THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward R. Miller, Circuit Court Judge

Appellate Case No. 2023-000144
Case No. 2022-CP-23-03356

Citizens for Quality Rural Living, Inc.,

Appellant,

v.

LyonJay and the Greenville County Planning Commission,

Respondents.

APPELLANT'S RESPONSE TO LYONJAY'S MOTION FOR *EN BANC* RECONSIDERATION

Appellant Citizens for Quality Rural Living, Inc. (CQRL) submits this Return in opposition to Respondent LyonJay's Motion for *En Banc* Reconsideration filed June 1, 2023. CQRL respectfully requests this Court deny the Motion.

INTRODUCTION

As covered in CQRL's previous return, this matter arises out of CQRL's appeal of Respondent Greenville County Planning Commission's (Planning Commission) approval of a subdivision preliminary plan submitted by LyonJay, identified as "River Preserve."[1] The Circuit

[1] LyonJay suggests the approval of its preliminary plan "adhere[d] to the schedule and process set forth in the Greenville County Land Development Regulations." *Motion for Reconsideration* at 2. CQRL has expressly disputed this notion throughout its appeal and will do so again in its Brief to this Court but does not intend to litigate the underlying merits in response to this Motion.

Court affirmed the Planning Commission's approval. On January 30, 2023, CQRL filed its Notice of Appeal with this Court, and initial briefing will be completed concurrently with this filing on June 12, 2023. LyonJay unsuccessfully sought an order from the Circuit Court to require CQRL to post a supersedeas bond during the course of the appeal. LyonJay then unsuccessfully sought an order from this Court requesting the same bond. As with its previous two filings, LyonJay's current request lacks any merit because no legal authority exists for the relief it seeks under these circumstances. CQRL therefore respectfully requests this Court deny the Motion.

ARGUMENT

LyonJay's present motion contains nearly verbatim arguments as contained in its prior bond motion, excepting its very brief and uncompelling argument that this Court (and the lower court) Orders denying such bond were the result of a "possible point of confusion." *Motion for Reconsideration* at 12 & Exhibit 1. In that regard, CQRL is similarly repeating arguments that this Court already found persuasive after "careful consideration."

I. This Court should deny LyonJay's motion for the imposition of a supersedeas bond.

LyonJay misguidedly contends that this Court should have ordered CQRL to post a supersedeas bond pursuant to Section 18-7-10 of the South Carolina Code; Rule 62, SCRCP; and Rule 241, SCACR. This Court was correct in denying such bond because none of these sources of authority apply and LyonJay's arguments ignore the plain language contained in both the statute and the rules. Rather than addressing the language of the statute or the rules, LyonJay questions "why the burden is not on CQRL to show cause why it should not be required to post the appeal bond specified [in Section 18-7-10]" and resorts instead to general appeals to "justice and equity." *Motion for Reconsideration* at 4. The answer is simple: CQRL is not required to post a bond in these circumstances because the General Assembly elected not to subject appeals of planning

commission decisions to the statutory framework set forth in Title 18; further, Rule 62, SCRCP and Rule 241, SCACR do not authorize the imposition of a bond for such appeals.

Throughout this litigation, LyonJay has repeatedly disparaged CQRL as a "serial litigant with no employees or legitimate business activity" that wishes to "elevat[e] the environmental ideals of a very few above the well being of the remainder citizens and residents of Greenville County." *Motion for Reconsideration* at 5. CQRL is simply an organization comprised of property owners and residents living in the rural areas of Greenville County who seek to advocate for preserving rural living untrampled by widespread, incompatible high-density residential development such as that sought by LyonJay. As growth in Greenville County exploded and pushed residential development sprawl into its undeveloped, rural areas, these citizens organized as CQRL to engage in joint advocacy for their shared goal. CQRL advocates against problematic and incompatible proposed developments that violate existing regulations and for sound development regulations that protect and preserve the rural nature of the place their members have called home for generations.

Specific to this case, CQRL has members who are residents of the County of Greenville, owning property and residing in the vicinity of River Preserve, the subdivision approved by Respondent Greenville County Planning Commission. *Exhibit 1, Notice of Appeal & Appeal* at ¶ 2 & 3. Thus CQRL, through its members, are by the Planning Commission's decision and has a significant interest in the outcome of the decision at issue here. *Id.*

When necessary, CQRL turns to the courts for judicial review of the Greenville County Planning Commission's erroneous approval of developments that violate local regulations, state law, or constitutional rights—a valid and legitimate exercise of its members' rights and nothing remotely approaching what LyonJay claims is the initiation of obviously meritless appeals and the

"employ[ment of] protracted litigation tactics."[2] LyonJay evidently fails to recognize that CQRL is exercising the constitutionally and statutorily-granted rights of assembly and judicial review and neither right requires being engaged in business activity or having employees.[3]

LyonJay also attempts to bolster its unsupported argument for the imposition of a bond by inserting the underlying merits of the appeal and asking this Court to consider what it claims is the applicable standard of review. *Motion for Reconsideration* at 6. CQRL has expressly contended throughout this litigation (and has done so in its Brief to this Court) that the Circuit Court's application of the "any evidence" standard of review is erroneous because that standard does not apply when the grounds for appeal implicate a matter of law.

LyonJay's attempts to decry CQRL are simply an effort to obscure the weakness of its argument and the lack of supportive authority. Because none of the authority cited by LyonJay

[2] LyonJay cites to four other lawsuits brought by CQRL, noting three have been dismissed in an attempt to suggest CQRL is unsuccessful and only engages in dilatory litigation. *Motion for Reconsideration* at 5. However, LyonJay neglected to identify the reason each case was dismissed. *Id.*; *see e.g.*, 2016CP2304248, *Greenville County Planning Commission Answer* at 1 ¶ 2 (noting the developer withdrew its preliminary plan application, mooting the appeal); 2016CP2305425, *Consent Order for Settlement Approval* (approving settlement agreement between the parties that reduced the subdivision size by forty-two lots, required a larger minimum-lot size, and mandated roadway improvements and other subdivision design changes, which resulted following CQRL's successful appeal to this Court of the Circuit Court's dismissal of its appeal on standing grounds); 2018CP2305907, *Stipulation of Dismissal* (stipulating to dismissal when the proposed plan was "void since the property has changed boundary lines, the developer has no intention to proceed with the plan, and the owner has sold the property" and "[a]ny future development on the remaining property will require that the procedures outlined in the Greenville County Land Developer regulations be followed from the beginning").

