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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.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE CIRCUIT COURT ERRONEOUSLY APPLIED THE "ANY EVIDENCE" STANDARD BECAUSE THE STANDARD GOVERNS ONLY FACTUAL FINDINGS OF THE PLANNING COMMISSION AND NOT ERRORS OF LAW

The Circuit Court erroneously applied the "any evidence" standard to hold that evidence in the record supported the Planning Commission's approval of the subdivision preliminary plan. (R. p. 7-9). This was an error because the standard governs only factual findings of the Planning Commission and not errors of law. *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 506, 443 S.E.2d 401, 405 (Ct. App. 1994). Instead, this Court will reverse if the "Board's findings of fact have no evidentiary support *or the Board commits an error of law*." *Id.* (emphasis added); *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 506, 443 S.E.2d 401, 405 (Ct. App. 1994) (Decisions of a local board or commission are not subject solely to the "any evidence" standard, Court will reverse if the Board's findings of fact have no evidentiary support or the Board commits an error of law).

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 board acts arbitrarily or unreasonably, or where, in general, the [planning 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), *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 standard of review to a planning commission decision); *see also I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 414, 526 S.E.2d 716, 720 (2000)("The governing body may create a board of zoning appeals to help resolve disputes, and that board must follow specific procedures in hearing and deciding cases.").

The Greenville County Land Development Regulations ("LDRs") establish legal requirements for the delineation of water features on subdivision preliminary plans and for conducting traffic impact studies for proposed subdivision developments. Respondents' briefs mistakenly restrict CQRL's arguments as those contesting the existence of evidence while ignoring the Circuit Court's obligation to ensure that the commission's decision was not "based on errors of law" or otherwise an abuse of discretion. *Grays Hill Baptist Church v. Beaufort Cnty*., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020); *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, 329 (2009) (holding that "although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns [a matter of law].").

By focusing solely on whether there was "any evidence" to support GCPC's decision the trial court failed to recognize the numerous errors of law upon which the GCPC's decision was based, and which, accordingly, render the GCPC's decision an abuse of discretion that the trial court should not have permitted to stand. (R. pp. 7-9) *See Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying zoning board standards to a planning commission decision).

Moreover, in focusing solely on whether there was "any evidence" to support Respondent GCPC's decision, the trial court gave undue deference to the GCPC's decision on ***questions of law*** (not factual findings?) that the court properly should have "reviewed without any deference to the [GCPC's] decision." *Olds v. City of Goose Creek*, 418 S.C. 573, 585, 795 S.E.2d 163, 170 (Ct. App. 2016); *Carolina Chloride Inc. v. Richland Cty*., 394 S.C. 154, 167, 714 S.E.2d 869, 875 (2011) (noting that "interpretation and implementation of a zoning ordinance…is a matter of law…"); *see also Colbert v. Krawcheck*, 299 S.C. 299, 302, 384 S.E.2d 710, 712 (1989) ("In

exercising its discretion, the [zoning] board of adjustment is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes.")

Respondents continue where the Circuit Court left off and attempt to characterize CQRL's appeal as one that challenges the evidence and but they ignore: (1) the acceptance of a wetlands delineation that evaluated only "waters of the *United States*" amounts to an error of law when a delineation of all "waters of the *State*" was required to comply with the LDR's riparian buffer requirement; and (2) the acceptance of a traffic impact study that included two nonexistent intersections amounts to an error of law in an analysis that was supposed to study River Preserve's effect on existing roads. *See* GCPC Brief at p. 8; *see also* LyonJay Brief at p.7. Despite this characterization, Respondents' briefs both concede that the correct standard of review in this case requires reversal if the trial decision was based on an error of law or not supported by the evidence. *See* GCPC Brief at p. 4; *see also* LyonJay Brief at p.7.

Because Greenville County has adopted land development regulations that include specific procedures for the submission and approval/disapproval of development applications by the Planning Commission, it was an error of law for the Planning Commission to unilaterally waive or alter the specific standards, procedures, and requirements prescribed by local ordinance. Since the Local Government Comprehensive Planning Enabling Act ("CPA") was enacted in 1994 it has become the cornerstone of most land use planning and regulatory programs in cities and counties across South Carolina. S.C. Code Ann. § 6-29-310, *et seq*. The CPA also gives local governments in South Carolina the authority to establish planning commissions. S.C. Code Ann. § 6-29-320. Consistent with the statute's Home Rule principles, local governments are not *required* to establish planning commissions but should they *choose* to do so, those planning commissions then have the

duty to follow the "specific procedure for the submission and approval or disapproval by the planning commission or designated staff" in the LDRs adopted by the governing authority. S.C. Code Ann. § 6-29-1150(A).

