality architecture and site design and more pedestrian friendly building placement. The recommended density is 12 to 30 dwellings per acre. This application calls for a density of 8 units per acre consistent with the Comprehensive Plan and the final development plan for the FRD.

Staff recommends approval of the preliminary plan with the standard and specific requirements.

Discussion: There were no speakers in opposition of the proposed subdivision. However, there was one speaker in favor, Jay Martin, the project engineer. Mr. Martin stated after working with Chairman Meadows and Councilor Fant on the development plan he now has their support. Mr. Martin explained this development will not contain any rental property. Mr. Martin stated a second access is impossible due to adjacent properties, topography, and land constraints. Mr. Martin stated traffic had reduced in the area.

Chairman Bichel asked if the deed would state “no rental.” Mr. Martin explained the deed restrictions will read “it cannot be a wholesale rental development.” Mr. Martin stated these properties will be owned by individual owners.

Ms. Clark noted concerns with street parking and its impact on emergency services. Mr. Martin stated they have provided two parking spaces per unit and street parking would not be allowed. Mr. Martin explained the anticipated peak rate of traffic would be about one vehicle per minute preventing traffic congestion.

Motion for PP-2021-291: by Mr. Looper, seconded by Mr. Howard, to approve PP-2021-291. The motion carried unanimously by voice vote with one recused (J. Rogers) and one absent (E. Forest).

Motion for VA-2022-012: by Mr. Looper, seconded by Mr. Howard, to approve VA-2022-012. The motion carried unanimously by voice vote with one recused (J. Rogers) and one absent (E. Forest).

Mr. Rogers returns.

PP-2021-292: Staunton Place (Revision)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Staunton Place. On July 25, 2018, the Planning Commission voted to conditionally approve Staunton Place Phase 2 #PP-2018-080 and the associated variance cases: VA-2018-095 (5’ sidewalks), VA-2018-095 (20’ buffer) and VA-2018-122 (interconnectivity). The approval conditions for #PP-2018-080 were as follows:

- A copy of the purchase agreement for the portion of BB#0252000102529 that will be used for right of-way shall be submitted prior to issuance of a land disturbance permit.
- A 6’ privacy fence in lieu of 20’ landscape buffer shall be provided along adjoining properties except for lots along Sandal Wood Ln.

The purpose of the subject application (PP-2021-292) is solely to remove an affordable housing note on the approved plan. The affordable housing note indicates that the maximum prices of houses will not exceed \$160,000. Outside of the note, the subject application has not changed.

The project site is located within the Suburban character area of the Comprehensive Plan. Suburban Neighborhoods are generally shaped by residential subdivisions of medium lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks, and

community open space connections. The recommended density is 3 to 5 dwellings per acre. This application is proposing 4.2 units per acre consistent with the Comprehensive Plan.

Staff recommends conditional approval of the revised preliminary plan with the standard and specific requirements. Approval conditions are as follows:

- Place a hold on building permits until the portion of BB#0252000102529 needed for right-of-way has been deeded.
- A 6' privacy fence shall be installed along all sides of the development except the northern boundary

Discussion: Stacy Ashmore, a nearby resident, spoke in opposition of the proposed subdivision. Mr. Ashmore asked why the price of the homes and the number of lots have increased. Mr. Ashmore expressed his concerns for increased traffic in the area and dangerous road conditions.

Chairman Bichel explained the subdivision was already approved. The Planning Commission was voting only on the removal of the affordable housing standard.

Daniel Chewning, a representative of the developer, spoke in favor of the affordable housing note removal. Mr. Chewning stated he was there only to remove the note of the budget on the houses.

Mr. Rogers asked why they want to change the properties from affordable housing. Mr. Rogers stated he believed the affordable housing standard was likely a material part of why the proposed subdivision was approved. Mr. Chewning stated it is three and a half years into inflation, the project has run into construction issues, and it's no longer a reasonable budget. Mr. Chewning stated the developer is trying to sell the property.

Chairman Bichel stated the whole area is surrounded by affordable housing, was intended to be affordable housing, and to change it at this time would be inconsistent with the surrounding area. Chairman Bichel stated he believed they should deny the request based on these reasons.

Mr. Howard asked if inflation was not considered in the original planning. Mr. Chewning stated he was unsure and was unaware of where the \$160,000-dollar amount came from. Mr. Chewning stated if any existing residents listed their homes for sale they would sell for more than \$160,000.

Ms. Clark explained there is a need for more affordable housing in Greenville County and why would they remove a standard that has already been approved. Mr. Chewning asked if anybody on staff helped determine the price point and stated he believed it was up to the developer to determine the cost.

Mr. Hammond asked if the note was a condition required by the Planning Commission or Planning Staff. Ms. Rashida Jeffers-Campbell explained the note was added by the developer and a condition the developer bound themselves to. Ms. Jeffers-Campbell stated Greenville County is not binding them to this condition and it was not a condition for approval. Mr. Hammond asked if this was enforceable by Greenville County. Ms. Jeffers-Campbell stated it was not enforceable as far as Greenville County is concerned. Mr. Hammond stated it is an

issue between the buyer and the seller. Ms. Jeffers-Campbell agreed. Mr. Hammond asked if the Planning Commission should vote on this or if they have any purview over it. Ms. Jeffers-Campbell stated this was the request of the applicant to go through the process to remove the note. Mr. Chewning stated they were asked to submit the request to the Subdivision Administration. Mr. Hammond stated he doesn't see how the Planning Commission or Greenville County have any standing in this question.

Mr. Shockley asked if there were any other subdivisions that had a financial number on the proposal. Ms. Jeffers-Campbell stated no.

Chairman Bichel asked if \$160,000 was in the record. Ms. Jeffers-Campbell stated it was in the original plan and the developer is requesting to have it removed from the plan so it is no longer a part of the record. Chairman Bichel stated because it's on the drawing he can see how they have the jurisdiction. Mr. Hammond explained he doesn't know why they are voting on it if Greenville County doesn't enforce it and the Planning Commission did not make it a condition for approval.

Mr. Shockley stated if it was self-imposed and recorded on the plat he understands why they would want it removed; however, he doesn't understand how it got there in the first place. Ms. Jeffers-Campbell explained it was self-imposed by the developer and not something Greenville County required. Mr. Shockley asked if there was any benefit for the developer to add this note. Ms. Jeffers-Campbell stated she was not aware of any benefit.

Mr. Hammond stated he does not believe they have any purview and are assuming liability by voting on it. Mr. Hammond stated he does not think they should vote on it.

Mr. Rogers explained if the developer offered it as an agreement for approval, it is a binding agreement.

Mr. Hammond stated if it wasn't a condition for approval by the Planning Commission then it is an issue between the buyer and the seller. Ms. Jeffers-Campbell stated the proposal was promoted as an affordable housing project but there was no discussion on price point. Ms. Jeffers-Campbell explained the price point was something the developer did to market the housing project to the Planning Commission.

Mr. Bailey stated he is making a motion to deny because they do not have the purview to set a price point.

Mr. Chewning stated it doesn't make sense to deny due to not having any purview if they had the purview to originally approve.

Chairman Bichel stated the safest way to handle this is to leave it as-is.

Motion for PP-2021-292: by Mr. Bailey, seconded by Mr. Howard, to deny PP-2021-292. The motion carried by hand vote with six in favor (S. Bichel; J. Bailey; C. Clark; M. Looper; J. Rogers; J. Howard), one abstained (M. Shockley), one no vote (F. Hammond) and one absent (E. Forest).

PP-2021-295: Belmont Townes

Chairman Bichel stated PP-2021-295 has been withdrawn.

PP-2021-296: Hunters Grove

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Hunters Grove, a conventional single-family development located about two miles east of the intersection of State Park Road and U.S. Hwy 25 in the unincorporated area of Travelers Rest. The applicant is requesting 42 lots at a density of 1.11 units per acre in the Residential Suburban (R-S) zoning district. Access is provided off of State Park Road. Water and sewer will be provided by Greenville Water and Septic, respectively.

The site is located within the Open Space character area of the Comprehensive Plan. An insignificant portion of the site lies within the Suburban Edge Character Area of the Comprehensive Plan. Suburban Edges are low-density residential areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application calls for a density of 1.1 units per acre consistent with R-S zoning district.

While storm water issues can be addressed via storm water management strategies, the potential impact from septic tanks containing pollutants getting into the groundwater/stream is a possibility and of great concern. Consequently, staff recommends denial of Hunters Grove.

Discussion: Three nearby residents spoke in opposition of the proposed subdivision. The first speaker, James Pachter, noted concerns with dangerous traffic conditions. Mr. Pachter stated over an eleven-year period the area has experienced 173 injury accidents and 650 collisions. The second speaker, John Cook, explained nearby properties contained the endangered plant species bunched arrowhead and dwarf-flowered heartleaf. Mr. Cook stated there is an undocumented dumpsite near the property that potentially contains hazardous waste and brought up concerns of septic tank use on the property and possible contamination due to the high water table. The final speaker in opposition, Mark Mullinax, echoed the concerns of additional traffic and dangerous driving conditions.

Mr. Hammond asked if there were any bunched arrowhead plants on the site. Mr. Pachter stated he did not know due to not having access to the site.

Mr. Rogers asked if Mr. Pachter conducted a groundwater test. Mr. Pachter stated no, due to time and resource constraints. Mr. Rogers explained the government would not allow the developer to place homes on a contaminated site.

Mr. Hammond stated the buyer would not close until a phase 1 environmental assessment was performed. Mr. Hammond explained there was no way to verify the environmental concerns and was therefore not their discretion.

There were two speakers in favor of the proposed subdivision. The first speaker, Waverly Wilkes, the project engineer, provided a brief overview of the project. Ms. Wilkes explained the groundwater concerns can be addressed and the septic tanks would be regulated by DHEC. Ms. Wilkes stated the developer paid for a bunched arrowhead study and no plants or

habitat were found on the property. The second speaker, Will Beckwith, the developer, explained he walked the entire site and did not find bunched arrowhead or a dumpsite. Mr. Beckwith stated they did their due diligence and would not do harm to the area.

Ms. Clark stated the stub-out is directly next to a future residential site. Ms. Clark explained the area is a part of the open space designation and is meant to be protected. Ms. Clark stated she believed a subdivision in this area is a horrible idea and would not be voting in favor of it. Ms. Wilkes stated she was unaware that the stub-out was next to a future residential site but would be happy to leave the existing vegetation to act as a buffer.

Mr. Rogers asked if an environmental study had been conducted and if groundwater feeding was evaluated in the bunched arrowhead study. Ms. Wilkes stated an environmental study had not been completed yet but proper steps will be taken to assess any issues found. Ms. Wilkes explained the bunched arrowhead study only determined if the plant or environment is on the land, it does not address groundwater feeding.

Mr. Hammond asked staff why they changed their recommendation. Ms. Jeffers-Campbell explained she changed her recommendation based on information she received from the Greenville County engineer in the Land Development Division. Ms. Jeffers-Campbell explained the Land Development Division had conducted studies with septic tanks and groundwater impact that showed septic systems can impact plant species within 200-250 feet. Mr. Hammond asked how the LDR handles off-site species. Ms. Jeffers-Campbell stated she was not looking at it from the LDR specifically but from the view of it being an endangered species protected by the Federal Government. Ms. Jeffers-Campbell explained if the use of septic was going to impact the species she was not comfortable recommending approval. Mr. Hammond stated the septic tank process with DHEC would ensure the wastewater is clean.

Chairman Bichel stated protection of endangered species was added to the LDR.

Ms. Clark stated she would like to make a motion to deny the application based on staff recommendation, documented knowledge of bunched arrowhead, and because the property is located in the protected open space category of the Future Land Use Map.

Mr. Shockley asked staff if the 250 feet determination from the bunched arrowhead was a national regulation. Ms. Jeffers-Campbell stated the number came from the Greenville County engineer in the Land Development Division based on her studies where adverse impact was noted due to septic tanks.

Motion for PP-2021-296: by Ms. Clark, seconded by Mr. Looper, to deny PP-2021-296. The motion carried by hand vote with five in favor (S. Bichel; C. Clark; M. Looper; J. Rogers; J. Howard) and three in opposition (J. Bailey; J. Rogers; F. Hammond) with one absent (E. Forest).

Mr. Hammond recused himself.

PP-2021-298: Langford Hills

VA-2021-300: Langford Hills Variance

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Langford Hills, a rural conservation subdivision located a third of a mile south of the

intersection of Garrison and Augusta Rd in the unzoned area south of I-185. The applicant is requesting 176 lots at a density of 1.07 units per acre with an average lot size of 21,555. Access is provided off of Garrison and Augusta Rd –state roads. Water and sewer will be provided by Greenville Water and septic, respectively.

VA-2021-300:

The applicant is requesting a variance from LDR Article 22.3.5.A which requires a minimum fifty (50) foot buffer along the perimeter of the development. The variance request will only apply to lot #1. The 50' buffer stops at the shared lot line between lots #1 and #2. No buffer is shown on lot #1. There is an existing house located on parcel 0603020102200. The home is located partially in what would be 50' buffer. This home is located on the Greenville County Historic Resource Survey performed in 2013. The home is known as the McDavid House and the developer intends to leave the home undisturbed. There were no SAC comments in opposition to the variance.

The proposed subdivision is located in the Rural Living character area of the Comprehensive Plan. Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses. The recommended density is 1 dwelling per 2+ acres. This application proposes 1.07 units per acre consistent with the Comprehensive Plan.

On 11.17.2021, the Planning Commission denied Langford Hills case PP-2021-219 due to a split vote. At the public hearing, citizens expressed concerns regarding the preservation of the McDavid House – a structure listed on the Greenville County Historic Resource Survey. This application has been revised to address the preservation of the historic resource.

Staff recommends conditional approval of the preliminary plan and variance with the standard and specific requirements:

- All SCDOT required improvements shall be installed once 40 lots have been recorded by final plat. Specifically, a right turn lane shall be installed at Access 3 or at US 25 and Garrison Rd as directed by SC DOT.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted

Discussion: Two residents spoke in opposition of the proposed subdivision. The first speaker, Dr. Anne Peden, the Vice Chairwoman of the Greenville County Historic Preservation Commission, explained there are over 100 historic houses off of Highway 25 and two of the structures are on the Langford Hills property. Dr. Peden asked for both houses to be preserved and asked for the historic road corridor to be preserved. The second speaker, John Hill, echoed the need for historic preservation and stated the proposed subdivision was not consistent with the surrounding area. Mr. Hill noted 176 septic tanks in a small area could adversely impact the water table.

There were two speakers in favor of the proposed subdivision. The first speaker, Waverly Wilkes, the project engineer, stated only one of the homes on the property is considered a historic home. Ms. Wilkes explained the developer is working with Preservation South

Carolina to preserve the historic home on the property. Ms. Wilkes noted all stormwater would be treated on-site and the proposal meets all requirements. The second speaker, Michael Bedenbaugh, president of Preservation South Carolina stated the historic home would be donated to Preservation South Carolina and he looked forward to working with the developer. Mr. Bedenbaugh stated the developer declined to save the second house due to it not being designated as a historic home.

Chairman Bichel asked Ms. Wilkes to address sight line concerns. Ms. Wilkes explained they checked sight lines and DOT verified them.

Ms. Clark asked how the historic home will be accessed. Mr. Bedenbaugh stated they are working on access with the developer. Mr. Webb, the developer, explained they would keep the historic home separate from the subdivision.

Chairman Bichel asked if the developer would accept a condition to preserve the second house. Mr. Webb stated he would need to discuss it with his team.

Mr. Bailey asked if both homes were currently being lived in. Ms. Henson, a family friend, explained the same family occupies both homes. Ms. Henson stated when the properties were previously up for sale the historic nature of the structures was never brought up.

Mr. Howard asked if there was a process that the second house did not qualify for. Mr. Bedenbaugh stated there was not; however, the agreement with the developer was only to preserve the historically-designated home.

Ms. Clark explained Greenville County has a goal to reduce septic tank usage and when septic tanks are used it is encouraged to provide septic easements. Ms. Clark stated the density is inconsistent with the surrounding area. Ms. Wilkes stated they were not asked to provide easements.

Mr. Rogers stated the proposed subdivision was out of character with the Comprehensive Plan.

Motion for PP-2021-298: by Mr. Shockley, seconded by Mr. Bailey, to approve PP-2021-298. The motion failed by hand vote with three in favor (M. Shockley; J. Bailey; J. Howard), four in opposition (S. Bichel; C. Clark; M. Looper; J. Rogers), and one recused (F. Hammond), with one absent (E. Forest).

Motion for VA-2021-300: by Mr. Shockley, seconded by Mr. Bailey, to approve VA-2021-300. The motion failed by hand vote with three in favor (M. Shockley; J. Bailey; J. Howard), four in opposition (S. Bichel; C. Clark; M. Looper; J. Rogers), and one recused (F. Hammond), with one absent (E. Forest).

Mr. Hammond returns.

5. Variance Applications

VA-2022-004: Willimon Business Park

Rashida Jeffers-Campbell addressed the Commission members with a variance application for

Willimon Business Park. The applicant is requesting a variance from LDR 10.2.4 Pedestrian Facilities for Willimon Business Park #PP-2021-109. The request is to eliminate the requirement for sidewalk and ADA ramps along Perimeter Road because Duke Energy will not allow these improvements in their right of way.

Staff recommends approval of the variance in accordance with LDR 1.6.3.

Discussion: None.

Motion for VA-2022-004: by Mr. Hammond, seconded by Mr. Looper, to approve VA-2022-004. The motion carried unanimously by voice vote with one absent (E. Forest).

6. Rezoning Requests

CZ-2022-002

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-002.

The subject parcel zoned R-S, Residential Suburban is located along St. Albans School Road, a two-lane county-maintained residential road. Staff is of the opinion that rezoning to R-15, Single-Family Residential is not appropriate for the area due to the existing infrastructure and further is not supported by the Plan Greenville County Comprehensive Plan, which designates this area as Rural Living.

Based on these reasons, staff recommends denial of the requested rezoning to R-15, Single-Family Residential.

Discussion: None

Motion: by Mr. Looper, seconded by Mr. Bailey, to deny CZ-2022-002. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-003

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-003.

The subject parcels, zoned R-S, Residential Suburban, and FRD, Flexible Review District, are located along West Georgia Road, a two-lane State-maintained arterial road, and Sullivan Road, a two lane State-maintained collector road. Staff is of the opinion that a successful rezoning to FRD, Flexible Review District—Major Change, which would allow for commercial development along West Georgia Road in conjunction with additional residential units at a greater density than allowed under the current zoning, would be consistent with much of the residential density in the area, and would not have an adverse impact on this area.