[3] While deriding CQRL's advocacy efforts, LyonJay simultaneously attempts to paint itself as an altruistic actor graciously building "much-needed housing stock" for the benefit of Greenville County residents and citizens, but LyonJay stands to earn in the neighborhood of two million dollars in profit from this development alone. *See Motion for Reconsideration* at 5-6. CQRL raises this point not to criticize LyonJay's desire and efforts to earn profits on its ventures, but to dispel this image LyonJay seeks to present to this Court.

authorizes—let alone requires—the imposition of a bond on CQRL during the pendency of this appeal, CQRL requests this Court deny LyonJay's Motion.

a. Title 18 is inapplicable to appeals of planning commission decisions.

LyonJay claims Section 18-7-10 serves as the "[c]ontrolling authority for the imposition of a bond in this matter." *Motion for Reconsideration* at 3. This assertion is incorrect for several reasons. First, the plain language of the statutory provision demonstrates it is inapplicable to appeals from decisions of a planning commission, which are instead governed by Section 6-29-1150. Section 18-7-10 provides:

> When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if *the party against whom judgment is rendered* shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal . . . .

Id. (emphasis added). Section 18-7-10 does not apply for the simple reason that CQRL is not a "party against whom judgment [was] rendered" because it was not a party to the Planning Commission's consideration or approval of River Preserve. *See Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116-17, 719 S.E.2d 282, 284 (Ct. App. 2011) (noting the Board of Zoning Appeals' argument "overlooks . . . the non-adversarial nature of administrative proceedings"). Furthermore, this provision clearly envisions money judgments. *See* S.C. Code Ann. § 18-7-10 (requiring a "good and sufficient bond with surety to pay *the amount of the judgment and costs* in the event that he fail to sustain such appeal" (emphasis added)). Appeals from planning commission decisions do not involve money judgments.

The illogical application of this section to these circumstances demonstrates that the South Carolina Comprehensive Local Government Planning Enabling Act (Planning Enabling Act), S.C.

Code Ann. § 6-29-310 *et. seq.*, is the sole statutory authority for appeals from local commissions or boards. Even if Section 18-7-10 applied, the provision simply authorizes the appeal to constitute a supersedeas—or stay of the judgment—*if* the losing party executes a bond. Section 18-7-10 does not *mandate* the execution of a bond to pursue an appeal; the payment of a bond simply acts as a stay of the judgment during the pendency of the appeal. CQRL has never sought a stay, nor does it need to because the Circuit Court's order affirming the Planning Commission's approval of the preliminary plan automatically stayed by CQRL's Notice of Appeal pursuant to Rule 241(a), SCACR.[4]

LyonJay attempts to preemptively address the fact that no judgment was ever rendered against CQRL by calling it "straw-grasping" and claiming it amounts to an admission by CQRL that it has not been adversely affected and, therefore, lacks standing. *Motion for Reconsideration* at 7-8. LyonJay mistakenly conflates the concept of standing with a party having a judgment rendered against them. If the two concepts were equivalent, only the *losing* party in any litigation could ever have standing. "In its most basic sense, '[s]tanding refers to a party's right *to make* a legal claim *or seek* judicial enforcement of a duty or right.'" *Preservation Soc. of Charleston v. S.C. Dep't of Health & Envt'l Control*, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020) (emphasis

[4] An important distinction should be noted here. The operation of Rule 241(a), SCACR imposed an automatic stay on the *Circuit Court's order* but CQRL's initial notice of appeal did not stay the *Planning Commission's approval* of the preliminary plan. Nothing in the Planning Enabling Act indicates the filing of a notice of appeal from a local board or commission acts as an automatic stay, contrary to LyonJay's claims. *See also* Rule 74, SCRCP. As LyonJay itself notes, *Greenville County* is the entity that "will not allow [the approved subdivision] to proceed while the appeal is pending." *Motion for Reconsideration* at 4. LyonJay cites to Section 6-29-1140 as the basis, but this provision does not stay the matter and instead only prohibits the recording or acceptance for recording of an *unapproved* subdivision plan. The existence of this very appeal demonstrates that LyonJay possesses an *approved* preliminary plan, and the fact that CQRL filed its appeal in the circuit court challenging the Planning Commission's approval did not transform the approved plan into an unapproved plan.

added) (quoting *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018)). The very nature of standing relates to whether a party can even institute an action and in no way requires a judgment being rendered first. *See id.* ("Standing to sue is a fundamental requirement in *instituting* an action." (emphasis added) (quoting *Joytime Distibs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999))).

LyonJay argues that the Circuit Court's order denying its motion for supersedeas bond failed to explain "how a planning commission decision can be simultaneously adverse to a party in interest and yet not a judgment against that party." *Motion for Reconsideration* at 8. Again, LyonJay's error occurs because it fails to distinguish between standing and judgments. A simple example is useful to demonstrate the distinction and also illustrate why Section 18-7-10 is inapplicable here: Pat files a lawsuit against Dave for personal injury in magistrate court. Pat wins the lawsuit and the magistrate court enters a judgment against Dave. Therefore, Dave is the only party "against whom judgment is rendered," and Section 18-7-10 authorizes Dave to file an appeal to the circuit court, which would operate as a supersedeas *if* he posted a bond. Yet, LyonJay's argument would mean Pat, who won the lawsuit, would not have *standing* even though he had been injured (i.e., adversely affected), which is necessary throughout the entirety of litigation. LyonJay's argument leads to this patently absurd result, and this Court should not revisit its decision and construe the statute in such a manner. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd it could not have been intended by the Legislature or would defeat the plain legislative intention."). The reason Section 18-7-10 logically applies in this hypothetical—independent of standing—is because there was a *party* who had a judgment rendered against them. That did not happen to CQRL here.

Moreover, LyonJay mischaracterizes this Court's decision in *Citizens for Quality Rural Living Inc. v. Greenville County Planning Commission and RMDC, Inc.*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). The portion of this Court's opinion cited by LyonJay addressed CQRL's argument that it had standing under the Declaratory Judgment Act, not whether it had standing to *appeal* the planning commission's decision under the Planning Enabling Act. *Id.* at 112-13, 825 S.E.2d at 729. Significantly, an action under the Declaratory Judgment Act seeking a declaration from the court is entirely distinct from an *appeal* to the circuit court and does not implicate the circuit court's appellate jurisdiction over planning commission decisions under Title 6 (or Title 18, if it applied). Instead, the declaratory judgment action filed by CQRL in *RMDC* would trigger the circuit court's original jurisdiction, rendering the existence of any appellate procedures, including Section 18-7-10, completely inapplicable.