The case *Turner versus Barber* is instructive in this matter. *Turner v. Barber*, 298 S.C. 321, 324, 380 S.E.2d 811, 812–13 (1989). In *Turner*, the respondent developer sought to develop a tract of land but did not include information required under the county ordinances. *Id*. The planning commission, notwithstanding absence of the missing material, recommended approval of the Plan. Unlike the instant matter, the planning commission deferred the final reading when interested nearby homeowners pointed out the application violated the ordinance by lacking the necessary information. *Id*. On appeal, the South Carolina Supreme Court found the Planning Commission's "recommendation of approval was fatally flawed" by "this non-compliance with the ordinance" because "the Planning Commission here did not have before it all essential information" and reversed the circuit court's order upholding the plan approval. *Id*. That is what happened in the instant matter and the Circuit Court's order should be reversed in this case, as well.

II. LYONJAY AND GREENVILLE COUNTY PLANNING COMMISSION FAILED TO ADHERE TO THE LAND DEVELOPMENT REGULATIONS' SPECIFIC PROCEDURES AND REQUIREMENTS

As outlined in S.C. Code Ann. § 6-29-1150(A), it was incumbent upon the Greenville County Planning Commission to follow the "specific procedure" for approval or disapproval of projects which "include requirements for submission of sketch plans, *preliminary plans*, and final plans for review and approval or disapproval." *Id*. (emphasis added). Specifically, Greenville County's LDRs outline that revisions to the proposed preliminary plan and re-submittals as local

and state officials provide feedback on the plan occur only "during an identified revision period" prior to the ultimate consideration by the Planning Commission. LDR, Article 3.3.3.(R. p. 676).[1]

To implement the provisions of Article 3.3.3., Greenville County created and published a Subdivision Review Calendar, setting forth the identified revision period and key deadlines for submission and consideration of proposed preliminary plans. (R. p. 131, R. p. 676) (stating the Subdivision Advisory Committee reviews and submits comments on preliminary plans prior to Planning Commission consideration). Here, Respondent Greenville County Planning Commission failed to follow its own unequivocal deadline and "identified revision period," by not adjusting the hearing when Respondent LyonJay was still revising its plans as late as three days before the Planning Commission meeting. (R. p. 87;[2] *See* LDR, Article 3.3.3 (R. p. 676); (R. pp. 103-105).[3]

The changes submitted three days before the Planning Commission meeting were substantial; Greenville County's LDRs require a "minimum fifty-foot riparian buffer…on all waters of the state" to be delineated on the preliminary plan but Respondent LyonJay only submitted—and Respondent Greenville County Planning Commission approved—a preliminary

[1] Respondents also attempt to argue there was some agreement between themselves allowing the shortened timeline. *See* Respondent GCPC Brief at p. 15 ("Additionally, LDR Article 1.6.1 specifically allows the Planning Commission to deviate from its subdivision review calendar if "agreed upon by both the applicant and the Commissioners.") While it is true that the language of Article 1.6.1(A) contains the language "unless otherwise agreed upon by both the applicant and the Commissioners" that language specifically refers to *expanding* the time to consider the application past the sixty (60) day time limit as evidenced in the following two sentences. The practical outcome of Respondents' reading of this provision allowing the *reduction* of review time upon agreement would render both LDR, Article 3.3.3 and the Subdivision Review Calendar superfluous and infringe upon the public's right to notice and comment on matters before the Planning Commission.

[2] Notably, the last revision Respondent LyonJay made to its plans was on May 22, 2022, which was a Sunday. The hearing was held at 4:30 on Wednesday, May 25, 2022. *Id.*

[3] Respondents also seemingly miss the point of CQRL's challenge. *See* LyonJay Brief at p. 18 ("Respondent LyonJay has asserted a preservation issue based on the fact that the GCPC had no authority to deviate from Greenville County Land Development Regulations (the "LDR") as Appellant would require.") Appellant CQRL has never—and is not now—asking Respondent GCPC to deviate from the LDRs but simply asked them to comply with their own regulations in accordance with the law. The fact that CQRL is asking for evaluation of waters of the State is asking for the specific language of the LDR to be enforced. Had County Council wanted WOTUS to be the standard, it could have written the LDR to include that standard.

plan that evaluated only *waters of the United States* ("WOTUS"). *LDR*, Article 22.3.5(E) (R. p. 676).