The development would have to meet the following conditions:

1. Submit revised Statement of Intent and Preliminary Land Development and Landscape Plan, addressing comments from the letter dated January 13, 2022.
2. Submit Final Development Plan for review and approval prior to the

issuance of any land development or building permits.

Based on these reasons, staff recommends approval of the requested rezoning to FRD-MC, Flexible Review District—Major Change with the aforementioned conditions.

Discussion: Ms. Clark stated the revision doubles the footprint, proposed homes, and does not fit with the Rural Living character area. Ms. Clark asked if any additional parcels would be acquired. Mr. Zuendt, the applicant, stated no additional parcels would be acquired.

Chairman Bichel explained the Comprehensive Plan designates this area as Rural Living.

Mr. Bailey stated he was familiar with the area and there are other dense subdivisions nearby.

Mr. Henderson explained there are similar developments being constructed nearby.

Motion: by Mr. Hammond, seconded by Mr. Bailey, to approve with conditions CZ-2022-003. The motion carried by voice vote with seven in favor (S. Bichel; J. Bailey; M. Shockley; M. Looper; J. Rogers; F. Hammond; J. Howard), one in opposition (C. Clark) with one absent (E. Forest).

CZ-2022-004

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-004.

The subject parcel zoned I-1, Industrial is located along Anderson Rd., a five-lane State maintained Arterial Road. Staff is of the opinion that the requested rezoning would allow the applicant to operate an auto sales business on the subject property. This proposed use, along with other allowable uses in the S-1, Services district, would not adversely impact the surrounding area.

Based on these reasons, staff recommends approval of the requested rezoning to S-1, Services.

Discussion: Mr. Looper asked staff if auto sales in S-1 zoning were required to meet the beautification standards. Mr. Henderson stated the applicant would need to adhere to Condition 31 for auto sales.

Motion: by Mr. Bailey, seconded by Mr. Shockley, to approve CZ-2022-004. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-005

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-005.

The subject parcel zoned R-S, Residential Suburban is located along White Horse Rd., a six-lane State maintained Arterial Road. Staff is of the opinion that the requested rezoning would permit uses that may have an adverse impact on the existing surrounding properties.

Based on these reasons, staff recommends denial of the requested rezoning to C-2, Commercial.

Discussion: Mr. Henderson explained the structures on the property were permitted as

residential accessory structures not permitted for commercial use.

Mr. Hammond asked what options the applicant would have if the request was denied. Mr. Henderson explained anybody can request to rezone to FRD or the commercial business would have to vacate.

Mr. Howard asked staff if the applicant could still live in the house on the property without operating the commercial business. Mr. Henderson stated that was correct.

Motion: by Mr. Bailey, seconded by Mr. Looper, to deny CZ-2022-005. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-006

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-006.

The subject parcel zoned R-S, Residential Suburban is located along White Horse Rd., a six-lane State maintained Arterial Road. Staff is of the opinion that the requested rezoning to R-15, Single-Family Residential would be consistent with surrounding land uses. However, subdividing this parcel, and leaving the remainder of the parcel as R-S, Residential Suburban would be creating a non-conforming lot on this remainder due to the absence of a single-family dwelling.

Based on these reasons, staff recommends denial of the requested rezoning to R-15, Single-Family Residential.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Looper, to deny CZ-2022-006. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-007

Mr. Henderson stated CZ-2022-007 has been administratively withdrawn

CZ-2022-008

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-008.

The subject parcel zoned R-7.5, Single-Family Residential is located along B Street, a two-lane State-maintained local road, 3rd Avenue, a two-lane County-maintained local road and 4th Avenue, a two-lane State-maintained local road. Staff is of the opinion that the requested rezoning would enable the applicant to build one additional residential unit on the subject property than is currently allowed under the existing district. Further, it will also allow the applicant to match the density of the surrounding neighborhood and better conform to the Plan Greenville County comprehensive plan.

Based on these reasons, staff recommends approval of the requested rezoning to R-6, Single-Family Residential District.

Discussion: Ms. Clark stated there was no R-6 zoning within two miles of this property. Mr. Henderson explained the size of lots would fit with the surrounding area. Ms. Clark asked how

many lots were being proposed. Mr. Henderson stated the applicant can put five homes but a rezoning would allow for six homes. Ms. Clark explained there was a historical specimen oak tree on this property that would likely be destroyed if six homes were constructed.

Mr. Bailey asked staff if there were any protections for historical trees. Mr. Stone explained the Tree Ordinance only provides credits to developers; however, future preservation tactics are being worked on.

Motion: by Mr. Bailey, seconded by Mr. Hammond, to approve CZ-2022-008. The motion carried by voice vote with seven in favor (S. Bichel; J. Bailey; M. Shockley; M. Looper; J. Rogers; F. Hammond; J. Howard), one in opposition (C. Clark) and one absent (E. Forest).

CZ-2022-009

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-009.

The subject parcel zoned R-M20, Multifamily Residential is located along Earle Dr., a two-lane County-maintained local road and Larry Ct., a two-lane County-maintained local road. While staff is aware of the Future Land Use designation of *Industrial* for this area in the Plan Greenville County Comprehensive Plan, staff is of the opinion that a successful rezoning would allow the existing scrapyard on the adjacent parcel to encroach closer to the single-family residential dwellings in this area. Staff has concern with the additional adverse impacts that industrial uses might have on these residential parcels.

Based on these reasons, staff recommends denial of the requested rezoning to I-1, Industrial.

Discussion: Mr. Hammond explained historically the area has been used as industrial. He doesn't believe this use would be a detriment to the area or nearby housing due to the existing industrial uses in the area.

Mr. Shockley stated the rezoning is an appropriate use in the Comprehensive Plan.

Mr. Henderson explained the staff's opinion was based on the surrounding zoning and designated zoning use.

Mr. Shockley asked if the desire was to keep the area non-conforming. Mr. Henderson said that was correct.

Mr. Hammond stated the area should be zoned industrial or it will stay non-conforming.

Ms. Clark explained if the property was re-zoned there would be residential homes 30 feet from the property. Mr. Stone stated the residents of this area are unhappy with industrial growth encroaching into residential areas.

Mr. Rogers asked why this area was designated as industrial in the Comprehensive Plan. Mr. Henderson stated it was based on an aerial view and the area looked more industrial.

Motion: by Mr. Hammond, seconded by Mr. Shockley, to approve CZ-2022-009. The motion

failed by hand vote with four in favor (F. Hammond; M. Shockley; J. Bailey; J. Howard) and four in opposition (S. Bichel; J. Rogers; C. Clark, M. Looper) with one absent (E. Forest).

CZ-2022-010

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-010.

Staff is of the opinion that the proposed amendments will provide an easier process for initial zoning of parcels within Greenville County which will assist property owners in their efforts.

Based on these reasons, Staff recommends approval of the proposed Text Amendment.

Discussion: None

Motion: by Mr. Looper, seconded by Ms. Clark, to approve CZ-2022-010. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-011

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-011.

The subject property is located on Stallings Rd., a two-lane State-maintained collector road. The allowable uses of the requested rezoning are more intensive than the surrounding neighborhoods and do not conform to the Plan Greenville County Comprehensive Plan.

Based on these reasons, staff recommends denial of the requested rezoning to R-M20, Multifamily Residential.

Discussion: None

Motion: by Ms. Clark, seconded by Mr. Rogers, to deny CZ-2022-011. The motion carried by voice vote with six in favor (S. Bichel; J. Bailey; C. Clark; M. Looper; J. Rogers; J. Howard) and two in opposition (F. Hammond; M. Shockley) with one absent (E. Forest).

CZ-2022-012

Mr. Henderson stated CZ-2022-012 was withdrawn by the applicant.

CZ-2022-013

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-013.

The subject parcel zoned S-1, Services is located along Old Bramlett Rd., a two-lane State-maintained local road and Frady Rd., a two-lane County-maintained local road. Staff is of the opinion that while the proposed density for R-15, Single-Family Residential does not align with the Future Land Use of the Comprehensive Plan, the parcels, however, are surrounded by similar zoning and density.

Based on these reasons, staff recommends approval of the requested rezoning to R-15, Single-Family Residential District.

Discussion: Ms. Clark stated they saw this request not long ago. Mr. Henderson stated she was correct. Mr. Henderson explained the applicant was proposing Multi-Family Residential and are now requesting Single-Family Residential.

Motion: by Mr. Hammond, seconded by Mr. Shockley, to approve CZ-2022-013. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-014

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-014.

The subject parcel zoned R-S, Residential Suburban is located along Griffin Mill Rd., a two-lane State-maintained collector road. Staff is of the opinion that while the proposed density for R-15, Single-Family Residential does not align with the Future Land Use of the Comprehensive Plan, the parcel, however, is surrounded by similar zoning and density.

Based on these reasons, staff recommends approval of the requested rezoning to R-15, Single-Family Residential District.

Discussion: Mr. Rogers asked staff the recommended density for Mixed-Employment Center. Mr. Stone stated the recommended density was 8-30 dwellings per acre. Mr. Henderson stated the area is surrounded by similar zoning and density despite not conforming to the Comprehensive Plan.

Motion: by Mr. Rogers, seconded by Mr. Bailey, to approve CZ-2022-014. The motion carried unanimously by voice vote with one absent (E. Forest).

CZ-2022-015

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-015.

The subject parcels zoned R-S, Residential Suburban are located along Woodruff Rd., a two-lane State-maintained arterial road. Staff is of the opinion that while the proposed density does not align with the Future Land Use of the Comprehensive Plan, it does, however, align with the density of the Five Forks Area Plan. The proposed zoning will also be consistent with surrounding zoning and densities.

Based on these reasons, staff recommends approval of the requested rezoning to R-12, Single-Family Residential District.

Discussion: None

Motion: by Mr. Shockley, seconded by Mr. Hammond, to approve CZ-2022-015. The motion carried unanimously by voice vote with one absent (E. Forest).

7. Planning Report

Mr. Coker presented the January Planning Report to the Commission.

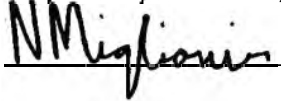
8. Old Business

9. New Business

10. Adjourn

Without objection, Chairman Bichel adjourned the meeting at 8:07 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "NMiglionico", written over a horizontal line.

Nicole Miglionico

Recording Secretary

EXHIBIT 3

**(Order of the Honorable Letitia H. Verdin
dated June 3, 2022 - "Judge Verdin's Order")**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Mark III Properties, LLC,	)	C.A. NO. 2022-CP-23-01106
	)	
Appellant,	)	
	)	
vs.	)	ORDER
	)	
Greenville County Planning Commission,	)	
	)	
Respondent.	)	
	)	
	)	

This matter comes before the Court on appeal from Mark III Properties, LLC (“Appellant”) of a decision by the Greenville County Planning Commission (“Respondent”) to deny Appellant’s application for a subdivision named Langford Hills. For the reasons stated herein, the Court **AFFIRMS** Respondent’s decision.

I. BACKGROUND

On January 26, 2022, Respondent held a public hearing on Appellant’s application for the Langford Hills subdivision. County Staff recommended approval of the application with minor conditions. After discussion, Respondent voted on a motion to approve the application, which failed by a vote of three in favor and four opposed. This appeal followed.

II. STANDARD OF REVIEW

The Court must not reverse the decision of a county review board unless it has no evidentiary support or the board has committed an error of law. *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020) (citing *Charleston Cty. Parks and Recreation Comm’n*

v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)). “In the zoning context, a decision of the reviewing body will not be disturbed if there is evidence on the record to support its decision.” *Peterson Outdoor Advert v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997). “However, the decision of the zoning board will not be upheld where it is based on errors of law.” *Grays Hill Baptist*, at 647, S.E.2d at 33 (quoting *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752 (1953)).

III. DISCUSSION

Appellant argues on appeal that it was not given a reason for the denial of its application and therefore Respondent’s decision was arbitrary and capricious and should be overturned. To support its position, Appellant cites S.C. Code 6-29-1150(B), which states, “A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record.”

The Court finds that the document titled “January 26 Greenville County Planning Commission Minutes” satisfies this requirement. (Appellant’s Brief, Exhibit 2). During the meeting, two members of the public addressed Respondent in opposition of the proposed subdivision. They cited as concerns the existence of two historic houses on the Langford Hills property that they argued should be preserved, as well as the adverse impact on the water table should the subdivision be approved. There was even some discussion between the Commission Chairman and the developer about whether Appellant would preserve one of the historic houses, which the developer was unable to commit to. One of commissioners, Ms. Clark, specifically stated that “Greenville County has a goal to reduce septic tank usage and when septic tanks are used it is encouraged to provide septic easements.” and “the density is inconsistent with the surrounding area.” Another commissioner, Mr. Rogers, stated that the proposed subdivision was out of character with the

surrounding area. In all, three of the four members who voted against the plan explained their opposition on the record, and it is reasonable to presume that the fourth member voted against it because he found their arguments compelling.

IV. CONCLUSION

Therefore, the Court finds that there is a sufficient record to explain Respondent's denial of Appellant's application. The Court does not find that that Respondent made its decision with no evidentiary support or in an arbitrary or capricious manner. Appellant also committed no clear errors of law. Accordingly, Respondent's decision is AFFIRMED.

IT IS SO ORDERED.

Letitia H. Verdin
Thirteenth Circuit Court Judge

June __, 2022

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Mark III Properties LLC VS Planning Commission Greenville County

Case Number: 2022CP2301106

Type: Order/Other

So Ordered

s/Letitia H. Verdin, SC Judge 2162

EXHIBIT 4

**(Minutes of April 27, 2022
Planning Commission Meeting)**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

Greenville County Planning Commission Minutes
April 27, 2022 at 4:30 p.m.
Conference Room D at County Square

Commissioners Present: S. Bichel, Chair; J. Bailey, Vice-Chair; M. Shockley; E. Forest; C. Clark; M. Looper; J. Rogers; F. Hammond; J. Howard

Commissioners Absent: None

County Councilors Present: W. Meadows

Staff Present: T. Coker; C. Antley; M. Staton; A. Lovelace; T. Stone; L. Mann; R. Jeffers-Campbell; N. Miglionico; IS Staff

- 1. Call to Order**
Chairman Bichel called the meeting to order at 4:30 p.m.
- 2. Invocation**
Mr. Howard provided the invocation.
- 3. Approval of the Minutes of the March 23, 2022 Commission Meeting**
Motion: by Mr. Looper, seconded by Mr. Bailey, to approve the minutes of the March 23, 2022 Commission meeting, as presented. The motion carried by voice vote.
- 4. Preliminary Subdivision Applications**

PP-2022-049 Bruce Lake Subdivision

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Bruce Lake, a townhome subdivision located south of the intersection of Nora Dr and Hwy 276. The applicant is requesting 52 townhome lots at a density 3.9 units/acre. The property is zoned Planned Development (PD). The PD district provides a mechanism for County Council and the applicant to agree on the scope of the proposed development. The PD is established to encourage innovative and creative design of residential and/or commercial developments, to permit a greater amount of flexibility by removing some of the restrictions of conventional zoning. Access is provided off of Poinsett Hwy –a state road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The project site is located within the Suburban Edge character area of the Comprehensive Plan. Suburban Edges are low-density residential areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the county's larger open space system. The applicant is proposing 3.9 units/acre which is not consistent with the recommended density of the Comprehensive Plan. The recommended density for the Suburban Edge character area is 0 to 1 dwellings per acre. The applicant is proposing 3.9 units per acre consistent with the Planned Development zoning district.

Staff recommends conditional approval of the plan with the standard and specific requirements.

Approval conditions are as follows:

- The site shall be subject to all applicable existing restrictive covenants and easements. Notwithstanding, the developer shall be responsible for all infrastructure improvements and maintenance related to adequate storm-water management and flood control for Bruce Lake subdivision.
- An emergency access shall be provided on Nora Drive consistent with the approved Final Development Plan dated 4.6.2022.

Discussion: Three nearby residents spoke in opposition of the proposed subdivision. The first speaker, Richard Wright, asked his neighbors to stand to show the Planning Commissioners how many people were in attendance. Mr. Wright stated the proposed subdivision failed to develop responsibly and detailed the opposition from surrounding neighborhoods and residents. Mr. Wright explained Bruce Lake Nature Preserve is fifteen acres of undeveloped wildlife habitat and a migratory corridor that needs to be protected. Mr. Wright stated the property covenant is an enforceable document that prohibits Bruce Lake from being used as a detention pond and restricts development.

Mr. Rogers asked Mr. Wright his response to the planned development already having County Council approval. Mr. Wright pointed out the approval was in the year 2006 and he believes it goes against the spirit of the current recommended density for the area.

Mr. Rogers stated LDR Article 20 states the final development plan is only valid for two years. Mr. Rogers asked if this plan was still relevant. Ms. Jeffers-Campbell stated the concept plan is the actual zoning. Ms. Jeffers-Campbell explained the zoning is linked to the approved concept plan. Mr. Rogers asked how the Comprehensive Plan, which was approved in 2020, factors into this application. Mr. Rogers stated the application is requesting twice the recommended density designated for this area in the Comprehensive Plan. Ms. Jeffers-Campbell stated the Comprehensive Plan is a guide but the zoning is the law. Ms. Jeffers-Campbell explained when a property is zoned a certain way, it is the property owner's right to develop the property in that way. Ms. Jeffers-Campbell pointed out the surrounding area is legally zoned predominantly more dense than what the Comprehensive Plan recommends.

Mr. Wright stated the covenants for Bruce Lake were filed in 1989 but had only recently been considered when he brought it to Subdivision Administration. Mr. Wright explained the spirit of the covenant is clear and is intended to restrict this type of development.

Mr. Bichel asked Mr. Wright if he gave the developer permission to use his half of the lake. Mr. Wright stated no.

The second speaker, John Cook, stated there appeared to be no stormwater control system to remove pollutants, which is against the DHEC national discharge permit regulations. Mr. Cook explained placing 52 townhouses on approximately five acres would provide no room to remove water pollutants. Mr. Cook stated the proposed subdivision needed a robust, sustainable, and transparent stormwater pollution management system that would protect Bruce Lake and the Reedy River. The third speaker, Rebecca Carper, stated the proposed subdivision does not align with the restrictive covenant's intent and contradicts the Greenville County Comprehensive Plan to ensure low density residential areas that are well integrated

with the native landscape.

There were two speakers in favor of the proposed subdivision. The first speaker, Jay Martin, the project engineer, reviewed the zoning history of the property, detailing four significant parameters that remain in place today.

1. Prior to the rezoning in 2006, the subject property was allowed to construct up to 70 units. The rezoning limited the development to 52 units and has remained the same ever since.
2. The proposed development will not access Nora drive. Access to the proposed development is via Poinsett Highway. Nora Drive is not designed to handle additional traffic and access to Nora Drive would negatively impact the adjacent neighbors.
3. The proposed development will provide a substantial landscape buffer along Nora Drive and Poinsett Highway. The development will include clearing and grading and the landscape buffer is a necessity to form a boundary.
4. Bruce Lake will incur corrective measures to the existing dam which may be used for stormwater control and water quality must be provided before stormwater enters the lake.