In *RMDC*, this Court concluded that CQRL had standing under the Declaratory Judgment Act because its language confers standing on any person who was "'affected by' local legislation" and found CQRL members had been adversely affected by the planning commission's application of the land development regulations without considering the comprehensive plan. *Id.* at 113, 825. S.E.2d at 729. As a result, the analysis regarding CQRL being adversely affected has nothing to do with its appeal of the planning commission's approval of the particular development at issue in *RMDC* and cannot serve, as LyonJay suggests, as the equivalent to a "party against whom judgment [was] rendered" under Section 18-7-10.

Second, Title 18 is inapplicable to appeals from decisions of a planning commission because the grant of general jurisdiction under Title 18 does not apply when the circuit court is granted jurisdiction by a separate, more specific statute. Instead, Section 6-29-1150 is the sole

statutory basis for the procedures governing appeals from a planning commission decision.[5] Significantly, Section 6-29-1150 is the more specific—and more recent—statutory provision, and "[i]t is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." *Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996).

LyonJay asks this Court to ignore these "well-settled" rules of statutory construction by arguing that the silence in Section 6-29-1150 regarding supersedeas bonds—or Title 18—"more likely reflects legislative efficiency." *Motion for Reconsideration* at 8. LyonJay's argument turns statutory construction principles upside down. "[T]he cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Henry-Davenport v. Sch. Dist. of Fairfield Cnty.*, 391 S.C. 85, 88, 705 S.E.2d 26, 28 (2011). The text of a statute is the best evidence of the General Assembly's intent. *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). "Where the language of the statute is clear and explicit, the court cannot

[5] The fact that this Court has concluded that an appeal from a local zoning board decision could not be amended past the time for filing while not applying Section 18-1-140's grant of discretion to "permit amendment on such terms as may be just" in order to perfect the appeal bolsters the notion that Title 18 does not apply to planning commission appeals. *See Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 37 606 S.E.2d 209, 213 (Ct. App. 2004) (noting the Planning Enabling Act "makes no provision for amendment of the grounds set forth in the petition" (citing *Smith v. S.C. Dep't. of Soc. Servs.*, 284 S.C. 469, 327 S.E.2d 348 (1985))). LyonJay's attempts to distinguish these decisions fail. *Motion for Reconsideration* at 9-10. *Austin* explicitly stated that the "procedures governing appeals of [zoning] Board decisions to the circuit court are prescribed by statute" and cites to the Planning Enabling Act—not Title 18. *See* 362 S.C. at 37, 606 S.E.2d at 213. Thus, it is clear that Title 18 is inapplicable to such appeals. Similarly, the Supreme Court in *Smith* rejected amendment of a petition because the applicable statute did not allow amendments "after expiration of the 30-day statutory period for filing the appeal." 284 S.C. at 471, 327 S.E.2d at 349. The Planning Enabling Act similarly does not authorize amendments to appeals of planning commission decisions beyond the time for filing; if Title 18 applied, then such amendments would be permitted, directly conflicting with the Act. *See* S.C. Code Ann. § 18-1-140. The General Assembly did not intend such a result.

rewrite the statute and inject matters into it which are *not in the legislature's language*." *Cty. of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (emphasis added).

The entirety of Chapter 7 of Title 6, which governs approvals of subdivision plans by a planning commission and appeals from such decisions, is devoid of any reference to supersedeas bonds or Title 18. This reflects the General Assembly's intent that appeals of planning commission decisions are governed solely by Section 6-29-1150, and such appeals do not trigger or authorize the imposition of a supersedeas bond. This Court's decision in *Bursey v. South Carolina Department of Health and Environmental Control* supports this reading. 360 S.C. 135, 140, 600 S.E.2d 80, 83 (Ct. App. 2004). In *Bursey*, this Court rejected the argument that the South Carolina Mining Act was governed by the standard of review found in Title 18, finding the Mining Act, not Title 18, conferred jurisdiction on the circuit court. *Id.* at 139-41, 600 S.E.2d at 83. This Court reasoned that the "standard of review in section 18-7-170 is meant only to apply in appeals over which the Circuit Court gains jurisdiction *solely* by the jurisdictional grant of section 18-7-10, and not appeals where the court's jurisdiction is, by virtue of a separate statute, otherwise provided for 'by law.'" *Id.* (emphasis added).

LyonJay asserts *Bursey* is inapplicable because it involved an executive agency and the Administrative Procedures Act, an argument that ignores the similarity to the case now before this Court. *Motion for Reconsideration* at 10. The Planning Enabling Act confers jurisdiction on the circuit court to hear appeals of decisions of a planning commission. *See* S.C. Code Ann. § 6-29-1150. By extension, this Court's holding in *Bursey* makes clear that the circuit court's jurisdiction here is granted *solely* by the Planning Enabling Act, not Title 18. *See* 360 S.C. at 139-41, 600 S.E.2d at 83. Unlike the Mining Act in *Bursey*, the Planning Enabling Act lacks any reference to Title 18, let alone comparable language regarding the manner in which such appeals would be

taken. *See Bursey*, 360 S.C. at 140, 600 S.E.2d at 83 (noting the Mining Act required that appeals of mining decisions be taken "in the manner provided by Chapter 7 of Title 18").

The General Assembly is clearly capable of explicitly drafting a statute to subject certain categories of appeals to the procedures set forth in Chapter 7 of Title 18, and it elected not to do so in the Planning Enabling Act—notably, a statute drafted *after* the Mining Act. LyonJay's complaint that such an interpretation deprives litigants of the procedural protections granted by Chapter 7 of Title 18 should be directed to the General Assembly, not to this Court. The absence of any reference in the Planning Enabling Act to Chapter 7 of Title 18 makes clear that Title 18 is entirely irrelevant to appeals of decisions of a planning commission. *See generally* 82 C.J.S. *Statutes* § 460 (2009) ("[W]here a statute contains a given provision, the omission of such a provision from a similar statute concerning a related subject is significant to show a different intention has existed.").

As previously noted, Article 7 of Title 6 lacks any reference to a supersedeas bond. *See* S.C. Code Ann. §§ 6-29-1110 to 1210. In contrast, another section of the Planning Enabling Act that governs appeals from decisions of a board of zoning appeals *does* authorize the circuit court to grant supersedeas. *See* S.C. Code Ann. § 6-29-830(B) ("The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper."). The presence of this plain language in Article 5—but not Article 7—of Title 6 demonstrates the General Assembly's intent that supersedeas are available in appeals from zoning board decisions but not from planning commission decisions. Even if this Court elected to apply this provision to the planning commission appeal context, CQRL has never sought a

supersedeas, and this provision makes clear a stay is not automatic.[6] *See id.* (noting the filing of an appeal "does not *ipso facto act* as a supersedeas" (emphasis added)).