Significantly, the approved version submitted on May 22, 2022 resulted in the elimination of waterways based on the conclusions contained in the WOTUS delineation. (R. pp. 121-125; R. p. 89; R. p. 90). This substantial change in the preliminary plan nearly a month after the resubmittal deadline and just three days before the Planning Commission meeting impeded CQRL and the public's "notice and…opportunity to be heard in a *meaningful way*." *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009) (noting the "fundamental requirements" of due process (emphasis added)).

Respondents attempt to use their failure to abide by the Greenville County's LDRs as both a sword and a shield, arguing CQRL failed to preserve these issues for appeal. *See* GCPC Brief at p. 11; *see also* LyonJay Brief at p. 17. To support its arguments, Respondent LyonJay cites an unpublished opinion, *Rutter v. City of Columbia Design/Development Review Comm'n*, 2021 WL 2701549 (Ct. App. 2021), which is distinguished from the case at issue here for several reasons. First, Rutter complained his due process rights were violated because: (1) he was given less than ten minutes to present his case; (2) he had no right to counsel; and (3) he had no opportunity to cross-examine the City staff member who presented the matter to the board. Conversely, CQRL members were not afforded a meaningful opportunity to be heard and did not submit comments that addressed the elimination of the waterways and their requisite riparian buffers because of Respondent LyonJay's late submission and Respondent GCPC's acceptance of said late submission a month after the deadline prevented CQRL's adequate notice and opportunity to meaningfully comment. Moreover, *Rutter* is plainly distinguishable. Section 6-29-890, which governs appeals to architectural boards of review states: "The appeal must be taken within a

reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of *appeal specifying the grounds of it*." S.C. Code Ann.§ 6-29-890(A) (emphasis added). The proceedings before a planning commission are different and do not require interested parties to object or outline its grounds for challenge during or prior to the proceedings.

While it is understandable that this Court held "[d]ue process does not require local architectural boards or other similar boards to adopt the procedures used in circuit court" in *Rutter*, it is a leap for Respondents to compare it to the situation in the instant matter where Respondents themselves created CQRL's prejudice by failing to follow the "specific procedure land development regulations adopted by the governing authority" that governed the approval Respondents LyonJay and GCPC were seeking and granting, respectively.[4] *See Rutter v. City of Columbia Design/Dev. Rev. Comm'n*, No. 2018-001194, 2021 WL 2701549, at *2 (S.C. Ct. App. June 30, 2021)*;see also* S.C. Code Ann. § 6-29-1150(A).

Second and third, while the record in *Rutter* suggests that Rutter had actual notice of the guidelines a month before he purchased the property and "neither Rutter nor his agent lodged <u>any</u> objection to the procedure the board employed <u>before or during</u> the board's hearing," the meeting minutes in the instant case reflect CQRL's President, James Moore, did object <u>during</u> the hearing that "the application violated the LDR" and both Mr. Moore and Mr. John Cook submitted written comments <u>before</u> the May 22, 2022 preliminary plan that eliminated these waterways. *Id*. (R. p.

[4] The other unpublished case Respondent cites, *Brick v. Richland Cnty. Plan. Comm'n*, No. 2014-000583, 2016 WL 3200138 at *1 (S.C. Ct. App. June 8, 2016) (unpub.), cites *Kurschner*. *See* LyonJay Brief at p. 17; *see also Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008). In *Kurschner,* the planning commission "did not preclude the Kurschners from accessing the evidence in opposition to their application." *Id*. This is inapposite to the issue here where the ultimately approved revision didn't exist until 3 days before the hearing.

92, R. p. 487).[5] Moreover, a party is not required to use the exact name of a legal doctrine in order to preserve the issue. *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011).

III. THE CIRCUIT COURT ERRED IN IGNORING THE FACT THAT WATERS OF THE UNITED STATES ARE DISTINCT FROM WATERS OF THE STATE, WHICH PREVENTED IT FROM ADDRESSING PRELIMINARY PLAN'S RELATED FAILURE TO INCLUDE RIPARIAN BUFFERS ON ALL WATERS OF THE STATE.