Mr. Martin stated traffic circulation has improved in the area with the installation of a traffic light at North Parker Road and Poinsett Highway. Mr. Martin explained the light allows neighbors to access Poinsett Highway and serves to separate the traffic from the proposed subdivision and the existing traffic flow. Mr. Martin stated Bruce Lake is a planned development that has achieved an approved statement of intent, approved preliminary development plan, and an approved final development plan. Mr. Martin explained the current property owner bears the responsibility for making much needed repairs to the dam, which SC DHEC can attest to. Mr. Martin stated the repairs will occur during the development of the subject property and SC DHEC will review, approve, and inspect all repair activities. Mr. Martin said they will also need to provide Greenville County with a structural and dam breach analysis. Mr. Martin stated the easement agreements and covenants dated March 15, 1989 apply to the owners of Bruce Lake. Mr. Martin explained the development of the subject property will meet all agreements and covenants stated within the recorded document which includes the cross use between properties of the lake. Mr. Martin stated they are required by state law to provide water quality before water enters Bruce Lake. Mr. Martin explained they are required by law to show total phosphorus reduction prior to permit issuance and the site will be inspected during construction to ensure it is not polluting Bruce Lake or the Reedy River. Mr. Martin stated a wooded buffer is not the only type of BMP that can provide water quality. There are multiple BMPs that can and have been approved by Greenville County. Mr. Martin explained new developments are held to the highest standard and existing developments are not held to this same standard. Mr. Martin stated the proposed subdivision meets all codes, ordinances, regulations, rules, permits, and it should be approved.

Mr. Bailey asked Mr. Martin to explain how water quality control will be handled. Mr. Martin explained approval tonight would be for the preliminary plat, not for engineering documents. Mr. Martin explained after approval he will work with Land Development and through the engineering and permitting process they will develop a BMP plan that meets the criteria, cost effectiveness and all requirements to provide the water quality required by permit. Mr. Bailey clarified that they will have a way to restrict the phosphorus numbers and suspended solids before they enter the lake, even though a retention pond is not shown on the plan. Mr. Martin stated that was correct. Mr. Martin clarified that Bruce Lake is a retention pond, not a

detention facility. Mr. Bailey asked Mr. Martin to explain how the intent of Bruce Lake's covenants will be upheld and how the stormwater from the proposed development is not a noxious addition to the lake. Mr. Martin stated the covenants state you cannot prohibit the natural flooding and drainage of the lake waters from one property onto the others. Mr. Martin explained you cannot have negligent flooding from one property owner or the other and it is not negligent when it goes through the permitting process to ensure there is no flooding inundation. Mr. Martin stated you cannot raise the full pond level more than the level limits outlined in the dated survey. Mr. Martin explained the covenants prohibit draining the pond unless for repairs and 30 days' notice must be provided to the other owner of the lake. Finally, neither party nor the purchaser shall do or permit anything to be done which would tend to make the lake a hazard or nuisance or conduct any activity which shall be a nuisance or put or deposit debris, trash, noxious or other objectionable materials into the lake. The water quality requirement that will be provided before the water enters the lake will keep the pollutants, hazards and debris out of the lake.

Mr. Rogers asked if the original approval for this plan had fewer units than the current plan. Mr. Martin stated the original approval of 52 units has not changed since 2006.

Mr. Bailey asked what happened with the property in 2018. Mr. Martin stated the current owner was developing the property and the project stopped. Mr. Martin stated he did not know why the project stopped.

Ms. Clark stated, according to LDR Appendix E, "If an LID approach is being considered, the applicant will be required to participate in early design guidance, Stormwater Concept Plan Process, with the Land Development Division to discuss possible site constraints, existing drainage problem areas, transportation needs, soil conditions, design and accessibilities, and maintenance responsibilities. This Concept Plan should focus on the proposed layout, LIDs and BMPs..." Ms. Clark stated the proposed subdivision is six years into the project and this process has not occurred. Mr. Martin explained they are sixteen years into the zoning. The original developer did not move forward in 2007, pre-design was completed with Land Development for the 2018 project, and once the current preliminary plat is approved they will discuss pre-design with Land Development. Mr. Martin stated early design refers to engineering. Ms. Clark stated the plan is scarily silent on stormwater management despite the environmental sensitivities of the lake and the ramifications downstream. Ms. Clark explained there is no structural dam assessment completed and doesn't know how they can speak to vacillating the quantity of the lake without a structural assessment. Mr. Martin stated if the criteria are not met, it will not be approved by Land Development. Ms. Clark asked how the water quality is measured. Mr. Martin stated water quality runs through the ideal model, which is the standard for Greenville County. Mr. Martin explained the results are submitted and they do not receive any permits until the results are verified. Ms. Clark stated modeling is not real-time monitoring. Ms. Clark pointed out there is no deceleration lane on Poinsett Highway to turn into the subdivision, creating a safety hazard because of the four parking spaces at the entrance of the neighborhood. Mr. Martin stated the parking spaces were reviewed by the SAC and there will be an additional review when they apply for the encroachment permit. If a deceleration lane is recommended at that time, they will be responsible for providing one or a permit will not be issued. Ms. Clark stated there is a stream on the northern part of the parcel that is not clearly annotated. Mr. Martin explained it had been marked in the field and surveyed. Ms. Clark stated there is a concern that there is not

enough pervious surface to allow for quality measures. Mr. Martin explained those will be requirements that will be reviewed by Land Development.

Chairman Bichel asked how you can have a large amount of impervious surface and not have the lake level rise. Mr. Martin explained the covenant and deed restrictions say you can't raise the level above the current full pull elevation. However, you can reduce the lake level as long as it's not significant. Mr. Martin stated keeping the lake level within the limits is easily attainable with such a large body of water.

Mr. Looper asked who would be responsible for water quality and if the dam bursts after the development is completed. Mr. Martin stated the covenants state the land owners would be responsible if the dam burst and water quality maintenance would be provided by the HOA.

Mr. Rogers stated LDR Article 20.4 "All FDP review approvals are valid for two (2) years, where upon if no permit has been issued, a new FDP review will be required". Mr. Martin stated the FDP was approved by Planning staff immediately prior to the SAC meeting for this proposed subdivision. Mr. Rogers asked what was approved in 2018.

Chairman Bichel stated the zoning was approved.

Ms. Jeffers-Campbell stated the zoning doesn't change no matter how many iterations of the plan have been submitted.

Mr. Hammond stated the PD and development plan are different items.

Mr. Rogers stated the biggest struggle seems to be if they are bound by the previous action of County Council.

Chairman Bichel stated that is the zoning ordinance. The applicant is here for a subdivision which is reviewed by the LDR.

Ms. Jeffers-Campbell stated PDs are very unique because the zoning doesn't change; the concept is tied to the actual zoning. Ms. Jeffers-Campbell explained the concept is the zoning: if the plan expires the applicant still has the right to come back and go through the process and continue to move forward.

The second speaker, Steve McNair, the project developer, stated they have entered into an agreement with SC DHEC and the current property owner to repair the dam at the developer's cost during construction of the subdivision. Mr. McNair explained it is their intent to find a public or private entity to turn the dam into a park or recreational destination.

Chuck Owens from DHEC Dam Safety spoke on the condition of the dam. Mr. Owens stated the dam is a high hazard dam. Mr. Owens explained the dam is rated as unsatisfactory and is only one of two dams in Greenville County rated that low. Mr. Owens stated the dam needs a lot of attention and will eventually fail if a repair is not made.

Mr. Rogers asked what impact the development will have on the dam. Mr. Owens stated all runoff would have to be taken into account to ensure the dam meets spillway capacity which

would come in the form of a permit from DHEC Dam Safety.

Mr. Forest asked how much it would cost to repair the dam. Mr. Owens stated a couple hundred thousand dollars.

Mr. Hammond asked if the dam is not repaired would the pond need to be drained. Mr. Owens stated the issue would go back to the owner to repair the dam.

Mr. Bailey asked what sequence of events would take place if the development is approved in regards to repairing the dam. Mr. Owens stated he believes the permits for the dam would have to be in conjunction with the site grading. Mr. McNair stated the dam repair would be a part of the land disturbance permit and all of the site clearing, grading, and dam repair would be completed simultaneously. Mr. Bailey asked what mechanism is in place to prevent obtaining a CO before the dam repair takes place. Mr. McNair stated final plat approval. Ms. Jeffers-Campbell stated the dam repair is spelled out in the specific requirements and the Land Development Division would be monitoring all requirements before final plat approval.

Mr. Howard asked if there was a timeline for the dam repair and what would be the impact to neighbors if the dam were to fail while repairs are ongoing. Mr. Owens stated if the dam fails the impact would be to Poinsett Highway and businesses across the road.

Mr. Rogers asked how the dam will be improved and will it be sufficient. Mr. Owens stated the developer will have to bring the dam up to full compliance which will require a complete reconstruction. Mr. McNair stated the current property owners are going to allow them to escrow money at the land closing to cover the bid pricing for the dam repair.

Mr. Shockley asked if the dam will have to be repaired whether the developer pays for it or not. Mr. Owens stated yes.

Mr. Howard asked if there is a plan for the dam repair. Mr. Owens stated no plans have been submitted to DHEC. Mr. McNair stated the plan would be a part of their grading plan submission.

Chairman Bichel stated he wanted to remind the Planning Commission of LDR Article 20 section 20.2: "The Planning Commission may impose additional or more restrictive requirements if it is determined that it is within the public interest." Chairman Bichel stated due to the fact the other owner of Bruce Lake has not given permission for any discharge into the lake and the density recommended in the Comprehensive Plan he intends to not support the application.

Mr. Hammond reminded the Planning Commission that the Comprehensive Plan is an aspirational document and has no enforceability. Mr. Hammond explained the zoning is PD and to deny the application based on zoning or density is inappropriate. Mr. Hammond stated the reasons that have been voiced in concern about the application (the dam, water, DHEC, water quality, water quantity) are not within the purview of the Planning Commission. Mr. Hammond explained any covenants on the property are the buyers and not the purview of the Planning Commission. Mr. Hammond stated the Planning Commission is assigned to ensure

the application qualifies under the regulations of the LDR which staff has indicated it does. Mr. Hammond explained he doesn't see any issues where the application doesn't comply with the LDR. Mr. Hammond stated it doesn't seem like the dam will be improved anytime soon unless the property sells. Mr. Hammond stated if you are looking for a reason to turn this application down, ask yourself before you vote no, if I am giving a deposition, can I be absolutely sure I had the purview, expertise, and a specific reason to deny.

Mr. Bailey stated he believes the Planning Commission is charged with putting a stop to public nuisance and public safety. Mr. Bailey stated there are some things of concern with the application but they are outside of the Planning Commission's purview. Mr. Bailey explained they may not like the application from an environmental standpoint but they are limited to what they can deny based on those matters. They must look at the application from a zoning standpoint.

Chairman Bichel stated LDR 20.2: "The Planning Commission may impose additional or more restrictive requirements if it is determined that it is within the public interest."

Mr. Forest asked Chairman Bichel what restrictions or requirements does he deem necessary.

Chairman Bichel stated the density.

Mr. Shockley stated the reasons for denying the application are not under the Planning Commission's purview. Mr. Shockley stated he would be in support of the staff recommendation and made a motion to approve.

Mr. Forest stated the condition of the dam concerns him and if the dam fails it will be a larger environmental disaster than the sediment entering the lake. Mr. Forest explained, the other land owner on the lake did not give permission to discharge into the lake but that land owner is not responsible for repairing the dam. The land owner responsible for repairing the dam bears a larger burden than the other land owner.

Mr. Bailey asked Chairman Bichel what changes he would like brought to the application.

Chairman Bichel stated the DHEC report said they have only looked at the quantity and not the quality of the water. Chairman Bichel explained he has an issue with the quality of the water and an issue that the owner of the other half of the lake has not given permission for any discharge.

Mr. Shockley asked if the other owner of Bruce Lake was willing to pay for half the cost of the dam repair. Mr. Wright stated he was willing to pay for the repair of the dam and it should not be taken into consideration over the larger issues of the application.

Mr. Rogers stated this is a difficult case given the prior action of the PD zoning approval which is inconsistent with the Comprehensive Plan. Mr. Rogers explained he looked at the statute on the Comprehensive Plan, 6.29.510 SC Code: "The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to

guide the development and redevelopment of its area of jurisdiction.” Mr. Rogers stated he understands that to mean the Comprehensive Plan is not binding but it can guide the Planning Commission’s decision making. Mr. Rogers explained, in this instance, where there is an action that is 17 years old and, since then, the Comprehensive Plan has been readopted twice which clearly does not envision that sort of density for this area of the County, he doesn't see how you can support the application.

Mr. Shockley asked Mr. Rogers if they should take every piece of property that has been previously zoned and change it because it was zoned 17 years ago or longer.

Mr. Rogers stated that was a legitimate point, but the way the enabling statute reads, it says the Comprehensive Plan guides the Planning Commissions decisions. Mr. Rogers explained he believes it is within the Planning Commission's discretion.

Mr. Shockley stated zoning is more significant than the Comprehensive Plan guide. Mr. Shockley explained that land owners rely on the zoning to dictate what can be done with the property and everyone wants to know what the rules are, what they need to do to meet the rules, then they meet the rules and are told the rules no longer apply. Mr. Shockley stated it is very important that the Planning Commission support zoning in Greenville County.

Mr. Hammond stated Greenville County Council adopted the zoning by law. Mr. Hammond explained the Comprehensive Plan is a guide and an aspirational document but the zoning is by law a use. Mr. Hammond stated, as per the Greenville County attorneys, if you plan to deny an application, there must be a very specific reason. If the Planning Commission turns an application down because, in our opinion, the Comprehensive Plan overrides legal zoning, that is not very specific.

Mr. Rogers stated the statutory language in 6.29.510 is a legally binding authority which gives the Comprehensive Plan legal status as a guidance document to the Planning Commission.

Mr. Hammond stated you should not pick and choose when you are going to evaluate applications based on the Comprehensive Plan.

Mr. Forest stated zoning is a vested right. Mr. Forest explained when an appraiser reviews a property for value, they are looking at that zoning, not what the aspirational plans are for the area. Properties are appraised for what uses are allowed and that creates a value that the property owner has a right to. Mr. Forest stated the property is devalued if the property cannot be used for its current zoning.

Chairman Bichel stated they could ask for a major change or a different zoning category.

Mr. Shockley stated the zoning is the property owners' right, not the Planning Commission’s right.

Chairman Bichel stated the Planning Commission should read LDR Article 20.

Motion for PP-2022-049: by Mr. Shockley, seconded by Mr. Forest, to approve PP-2022-049. The motion failed by hand vote with four in favor (M. Shockley; E. Forest; F. Hammond; J. Bailey) and five

in opposition (S. Bichel; C. Clark; M. Looper; J. Rogers; J. Howard).

PP-2022-043 Langford Hills Subdivision

VAR2022-100 Langford Hills Variance (50 ft. Buffer lot 1)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Langford Hills, a rural conservation subdivision located a third of a mile south of the intersection of Garrison and Augusta Rd in the unzoned area south of I-185. The applicant is requesting 176 lots at a density of 1.07 units/acre with an average lot size of 21,555 square feet. Access is provided off of Garrison and Augusta Rd –state roads. Water and sewer will be provided by Greenville Water and septic, respectively.

VAR2022-100

The applicant is requesting a variance from LDR Article 22.3.5.A which requires a minimum fifty (50) foot buffer along the perimeter of the development. The variance request will only apply to lot #1. The 50' buffer stops at the shared lot line between lots #1 and #2. No buffer is shown on lot #1. There is an existing house located on parcel 0603020102200. The home is located partially in what would be 50' buffer. This home is located on the Greenville County Historic Resource Survey performed in 2013. The home is known as the McDavid House and the developer intends to leave the home undisturbed. There were no SAC comments in opposition to the variance.

The proposed subdivision is located in the Rural Living character area of the Comprehensive Plan. Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses. The recommended density is 1 dwelling per 2+ acres. This application proposes 1.07 units per acre.

On 11.17.2021, the Planning Commission denied Langford Hills case PP-2021-219 due to a split vote. At the public hearing, citizens expressed concerns regarding the preservation of the McDavid House – a structure listed on the Greenville County Historic Resource Survey. The applicant revised and resubmitted the plan under case PP-2021-298 to address the preservation of the historic resource but was denied on 1.26.2022. The current application PP-2022-043 is the same as the application denied on 1.26.2022.

Staff recommends approval of the variance and conditional approval of the plan with the standard and specific requirements: Approval conditions are as follows:

- All SCDOT required improvements shall be installed once 40 lots have been recorded by final plat. Specifically, a right turn lane shall be installed at Access 3 or at US 25 and Garrison Rd as directed by SC DOT.

Discussion: Chairman Bichel stated there is a pending lawsuit on this proposed subdivision and doesn't agree that it should come before the Planning Commission until the lawsuit is settled.

Mr. Hammond asked staff for clarification on their recommendation due to the developer requesting a density higher than what is recommended in the Comprehensive Plan. Ms.

Jeffers-Campbell explained there is no density related to this site; it only has to meet the standards of the LDR. Ms. Jeffers-Campbell stated the application met the standards of the LDR.

There were two speakers in opposition of the proposed subdivision. The first speaker, John Hill, stated Mr. Hammond was financially involved in this project and should not be able to vote on the application. Mr. Hammond stated he no longer has any interest in this property from any standpoint and has no financial gain from the results of this application. Mr. Hill stated that Mr. Hammond has recused himself on this application in the past. Chairman Bichel stated it was Mr. Hammond's decision to recuse or not. Mr. Hill explained the high concentration of septic tanks would contaminate the watershed, local domestic wells, and springs. The second speaker, Anne Peden, spoke about the historical nature of the Highway 25 corridor and the two homes on the property. Ms. Peden explained that Preservation South Carolina is trying to save the two homes on the property but the contract from the developer has requirements that the Preservation South Carolina Board cannot agree to.

There were two speakers in favor of the proposed subdivision. The first speaker, Waverly Wilkes, the project engineer, provided an overview of the project. Ms. Wilkes explained the variance is being requested because the McDavid House is located within the 50 foot buffer. Ms. Wilkes stated the project conforms to LDR Article 22 for a Rural Conservation Subdivision. Ms. Wilkes read a letter, addressed to Mr. Fitzpatrick, the Preservation South Carolina Board Chairman, offering the homes to Preservation SC to restore and market the homes for sale with all financial proceeds being donated to Preservation SC.