LyonJay's argument ignores the plain language in Section 18-7-10 and Section 6-29-1150. Because the approval of the preliminary plan was not automatically stayed, CQRL never sought a stay, and Section 18-7-10 does not authorize the imposition of a supersedeas bond under these circumstances, this Court should deny LyonJay's Motion for *En Banc* Reconsideration seeking to impose a bond.

b. Rule 62, SCRCP is irrelevant under these circumstances.

LyonJay also cites to Rule 62, SCRCP, which governs stays of the enforcement or execution of a judgment. Specifically, the Rule establishes an automatic stay for ten days after entry of a judgment before any execution of the judgment or any proceedings "taken for [the judgment's] enforcement." Rule 62(a), SCRCP; *see also Haselden v. Haselden*, 347 S.C. 48, 63, 552 S.E.2d 329, 337 (Ct. App. 2001) ("Moreover, while Rule 62(a), SCRCP automatically stays enforcement of a judgment, the automatic stay expires 10 days after judgment is entered."). Beyond the ten-day automatic stay, "when an appeal is taken, a party, by giving a supersedeas bond, *may* obtain a stay *subject to* the exceptions contained in subdivision (a) of this rule and *the South Carolina Appellate Court Rules*." Rule 62(d), SCRCP (emphases added).

Yet, CQRL has not sought a stay of the enforcement of a judgment here, making Rule 62(d), SCRCP simply inapplicable to this case and, in any case, subject to the appellate court rules. As LyonJay appears to recognize, the service of CQRL's Notice of Appeal to this Court implicates the general rule of Rule 241, SCACR, which imposed an automatic stay of the Circuit Court's

[6] *See also supra* n.4 (describing how nothing in the Planning Enabling Act indicates the filing of a notice of appeal from a local board or commission acts as an automatic stay).

Order affirming the Planning Commission's approval of the preliminary plan. Accordingly, LyonJay's motion under Rule 62(d), SCRCP should be rejected.

c. A Motion for Supersedeas Bond under Rule 241, SCACR, is similarly inapplicable under these circumstances.

Finally, LyonJay relies on Rule 241(c), SCACR to support its request for the imposition of a supersedeas bond, but the plain language of the Rule demonstrates such relief is inapplicable here because this case involves the general rule and is not subject to an exception.[7] Specifically, Rule 241 governs stays and the issuance of supersedeas in civil actions, providing:

> As a general rule, the service of a notice of appeal in a civil matter *acts to automatically stay matters* decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. *This automatic stay continues in effect* for the duration of the appeal *unless lifted by order* of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

Rule 241(a), SCACR (emphases added). Importantly, no bond requirement exists for a case to fall within the "general rule." *See id.* Although exceptions to the "general rule"—that service of a notice of appeal automatically stays matters decided in the order—may exist in statutes, court rules, and case law, LyonJay has not identified a statute, court rule, or case that establishes such an applicable exception, and none of the examples included in subsection (b) apply here. *See* Rule 241(b), SCACR.

[7] LyonJay makes a vague assertion that this case is subject to an exception under Rule 241(b)(4), SCACR, for "[j]udgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann § 18-9-170;" however, this case is about a local government's preliminary plat approval and has nothing to do with directing the sale or delivery of possession of real estate. *Motion for Reconsideration* at 4. Indeed, LyonJay later acknowledges that the appeal does not "order the sale or delivery of real property." *Id.* at 12. LyonJay is the party engaging in straw-grasping.

As a result, the plain language of Rule 241(c), SCACR, on which LyonJay relies, makes clear a supersedeas is unavailable when a case is governed by the general rule in Rule 241(a). "*In a case subject to an exception*, any party may move for an order imposing a supersedeas of matters decided in the order." Rule 241(c)(1), SCACR (emphasis added). A writ of supersedeas is naturally only available in cases falling *outside* the general rule (i.e., cases where the notice of appeal does *not* automatically stay matters decided in the order on appeal) because the writ accomplishes the stay that *is* automatically available in cases subject to the general rule. As this case falls within the general rule outlined in Rule 241(a), the Rule does not authorize the granting of a supersedeas when the matter is already automatically stayed.

The Supreme Court's decision in *Matter of Decker* demonstrates that a supersedeas is only an option when the automatic stay is inapplicable: "Having determined that there is no automatic stay, this Court must determine if we should exercise our discretion to issue a writ of supersedeas." 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995) (applying Rule 225, SCACR, the predecessor to Rule 241). If the order on appeal had automatically stayed the order, it would have been unnecessary for the Court to determine whether to issue a writ of supersedeas. *Id.* The same analysis applies here.

Lastly, LyonJay cites specifically to Rule 241(c)(3), SCACR for the proposition that this Court has the discretion to impose a bond "in the interest of justice." The Rule provides:

> Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief as are deemed appropriate.

Id. While broadly stated, this provision does not authorize ordering a party to post a bond for a stay automatically imposed by the general rule; any other interpretation would rewrite the language

of the general rule. *See* Rule 241(a), SCACR. Moreover, this subsection requires that the "lifting of a stay . . . [be] insufficient to afford complete relief." Rule 241(c)(3), SCACR; Rule 241(a)(1), SCACR ("After service of notice of appeal, any party *may move for an order lifting the automatic stay* in cases which involve the general rule." (emphasis added)). Instead of moving to lift the stay imposed by the operation of Rule 241(a), LyonJay has repeatedly sought to require CQRL to post a bond despite the absence of any authority supporting its request.

Accordingly, LyonJay's Motion for Bond under Rule 241, SCACR should be rejected because it does not authorize a supersedeas bond when the matter falls within the general rule's automatic stay.

II. Reconsideration is Not Warranted

South Carolina Appellate Court Rule 221(a) requires a party seeking reconsideration to "state with particularity the points supposed to have been overlooked or misapprehended by the court." LyonJay's motion for *en banc* reconsideration amounts to a regurgitation of the exact same arguments previously made, and rejected, both by the lower court and by this Court. It has not stated with particularity the points overlooked or misapprehended by this Court, it simply disagrees with the result.

While it is true that this Court notes that Greenville County will not allow the development to proceed pending appeal, the Court gave "careful consideration" to the arguments presented, and in denying the motion effectively found that Title 18 is not applicable to appeals of planning commissions. This Court also cited the general rule of SCACR Rule 241(a) that the notice of appeal automatically stays the matters on appeal, which is applicable here. SCACR Rule 241(c) cannot be used to impose a bond in instances where the general rule of SCACR Rule 241(a) applies

because that rule is only invoked when a party moves to either lift the automatic stay or moves for supersedeas. Neither is the case here.