Waters of the *State* encompass a different, vastly broader, scope of features than Waters of the *United States* and the Planning Commission violated the LDR's plain language by approving a preliminary plan that evaluated only *waters of the United States* rather than *waters of the State* and their riparian buffers as required by the LDR.[6] *See* LDR, Article 22.3.5(E) (R. p. 676). The LDRs impose several obligations for delineating water features on the preliminary plan, which must be satisfied before the Planning Commission may legally approve the plan. *See* LDR, Articles 22.2.1, 22.3.5(E) and 3.3.4(I). Specifically, a preliminary plan must delineate a "minimum fifty-foot riparian buffer…on all waters of the state." LDR, Article 22.3.5(E) (R. p. 676).

The notes contained on the April 5, 2022 preliminary plan indicated numerous streams located on site and promised a wetland delineation would be completed for the areas of concern.

[5] The other case Respondent cites, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731,733 (1998), held that "an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *see also* LyonJay Brief at pp. 16-17. Appellant CQRL rejects the notion that preservation principles apply here. CQRL could not possibly have lodged objections to the wetlands delineation because it didn't have adequate time to review the revised submissions—the precise reason their due process rights were violated. CQRL members could not have known the wetlands delineation would utilize a WOTUS standard instead of the standard required by the LDR when it submitted its letters on May 20th because the revised plan did not yet exist.

[6] Respondent LyonJay's assertion that "'Waters of the United States' is an arguably more narrow definition" than Waters of the State is patently false. *See* Respondent LyonJay's Brief at p. 9, FN 3. In addition to demonstrating the distinction between waters of the State and waters of the United States, the Supreme Court's holding in *Georgetown County* made clear that *all wetlands*, including isolated wetlands, must be included in any determination of the presence of waters of the State. *Georgetown County League of Women Voters v. Smith Land Company, Inc.*, 393 S.C. 350, 352-53, 713 S.E.2d 287, 288-89 (2011). Respondent LyonJay's bald assertion that the wetlands delineation did in fact evaluate waters of the State based on an affidavit prepared and attested to *after* the GCPC hearing and *only* to benefit its position during this litigation is plainly self-serving, was repeatedly objected to, and should not be considered in any way. Respondent LyonJay's makes much of the fact that he prepared the delineation in accordance with the Corp's manual on wetlands delineation—this proves the point that his delineation evaluated only WOTUS as that is the sole standard governing the Corp's jurisdiction. The wetlands delineation—the only evidence properly in the record--contains no indication that it considered the presence of waters of the *State*.

See River Preserve Preliminary Plat, dated April 5, 2022 n.16. (R. p. 87 n.16) However, the belatedly-submitted request for jurisdictional determination by the U.S. Army Corps of Engineers, which LyonJay referred to as a "wetlands delineation,"[7] utilized the federal standard jurisdiction over waterways instead of the correct standard outlined in the LDRs applicable to preliminary plan approval: a delineation of *waters of the State*. ((R. p. 90; R. p. 112). No part of this "wetland delineation" makes a single reference to the correct waters of the State standard. *Id*. Moreover, in utilizing this incorrect standard, the delineation neither accounted for the required waters of the State or their requisite buffers, nor provided any explanation for how several waters that were seemingly present previously had completely disappeared 47 days later. *Id*. Respondents also claim that CQRL has not presented any evidence that shows the existence of other water features but they admit themselves: "The actual supplemental plan submitted prior to the May 2022 meeting removed some creeks and water ways that were determined not to exist after LyonJay's environmental consultant visited the property for the wetlands delineation. Appellant cannot now show substantial prejudice since they still have presented nothing that shows that a required riparian buffer is missing." *S*ee Respondent GCPC brief at 20.

The basis for the conclusion that they don't exist is because Respondents only evaluated the wetlands' presence under the WOTUS standard, instead of the proper standard set forth in the

[7] Both Respondents continue to attempt to introduce new evidence into the record. *See* Respondent LyonJay's Brief at p. 9 (Claiming "[e]nvironmental consultant Jon Pruitt, the Wetlands Delineation's author, has provided an affidavit in which he unequivocally testified that he "conducted a comprehensive, on-site examination of natural conditions..." that identified all present waterways to include "any so-called waters of the state that exist on the subject property."); *see also* Respondent GCPC Brief at p. 16 (Claiming "[t]he actual supplemental plan submitted prior to the May 2022 meeting removed some creeks and water ways that were determined not to exist after LyonJay's environmental consultant visited the property for the wetlands delineation.") Appellant CQRL objected to the Circuit Court's consideration of the affidavit Respondent LyonJay is still attempting to force into the record: (1) during its Circuit Court briefing; (2) during the Circuit Court hearing; and (3) in Appellant's Initial Brief and objects still. *See* Appellant CQRL's Initial Brief at p. 15, FN6; *see also Massey v. City of Greenville Bd. of Zoning Adj.*, 341 S.C. 193, 198, 532 S.E.2d 885, 887 (Ct. App. 2000) (Reversing circuit court's order upon finding the circuit court impermissibly supplemented the record).