Ms. Clark asked why the cemetery was not included in the variance request. Ms. Wilkes explained the cemetery would remain undisturbed. Ms. Clark stated the variance for Lot 1 seemed like an afterthought. Ms. Wilkes explained they were originally unaware that the McDavid House could be historic.

Mr. Forest explained the difference for the variance is the homes will be sold and the graveyard is included in an easement.

Chairman Bichel pointed out a mislabeling on Area H of the preliminary plat. Chairman Bichel stated all of the calculations would need to be redone. Ms. Wilkes stated that is correct for the open space table. However, the numbers in the open space table would remain the same as they are based on the hatching.

Mr. Rogers asked why the proposed subdivision was being brought back to the Planning Commission while litigation is pending.

The second speaker, John Beeson, the developer, explained there are two homes on the property that were intended to be demolished until it was discovered that they could be historic and public interest wanted them preserved. Mr. Beeson stated they met with Preservation SC in an effort to work out an agreement to restore the homes. Mr. Beeson explained they have had builders look at the homes and the house on Lot one is in disrepair and the house on Lot five and six will require approximately \$150,000-200,000 dollars to repair. Mr. Beeson stated they have agreed to donate the lots if Preservation SC agrees to restore the homes, sell them, and keep the proceeds. Mr. Beeson stated this is not a

requirement of the LDR. Mr. Beeson explained if they do not restore the homes, they will demolish them, in an effort to maintain the aesthetics of the subdivision. Mr. Beeson reminded the Planning Commission that neither of the homes are currently on the historical protected list. Mr. Beeson explained they have filed an appeal of the previous Planning Commission decision and needed to do that within 30 days. Mr. Beeson stated if the proposed subdivision is approved tonight, they will withdraw the appeal. Mr. Beeson explained the plan has been brought back and changed to offer Preservation SC both homes instead of the one home that was previously proposed.

Chairman Bichel asked why Preservation SC wouldn't want to keep the homes for tours. Mr. Beeson stated they don't care what Preservation SC does with the homes, they plan to give them to them either way. Mr. Beeson explained the intent was to have Preservation SC preserve the homes, but it seems as though Preservation SC wants to make a profit from them. Chairman Bichel asked if Mr. Beeson was willing to hold the application until the lawsuit is settled. Mr. Beeson stated no, they would like a decision tonight. Mr. Beeson stated the letter to Preservation SC is only in effect if the proposed subdivision is approved. Mr. Beeson stated if the proposed subdivision is not approved they will need to demolish the first house due to the liability of it remaining intact.

Mr. Bailey asked what would happen if the houses were donated but the repairs were not made for six years. Mr. Beeson stated they would have to agree to a reasonable time limit.

Ms. Peden explained the Board of Preservation SC would not approve due to the wording of the letter.

Chairman Bichel asked if the intent of Preservation SC was to sell the homes for a profit. Ms. Peden stated Preservation SC is a statewide nonprofit organization that works under the purview of the nonprofit system. Ms. Peden explained they have preserved and restored many historic houses and buildings. Ms. Peden stated they have to sell the homes and use the funding to restore the next historic structure.

Mr. Forest asked if Preservation SC is worried they don't have a vested right to sell and receive the money from the sale. Ms. Peden stated that was correct. Ms. Peden explained the wording in the letter cut them out of receiving the money, which was probably not the intent.

Mr. Beeson stated he believes there is a misunderstanding, they have offered to give Preservation SC three lots. Mr. Beeson stated the proposed subdivision should be approved regardless of the homes on the property because they have no bearing on the LDR.

Mr. Forest stated the homes have bearing on the decision for this meeting because the developer had to have a reason to bring it back before the Planning Commission.

Mr. Bailey asked Ms. Peden if she thought a two-year time frame was reasonable for the restoration of the homes. Ms. Peden stated she did not believe that was Preservation SC's common working time frame.

Mr. Shockley stated he doesn't believe the details of the agreement of the homes holds any

bearing on the decision.

Ms. Clark asked how the site assessment required by LDR 22.2 was conducted. Ms. Wilkes stated the site assessment was conducted within the requirements of the pre-submittal meeting. Ms. Clark stated the assessment is supposed to identify historical structures. Ms. Wilkes stated currently neither home is considered a protected historical structure. Ms. Clark explained in the original application the developer was unaware of the homes' historical relevance. Ms. Clark stated it concerns her that the original site assessment never acknowledged the homes were important. Ms. Clark stated they have never received a site diagram that is required by the LDR that annotates all of the significant features of the property. Ms. Wilkes stated she was happy to provide it for future unzoned areas. Ms. Jeffers-Campbell stated this application has satisfied the requirements. Ms. Clark explained the design has virtually no conservation value, which is the intent of a Rural Conservation Subdivision. Ms. Clark stated the intent of Rural Conservation Subdivisions is to build small septic lots and maximize the conservation potential. Ms. Clark stated the proposed subdivision does not meet the intent of a Rural Conservation Subdivision.

Mr. Rogers made a motion to deny the application on the following grounds:

1. The same grounds it was denied previously and the fact that it is in litigation, as it seems inappropriate to consider it.
2. It's unclear, based on the file, whether the developer is committed to building the right turn lane. The conditions state that SC DOT will work with the developer to determine if the right turn lane needs to be installed.
3. Lack of conservation and lack of sewer.
4. It exceeds the density in the Comprehensive Plan.

Chairman Bichel stated he would add LDR 22.3.6 D "high tension power lines, fenced detention areas used for stormwater management and similar construction shall not be considered as Open Space or count towards the Open Space required." Mr. Bichel stated it does not mention common area. Mr. Bichel explained that if you read Article 22, common area was only used once and is used incorrectly. Mr. Bichel stated the Greenville County open space table is incorrect, which is against LDR Section 3.

Mr. Rogers stated he would incorporate Chairman Bichel's ground for denial into the motion.

Ms. Clark agreed with the grounds for denial.

Motion for PP-2022-043: by Mr. Rogers, seconded by Ms. Clark, to deny PP-2022-043. The motion carried by hand vote with five in favor (S. Bichel; C. Clark; M. Looper; J. Rogers; J. Howard) and four (M. Shockley; E. Forest; F. Hammond; J. Bailey) in opposition.

PP-2022-044 Highland Preserve

PP-2022-044 was withdrawn.

PP-2022-048 Aster Subdivision

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Aster Subdivision, a Cluster Development under Option 1 of the Zoning Ordinance located approximately a half mile south of the intersection of East North Street and Butler Springs Rd.

The applicant is requesting 10 lots at a density of 2.06 units/acre in the single family R-12 zoning district. Access is provided off of Butler Springs Rd –a county road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The project site is located within the Suburban Neighborhood character area of the Comprehensive Plan. Suburban Neighborhoods are generally shaped by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks, and community open space connections. The recommended density is 3-5 dwellings/acre. Aster proposes 2.06 dwellings/acre consistent with the R-12 zoning district and comprehensive plan.

Staff recommends approval of the plan with the standard and specific requirements.

Discussion: There were no speakers in opposition to the proposed subdivision. However, there was one speaker in favor, Austin Allen, the project designer. Mr. Allen provided a brief overview of the proposed subdivision and stated there are no wetlands of concern in the area. Mr. Allen explained the increased traffic would be minimal and of no detriment to the existing traffic in the area.

Ms. Clark pointed out two large discharge pipes that presumably run water across a significant elevation straight into the proposed subdivision property. Ms. Clark stated she questioned if they have met the requirement for developable open space due to the presence and function of the discharge pipes. Mr. Allen stated a ditch for runoff or storm water does not interfere with the requirement. Ms. Clark asked if the heavily wooded area would remain undisturbed. Mr. Allen stated yes. Mr. Allen explained they had no intention of disturbing anything west of the eastern side of the wetland buffer.

Chairman Bichel stated the largest practical number of lots should be touching the open space. Chairman Bichel explained there are only three lots touching the open space and seven lots not touching the open space.

Motion for PP-2022-048: by Mr. Hammond, seconded by Mr. Looper, to approve PP-2022-048. The motion carried unanimously by voice vote.

PP-2022-060 Parker's Summit

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Parker's Summit, a cluster subdivision under Open Space Option 1 of the Zoning Ordinance. The site is located near the Greenville-Spartanburg county line approximately a mile southeast of the intersection of Anderson Ridge Rd & Hwy 296. The applicant is requesting 171 lots at a density of 1.69 units/acre in the R-S Residential Suburban zoning district. Access is provided off of White Circle Rd – a county road. Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The proposed subdivision is compatible with the Suburban Edge Character area of the Comprehensive Plan. Suburban Edges are low-density residential areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of open space, which should be interconnected as part of the

county's larger open space system. The recommended density is 0 to 1 dwellings per acre. This application proposes 1.6 units per acre.

Staff recommends conditional approval of the plan with the standard and specific requirements. Approval conditions are as follows:

- Widen White Circle Road to 20ft wide with 25 ROW on development side.
- Install a southbound left-turn into the site with a 150' of storage per study.
- All required traffic improvements required by the TIS shall be installed once 40 lots have been recorded by final plat.
- All off-street parking shall conform to Zoning Ordinance Article 12.

Discussion: Four nearby property owners spoke in opposition of the proposed subdivision. The first speaker, Janet Edie, expressed her concerns about the lack of emergency services in the area, school overcrowding, and traffic congestion. The second speaker, Doug Stewart, was concerned about the lack of green space, path maintenance, and emergency response capability within the proposed subdivision. Mr. Stewart expressed additional concerns about the acquisition of 25 right-of-ways needed to complete the C-Fund project, explaining it could take years to complete. The third speaker, Angelia Ulrich, stated she has a difficult time getting out of her nearby neighborhood, and believes the major traffic issues need to be solved before adding any additional houses in the area. The final speaker, Jonelle Phillips, explained that traffic improvements are needed for the current traffic conditions and additional traffic improvements should be made before adding additional homes.

Three speakers spoke in favor of the proposed subdivision. The first speaker, Jason Searle, stated the traffic problems were created by Greenville County, not the developer. Mr. Searle explained it's unfair to the land owners who want to sell their land to put the road and infrastructure repairs onto the developers. Mr. Searle stated this is a great place for a subdivision due to its close proximity to commercial businesses and parks. The second speaker, Michelle Jones, is the daughter of a land owner on the proposed subdivision land. Ms. Jones stated her mother was no longer able to take care of the land and echoed Mr. Searle's opinion that the traffic issues were caused by Greenville County. The final speaker, Waverly Wilkes, the project engineer, provided an overview of the proposed subdivision. Ms. Wilkes explained there are several access points and room for future interconnectivity to the walking trail that will be maintained by the HOA. Ms. Wilkes detailed the traffic improvements and stated the turn lane is not shown at this time due to the right-of-way attainment process. Ms. Wilkes explained the timing of the road improvements and stated the estimated completion of the GPATS project is June 2023. Ms. Wilkes detailed the phased construction plan and stated home construction would not start until after June 2023.

Ms. Clark asked if right-of-way is not attained would they use the hourglass design previously proposed. Ms. Wilkes stated it would not be a typical hourglass design. However, the developer is committed to exhausting all efforts in attaining the right-of-way.

Mr. Rogers asked if Greenville County could use eminent domain power to obtain the right-of-way. Ms. Jeffers-Campbell stated she does not have the confidence to answer that question but will look into an answer. Ms. Jeffers-Campbell explained it is a private developer's interest to develop their property and cannot see using eminent domain for that purpose but will

investigate it. Ms. Jeffers-Campbell explained the right-of-way recommendation did not come from the traffic study, it was a recommendation from staff. Mr. Rogers asked if the project would still move forward if the developer is unsuccessful in obtaining the right-of-way. Ms. Jeffers-Campbell stated it is a recommendation to exhaust all efforts, but it is not a requirement of approval.

Mr. Forest asked if Greenville County Roads and Bridges had any plans to widen Anderson Ridge Road. Ms. Wilkes stated no plans had been mentioned.

Mr. Bailey asked when the development across the street was approved and how many homes were constructed. Ms. Wilkes stated it was approved several years ago and has approximately 49 homes.

Mr. Forest asked how many private property owners would potentially be involved in the right-of-way acquisition. Ms. Wilkes explained there could be four to nine property owners contingent on widening one side or both sides of the road. Mr. Forest asked if any property owners had been contacted. Ms. Wilkes stated they will not be contacted until there is a plan approval but there is an attorney on standby.

Chairman Bichel agreed Greenville County started the traffic problem. Chairman Bichel stated there is not enough open space in accordance with LDR 11.4. Chairman Bichel stated the developer is pushing the limits of cluster development. Chairman Bichel explained some of the lots need to be eliminated for the proposal to be closer to a cluster development design. Ms. Wilkes stated the appearance is not typical for a cluster development because of the larger lot sizes.

Ms. Clark explained the TIS applied a 9% growth rate based on ten years of traffic data but the addition of the four proposed subdivisions in the area would add an additional 40% traffic load to the existing vehicle trips per day. Ms. Clark stated in these proven stressed corridors they can no longer consider the impact of a single application, they must consider the collective impact. Ms. Clark asked if widening White Circle Road to 20 feet would be sufficient and what is limiting the right-of-way on the undeveloped side of White Circle Road. Ms. Wilkes explained 20 feet was the recommendation of Greenville County Roads and Bridges and they are also required to provide 25ft of the development property to Greenville County.

Ms. Wilkes asked what amount of lot reduction the Planning Commission is looking for. Ms. Wilkes explained they feel they have met the requirements of a cluster subdivision.

Bob Bennett, the developer, asked if there is a number of lots they can reduce that would get them to the open space percentage the Planning Commission would like to see. Chairman Bichel stated he would have to look at the percentage and see some homes pulled away from the undisturbed buffer per the cluster ordinance in the LDR. Mr. Bennett explained they were trying to meet the needs of the Planning Commission and wants to work with Planning Commission in whatever way they can. Chairman Bichel stated he would not be able to commit to changes right now and would need to study it.

Ms. Jeffers-Campbell addressed a previous question from Ms. Clark asking why White Circle Road would be widened to 20 feet. Ms. Jeffers-Campbell stated we do not have right-of-way

to widen over 20 feet.

Ms. Clark stated the issue is with the location and impact on the infrastructure, not the design.

Mr. Forest stated it was brought up in the past the Planning Commission needed to review subdivision applications based on their merits alone. Mr. Forest explained now they are discussing reviewing subdivisions based on potential subdivisions that may or may not be approved in the future. Mr. Forest stated it seemed like the consensus of the Planning Commission is for no additional subdivisions to be built in this area until Greenville County widens the road.

Mr. Shockley stated this may be the thoughts of some Planning Commissioners but not the consensus of all.

Chairman Bichel agreed and stated it is some Planning Commissioners' opinion but not all.

Mr. Forest stated his point is developers should know now if they plan to turn down every development in this area.

Motion for PP-2022-060: by Mr. Shockley, seconded by Mr. Hammond, to approve with conditions PP-2022-060. The motion failed by hand vote with three in favor (M. Shockley; F. Hammond; E. Forest) and six in opposition (S. Bichel; J. Bailey; C. Clark; M. Looper; J. Rogers; J. Howard).

5. Rezoning Requests

CZ-2022-031

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-031.

The subject parcel zoned S-1, Services District is located along New Easley Highway, a four-lane State-maintained arterial road. The Plan Greenville County Comprehensive Plan designates the future land use of this parcel as *Rural Corridor* and *Traditional Neighborhood*. The Riverdale/Tanglewood Community Plan designates the future land use of this parcel as *Service*. Staff is of the opinion that the requested rezoning does not align with existing plans and would permit uses that may have an adverse impact on the existing surrounding properties.

Based on these reasons, staff recommends denial of the requested rezoning to C-2, Commercial.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Rogers, to deny CZ-2022-031. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; M. Shockley; E. Forest; C. Clark; M. Looper; J. Rogers; J. Howard) and one in opposition (F. Hammond).

CZ-2022-032 – Administratively Withdrawn

CZ-2022-032 was administratively withdrawn.

CZ-2022-033

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-033.

The subject parcel, zoned R-R3, Rural Residential is located along McKelvey Road, a two-lane, State-maintained collector road. Staff is of the opinion that a successful rezoning to R-S, Residential Suburban, is consistent with surrounding land uses and would not have an adverse impact on the surrounding area as it would only allow for one additional dwelling.

Based on these reasons, Staff recommends approval of the requested rezoning to R-S, Residential Suburban.

Discussion: None

Motion: by Mr. Bailey, seconded by Mr. Looper, to approve CZ-2022-033. The motion carried unanimously by voice vote.

CZ-2022-034

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-034.

The subject parcel zoned R-S, Residential Suburban is located along Hillcrest Dr. W., a two-lane County-maintained local road, and Cedar Ln., a two-lane County-maintained local road. Staff is of the opinion that the requested rezoning aligns with the Plan Greenville County Comprehensive Plan, which recommends 3 to 5 dwellings per acre for this area. Additionally, this request would only allow the property owner to add one additional residence, which staff believes will not have an adverse impact on the area.

Based on these reasons, staff recommends approval of the requested rezoning to R-12, Single-Family Residential.

Discussion: Mr. Rogers stated the property is surrounded by R-S zoning, making this request resemble spot zoning. Mr. Rogers stated he would vote against it.

Chairman Bichel stated he agreed with Mr. Rogers but there were extenuating circumstances and he believes the rezoning is helpful.

Motion: by Mr. Bailey, seconded by Mr. Howard, to approve CZ-2022-034. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; M. Shockley; E. Forest; C. Clark; M. Looper; F. Hammond; J. Howard) and one in opposition (J. Rogers).

CZ-2022-035

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-035.

The subject property zoned R-R1, Rural Residential District is located along W. Georgia Rd., a two-lane State-maintained collector. The Plan Greenville County Comprehensive Plan calls for a density of 1 dwelling per 2 or more acres, and the South Greenville Area Plan calls for density that fits most closely with the R-R1, Rural Residential zoning district. Because of these future land use designations, and due

to the existing zoning in the area, Staff is of the opinion that R-R1, Rural Residential is currently the most appropriate zoning district for these parcels.

Based on these reasons, staff recommends denial of the requested rezoning to R-S, Residential Suburban.

Discussion: None

Motion: by Mr. Rogers, seconded by Mr. Bailey, to deny CZ-2022-035. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; M. Shockley; E. Forest; C. Clark; M. Looper; J. Rogers; J. Howard) and one in opposition (F. Hammond).

CZ-2022-036

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-036.

The subject parcel zoned R-12, is located along Motor Boat Club Rd., a two-lane County-maintained local road. The area is characterized by mainly single-family residential zoning and uses, with multifamily zoning adjacent to the parcel. Staff is of the opinion that the existing zoning is appropriate for this area and that lowering the density would not align with the Plan Greenville County Comprehensive Plan.