CONCLUSION

This Court should deny LyonJay's Motion for Reconsideration because it has presented no point of law misinterpreted or overlooked by this Court, and no applicable statute or rule authorizes the imposition of a bond under these circumstances.

Respectfully submitted,

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June 12, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward R. Miller, Circuit Court Judge

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CERTIFICATE OF SERVICE

I, Leslie Lenhardt, hereby certify that on June 12, 2023, I served counsel for Respondents LyonJay and Greenville County Planning Commission with copies of Appellant Citizens for Quality Rural Living, Inc.'s Return to LyonJay's Motion for *En Banc* Reconsideration by emailing copies of the same to the following email addresses registered in the South Carolina Attorney Information System:

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Mount Pleasant, South Carolina
June 12, 2023

Exhibit 1

NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
GREENVILLE COUNTY CIRCUIT COURT

APPEAL FROM THE GREENVILLE COUNTY PLANNING COMMISSION

Preliminary Plan Application PP-2022-072

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Respondents.

NOTICE OF APPEAL

Appellant hereby submits notice to LyonJay and the Greenville County Planning Commission of its appeal of the Greenville County Planning Commission's approval of the River Preserve preliminary plan, PP-2022-072, by vote on May 25, 2022.

s/ Michael G. Martinez
Michael G. Martinez, Bar No. 101800
S.C. ENVIRONMENTAL LAW PROJECT
Post Office Box 5761
Greenville, SC 29606
Telephone: (864) 412-7921
Attorney for Appellant

Greenville, South Carolina
June 23, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	Case No. 2022-CP-23-_____
Citizens for Quality Rural Living, Inc. Appellant, vs. LyonJay and the Greenville County Planning Commission Respondents.	)	**APPEAL FROM GREENVILLE COUNTY PLANNING COMMISSION**

Appellant Citizens for Quality Rural Living hereby appeal the Greenville County Planning Commission's decision to approve LyonJay's preliminary subdivision proposal entitled "River Preserve," and respectfully show the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Appellant Citizens for Quality Rural Living, Inc. (CQRL) is a non-profit organization incorporated in the state of South Carolina.

2. CQRL's members are residents of the County of Greenville, owning property and residing in the vicinity of River Preserve, the subdivision approved, and are impacted by the decision of Respondent Greenville County Planning Commission.

3. CQRL, through its members, has a significant interest in the outcome of the decision at issue here and has standing to bring this action on the basis of that interest.

4. The South Carolina Local Government Comprehensive Planning Enabling Act provides a right to appeal from Planning Commission decisions for any "party in interest," including opponents of the subdivision. *See* S.C. Code § 6-29-1150; *Citizens for Quality Rural*

Living, Inc. v. Greenville Cty. Planning Comm'n, 426 S.C. 97 (Ct. App. 2019) ("The plain language of section 6-29-1150 as a whole provides Appellant the right to appeal the Commission's decision to the circuit court.").

5. Appellant CQRL is a "party in interest" under section 6-29-1150(D)(1) of the South Carolina Code.

6. Appeal from decision of the planning commission must be initiated "within thirty days after actual notice of the decision." S.C. Code § 6-29-1150(D)(1).

7. The Planning Commission approved the River Preserve preliminary plan on May 25, 2022.

8. Greenville County is a political subdivision of the State of South Carolina.

9. Respondent Greenville County Planning Commission consists of nine members appointed by the governing body of Greenville County, County Council, as defined in the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, and was created pursuant to that legislation.

10. Respondent LyonJay is a business entity incorporated in South Carolina and doing business in Greenville County.

11. LyonJay is the developer named on the subdivision preliminary plan approved by the Planning Commission and the approval of which is the subject of this appeal. LyonJay is accordingly a necessary party to this appeal.

12. The property to be subdivided corresponds to Greenville County tax map numbers 0577010100100, 0568030100400, and 0568030100510, and consists of 219.40 acres of unzoned land.

13. The circuit court is vested with subject matter jurisdiction over appeals from local

planning commissions. *See* S.C. Code § 6-29-1150(D)(1).

14. Venue is proper in this Court, as the property at issue in this appeal is located within Greenville County, the Planning Commission is a commission appointed by the Greenville County governing body, CQRL is duly incorporated in South Carolina and represents residents and property owners in Greenville County, and LyonJay is incorporated in South Carolina and conducts business in Greenville County.

15. This Court has personal jurisdiction over the parties due to their location or activities in Greenville County.

FACTS AND PROCEDURAL HISTORY

16. LyonJay applied for preliminary approval of its plan to subdivide and develop a property located along Woodside Road and Wasson Way in a rural section of southern Greenville County, naming the proposed subdivision "River Preserve." *See* Exhibit 1, Approved Preliminary Plan.

17. The River Preserve site consists of a set of unzoned parcels in Greenville County.

18. The property to be subdivided corresponds to Greenville County tax map number 0577010100100; River Preserve will also encompass the parcels that correspond to Greenville County tax map numbers 0568030100400 and 0568030100510, largely for construction of access roads to the subdivision and to satisfy open space and common space requirements.

19. The Reedy River and Woodside Creek form a significant portion of the boundary of the River Preserve site. *Id.*

20. On May 25, 2022, LyonJay's preliminary plan application for River Preserve came before the Planning Commission. *See* Exhibit 2, Planning Commission Agenda.

21. Undersigned submitted written comments prior to the May 25, 2022 meeting.

Members of CQRL also spoke in opposition to the subdivision. The meeting minutes for the May 25, 2022 are not yet publicly available but should reflect comments from members of CQRL.

22. After discussion regarding delineation of waterways and wetlands on site, and the traffic impact study and appropriate study area, the Planning Commission voted 4-3 to approve the subdivision plat with a condition unrelated to the issues relevant to this appeal. *See* Exhibit 1, Approved Preliminary Plat.

STANDARD OF REVIEW

23. A Planning Commission decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a Planning Commission decision). Further, a decision of the planning commission 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).

GROUNDS FOR APPEAL

I. The Planning Commission unlawfully approved River Preserve when the preliminary plan fails to comply with waterway and wetland delineation requirements.

24. Pursuant to Greenville County's Land Development Regulations, no plat of a subdivision shall be filed or recorded until it has been submitted to the Planning Commission and approved. *Greenville County Land Development Regulations*, Article 1.1.

25. LyonJay proposes to create "River Preserve" by subdividing the parcel into a total of 210 lots; therefore, the project is considered a "major subdivision." *See Greenville County Land Development Regulations*, Article 2 (defining "major subdivision" as the "division of land into 7 or more lots at one time").

26. Preliminary plans for major subdivisions are submitted to the Planning Commission for "review and approval, hold, or denial." Article 3.3.3.