Based on these reasons, staff recommends denial of the requested rezoning to R-S, Residential Suburban.

Discussion: None

Motion: by Mr. Rogers, seconded by Mr. Looper, to deny CZ-2022-036. The motion carried by voice vote with eight in favor (S. Bichel; M. Shockley; E. Forest; C. Clark; M. Looper; J. Rogers; F. Hammond; J. Howard) and one in opposition (J. Bailey).

CZ-2022-037

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-037.

The subject parcels zoned R-S, Residential Suburban are located along Locust Hill Rd., a two-lane State-maintained collector road and Lakeview Cir. a two-lane County-maintained local road. Staff is of the opinion that the requested rezoning to C-1, Commercial District is appropriate due to its location adjacent to additional commercially zoned property, as well as its location along Locust Hill Rd.

Based on these reasons, staff recommends approval of the requested rezoning to C-1, Commercial.

Discussion: Mr. Rogers stated the property is surrounded by residential zoning.

Mr. Hammond stated C-3 zoning was nearby.

Mr. Bailey stated there are multiple businesses in the area.

Ms. Clark stated the applicant provided a letter assuring the Planning Commission that the property would be designated as a garden center.

Chairman Bichel stated he was going to deny the application because, often times, when a property is zoned to C-1, residential development occurs.

Motion: by Mr. Looper, seconded by Mr. Bailey, to approve CZ-2022-037. The motion carried by voice vote with eight in favor (J. Bailey; M. Shockley; E. Forest; C. Clark; M. Looper; J. Rogers; F. Hammond; J. Howard) and one in opposition (S. Bichel).

CZ-2022-038

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-038.

The subject parcels, zoned R-7.5, Single-Family Residential, and O-D, Office District, are located along Draper St, a two-lane State-maintained local road, Abney St, a two lane State-maintained local road, and Hwy 124, a two-lane State-maintained arterial road. Staff is of the opinion that the request is appropriate for this area and adds infill housing to the area while also aligning with both the Plan Greenville County Comprehensive Plan and the Brandon Community Plan for the site. Additionally, the proposed development will complement the Brandon Mill Community.

The development would have to meet the following condition:

1. Submit a Final Development Plan for review and approval prior to the issuance of any land development or building permits.

Based on these reasons, staff recommends approval of the requested rezoning to FRD, Flexible Review District with the aforementioned condition.

Discussion: None

Motion: by Mr. Hammond, seconded by Mr. Bailey, to approve with condition CZ-2022-038. The motion carried unanimously by voice vote.

CZ-2022-039 – Administratively Withdrawn

CZ-2022-039 was administratively withdrawn.

CZ-2022-040

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-040.

The subject parcel, zoned R-20, Single-Family Residential, is located along Hudson Road, a two-lane, State-maintained collector road. Staff is of the opinion that a successful rezoning to FRD, Flexible Review District to allow for a max of six detached single-family dwellings is consistent with surrounding land uses and would allow for infill development.

The development would have to meet the following condition:

1. Submit a Final Development Plan for review and approval prior to the issuance of any land development or building permits.

Based on these reasons, staff recommends approval of the requested rezoning to FRD, Flexible

Review District with the aforementioned condition.

Discussion: Chairman Bichel stated the homes shown on the application would not fit on the actual property lots. Chairman Bichel explained there is no appropriate space for children to play and there is not enough parking.

Ms. Clark stated the application does not meet what pocket communities are designed for.

Mr. Rogers explained it would be unfair to the surrounding home owners to put smaller homes in the area that would affect their house value.

Mr. Forest asked how this zoning fit into the Comprehensive Plan. Ms. Staton stated the designation in the Comprehensive Plan for this area is Suburban Neighborhood, which designates 3-5 dwellings per acre. Ms. Staton stated this application is requesting 4.64 units per acre. Mr. Forest stated the rezoning would fit into the Comprehensive Plan and would be a reason to approve based on previous conversations about staying aligned with the Comprehensive Plan.

Mr. Hammond explained that if the Comprehensive Plan is going to be cited as a reason to approve or deny an application one time, it should be followed at all times.

Mr. Rogers stated the rezoning was a different situation from the previous conversations. Mr. Rogers explained the Comprehensive Plan is a discretionary guidance document.

Motion: by Mr. Hammond, seconded by Mr. Shockley, to approve with condition CZ-2022-040. The motion failed by hand vote with four in favor (F. Hammond; M. Shockley; E. Forest; J. Bailey) and five in opposition (C. Clark; S. Bichel; M. Looper; J. Rogers; J. Howard).

CZ-2022-041

Ms. Staton introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-041.

The subject parcels, zoned R-S, Residential Suburban, are located along Batesville Road, a two-lane State-maintained arterial road, and Roper Mountain Road, a two-lane State-maintained collector road. Staff is of the opinion that a successful rezoning to FRD, Flexible Review District, which would allow for a senior living community, would be consistent with the residential uses in the area and would not have an adverse impact on this area.

The development would have to meet the following condition:

1. Submit Final Development Plan for review and approval prior to the issuance of any land development or building permits.

Based on these reasons, staff recommends approval with condition of the requested rezoning to FRD, Flexible Review District with the aforementioned condition.

Discussion: Ms. Clark asked how the 25% reduction in parking would work procedurally. Ms. Staton explained the zoning ordinance permits the Zoning Administrator to allow up to a 25% reduction as long as the applicant provides a written reason for the request. Ms. Staton stated

in this application the reason provided was there would be less traffic because the residents living at the assisted living facility would not be driving.

Motion: by Mr. Bailey, seconded by Mr. Hammond, to approve with condition CZ-2022-041. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; E. Forest; C. Clark; M. Looper; J. Rogers; F. Hammond; J. Howard) and one in opposition (M. Shockley).

6. Planning Report

Mr. Coker presented the April Planning Report.

7. Old Business

None

8. New Business

Chairman Bichel stated elections for chairman and vice chairman will be held next month. Chairman Bichel stated that Mr. Rogers is the Ad Hoc Nomination Committee Chairman and all nominations should be provided to Mr. Rogers.

9. Adjourn

Without objection, Chairman Bichel adjourned the meeting at 8:43 p.m.

Respectfully submitted,

Nicole Miglionico

Recording Secretary

EXHIBIT 5

**(Minutes of July 27, 2022
Planning Commission Meeting)**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

Greenville County Planning Commission Minutes
July 27, 2022 at 4:30 p.m.
Conference Room D at County Square

Commissioners Present: S. Bichel, Chair; J. Bailey, Vice-Chair; C. Clark; J. Rogers; F. Hammond; J. Howard; J. Barbare

Commissioners Absent: M. Shockley; M. Looper

County Councilors Present: None

Staff Present: R. Jeffers-Campbell; H. Gamble; C. Antley; M. Tollison; J. Henderson; K. Walters; T. Stone; L. Mann; N. Miglionico; IS Staff

1. Call to Order

Chairman Bichel called the meeting to order at 4:30 p.m.

2. Invocation

Mr. Howard provided the invocation.

3. Approval of the Minutes of the June 22, 2022 Commission Meeting

Motion: by Mr. Howard, seconded by Mr. Bailey, to approve the minutes of the June 22, 2022 Commission meeting, as presented. The motion carried unanimously by voice vote.

4. Rezoning Requests

CZ-2022-063

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-063.

Staff is of the opinion that the proposed amendments will provide the ability for Community Centers to open in areas that are fitting for Greenville County residents without having to go through rezoning requests and allow Staff the opportunity to have better regulations in reviewing these types of uses.

Based on these reasons, Staff recommends approval of the proposed Text Amendment.

Discussion: None.

Motion: by Mr. Barbare, seconded by Mr. Howard, to approve CZ-2022-063. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

CZ-2022-064

CZ-2022-065 has been administratively withdrawn.

CZ-2022-065

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-065.

The subject parcels, zoned R-R3, Rural Residential are located along Chickadee Drive, a two-lane County-maintained residential road. Staff is of the opinion that a successful rezoning to R-R1, Rural Residential, is consistent with surrounding land uses. Currently, the subject parcels are existing nonconforming and would permit 3 dwelling units. Staff is of the opinion that a successful rezoning to permit a reconfiguration of lot lines and only 2 dwelling units would be consistent with the uses in the surrounding area.

Based on these reasons, staff recommends approval of the requested rezoning to R-R1, Rural Residential District.

Discussion: None.

Motion: by Mr. Bailey, seconded by Ms. Clark, to approve CZ-2022-065. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

CZ-2022-066

CZ-2022-066 was withdrawn by the applicant.

CZ-2022-067

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-067.

The subject parcel, zoned S-1, Services District, is located along Old Bramlett Road, a two lane County-maintained local road. Staff is of the opinion that a successful rezoning to FRD, Flexible Review District to allow for a maximum of 300 single-family residential units is consistent with the Future Land Use Map in the Plan Greenville County Comprehensive Plan and the Future Land Use Map in the Riverdale-Tanglewood Community Plan.

The development would have to meet the following conditions:

1. Provide a revised Traffic Impact Study satisfying the comments of the Greenville County Traffic Engineer.
2. Submit a Final Development Plan for review and approval prior to the issuance of any land development or building permits.

Discussion: Mr. Henderson explained the applicant needed to revise the traffic impact study showing the widening of Old Bramlett Road. Mr. Henderson stated if the traffic impact study is unsatisfactory, the applicant would be unable to submit a Final Development Plan.

Ms. Clark stated her interpretation of Mr. Walters comment was that he was asking for a different set of data, growth rate, and more intersections to be included in the traffic study. Ms. Clark stated she was going to recommend holding the application until a new traffic study is submitted. Ms. Clark stated the drawing they received was not as detailed as typically expected for a Preliminary Development Plan. Mr. Henderson stated the drawing met all requirements of the Zoning Ordinance and checklist. Ms. Jeffers-Campbell explained drawings are typically more detailed than what is required in the Zoning Ordinance. Ms. Clark stated, based on the Planning Commission workshop, this drawing is similar to what they would see for a PD, not an FRD. Ms. Jeffers-Campbell explained as long as the applicant met the Zoning Ordinance, the drawing is sufficient. Ms. Jeffers-Campbell stated the point of the workshop

was to address the difference between what the Zoning Ordinance requires for a Preliminary Development Plan and a Final Development Plan. Ms. Clark asked how they are supposed to compare the drawing to a Final Development Plan when it has virtually no detail. Ms. Jeffers-Campbell stated Final Development Plans are currently reviewed by staff for consistency with the Statement of Intent and Preliminary Development Plan. Ms. Jeffers-Campbell stated as long as the drawing meets the Zoning Ordinance, there is sufficient information.

Chairman Bichel stated the Planning Commission will see this as a subdivision.

Ms. Clark stated she is trying to avoid similar problems to what the Planning Commission is currently experiencing.

Ms. Clark stated she had concerns about the traffic impact study not satisfying the County Engineer. Mr. Henderson stated they have added the condition to provide a revised traffic impact study. If they do not, they will not be able to move forward with the project.

Mr. Barbare stated after reviewing the traffic study and the staff recommended conditions, he feels confident the issue will be worked out as it must satisfy the County Traffic Engineer.

Chairman Bichel stated the traffic impact study needed to be sufficient to the County Traffic Engineers standards, and it should not only include Old Bramlett Road.

Mr. Rogers stated if this came back to the Planning Commission as a subdivision, according to the Planning Commission workshop, their hands are tied due to County Council approving the rezoning.

Chairman Bichel stated that was true and he hopes County Council picks up on the concerns.

Ms. Clark asked for clarification on the Planning Commission's ability to hold an application. Mr. Henderson read Planning Commission Bylaws Article 6, Section I "Proposed zoning text and map amendments shall be considered, and recommendations shall be forwarded to the governing body within thirty (30) days after receipt of the proposed amendments, unless additional time is given by the governing body." Ms. Clark stated she is concerned because on different application, they have been penalized for not considering traffic at the preliminary review. Chairman Bichel stated he agreed but the motion contained the condition to include a revised traffic impact study.

Chairman Bichel stated the traffic impact study has to be approved by the Greenville County Engineer and County Council.

Motion: by Mr. Barbare, seconded by Mr. Hammond, to approve with conditions CZ-2022-067. The motion carried by voice vote with five in favor (J. Barbare; F. Hammond; S. Bichel; J. Bailey; J. Howard) and two in opposition (C. Clark; J. Rogers) with two absent (M. Shockley; M. Looper).

CZ-2022-068

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2022-068.

The subject parcel zoned R-20, Single-Family Residential is located along Stephenson St. Ext., a two-lane County-maintained residential road. Staff is of the opinion that the requested rezoning to R-7.5, Single-Family Residential to allow for a maximum of 8 units is appropriate for the area as it would be consistent with the parcels zoned R-7.5 abutting the rear of the subject parcel. Additionally, the property has unique constraints with regards to floodplain and existing infrastructure.

Based on these reasons, staff recommends approval of the requested rezoning R-7.5, Single-Family Residential District.

Discussion: None.

Motion: by Mr. Bailey, seconded by Mr. Howard, to approve CZ-2022-068. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

5. Final Development Plan Application

Mr. Henderson introduced the staff report and presentation into the record as background information for Roberts Farm, Flexible Review District.

In review of the Roberts Farm Final Development Plan, staff finds that the submitted plans are consistent with the Preliminary Development Plan and the Statement of Intent that was approved. The plans also reflect general compliance with the conditions outlined in Section 3:9.1 of the Greenville County Zoning Ordinance, and comply with Article 21.1 of the Greenville County Land Development Regulations, which call for developments to be aesthetically pleasing and harmonize with the surrounding developments.

Based on these reasons, Staff recommends approval of the Final Development Plan.

Discussion: Chairman Bichel stated this is the final step in the rezoning process.

Ms. Clark stated the zoning map has already changed.

Mr. Rogers stated it appeared, based on Judge Verdin's order, that the Planning Commissions hands are tied in the sense that, according to the order, once County Council approved the rezoning, the Planning Commissions ability to review this application was limited.

Chairman Bichel stated he agreed with Mr. Rogers

Motion: by Mr. Rogers, seconded by Mr. Bailey, to approve Roberts Farm, Flexible Review District. The motion carried unanimously by voice vote with five in favor (J. Rogers; J. Bailey; J. Barbare; F. Hammond; J. Howard) and two abstaining (S. Bichel; C. Clark) with two absent (M. Shockley; M. Looper).

6. Preliminary Subdivision Applications

PP-2022-087 Grove Creek Cottages

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Grove Creek Cottages, a Rural Conservation Subdivision developed under Article 22 of the Land Development Regulations, located southeast of the intersection of S. Piedmont Highway (Highway 20) and Bessie Rd (Highway 86), near the Anderson County line. The applicant is requesting 328 lots at a density of 2 units/acre in the Unzoned area of the County. Access is provided off of Old Pelzer Rd (state). Water and sewer will be provided by Greenville Water and Metro Sewer, respectively.

The proposed subdivision is located in the Rural Living character area of the Comprehensive Plan. Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses. The recommended density is 1 dwelling per 2+ acres. This application proposes 2 units per acre, which is not consistent with the Comprehensive Plan.

Staff recommends approval with the standard and specific requirements with the following condition:

- All traffic improvements required by SCDOT shall be installed once 40 lots have been recorded.

Additional condition from the Planning Commission:

- Submit a revised plan showing mid-block pedestrian pathways connecting adjacent blocks at and between lots: 146 and 147, 153 and 154, 168 and 169 and 176 and 177.

Discussion: There were no speakers in opposition of the proposed subdivision.

Waverly Wilkes, the project engineer, spoke in favor of the proposed subdivision. Ms. Wilkes provided a brief overview of the project. Ms. Wilkes stated the project exceeded open space requirements, traffic improvements are planned in the area, and stormwater would be treated on site.

Chairman Bichel pointed out an error on the open space table. Ms. Wilkes explained they exceed the open space requirement and they created the table based on LDR Article 22 open space table requirements. Chairman Bichel stated he was unable to find any mid-block pedestrian pathways. Ms. Wilkes explained only one section of the plan does not meet the requirement and they have already looked into a resolution. Ms. Wilkes pointed out two locations for the six-foot pathways they plan to add and stated it would not affect the layout or number of lots on the plan.

Ms. Clark explained the property is located in the Rural Living character area of the Comprehensive Plan, which would dictate approximately 82 homes. Ms. Clark stated the proposed plan has four times the amount that is recommended. Ms. Clark asked how the number of homes was determined. Ms. Wilkes explained they determined the number of homes based on the adjacent Mixed-Use designation area, located near an Industrial designation area, and due to the amount of infrastructure needed to provide sewer to the lots. Ms. Clark asked if they planned to provide walking trails. Ms. Wilkes stated there are sidewalks throughout the community but at this point, for grading purposes, they have not identified any walking trail routes. Ms. Clark asked for clarification on SCDOT's traffic impact

study response. Ms. Jeffers-Campbell explained if the traffic improvement associated with Cottage Woodridge Subdivision do not occur, SCDOT will require an updated traffic impact study and will attach traffic improvements to this proposed subdivision. Ms. Clark stated she is concerned because traffic improvements are not required until forty lots have been recorded. Chairman Bichel stated permits will not be allowed until SCDOT is satisfied. Ms. Jeffers-Campbell explained the condition ensures the developer cannot record lots until traffic improvements are satisfied.

Motion: by Mr. Barbare, seconded by Mr. Bailey, to approve with conditions PP-2022-087. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

PP-2022-105 Langford Hills

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Langford Hills, a rural conservation subdivision located a third of a mile south of the intersection of Garrison and Augusta Rd in the unzoned area south of I-185. The applicant is requesting 174 lots at a density of 1.06 units/acre with an average lot size of 21,555. Access is provided off of Garrison and Augusta Rd –state roads. Water and sewer will be provided by Greenville Water and septic, respectively.

The proposed subdivision is located in the Rural Living character area of the Comprehensive Plan. Rural Living place types are transitional areas that offer opportunities for low-intensity development that is well-integrated with the natural landscape and agricultural uses. Residential development may occur as individual single-family structures on large lots, or clusters of homes designed to preserve large amounts of interconnected open space. Hobby farms on large lots with residential homesteads are common land uses. The recommended density is 1 dwelling per 2+ acres. This application proposes 1.06 units per acre.

On 11.17.2021, the Planning Commission denied Langford Hills case PP-2021-219 due to a split vote. At the public hearing, citizens expressed concerns regarding the preservation of the McDavid House – a structure listed on the Greenville County Historic Resource Survey. The applicant revised and resubmitted the plan under case PP-2021-298 to address the preservation of the historic resource but was denied on 1.26.2022. Application PP-2022-043, which was the same as the application denied on 1.26.2022, was also denied on 4.27.2022. Since then, the McDavid House has been demolished and no longer exists on site. The current application has two less lots with approximately 2.78 more acres of open space.