27. Because the parcels utilized for River Preserve are unzoned, the application must satisfy Article 22, which governs Rural Conservation Subdivisions. *See id.* at Article 22.5.1 ("All major subdivision applications in the unzoned areas of the County shall follow the guidelines set for this in this Article for the Rural Conservation Subdivision.").

28. As a proposed rural conservation subdivision, LyonJay was required to participate in a "pre-submittal meeting . . . to determine and ensure a preliminary plan complies with the Land Development Regulations of the County of Greenville." Article 22.2.1. The pre-submittal meeting is scheduled with Subdivision Administration. *Id.*

29. As part of the process, the River Preserve pre-submittal application was required to "include a concept plan and site assessment diagram." *Id.* "The Concept Plan is a draft preliminary plan with basic plan elements to include . . . the location of watercourses, live streams, marshes, known wetlands, wooded areas, water impoundments . . . location and delineation of required buffers [and] areas that are required for storm water or other infrastructure facilities . . . ." *Id.* The Site Assessment diagram must delineate site characteristics such as "water, wetlands, drainage, and floodplains." *Id.*

30. River Preserve was also required to comply with Article 3. *See id.* at Article 22.2.2 (outlining requirements for preliminary subdivision approval and mandating that specific

information be provided at the time of submittal for preliminary approval *"[i]n addition to* the requirements in Article 3, General Subdivision Standards" (emphasis added)).

31. After the pre-submittal meeting, "[a] preliminary plan shall be submitted to the Community Planning, Development and Public Works Department for review." Article 3.3.4.

32. Following acceptance by the Planning Department, posting of subdivision notice signs, review and recommendations from the Subdivision Advisory Committee (SAC), and the addressing of all SAC comments by the developer "during an identified revision period," the proposed preliminary plan is submitted for the Planning Commission's "review and approval, hold, or denial." Article 3.3.3; *see also* Exhibit 3, Greenville County 2022 Subdivision Review Calendar (establishing relevant deadlines for submission, review, and Planning Commission consideration of preliminary plans in Greenville County for 2022).

33. Similar to the draft preliminary plan required by the Article 22 pre-submittal process, the preliminary plan submitted to the Planning Department—and ultimately, the Planning Commission—*must* include the "location of watercourses, live streams, marshes, known wetlands, floodplains and floodways, wooded areas, water impoundments . . . ." Article 3.3.4(I).

34. Notably, Article 3.3, which governs major subdivisions, requires the above described broad categories of waterways to be delineated on the preliminary plan whereas Article 3.5, which governs minor subdivisions, requires only that the plat include "[United States Geological Survey] blue line streams with Greenville County buffer easements," a subset of waterways much narrower than what Article 3.3 requires. *Compare* Article 3.3.4(I) with Article 3.5.4(P).

35. The distinction between the categories of waterways that must be delineated in

major subdivisions as opposed to minor subdivisions demonstrates that the Land Development regulations intend for effectively all waterways to be delineated on major subdivision preliminary plans prior to Planning Commission approval.

36. As discussed in further detail below, Article 22.3.5(E) imposes a "minimum fifty-foot riparian buffer . . . on all waters of the state." *Id.*

37. Therefore, by necessity, the preliminary plan must also delineate all "waters of the State" in order to comply with the riparian buffer requirement.

38. The Department of Health and Environmental Control has defined "waters of the State" broadly as "lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction." S.C. Reg. § 61-9.122.2(b); S.C. Code Ann. § 48-1-10(2) (defining "waters" identically as the regulation).

39. Greenville County defines "wetlands" as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." *See* Article 2 (defining "wetlands"); S.C. Reg. § 61-9.122.2(b) (defining "wetlands" identically).

40. Furthermore, the South Carolina Supreme Court has held the South Carolina Pollution Control Act's definition of "waters" (which is identical to the regulation's definition of waters of the State) includes even *isolated* wetlands. *Georgetown Cnty. League of Women*

Voters v. Smith Land Co., Inc., 393 S.C. 350, 352-53, 713 S.E.2d 287, 288-89 (2011); S.C. Code Ann. § 48-1-10(2) (defining "waters" in the Pollution Control Act).

41. The preliminary plan originally submitted on April 6, 2022 was the only publicly available preliminary plan as late as May 24, 2022. *See* Exhibit 4, River Preserve Data Sheet; Exhibit 5, River Preserve Preliminary Plan (dated April 5, 2022).

42. Included on note 16 on this original plan was a statement that "there are 7 possible blue line streams located on site. A wetland delineation *will be completed* to located [sic] areas of concern." *Id.* Exhibit 5 (emphasis added).

43. Suddenly, a revised preliminary plan dated May 22, 2022—just three days before the meeting—was considered and approved by the Planning Commission. Exhibit 1

44. On this revised plan, note 16 now reads "a wetland delineation has been conducted for this site," which purportedly determined three of the original seven streams previously believed to be on site do not exist. *See* Exhibit 1.

45. However, the "wetlands delineation" submitted by LyonJay and accepted without scrutiny by the Planning Commission is actually a mere *request* to the United States Army Corp of Engineers for an "approved jurisdictional determination." Exhibit 6, Request for Jurisdictional Determination.

46. Upon information and belief, Greenville County has never received any actual approved jurisdictional determination from the Corp that concurs with the opinion that three streams on site *do not exist*, and the Corp has not issued any such determination.

47. In addition, LyonJay's claim that three of the seven streams shown on the United States Fish and Wildlife National Wetlands Inventory Map "do not exist" is unsupported by any evidence or elaborated upon in its request for jurisdictional determination. *Id.* at 5, 9.

48. Moreover, LyonJay's "wetland delineation" does not evaluate whether the River Preserve site contains the water features described in Article 3.3.4, Article 22, or the statutory or regulatory definition of "waters of the State"; for purposes of approving a major subdivision in the unzoned areas of Greenville County, the proper determination is whether the contains any water features included in Article 3.3.4, Article 22, or the definition of "waters of the State."

49. The Planning Commission's reliance on LyonJay's unapproved "wetlands delineation" that did not specifically evaluate whether the site contained waters of the State and without any verification of LyonJay's claim that three streams previously believed to be on site do not exist constitutes an abuse of discretion. *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001) ("An abuse of discretion occurs when the [Commission's decision] is based upon an error of law or, when based on factual conclusions, without evidentiary support."); Exhibit 6, pp. 5, 9.

50. The Planning Commission's approval of River Preserve without requiring compliance with Article 3.3.4(I)'s and Article 22's requirements for the delineation on all "watercourses, live streams, marshes, known wetlands, floodplains and floodways, wooded areas, water impoundments" and without a specific evaluation of waters of the State was an abuse of discretion and requires reversal of the decision. *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997) (stating a Planning Commission decision "will not be upheld . . . [when] the [Commission] has abused its discretion").