Staff recommends conditional approval of the plan with the standard and specific requirements:

Approval conditions are as follows:

- All SCDOT required improvements shall be installed once 40 lots have been recorded by final plat. Specifically, a right turn lane shall be installed at Access 3 or at US 25 and Garrison Rd as directed by SC DOT.
- The lot sequencing on the final plat must remain the same as the approved preliminary plan.
- A phased masterplan shall be submitted that shows all existing and proposed phases for all lots in the development for each final phase submitted

Discussion: Three nearby residents spoke in opposition of the proposed subdivision. The first speaker, John Hill, stated the proposed subdivision has been denied three times, the

developer filed a lawsuit and the court ruled in favor of the Planning Commission's decision, and no changes have been made to the current plan other than the 1800s-era home that was once on the property is now destroyed. Mr. Hill expressed concern about the use of septic on 174 lots stating it will provide a dangerous impact to the local water table and pollute streams. The second speaker, Anne Peden, stated the community is broken hearted due to the loss of the historic McDavid house and is scared the developer will destroy the other house on the property. The final speaker, Mark Yost, stated the proposal is a poor attempt at rural conservation and expressed concern about the use of septic.

There were three speakers in favor of the proposed subdivision. The first speaker, Waverly Wilkes, the project engineer, provided a brief overview of the project. Ms. Wilkes stated they have protected the existing graveyard and access is provided. Ms. Wilkes explained septic lots are permitted individually, must have soil tested and be signed off by consultants and SCDHEC, and must provide appropriate buffers. Ms. Wilkes stated septic regulations are full covering and expansive. Ms. Wilkes explained there was a long process and attempt to work on the existing homes on the property and Greenville County condemned the house that was destroyed. Ms. Wilkes stated neither of the homes are historic or on a protected list. Ms. Wilkes explained the existing house is marked out from the development.

Mr. Rogers asked how this plan was different than the one that was most recently denied. Ms. Wilkes stated mainly it is the frontage, the home around lot one is now excluded from the plan, and the McDavid home is no longer there. Mr. Rogers asked if they tore down one house and put more lots in. Ms. Wilkes stated they did not gain any additional lots.

The second speaker in favor, Marcelo Torricos, the project attorney, spoke about the recent lawsuit involving this project and the Planning Commission. Mr. Torricos stated the issue before the court, at that particular time, was whether or not the Planning Commission in its denial letters had to provide specific reasons for their denial. The court ruled that the minutes themselves are the record and the specific reasons do not need to be included in the denial letter. Mr. Torricos explained the difference in this application to the applications before was there are two fewer lots, the historical houses are no longer an issue because one has been removed and one was condemned by Greenville County, and there is no variance request in this application. Mr. Torricos stated there was no data to support pollution of the water table and none has been presented. Mr. Torricos explained there has been a lot of discussion about the Comprehensive Plan and the number of units per acre. Mr. Torricos stated the Planning Commission knows the Comprehensive Plan is merely a guide and if the Planning Commission were going to require density to meet the Comprehensive Plan, then the Planning Commission is effectively zoning property without due process. Mr. Torricos stated in reference to the turn lane that was an issue at the last meeting, the developer is committed to following all of SCDOT's recommendations.

Mr. Howard asked for clarification about the existing homes on the property and if they are listed as historic protected homes. Mr. Torricos stated the homes were eligible for the registry but were not listed on any registry, then Greenville County condemned one of the homes and it was torn down. Mr. Howard asked if that added to the open space. Mr. Bailey explained the buffer added additional open space.

Mr. Rogers asked for clarification about the comment regarding the Comprehensive Plan. Mr. Rogers explained the Comprehensive Plan contains density recommendations and was adopted by Greenville County Council. Mr. Rogers stated he does not understand how that is denying due process if the Planning Commission uses it as a guide in adjudicating a petition. Mr. Torricos explained his interpretation is the Comprehensive Plan is a guide for Greenville County to enact things like the Land Development Regulations or Zoning Ordinances. Mr. Torricos does not believe the Comprehensive Plan can be a basis for denial of preliminary conditional approval. Mr. Torricos stated if County Council wanted to take the Comprehensive Plan and modify Land Development Regulations or Zoning Ordinances with it, that is fine, but it should not be a basis for denial. Mr. Torricos explained zoning property requires many steps, processes, and public input. If the Comprehensive Plan is going to be used to set density, you are depriving people of due process.

Ms. Clark stated the LDR states the Planning Commission needs to review plans and decide if they are in harmony with the Comprehensive Plan. Mr. Torricos stated you have to take a holistic approach to how you view “in harmony” with the surrounding area, because if you take that statement strictly, you will never be able to advance any developments in any areas that don’t already have development. Mr. Torricos explained we need to look at growth and where growth is going. Ms. Clark stated the Future Land Use Map for this area was supposed to reduce septic lots by 59%. Ms. Clark stated this application is two-three miles south of the closest sewer connection and approving an application with this density on septic is not helping Greenville County reach the goal of septic lot reduction.

The final speaker in favor, Darren Webb, the developer, pointed out similarities between PP-2022-072 River Preserve, which was approved last month, and this application. Mr. Webb explained Langford Hills has fewer lots with about the same density, has slightly more open space, both projects have septic, and Langford Hills is within a less restrictive character area.

Chairman Bichel read Judge Verdin’s order conclusion, “Therefore, the Court finds that there is a sufficient record to explain Respondent’s denial of Appellant’s application. The Court does not find that that Respondent made its decision with no evidentiary support or in an arbitrary or capricious manner. Appellant also committed no clear errors of law. Accordingly, Respondent’s decision is affirmed”. Chairman Bichel stated the Planning Commission has denied this subdivision three times and the Judge has concluded the same thing Planning Commission has.

Mr. Rogers moved to deny the application based on the following grounds:

1. The reason’s set forth previously and the Judge’s order.
2. The plan is inconsistent with the Comprehensive Plan.
3. Based on the concerns of septic use.

Mr. Hammond stated staff has recommended approval, ReWa has approved the use of septic, and nobody has presented a quantitative reason septic would be detrimental to this area. Mr. Hammond explained septic systems are sophisticated and expensive systems. If given a choice, sewer is preferred, but there is not a choice in this application. Mr. Hammond stated the subdivision fronts a five-lane US Highway that is at approximately 50% of its capacity, there are no traffic concerns with the application. Mr. Hammond explained if the Planning Commission was consistent with what was approved and denied based on the Comprehensive

Plan, he would be comfortable denying based on it, but there is no consistency. Mr. Hammond stated the Comprehensive Plan is an aspirational document and there is no Ordinance that enforces the Comprehensive Plan.

Mr. Howard stated there was consistency when using the Comprehensive Plan and asked why it wouldn't be able to be used as guidance.

Mr. Hammond stated the Comprehensive Plan is not law or zoning. It effectively becomes density without going through a zoning process to be used whenever it occurs to be used and has not been used consistently by the Planning Commission.

Mr. Barbare stated he agrees with the staff recommendation and failed to see the concerns raised.

Mr. Bailey stated he agrees with Mr. Hammond based on historical review of previous approvals and denials.

Ms. Clark stated, as long as a subdivision is in a suburban area, the Planning Commission is more than happy to consider the Comprehensive Plan, but when it is in a rural area we hear comments like we just heard. Ms. Clark stated the Planning Commission is inconsistent because they are not consistently applying the same level of review for suburban areas and rural areas.

Mr. Hammond stated you cannot cherry pick the Comprehensive Plan when it suits your needs and not pay attention to it when it doesn't.

Mr. Rogers stated we spent \$400,000 on the Comprehensive Plan and the argument seems to be that we need to apply it all the time, in which case it would be a binding document, then the argument would be that it is not a binding document. Mr. Rogers explained the Comprehensive Plan is a guidance document that you apply with judgement.

Chairman Bichel stated the Judge's response is affirmed. The Planning Commission has denied this subdivision three times and it was upheld.

Motion: by Mr. Rogers, seconded by Ms. Clark, to deny PP-2022-105. The motion carried by voice vote with four in favor (J. Rogers; C. Clark; S. Bichel; J. Howard) and three in opposition (J. Barbare; F. Hammond; J. Bailey) with two absent (M. Shockley; M. Looper).

PP-2022-110 Bethany Farms (Revision)

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Bethany Farms, a single-family subdivision located in the unincorporated area of Simpsonville on the northeast corner of the intersection of East Georgia and Bethany Road in the Scuffletown Rural Conservation District. The applicant is requesting 69 lots on 82.76 acres in the R-S residential suburban zoning district. Access is provided off of Bethany Rd – a state road, and E. Georgia Rd. – a state road. Water and sewer will be provided by Greenville Water and septic, respectively.

The proposed subdivision is located within Suburban Neighborhood Character area of the Comprehensive Plan. Suburban Neighborhoods are generally shaped by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks, and community open space connections. The recommended density is 3-5 dwellings/acre. Bethany Farms is proposing 0.83 dwellings/acre.

Staff recommends conditional approval of the plan with the standard and specific requirements.

- In accordance with LDR 8.21, deciduous (canopy) or evergreen trees shall be planted to create a visual screen along parcels 0552010100348 and 0552010100305 in the areas where there is not natural vegetative buffer.

Discussion: There were no speakers in opposition of the proposed subdivision.

Paul Harrison, the project engineer, spoke in favor of the proposed subdivision. Mr. Harrison stated he was available to answer questions.

Ms. Clark stated East Georgia Road and Bethany Road are rural scenic roads. Ms. Clark asked why access runs through almost two acres of trees. Mr. Harrison stated it was the high point of the road and they needed to design access in that way due to sight distance requirements. Ms. Clark asked if there are any requirements to plant trees within the 150 foot buffer on East Georgia Road and Bethany Road. Mr. Harrison stated a screening buffer is required within the first 50 feet. Ms. Clark explained you want to minimize the view of the subdivision from the road. Ms. Jeffers-Campbell explained trees need to be planted in an informal manner to provide a screen.

Motion: by Mr. Bailey, seconded by Mr. Howard, to approve PP-2022-110. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

PP-2022-112 Brisk Haven

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Brisk Haven, a conventional subdivision located west of the intersection of Blakely Ave. and Reedy Fork Rd. The applicant is requesting 82 lots at a density of 3.77 units/acre in the C-2, Commercial zoning district. A small portion of the development site is zoned R-S (parcel# 0594010100104). Access is provided off of Blakely Ave (state). Water and sewer will be provided by Greenville Water and MetroConnects, respectively.

The site is also located within both the Suburban Mixed Use and Mixed Employment Center area of the Comprehensive Plan. Suburban Mixed-Use place types include a variety of single-family (detached and attached) and multi-family building types. Housing types should be designed as a cohesive, connected neighborhood, rather than isolated subareas. Buildings should be of a high-quality design, and developments should include common neighborhood amenities and open space connections. The applicant is proposing 3.7 units per acre which is inconsistent with the comprehensive plan's recommendations of 6 to 20 dwelling units per acre for Suburban Mixed Use.

Staff recommends approval with the following conditions:

- Approval from the Board of Zoning Appeals for Use by Special Exception for the lift station
- A revised Preliminary Plan shall be submitted to Subdivision Administration following any approvals granted by the Board of Zoning Appeals.

Discussion: There were four nearby residents in opposition of the proposed subdivision. The first speaker, Kerry Lord, provided a petition against the proposed subdivision and asked his neighbors in attendance to stand. Mr. Lord stated there was no justification to develop single family residential homes under the C-2 zoning, it is incompatible with the surrounding area, and there is inadequate infrastructure to support the development.

Chairman Bichel stated the Comprehensive Plan recommends 6-20 dwelling units per acre for this area. Mr. Lord stated the area is directly on the border of Rural character area and everything else on that road has been in the family for generations. Mr. Bichel asked how the area became C-2 zoning. Mr. Lord stated the owner rezoned C-2 years ago but was uncertain why.

The second speaker in opposition, Ray Santoianni, stated local property values will decline, C-2 zoning was never intended to provide residential areas, and the traffic increase estimate is too low. The third speaker, Geeta Nangia, presented pictures to show the narrowness of the road. The fourth speaker, Angela Kay, expressed concern about drainage issues. Ms. Kay stated her property already experiences drainage issues from a new development and is concerned this development will provide even more drainage problems. Ms. Kay stated she does not believe the schools will have enough room for all the new developments in the area.

Austin Allen, the project engineer, spoke in favor of the proposed subdivision. Mr. Allen provided a brief overview of the proposed subdivision. Mr. Allen explained the property is zoned C-2 for a commercial meat plant. Mr. Allen stated within C-2 zoning you are allowed to develop under R6 zoning. Mr. Allen explained C-2 zoning allows for more than just single family detached homes, currently allows 16 units per acre, and could be developed at a much higher density than what they are proposing. Mr. Allen stated the goal for this subdivision and Willow Mist is to create inner-connectivity. Mr. Allen reviewed the traffic impact study and road conditions. Mr. Allen explained stormwater will meet all regulations and they are not allowed to create detriment to any surrounding properties.

Chairman Bichel asked why they need an appeal from the Board of Zoning Appeals. Mr. Allen explained a lift station is not an approved use within the current zoning.

Ms. Clark stated the area is located in the Suburban Mixed-Use character area. Ms. Clark explained subdivision applications continue to be presented to the Planning Commission without varying lot sizes or dwelling types, which is what Suburban Mixed-Use encourages. Colton Miller, the developer, pointed out initially Brisk Haven and Willow Mist were one development which would have contained some variation.

Chairman Bichel stated this proposal provides less density than it could.

Angela Kay, a speaker in opposition, explained the meat packing business is a small enterprise. Ms. Kay pointed out her barn and what the surveyor considered wetlands.

Mr. Bailey explained this proposed subdivision could come back with townhomes and apartments without needing the Planning Commission's approval.

Motion: by Mr. Howard, seconded by Mr. Bailey, to approve with conditions PP-2022-112. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

PP-2022-113 Willow Mist

Rashida Jeffers-Campbell addressed the Commission members with a preliminary subdivision application for Willow Mist, a Cluster Development under Option 1 of the Zoning Ordinance located west of the intersection of Blakely Ave. and Reedy Fork Rd. The applicant is requesting 31 lots at a density of 1.5 units/acre in the R-S, Residential Suburban zoning district. Access is provided off of Blakely Ave (state). Water and sewer will be provided by Greenville Water and ReWa, respectively.

The site is located within both the Suburban Mixed Use and Mixed Employment Center area of the Comprehensive Plan. Suburban Mixed-Use place types include a variety of single-family (detached and attached) and multi-family building types. Housing types should be designed as a cohesive, connected neighborhood, rather than isolated subareas. Buildings should be of a high-quality design, and developments should include common neighborhood amenities and open space connections. Mixed Employment Centers are a new type of office park or corporate campus-like developments geared toward meeting the needs of mid to large businesses. Typical features include signature architectural elements and a campus-style development pattern that connects jobs to amenities and places of residence in a well-organized fashion. The applicant is proposing 1.5 units per acre which is inconsistent with the comprehensive plan's recommendations of 6 to 20 dwelling units per acre for Suburban Mixed Use, and 8 to 30 dwelling units per acre for the Mixed Employment Center.

Staff recommends approval with the following conditions that will be required:

- Approval from the Board of Zoning Appeals for Use by Special Exception for the lift station
- That a revised Preliminary Plan be submitted to Subdivision Administration following any approvals granted by the Board of Zoning Appeals.

Discussion: Kerry Lord was the only speaker in opposition of the proposed subdivision. Mr. Lord expressed his sadness about the approval of the previous subdivision and stated he is concerned with the same issues about this proposed subdivision.

Austin Allen, the project engineer, spoke in favor of the proposed subdivision. Mr. Allen provided a brief overview of the project. Mr. Allen stated he believes this proposed subdivision meets the intent of a cluster subdivision.

Chairman Bichel stated the cluster design is better than most.

Motion: by Mr. Bailey, seconded by Mr. Howard, to approve with conditions PP-2022-113. The motion carried unanimously by voice vote with two absent (M. Shockley; M. Looper).

6. Planning Report

Ms. Jeffers-Campbell presented the July Planning Report.

7. Old Business

None

8. New Business

None

9. Adjourn

Without objection, Chairman Bichel adjourned the meeting at 7:06 p.m.

Respectfully submitted,

Nicole Miglionico

Nicole Miglionico

Recording Secretary

EXHIBIT 6

**(March 30, 2023 Order of the
Honorable Bentley D. Price -
"March Order")**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson dated August 5, 2021,

Appellant,

v.

The Greenville County Planning Commission,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-23-4704

**ORDER VACATING AND REMANDING
THE PLANNING COMMISSION'S JULY
27, 2022 DENIAL OF THE LANGFORD
HILLS PRELIMINARY SUBDIVISION
APPLICATION**

This matter comes before the Court for hearing on the appeal of Marcelo Torricos, as Trustee of the John W. Beeson Irrevocable Trust II FBO James H. Beeson dated August 5, 2021 (the "Trust" or the "Appellant") of a decision of the Greenville County Planning Commission (the "Planning Commission" or the "Respondent") to deny the preliminary subdivision application of the Langford Hills Subdivision. Present before the court were Marcelo Torricos, Luke Burke, and Alex Stalvey of the Bannister, Wyatt, and Stalvey Law Firm on behalf of the Appellant. Present on behalf of the Respondent was Boyd B. Nicholson, Jr. of the Haynesworth Sinkler Boyd Law Firm.

BRIEF PROCEDURAL HISTORY

This is an appeal of the Planning Commission's decision at a public hearing on July 27, 2022. The Planning Commission sent written notice of its decision to Appellant on August 2, 2022. Landowner filed it Notice of Appeal, Appeal, Request for Pre-Litigation Mediation, and Request for Declaratory Judgment on August 26, 2022. The Planning Commission filed their Response to Appeal on October 24, 2022. The parties attempted pre-litigation mediation pursuant to S.C. Code §§ 6-29-1150 and 6-29-1155 and reached an impasse. This hearing followed.

SUMMARY OF ARGUMENTS

The Court reviewed and considered the pleadings, the record on appeal, the briefs filed by the Trust and the Planning Commission, and the arguments of counsel.

The Appellant in this matter raised three principal issues. First, that the Planning Commission's use of the Greenville County Comprehensive Plan (both in terms of density and its call to reduce septic tank usage) (the "Comprehensive Plans") to deny the Appellant's preliminary subdivision application was arbitrary and not supported by law. Second, that the Planning Commission's use of Judge Letitia Verdin's June 3, 2022 order in the matter of *Mark III Properties, LLC v. The Greenville County Planning Commission* (2022-CP-23-1106) was not supported by law, was used arbitrarily, and used in a manner that is an abuse of discretion. Lastly, that the Planning Commission acted without legal support, acted arbitrarily, unreasonably, and abused its discretion when it denied the Appellant's preliminary subdivision application "for all other reason[s] set forth previously."

In response, the Respondent argued several points. First, the Respondent argued that the Appellant's appeal should be denied based on *res judicata* or alternatively, collateral estoppel. Second, the Respondent argued that the record on appeal contains ample evidence, or at least, some evidence, to support the Planning Commission's denial of the Applicant's preliminary subdivision application.

STANDARD OF REVIEW

In an appeal from a decision of a planning commission, the circuit court must uphold the decision if there is any evidence to support it. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008). The circuit court must refrain from substituting its judgment for that of the planning commission, even if the court disagrees with the decision.

Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). However, the circuit court may overturn the decision of a planning commission if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the commission abused its discretion. *Id.*

RULING

A. The Comprehensive Plan.

As to the first issue concerning the Planning Commission’s use of the Comprehensive Plan (both in regard to density and the use of septic tanks) as a basis for denying the Appellants preliminary subdivision, the court finds that the Planning Commission acted arbitrarily, without legal support, and abused its discretion.

First and foremost, the Comprehensive Plan is not law, but merely an uncodified, advisory document for the County. The authority for local governments in South Carolina to undertake planning and to adopt zoning and land development regulations is granted by the General Assembly to local planning commissions pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “1994 Act”). In order for a local government to adopt zoning and/or land development regulations, local planning commissions are required, by law, to develop and maintain a comprehensive plan. S.C. Code Ann. § 6-29-510. “The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to *guide* the development and redevelopment of its area of jurisdiction.” *Id.* (emphasis added).

The Comprehensive Plan itself gives direction for its use: “Plan Greenville County casts a twenty-year *vision* for the continued improvement and growth of Greenville County.

As a statutorily required comprehensive plan, once adopted, this plan will provide the basis for evaluating land development proposals in the unincorporated county and will serve as the *foundation for future land use and development regulations.*” Plan Greenville County, Page 9 (emphasis added).

Furthermore, the Comprehensive Plan states that, “a comprehensive plan is a *guiding* policy document that reflects a community's vision for its future...” and that, “[t]his plan is intended to be accessible to the general public; at the same time, it provides technical *guidance* and is a *foundation* for other planning related documents, such as *zoning and land development regulations.*” Plan Greenville County, Page 10 (emphasis added).

After a comprehensive plan has been adopted by a planning commission, a local planning commission can prepare and recommend the adoption of land development regulations and zoning ordinances to governing bodies, such as elected county councils. S.C. Code Ann. § 6-29-1130(A). The elected county councils can then enact land development regulations and ordinances, including zoning ordinances, based on a planning commission’s recommendations.

It is these regulations and ordinances enacted by a county council, along with State statutes, that regulate a planning commission’s consideration of whether to approve or disapprove subdivision projects. Once land development regulations and zoning ordinances are adopted by the County, those regulations and zoning ordinances (where applicable) become the law guiding approval or denial of a project at the planning commission level. By using the Comprehensive Plan as a basis for denial, the Planning Commission elevated the Comprehensive Plan to the same level of requirement as statutes passed by the General Assembly, and zoning ordinances and land development regulations passed by County

Council. Such elevation of the Comprehensive Plan by the unelected Planning Commission is improper.

It is not lost upon the court that we are dealing with in this appeal is a preliminary subdivision application and not a final application for plat approval. The court recognizes that there are harmless errors¹ and errors that may be fixed by an applicant prior to final plat approval². With that being said, if an preliminary subdivision application (1) substantially complies with the Greenville County Land Development Regulations (the “LDR”), (2) complies with applicable zoning ordinances (3) complies with applicable State statutes, and (4) no variance from the LDR is requested, then the Planning Commission has no authority to deny a project, and to do so is an abuse of discretion.

Secondly, after a review of the record, specifically Pages 8 and 9 of the minutes from the July 27, 2022 hearing, the court finds that the Planning Commission applies the Comprehensive Plan in an arbitrary manner. At the July 27, 2022 hearing several of the Commissioners mention that the Planning Commission’s application of the Comprehensive Plan is entirely inconsistent and applied in some instances and not in others. This troubles the court and is the very definition of arbitrary application and decision-making.

¹ In the Planning Commission’s brief in the matter of *Alliance to Preserve the Old White Horse Road Corridor and Mary Horney v. RP&L and the Greenville County Planning Commission* (2021-CP-23-3048), which was made a part of the record on appeal, concedes, on Page 12, that harmless errors may exist.

² In the Planning Commission’s brief in the matter of *Alliance to Preserve the Old White Horse Road Corridor and Mary Horney v. RP&L and the Greenville County Planning Commission* (2021-CP-23-3048), which was made a part of the record on appeal, concedes, on Page 13, that there are issues that arise in the development process that may be addressed at the final development phase rather than the initial subdivision application phase.

Third, the court finds that by forcing the Appellant to comply with the Comprehensive Plans density suggestions, the Planning Commission has, in effect, zoned the Appellant's property that lies in the unzoned portion of Greenville County in violation of the Appellant's due process rights.

In Greenville County, only County Council may zone or rezone property by approving an ordinance, whereas the Planning Commission only has the authority to *recommend* approval or disapproval of zoning map amendments to County Council. *See* Greenville County Zoning Ordinance § 3:2.6.

Furthermore, if the County were to attempt to zone private land, it must take the proper steps to ensure due process. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. *Id.*

That was the General Assembly's intent when it enacted S.C. Code Ann. § 6-29-760 which states, "[b]efore enacting or amending any zoning regulations or maps, the governing authority, or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. S.C. Code Ann. § 6-29-760(A). Any evidence that the Planning Commission followed the procedures outlined in S.C. Code Ann. § 6-29-760 or any other similar procedure that would have put the Appellant on fair and proper notice that an uncodified density requirement was going to be considered for this application is entirely absent from the record. As such, the Planning Commission's decision to deny cannot stand.

For all of the reasons set forth previously, the court finds that the use of the Comprehensive Plan was not supported by law, was arbitrary, and was an abuse of discretion.

B. Judge Verdin's June 3, 2022 Order.

The court also finds that the Planning Commission abused its discretion in applying Judge Verdin's June 3, 2022 order ("June 2022 Order") as a basis for denying the Appellant's application.

It is apparent to the court that the only issue decided on appeal in the June 2022 Order was the issue of notice. S.C. Code 6-29-1150(B) states, "[a] record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record." In that matter, the Appellant, Mark III Properties, LLC ("Mark III"), argued that by failing to put the reason for denial of a subdivision application in writing, the Planning Commission acted arbitrarily and capriciously. The court disagreed and found that the County had satisfied its requirement under S.C. Code 6-29-1150(B) when it created and published the minutes from the January 26, 2022 meeting and that the minutes constitute a sufficient public record.

The court finds that the Planning Commission's attempt to apply the June 2022 Order as a basis for denying Appellant's application is in error for three reasons. First, the order is very limited in nature and only decides one legal issue – whether the Planning Commission is required to publish its reason for denial in its written denial letter. Second, the applicant and appellant for the underlying application reviewed in the June 2022 Order are not the same entity or party as the applicant and appellee in this matter. Third and foremost, the application in this matter is different from the application reviewed in the June 2022 Order.

C. Denying the subdivision application “for all other reason’s set forth previously.”

As to the Planning Commission’s decision to deny the Appellant’s preliminary subdivision application based on “all other reason’s set for previously,” the court finds that the Planning Commission acted unreasonably and abused its discretion.

First, the Appellant and the applicant in previous preliminary application concerning this property are not the same party. The record is replete with evidence that this is the first time the Appellant applied for preliminary subdivision approval from the County. All prior applications were made by Mark III, while the application in this matter was submitted by the Trust. The Respondent argued, that while Mark III and John W. Beeson are separate parties, John W. Beeson is a privy of Mark III. However, John W. Beeson is not the Appellant, the Trust is.

Even assuming arguendo, that the Trust was privy to Mark III: (1) the application considered on July 27, 2022 was different than any of the three applications previously submitted by Mark III³ and (2) the claims in prior appeals were different than the claims made in the appeal at hand.

At the hearing, the Respondents themselves submitted summaries of prior applications that clearly show the applications were not the same. So, to deny this Appellant’s application, based on reasons another applicant’s different applications were previously denied is devoid of fairness and reason, and amounts to an abuse of discretion.

For these same reasons, the court denies the Respondent’s motion or request to have this appeal dismissed based on res judicata and/or collateral estoppel.

³ Mark III Properties submitted similar, but not the same, applications concerning the same property in November of 2021, January of 2022, and April of 2022. The minutes from these meetings were made a part of the record on appeal.

D. The Defenses of *res judicata* and collateral estoppel.

In their argument, the Respondent asserted the defenses of *res judicata* and/or collateral estoppel. “Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding.” *South Carolina Public Interest Foundation v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (2013) (quoting *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct.App.1997)). These doctrines do present two “different concepts”:

A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues actually and necessarily litigated and determined in the first suit.

South Carolina Public Interest Foundation v. Greenville County, 401 S.C. 377 at 386, 480 S.E.2d at 507 (quoting *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 n. 1 (Ct.App.1984)).

Res judicata requires the following elements: “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” The court finds that the Trust and prior applicant, Mark III Properties, are not the same party and are not privy to one another. Again, while Mark III Properties and John W. Beeson may be privy to one another, John W. Beeson was not the applicant in this matter, the Trust was. Additionally, the court finds that the subject matter of this appeal was not the subject matter of any previous appeal in the past. Per the record, Mark III Properties appealed the denial of a similarly-named subdivision twice previously. One appeal resulted in Judge Verdin’s June 3, 2022 order that has already been addressed and which dealt with a different application and entirely different claims than the ones before this court

now. The second appeal dealt with a different application and was withdrawn prior to its adjudication.

Further, the Respondent argues that even if the present claims were not raised in prior appeals, they could have been raised in those appeals. Even if the Trust and prior parties were considered privies, the previous appeals dealt with completely different underlying applications. As such, the same set of factual circumstances and claims were not in existence in the prior appeals. Therefore, the court denies the Respondent's motion to dismiss based on the doctrine of *res judicata*.

As to the defense of collateral estoppel, the party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct. App. 1984). For collateral estoppel to apply, the party against whom estoppel is asserted must have “had a full and fair opportunity to previously litigate the issues.” *Carolina Renewal v. S.C. Dept. Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (quoting *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008)).

As stated previously, the court finds that the Trust is not the same party as any party that filed an application or appealed in the past. Further, The court finds that the issue before this court has not been litigated in any prior actions. The Respondent argued that the issues before the court related to the January appeal that Judge Verdin ruled on are the same issues being adjudicated today. The court disagrees. The June 3, 2022 order is clear that a very limited issue was before the court on appeal. That issue being whether the Planning Commission is required to publish its

reason for denial in its written denial letter. The issues before the court now, are far more substantive and include, but are not limited to, challenges to the Planning Commission's use of the comprehensive plan to deny subdivision applications, due process arguments, and the validity of the Planning Commissions ability to deny subdivision applications for "all other reasons set forth previously."

Finally, as stated previously, the application appealed here is different from any application appealed from in the past. As such, similar factual circumstances do not exist such that decisions on past appeals could estop the Appellant's position in this appeal.

For these reasons, the Respondent's motion to dismiss this appeal based on the doctrine of collateral estoppel is denied.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Respondent's motions to dismiss this appeal based on the doctrines of *res judicata* and/or collateral estoppel are denied.
2. The Planning Commission's denial of the Appellant's preliminary subdivision applications considered on July 27, 2022 is hereby **VACATED**.
3. The issue shall be remanded back to the Planning Commission.
4. The Appellant may refile a new application with the Planning Commission for the Langford Hills Subdivision. The Appellant has leave to make modifications to the application to ensure that it substantially complies with relevant statutes, land development regulations, and any applicable ordinances.
5. In its consideration for approval, conditional approval, or denial, the Planning Commission is barred from (1) using the Comprehensive Plan as a basis for denial, (2) Judge

Verdin's June 3, 2022 Order as a basis for denial, and (3) any of the other reason's similar applications were denied previously as a basis for denial.

6. Should the Planning Commission decide to deny this new application, then the Appellant shall have leave to file an expedited appeal per S.C. Code Ann. § 6-29-1150. I am retaining jurisdiction in this matter and, if Appellant files a subsequent appeal pursuant to this order, then the Planning Commission shall provide my chambers with a detailed list of the reasons and detailed explanations as to why the Planning Commission has denied the Appellant's new application. Should I find that the reasons or basis for denial is or are not supported by law, the facts, are arbitrary, unreasonable, harmless error or an abuse of discretion, then the matter will again be remanded back to the Planning Commission with direct orders to approve the application as filed.

IT IS SO ORDERED.

March _____, 2023
_____, South Carolina

Honorable Bentley D. Price
Presiding Family Court Judge



Greenville Common Pleas

Case Caption: Marcelo Torricos Trustee , plaintiff, et al VS Planning Commission
Greenville County

Case Number: 2022CP2304704

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Certificate of Electronic Notification

Recipients

Marcelo Torricos - Notification transmitted on 03-31-2023 02:27:06 PM.

Boyd Nicholson - Notification transmitted on 03-31-2023 02:27:05 PM.

Bentley Price - Notification transmitted on 03-31-2023 02:27:12 PM.

Luke Burke - Notification transmitted on 03-31-2023 02:27:11 PM.

EXHIBIT 7

**(Greenville County Planning Commission's
Motion to Alter or Amend the Judgment)**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson James H. Beeson dated August 5, 2021,

Civil Action No. 2022-CP-23-04704

Appellant,

**Respondent's Motion to Alter or Amend
the Judgment**

vs.

Greenville County Planning Commission,
Respondent.

Pursuant to Rules 52 and 59, SCRPC, Greenville County Planning Commission (herein the “Respondent” or the “Planning Commission”) moves that the Court alter or amend its judgment set forth in the Court’s Order dated March 31, 2023 (the “Order”). Specifically, Respondent respectfully requests that the Court reconsider its Order and alter or amend the following portions of the Order as follows:

1. Page 5 of the Order states:

[I]f an preliminary subdivision application (1) ***substantially complies*** with the Greenville County Land Development Regulations (the “LDR”), (2) complies with applicable zoning ordinances (3) complies with applicable State statutes, and (4) no variance from the LDR is requested, then the Planning Commission has no authority to deny a project, and to do so is an abuse of discretion. (emphasis added).

This portion of the Order improperly creates a new standard of review of Planning Commission decisions, departing from the any evidence standard of review and imposing instead a mandate that the Planning Commission must approve preliminary plan applications as long as they substantially comply with the applicable law and ordinances. The South Carolina Local Government Comprehensive Planning Act (the “Act”), combined with the Greenville County Land

Develop Regulations (“LDR”), gives the Planning Commission sole authority to approve or deny preliminary plan applications. Nothing in the Act, the LDR, or any case law interpreting the same establishes that applicants have a right to approval as long as they substantially comply with the law. Just the opposite is true.

In *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 656 S.E.2d 346 (2008), the plaintiffs also argued for a new standard of review, but the South Carolina Supreme Court rejected this argument:

In our view, the Kurschners are essentially urging this Court to reject the any evidence standard of appellate review that is consistently-utilized in these types of cases and asking us to adopt an appellate review somewhere between a substantial evidence and de novo in examining decisions of a planning commission. We decline to do so.

376 S.C. at 173, 656 S.E.2d at 351. The Supreme Court made clear that the any evidence standard of review is the only standard of review applicable for planning commission decisions: “We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature’s intent in granting a planning commission broad discretion in this area.” *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. at 174, 656 S.E.2d at 351. The Court should alter or amend this portion of the Order by deleting it or altering it to apply the any evidence standard of review.

This portion of the Order also contains two footnotes. The first footnote, footnote 1 of the Order, states:

In the Planning Commission’s brief in the matter of *Alliance to Preserve the Old White Horse Road Corridor and Mary Horney v. RP&L and the Greenville County Planning Commission* (2021-CP-23-3048), which was made a part of the record on appeal, concedes, on Page 12, that harmless errors may exist.

The Order thus appears to support the aforementioned “substantially complies” standard (which is improper for the reasons stated directly above) with the idea that harmless error may exist. This

proposition has two problems. First, the Order implies that the Appellant's subdivision application contained or could in the future contain "harmless error" that the Planning Commission must overlook. The harmless error rule, however, is an appellate review concept and does not apply to the Planning Commission's review of a subdivision application, and even if it did apply, the determination of harmless error would only be for the Planning Commission to make, and not the Court. Second, the concession that footnote one alludes to was made in arguing that the Planning Commission's finding was appropriate, but that if there was a technical error in that part of the Planning Commission's finding it was a harmless error that did not warrant reversing the Planning Commission's approval of the subdivision application.¹

The second footnote, footnote 2 of the Order, states:

In the Planning Commission's brief in the matter of *Alliance to Preserve the Old White Horse Road Corridor and Mary Horney v. RP&L and the Greenville County Planning Commission* (2021-CP-23-3048), which was made a part of the record on appeal, concedes, on Page 13, that there are issues that arise in the development process that may be addressed at the final development phase rather than the initial subdivision application phase.

¹ On this point the Planning Commission argued in its brief:

The Appellants next port in this storm is a hypertechnical argument that the Court should reverse because the preliminary plan did not state whether the proposed open space was "developable" or "undevelopable" or show what the proposed uses would be for the open space. While LDR Article 11.3.2 tells developers to include this information on their preliminary plans, nothing in the LDR, the Zoning Ordinance, or South Carolina law suggests that the absence of this information is fatal or warrants a reversal of a planning commission decision. *See* LDR Art. 11; Zon. Ord. § 7.2. If this information were missing from the approved preliminary plan, the technical error would, at worst, be a harmless error. *See* Zon. Ord. § 7:2.4-6 (stating that the required open space "may include both developable and undevelopable property" which makes the technical designation on the plan informational only).

Brief of Planning Commission in *Alliance to Preserve the Old White Horse Road Corridor and Mary Horney v. RP&L and the Greenville County Planning Commission* (2021-CP-23-3048) (Exhibit E to Appellant's Brief) at 12.

Similar to footnote one, the concession that footnote two alludes to was made in the context the Planning Commission's approval of a subdivision application. There is nothing in the LDR that allows portions of a rejected subdivision application to be "addressed at the final development phase rather than the initial subdivision application phase." The Order should therefore be amended or altered by deleting or substantially amending footnotes one and two.

2. Page 5 of the Order also states:

Secondly, after a review of the record, specifically Pages 8 and 9 of the minutes from the July 27, 2022 hearing, the court finds that the Planning Commission applies the Comprehensive Plan in an arbitrary manner. At the July 27, 2022 hearing several of the Commissioners mention that the Planning Commission's application of the Comprehensive Plan is entirely inconsistent and applied in some instances and not in others. This troubles the court and is the very definition of arbitrary application and decision-making.