II. The Planning Commission unlawfully approved River Preserve when the preliminary plan fails to comply with riparian buffer requirements

51. All prior allegations are hereby incorporated by reference.

52. Article 22.3.5(E) imposes a "minimum fifty-foot riparian buffer . . . on all waters of the state." *Id.*

53. The Department of Health and Environmental Control has defined "waters of the State" broadly as "lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction." S.C. Reg. § 61-9.122.2(b); S.C. Code Ann. § 48-1-10(2) (defining "waters" identically as the regulation).

54. Greenville County further identifies "wetlands" as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." *See* Article 2 (defining "wetlands"); S.C. Reg. § 61-9.122.2(b) (defining "wetlands" identically).

55. Given the broad definition of waters of the State and the definition of wetlands, it is clear "wetlands" constitute a water of the State.

56. Furthermore, the South Carolina Supreme Court has held the South Carolina Pollution Control Act's definition of "waters" (which is identical to the regulation's definition of waters of the State) includes even *isolated* wetlands. *Georgetown Cnty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 352-53, 713 S.E.2d 287, 288-89 (2011); S.C. Code Ann. § 48-1-10(2) (defining "waters" in the Pollution Control Act).

57. Accordingly, River Preserve must include a minimum 50-foot buffer on all waters

of the State, including wetlands.

58. Article 2 defines riparian buffer as "a natural or vegetated area adjacent to or bordering a body of water such as a stream, lake, pond, or other watercourse through which stormwater runoff flows in a diffuse manner so that the runoff does not become channeled and which provides for the infiltration of pollutants while protecting the water body."

59. As a result, River Preserve is required to have a minimum fifty-feet of "natural or vegetated area" on a variety of water features, as a component of stormwater management.

60. In addition to the provision requiring the delineation of the location of all "watercourses, live streams, marshes, known wetlands," the preliminary plan must include "areas that are required for *stormwater or other infrastructure facilities*." Article 3.3.4(J).

61. Further, the "Concept Plan," or draft preliminary plan, required by Article 22.2.1 mandates the plan include the "location and delineation of required buffers." *Id.*

62. The combination of these provisions unambiguously demonstrates that riparian buffers on waters of the State must be delineated at the preliminary plan stage.

63. Therefore, before the Planning Commission may approve a proposed subdivision like River Preserve, the fifty-foot riparian buffer required by Article 22 on all waters of the State must be included and identified on the preliminary plan because it is a stormwater management area *and* a required buffer. *Id.*

64. Moreover, in order to effectively delineate the required riparian buffers on the preliminary plan, the preliminary plan must, by necessity, delineate *all* waters of the State as discussed above.

65. The purported "wetland delineation" encompassed within the request for jurisdictional determination did not evaluate whether the site included waters of the State or

any water feature required by Article 3 or Article 22.

66. The Planning Commission may not approve the proposed subdivision unless and until the preliminary plan delineates all waters of the *State*, including wetlands, and all riparian buffers to such waters.

67. The Planning Commission erroneously approved the preliminary plan based on its improper reliance on LyonJay's unapproved "wetlands delineation" that did not evaluate whether the site contained waters of the State, in order to delineate the riparian buffers unambiguously required by Article 22.

68. Because the Planning Commission approved River Preserve when the preliminary plan omitted these required components, the Planning Commission's decision lacked "legal evidence to support it . . . [and] the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *see also Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001) ("An abuse of discretion occurs when the [Commission's decision] is based upon an error of law or, when based on factual conclusions, without evidentiary support.").

69. CQRL therefore respectfully requests reversal of the Planning Commission's decision and remand for compliance with the Land Development Regulation requirements.

III. The Planning Commission unlawfully approved the River Preserve preliminary plan when the traffic impact study conducted for the subdivision violates the requirements imposed by the Land Development Regulations.

70. All prior allegations are hereby incorporated by reference.

71. As part of constructing the subdivision, LyonJay intends to construct two access roads to the subdivision—one that intersects with Woodside Road and one that intersects with Wasson Way.

72. Currently, the parcels where these access roads will be constructed are undeveloped parcels.

73. These two intersections—at Woodside Road and one access road; and at Wasson Way and the second access road—do not yet exist.

74. Yet, the Planning Commission erroneously approved the preliminary plan based on an analysis of these two nonexistent intersections.

75. Article 9 of the Greenville County Land Development Regulations governs the requirements for traffic impact studies (TIS).

76. A TIS is typically required for any project that "would generate 100 or more trips during the peak hour of the traffic generator or the peak hour of the adjacent street. *See* Article 9.1.

77. However, "[i]n unzoned areas, a TIS will be conducted when a subdivision will generate 50 peak-hour trips." Article 9.2(A).

78. River Preserve proposes more than 45 single family home units and therefore more than 50 peak-hour trips, triggering the need for a TIS. *See* Article 9, Table 9.1; Article 9.2(A).

79. The TIS for unzoned areas must include a "study area [that is] not to exceed adjacent or nearby 3 intersections within a ¾ mile radius from the property boundary. However, the study area may be expanded at the discretion of the County Traffic Engineer, if 3 intersections are not available within a ¾ mile radius from the property boundary." *Id.*

80. Therefore, the TIS must analyze three intersections within a ¾ mile radius from the property boundary unless the Traffic Engineer determines the radius needs to be expanded to capture the three necessary intersections. *Id.*

81. "The impact study *shall* analyze traffic conditions for the *existing year conditions*,

build-out background year 'no build' conditions, and build-out year 'build' conditions." *Id.* (emphases added).

82. Impact Designs, Inc. conducted a TIS for River Preserve and issued a report dated April 26, 2022 on behalf of LyonJay.

83. The report made no recommendations for mitigation measures. *See* Exhibit 7, River Preserve Traffic Impact Study, pp. 5.

84. The study sought to analyze the effects of the additional traffic associated with the proposed development during weekday morning and weekday evening peak periods. *Id.* at 6.

85. The study area analyzed included only Woodside Road and Wasson Way.

86. Woodside Road and Wasson Way are each two-lane undivided County roadways with posted speed limits of 35 MPH and 30 MPH respectively. *Id.*

87. In direct contradiction of the intent and the plain language of the traffic impact study requirements, the TIS evaluated traffic conditions and effects of the proposed developments at three intersections by using (1) the intersection of Woodside Road and Wasson Way; (2) the *currently nonexistent* intersection of Woodside Road and Site Access Road A; and (3) the *currently nonexistent* intersection of Wasson Way and Site Access Road B. *See* Article 9.1 ("A [TIS] evaluates the effect a development's traffic may have on *existing roads*." (emphasis added)); *see* Exhibit 7, pp. 17.

88. The TIS therefore sought to satisfy the Article 9 requirement to analyze existing traffic conditions at three intersections by choosing two that do not exist.

89. The TIS evaded the unambiguous requirement to evaluate existing conditions and "no-build" conditions by utilizing two intersections that *do not exist*; the results therefore only evaluated "build' conditions for those two intersections, preventing the determination of the

effect the development will have on existing roads. Exhibit 7, pp. 17; Article 9.2(A) ("The impact study *shall* analyze traffic conditions for the existing year conditions, build-out background year 'no build' conditions, and build-out year 'build' conditions." (emphasis added)).

90. The Planning Commission's approval of the preliminary plan when this TIS flagrantly violated Article 9's requirements constitutes an abuse of discretion. *See Bayle*, 344 S.C. at 128, 542 S.E.2d at 742 ("An abuse of discretion occurs when the [Commission's decision] is based upon an error of law or, when based on factual conclusions, without evidentiary support.").

91. The Planning Commission's baseless approval of the River Preserve preliminary plan without a proper TIS must be reversed and remanded for compliance with the Land Development Regulations.

IV. The Planning Commission violated CQRL's Due Process rights by considering and approving the River Preserve preliminary plan when LyonJay repeatedly submitted revised plans beyond the set deadlines, and these revised plans were unavailable to the public.

92. "The fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a *meaningful way*, and judicial review." *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009) (emphasis added).

93. The Greenville County 2022 Subdivision Review Calendar establishes the appropriate deadlines for submission and review of preliminary plans. *See* Exhibit 3.

94. For May 2022 consideration by the Planning Commission, the Calendar set April 6, 2022 as the deadline for submission for preliminary plan applications and April 18, 2022 as the date for the Subdivision Advisory Committee Meeting. *Id.* Those deadlines were satisfied.

95. Despite the Calendar further setting April 26, 2022 as the applicant submittal deadline and May 11, 2022 as the internal planning commission packet deadline, LyonJay submitted and Greenville County accepted revised plans on May 11, 2022 and May 22, 2022, as late as three days before the Planning Commission meeting. *Id.*, *see also* Exhibit 1.

96. Greenville County improperly accepted revisions fifteen days and twenty-six days past the deadline for the applicant submittal deadline. *See* Exhibit 3; Article 3.3.3 (providing that the developer "will ensure that all comments made at the Subdivision Advisory Committee meeting are fully addressed on the plan during an *identified revision period* (emphasis added)).

97. More troublingly, the Planning Commission proceeded to consider and approve the May 22, 2022 revision at its scheduled May 25, 2022 meeting.

98. The May 22, 2022 revision was not available to the public and to CQRL members in a timely manner prior to the Planning Commission meeting.

99. The unavailability of the revised preliminary plan prior to the Planning Commission meeting impeded the public and CQRL members from having a meaningful opportunity to review and comment on the revised plan.

100. Greenville County's acceptance of revisions far beyond the deadline and failure to provide the public and CQRL members access to the revisions in a timely manner prior to the Planning Commission's consideration of the preliminary plan violated Due Process.

CONCLUSION

101. The Planning Commission unlawfully approved the River Preserve subdivision when the preliminary plan violated the requirements for delineation of all water features, the delineation of riparian buffers on all waters of the State, and the completion of a

traffic impact study.

102. Because its decision constituted an abuse of discretion, Appellant respectfully requests this Court reverse and remand the Planning Commission's approval of River Preserve with instructions to comply with all relevant requirements of the Greenville County Land Development Regulations.

103. The public meeting minutes of the Planning Commission are not available prior to the deadline for filing this appeal, and Appellants request the right to modify their pleading based upon the minutes as they may be published and to supplement the record for the Court.

WHEREFORE, the Appellant requests that this Court:

a. issue an order reversing the decision of the Greenville County Planning Commission to approve River Preserve,

b. order the delineation of all waters of the State and riparian buffers on the preliminary plan,

c. order the completion of the traffic impact study that evaluates three nearby or adjacent existing intersections, and

d. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

s/ Michael G. Martinez
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Telephone: (864) 412-7921
Attorney for Appellant

June 23, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	Case No. 2022-CP-23-_____
Citizens for Quality Rural Living, Inc. Appellant, vs. LyonJay and the Greenville County Planning Commission Respondents.	)	**SUMMONS**

TO THE RESPONDENT GREENVILLE COUNTY PLANNING COMMISSION:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, P.O. Box 5761, Greenville, South Carolina, 29606, 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 Appeal.

s/ Michael G. Martinez
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June 23, 2022

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Citizens for Quality Rural Living, Inc. Appellant, vs. LyonJay and the Greenville County Planning Commission Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT Case No. 2022-CP-23-_____ **SUMMONS**

TO THE RESPONDENT LYONJAY:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, P.O. Box 5761, Greenville, South Carolina, 29606, 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 Appeal.

s/ Michael G. Martinez
Michael G. Martinez, Bar No. 101800
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June 23, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
GREENVILLE COUNTY CIRCUIT COURT

APPEAL FROM GREENVILLE COUNTY
Edward R. Miller, Circuit Court Judge

Appellate Case No. 2023-000144
Case No. 2022-CP-23-03356

Citizens for Quality Rural Living Inc.,
Appellant,

v.

LyonJay and the Greenville County Planning Commission,
Respondents.

PROOF OF SERVICE

I hereby certify that on this date I served the foregoing Appellant, Citizens for Quality Rural Living Inc.'s Return to Motion for Reconsideration En Banc upon counsel for Respondents by AIS registered electronic mail and U.S. Mail with notification distributed to the following:

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Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

s/Leslie S. Lenhardt, Esq.
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Mount Pleasant, South Carolina
June 12, 2023

Citizens for Quality Living, Appellate Case No. 2023-000144

From: Leslie Lenhardt <leslie@scelp.org>

To: Swent, William B. <WSwent@foxrothschild.com>, William A. Neinast <WNeinast@foxrothschild.com>, Andrew N. Price <anprice@wjcblaw.com>, anprice@wjlaw.net <anprice@wjlaw.net>

Cc: Amy Armstrong <Amy@scelp.org>

Subject: Citizens for Quality Living, Appellate Case No. 2023-000144

Date: Monday, June 12, 2023 4:22 PM

Size: 688 KB

Please find attached for service on you Appellant's Return to Motion for Reconsideration En Banc in the above-referenced matter.

--

Leslie Lenhardt
Senior Managing Attorney
S.C. Environmental Law Project
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