This portion of the Order fails to take into account the manner in which the Planning Commission makes decisions. Like the governing body of a municipality or county, the Planning Commission "acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise." *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 142, 459 S.E.2d 883, 886 (Ct. App. 1995). Thus, it is improper to view the statements of individual members of the Planning Commission who may have disagreed with the Planning's Commission decision "to impeach" the Planning Commission's decision. *See id.* at 142, 459 S.E.2d at 886 ("We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision."). Moreover, far from showing an arbitrary decision-making process, the fact that the Planning Commission engaged in vigorous debate shows just the opposite.

This portion of the Order also makes improper findings of fact by essentially finding that the dissenting members of the Planning Commission are more reliable than those members that

voted to deny the Appellant's subdivision application. The majority of the Planning Commission found that the use of the Comprehensive Plan was proper, and the fact that dissenting members of the Planning Commission disagreed with this point should not be used to impeach that finding.

3. Page 7 of the Order states that "the Planning Commission abused its discretion in applying Judge Verdin's June 3, 2022 order ("June 2022 Order") as a basis for denying the Appellant's application." To support this conclusion the Order finds:

First, the order is very limited in nature and only decides one legal issue – whether the Planning Commission is required to publish its reason for denial in its written denial letter. Second, the applicant and appellant for the underlying application reviewed in the June 2022 Order are not the same entity or party as the applicant and appellate in this matter. Third and foremost, the application in this matter is different from the application reviewed in the June 2022 Order.

Page 7 of Order. This portion of the Order should be altered or amended.

First, Judge Verdin's order went far beyond deciding the proper format for the Planning Commission to use in publishing its decision ("the Court finds that there is a sufficient record to explain Respondent's denial of Appellant's application."). First, Judge Verdin's order found that the record before the Planning Commission supported its decision: "[t]he Court does not find that that Respondent made its decision with no evidentiary support or in an arbitrary or capricious manner". Judge Verdin also found that the record was devoid of "clear errors of law." Judge Verdin's order at 3. Moreover, Judge Verdin not only made an explicit finding that the record supported the Planning Commission's decision, she also gave explicit examples of such support in the record. *See* Judge Verdin's order at 2 ("One of commissioners, Ms. Clark, specifically stated that 'Greenville County has a goal to reduce septic tank usage and when septic tanks are used it is encouraged to provide septic easements.' and 'the density is inconsistent with the surrounding area.' Another commissioner, Mr. Rogers, stated that the proposed subdivision was out of

character with the surrounding area. In all, three of the four members who voted against the plan explained their opposition on the record, and it is reasonable to presume that the fourth member voted against it because he found their arguments compelling.”). In the appeal that Judge Verdin’s order addresses, the appellant Mark III argued, among other things, that:

- The Commission abused its discretion by not writing out its specific reasons for denial in the denial letter;
- The Commission abused its discretion by disapproving the plan without any legal evidence to support the decision; and
- The Commission abused its discretion by misapplying the law since the repeal of LDR Art. 3.1 removed all discretion from the Commission.

Mark III’s Notice of Appeal (**Attachment 1** hereto) at ¶¶ 17-22. Thus, the same issues raised in Mark III’s appeal were raised in the current appeal.

Second, as described in Respondent’s Brief and set forth during oral argument, Mark III and the Appellant are, at the very least, privies. Third, as discussed below, the substance of the two applications are substantially similar. Given that, the Planning Commission properly considered Judge Verdin’s order as a basis of its decision.

4. As noted above, the Order finds on page seven that “the application in this matter is different from the application reviewed in the June 2022 Order.” On this topic page 8 of the Order states:

At the hearing, the Respondents themselves submitted summaries of prior applications that clearly show the applications were not the same. So, to deny this Appellant’s application, based on reasons another applicant’s different applications were previously denied is devoid of fairness and reason, and amounts to an abuse of discretion.

The Order bases this finding on a comparison of preliminary application plats. The Planning

Commission submits the Order should be amended or altered to conclude that the application that Mark III submitted in January 2022 was substantially similar to the one that the Appellant submitted in July 2022. First, a review of the documents to which the Order refers shows that these subdivision plans are substantially similar. *See* plats attached hereto as **Attachment 2**. Second, and more important, the Planning Commission found that these plans were substantially similar. *See* pages 6-7 of the July 26, 2022 Meeting Minutes (Exhibit A of Appellant's Brief). When reviewing a planning commission decision, a circuit court may not substitute its view of the facts for that of the planning commission. *See Kurschner v. City of Camden Planning Comm'n*, 376 S.C. at 173, 656 S.E.2d at 351. As the meeting minutes show, John Hill, speaking in opposition to the Appellant's application, stated that "no changes have been made to the current plan other than the 1800s-era home that was once on the property is now destroyed." July 27 Minutes at 6-7. Mr. Rogers' also questioned how the application was different, and the response was consistent with Mr. Hill's statement that very little change had been made. *See id.* at 7 ("Mr. Rogers asked how this plan was different than the one that was most recently denied. Ms. Wilkes stated mainly it is the frontage, the home around lot one is now excluded from the plan, and the McDavid home is no longer there. Mr. Rogers asked if they tore down one house and put more lots in. Ms. Wilkes stated they did not gain any additional lots."). Therefore, the Court should strike that portion of the Order on page 8 quoted above and replace it with a finding that some evidence supports the Planning Commission's finding that the January and July preliminary applications to be substantially similar.

5. Page 11 of the Order States:

The Appellant may refile a new application with the Planning Commission for the Langford Hills Subdivision. The Appellant has leave to make modifications to the application to ensure that it substantially complies with relevant statutes, land development regulations, and any applicable ordinances.

This portion of the Order oversteps the Court's authority and should be amended or altered. Under

the Act, the Court, in its appellate capacity, has the authority to approve the Planning Commission's decision or to vacate same and remand it to the Planning Commission for reconsideration. The Court does not have the authority to allow the Appellant to amend its application. Moreover, for the reasons stated in item 1 above, the Court does not have the authority to impose the "substantially complies" standard set forth on page 11 and elsewhere in the order.

6. Pages 11 and 12 of the Order states:

In its consideration for approval, conditional approval, or denial, the Planning Commission is barred from (1) using the Comprehensive Plan as a basis for denial, (2) Judge Verdin's June 3, 2022 Order as a basis for denial, and (3) any of the other reason's similar applications were denied previously as a basis for denial.

This portion of the Order oversteps the Court's authority and should be amended or altered. First, at no time has the Appellant sought an absolute bar from using the Comprehensive Plan. Indeed, it sighted with approval Judge Morgan's order in the case of *Alliance to Preserve the Old White Horse Road Corridor, LLC and Mary Jean Horney v. RP&L, LLC and the Greenville County Planning Commission*, C.A. No. 2021-CP-23-03048. This order does state that the Comprehensive Plan is not a mandatory document that the Planning Commission must follow, and on this point the Planning Commission agrees. Judge Morgan also notes, however, that the Comprehensive Plan "represents itself as a guide" for the Planning Commission. Judge Morgan order at 9. The Planning Commission did not elevate the Comprehensive Plan to the level of law, but did exactly as noted in Judge Morgan's order by using it as a guide. *See* July 27, 2022 Meeting Minutes at 9 ("Mr. Rogers explained the Comprehensive Plan is a guidance document that you apply with judgement.").

7. Page 12 of the Order States:

Should I find that the reasons or basis for denial is or are not supported by law, the facts, are arbitrary, unreasonable, harmless error or an abuse of discretion, then the matter will again be

remanded back to the Planning Commission with direct orders to approve the application as filed.

This portion of the Order oversteps the Court's authority and should be amended or altered. First, to the extent this portion of the Order could be viewed as pre-judging a remand, it is improper. While an order of the Court may unquestionably, and should, provide guidance to the Planning Commission on its remand, the Court may not dictate a result. Second, the determination of whether a defect in a subdivision application constitutes harmless error is, in the first instance, for the Planning Commission to decide. The Court's jurisdiction thereafter on such a point is limited to determining whether such a decision had the support of any evidence, was made arbitrarily or constituted an error of law. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008).

The Planning Commission respectfully moves and requests that the Court alter or amend its judgment consistently with the foregoing. This motion is based also upon the record in this matter and any brief or other materials that may be submitted after the filing of this motion.

HAYNSWORTH SINKLER BOYD, P.A.

s/Boyd B. Nicholson, Jr.

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*Attorneys for Defendant Greenville County
Planning Commission*

April 10, 2023
Greenville, South Carolina

ATTACHMENT 1
(Mark III's Notice of Appeal)

TO

**RESPONDENT'S MOTION TO ALTER
OR AMEND THE JUDGMENT**

*Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H. Beeson James H. Beeson dated
August 5, 2021*

v.

Greenville County Planning Commission

C.A. 2022-CP-23-04704

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Mark III Properties, LLC,

Appellant,

v.

Greenville County Planning Commission,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2022-CP-23-

SUMMONS

TO: THE RESPONDENT ABOVE-NAMED:

You are hereby summoned and required to answer the Notice of Appeal and Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the subscriber at 24 Cleveland Street, Suite 100, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Notice of Appeal and Petition.

BANNISTER, WYATT & STALVEY, LLC

s/ Luke A. Burke

Bruce W. Bannister (SC Bar # 15679)

Luke A. Burke (SC Bar # 100033)

Marcelo Torricos (SC Bar # 101403)

24 Cleveland Street, Suite 100 (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

Attorneys for the Appellant

February 28, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Mark III Properties, LLC,

Case No. 2021-CP-23-

Appellant,

NOTICE OF APPEAL AND PETITION

v.

Greenville County Planning Commission,

Respondent.

The Appellant, by and through undersigned counsel, submits this Notice of Appeal and Petition and alleges the following:

JURISDICTION AND PARTIES

1. Mark III Properties, LLC (“Appellant”) is a limited liability company organized and existing under the laws of the State of Delaware.

2. The Greenville County Planning Commission (“the Planning Commission”) is an appointed local planning commission as defined in South Carolina Code § 6-29-310, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created by the Greenville County Council pursuant to S.C. Code § 6-29-320, *et seq.*, and pursuant to Greenville County Code of Ordinances § 17-71, *et seq.*

3. On or around December 1, 2021, Gray Engineering Consultants (“Gray”) submitted a Preliminary Subdivision Application (PP-2021-298) and Variance Request (VA-2021-300) on behalf of Mark III Properties, LLC for property located on Augusta Road and Garrison Road in Greenville County (TMS# 0603020102501, 0603020102200, and portion of 0603020102100).

4. At its January 26, 2022 meeting, the Planning Commission denied the Preliminary Subdivision Application.

5. By letter dated February 2, 2022, Greenville County notified Gray of the Planning Commission's decision.

6. The Planning Commission did not provide a reason for its decision either at the meeting or in the denial letter.

7. Pursuant Title 6, Chapter 29, Article 7 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Greenville County has adopted land development regulations (LDR). LDR § 1.1.

8. This Court has personal jurisdiction over the parties due to their location or activities in Greenville County.

9. Venue is proper in Greenville County because the real property involved is situated within Greenville County and the Planning Commission is part of the Greenville County government.

10. This Court has subject matter jurisdiction of this action pursuant to S.C. Code § 6-29-1150.

11. Appellant hereby gives notice of its intent to appeal and does hereby appeal and petition this Court for review, pursuant to S.C. Code Ann. § 6-29-1150 and any other applicable section or section of the South Carolina Local Government Planning, of the Planning Commission's denial of the Preliminary Subdivision Application and Variance Request.

STANDARD OF REVIEW

12. The Planning Commission's decision must be overturned "where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion." *Peterson Outdoor*

Advertising v. City of Myrtle Beach, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standards to a Planning Commission decision).

13. “[A] decision of a municipal [Z]oning Board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Rest. Row Assocs. V. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

GROUND FOR APPEAL

14. “A record of all actions on all land development plans and subdivision plats *with the grounds for approval or disapproval*, and any conditions attached to the action must be maintained as a public record.”. S.C. Code § 6-29-1150(B) (emphasis added).

15. The Planning Commission’s failure to state its grounds for disapproval is proof that its decision was arbitrary and capricious and that the Planning Commission had no legitimate ground for disapproval.

16. The Planning Commission’s failure to state or record the grounds for disapproval represents error of law and proof that no legal evidence exists to support its decision.

17. The Planning Commission has abused its discretion by disapproving the plan without any legal evidence to support its decision.

18. Further, the legislative history of Article 3 of the County’s Land Development Regulations shows that the County intended to eliminate or significantly reduce the Planning Commission’s discretion to approve or disapprove preliminary subdivision applications.

19. Specifically, in response to numerous appeals by applicants and other interested parties from the Planning Commission's decisions, the County amended LDR Article 3, removing the infamous LDR 3.1.

20. It is clear from the removal of LDR 3.1 that County Council intended for the Planning Commission to approve all preliminary subdivision applications that complied with state laws and the County's ordinances and regulations.

21. Here, the Preliminary Subdivision Application complies with all state laws, and the County's ordinances and regulations.

22. Therefore, the Planning Commission's decision is based on errors of law, there is no legal evidence to support it, and the Planning Commission has acted arbitrarily or unreasonably and has abused its discretion.

WHEREFORE, Appellant prays for the following relief:

- 1) That the Court enter an order granting approval of the Preliminary Subdivision Application and Variance Request;
- 2) That Appellant be awarded attorney's fees and other reasonable costs related to this appeal from Respondent; and
- 3) For such other and further relief as the Court deems just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/ Luke A. Burke

Bruce W. Bannister (SC Bar # 15679)

Luke A. Burke (SC Bar # 100033)

Marcelo Torricos (SC Bar # 101403)

24 Cleveland Street, Suite 100 (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

Attorneys for the Appellant

February 28, 2022
Greenville, South Carolina

ATTACHMENT 2
(Plats)

TO

**RESPONDENT'S MOTION TO ALTER
OR AMEND THE JUDGMENT**

*Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H. Beeson James H. Beeson dated
August 5, 2021*

v.

Greenville County Planning Commission

C.A. 2022-CP-23-04704



Certificate of Electronic Notification

Recipients

Marcelo Torricos - Notification transmitted on 04-10-2023 02:38:35 PM.

Boyd Nicholson - Notification transmitted on 04-10-2023 02:38:35 PM.

Bentley Price - Notification transmitted on 04-10-2023 02:38:36 PM.

Luke Burke - Notification transmitted on 04-10-2023 02:38:36 PM.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2022CP2304704

Official File Stamp: 04-10-2023 02:37:01 PM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Marcelo Torricos Trustee , plaintiff, et al VS
Planning Commission Greenville County

Document(s) Submitted: Motion/Alter and/or Amend

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of: Boyd Benjamin Nicholson, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Boyd Benjamin Nicholson, Jr. for Planning
Commission Greenville County

Marcelo Torricos, III for Marcelo Torricos Trustee
et al

Luke Anthony Burke for Marcelo Torricos Trustee
et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

EXHIBIT 8

**(April 25, 2023 Order Denying Respondent's
Motion to Alter or Amend the Judgment -
"April Order")**

to

**Appellant Greenville County Planning
Commission's Memorandum of Appealability**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson dated August 5, 2021,

Appellant,

vs.

The Greenville County Planning Commission,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-04704

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND THE
JUDGMENT**

The Respondent, The Greenville County Planning Commission, filed a Motion to Alter or Amend, dated April 10, 2023, asking this Court to reconsider its Order dated March 31, 2023 vacating and remanding the Respondent's July 27, 2022 denial of the Langford Hills Preliminary Subdivision application.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Respondent’s Motion and review of the attachments to the Motion, the Court hereby DENIES Respondent’s Motion to alter or amend this Court’s March 31, 2023 Order.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Marcelo Torricos Trustee , plaintiff, et al VS Planning Commission
Greenville County

Case Number: 2022CP2304704

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Certificate of Electronic Notification

Recipients

Marcelo Torricos - Notification transmitted on 04-25-2023 11:40:24 AM.

Boyd Nicholson - Notification transmitted on 04-25-2023 11:38:47 AM.

Bentley Price - Notification transmitted on 04-25-2023 11:47:17 AM.

Luke Burke - Notification transmitted on 04-25-2023 11:43:29 AM.

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NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2022CP2304704

Official File Stamp: 04-25-2023 11:34:24 AM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Marcelo Torricos Trustee , plaintiff, et al VS
Planning Commission Greenville County

Document(s) Submitted: Order/Other-Denying Respondent's Motion/Alter
or Amend Order/Other

Filed by or on behalf of: Bentley D. Price

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Boyd Benjamin Nicholson, Jr. for Planning
Commission Greenville County

Marcelo Torricos, III for Marcelo Torricos Trustee
et al

Luke Anthony Burke for Marcelo Torricos Trustee
et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 12 2023

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Bentley D. Price

Trial Court Case No.: 2022-CP-23-04704
Appellate Case No. 2023-000699

Marcelo Torricos, as Trustee of the John W.
Beeson Irrevocable Trust II FBO James H.
Beeson dated August 5, 2021 Respondent,

v.

The Greenville County Planning Commission Appellant.

PROOF OF SERVICE

I certify that I have served *Notice of Appearance for Sarah P. Spruill* and *Memorandum of Appealability* on counsel of record on this the 12th day of May, 2023, by electronic mail only to the following:

Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Marcelo Torricos III, Esq.
Bannister, Wyatt & Stalvey, LLC
24 Cleveland Street, Ste. 100 (29601)
P.O. Box 10007
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bbannister@bannisterwyatt.com
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Stacey Carberry

Stacey Carberry, Legal Assistant
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**HAYNSWORTH
SINKLER BOYD**

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SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

May 12, 2023

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

May 12 2023

SC Court of Appeals

Re: *Marcelo Torricos, as Trustee of the John W. Beeson Irrevocable Trust II FBO James H. Beeson dated August 5, 2021 v. The Greenville County Planning Commission*
Appellate Case No. 2023-000699

Dear Ms. Kitchings:

This firm represents the Appellant, The Greenville County Planning Commission, in the above matter. Enclosed for filing, please find a *Notice of Appearance for Sarah P. Spruill* and *Memorandum of Appealability* together with our Proof of Service for the same.

Counsel for the Appellant has ordered and received the transcript; however, we understand from the Court's letter of May 2, 2023 that the deadlines in this matter have been held in abeyance pending the Court's consideration of the memoranda on appealability. For that reason, we have not yet calendared our initial brief and designation. Please let me know if that is incorrect.

If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac
Enclosures

cc: Bruce W. Bannister, Esq. (bbannister@bannisterwyatt.com)
Luke Anthony Burke, Esq. (lburke@bannisterwyatt.com)
Marcelo Torricos III, Esq. (mtorricos@bannisterwyatt.com)