LDR. The required buffer is missing on each of those creeks and waterways that they eliminated based on this flawed wetland delineation applying the incorrect standard. It's also false for Respondents to claim CQRL did not point to any areas that would violate the buffer requirement as in the original appellate brief before the circuit court. *See* CQRL Appellate Brief at 7. The preliminary plan's failure to delineate those waterways and their required buffer is because the delineation used the improper standard is a violation of the LDR and CQRL clearly identified that. The absence of those waterways and the buffer on those waterways is already in the record, and CQRL was not required to produce its own wetlands delineation.

Moreover, it is also disingenuous for Respondents to suggest Respondent GCPC discussed waterways and wetlands onsite—at no point did the GCPC consider the proper standard by which they would be delineated because that wasn't an issue—because CQRL lacked adequate time to identify and present that objection when the revised plan was only submitted 3 days before the hearing instead of the 30 required by the LDR and the subdivision review calendar. That failure to require the application of the correct standard is a legal error that the circuit court ignored. Both Lyonjay and GCPC claim that the fact that CQRL members appeared at the meeting and commented satisfies due process.[8] The problem arises because CQRL members lacked the opportunity to comment to the GCPC on the wetlands delineation issue because it had only existed for 3 days before the meeting and neither CQRL or the public is on notice that the GCPC would deviate from its own subdivision review calendar so significantly by accepting a revision so substantial so late.

[8] All the cases Respondents cite involve claims that the people were denied trial-type rights (*i.e.*, cross-examination, a lawyer, etc.). Appellant CQRL doesn't request any type of procedure like that. Instead, CQRL requests the basic hallmarks of due process—notice (not simply of the hearing, but of significant changes to what is before the tribunal) and an adequate opportunity to meaningfully comment (not simply provide comments, but to provide comments that meaningfully address the issues before the tribunal). What Respondent GCPC approved was substantially different as it relates to the water features present on site and the approval of a revision submitted 3 days prior is grossly insufficient to satisfy due process.

Respondents categorize this and other failures as questions of evidence, rather than what they are: an abuse of discretion based upon an error of law by failing to construe the plain language of the ordinance to determine whether LyonJay and the Planning Commission utilized the correct legal standard. Respondents' positions ignore the fact that an abuse of discretion amounting to an error of law has been found in South Carolina law when an order is founded upon a fundamental legal error. *Turner v. Barber*, 298 S.C. 321, 380 S.E.2d 811 (1989) (Reversing the planning commission's recommendation of approval for a developer's application that was not in compliance with county ordinance); *see also S.C. Dep't of Highways & Pub. Transp. v. Mooneyham*, 275 S.C. 205, 206, 269 S.E.2d 329, 330 (1980) (Abuse of discretion amounting to an error of law occurs when an order is founded upon a fundamental legal error).

IV. THE CIRCUIT COURT ERRED IN AFFIRMING THE PLANNING COMMISSION'S DECISION TO APPROVE THE PRELIMINARY PLAN WHEN THE TRAFFIC IMPACT STUDY CONDUCTED FOR THE SUBDIVISION VIOLATED CLEAR LEGAL REQUIREMENTS.

Contrary to Respondents' assertions, the River Preserve TIS's evaluation of only a *single existing intersection* is an error of law when the LDR requires the TIS to evaluate traffic conditions for "*existing* year conditions, build-out background year 'no build' conditions, and build-out year 'build' conditions" *on three existing intersections*. *Compare* Article 9.2(A) *with* Respondent LyonJay's Brief at pp. 11-13 *and* Respondent GCPC Brief at pp. 9-10. Both Respondents argue that the language of Article 9 of the LDR does not require 3 intersections for legal sufficiency, arguing that the language "not to exceed" modifies the number of intersections required instead of the radius of the study area. *Id*.

The correct reading is that when a subdivision will produce more than fifty peak-hour trips— and River Preserve will produce more than fifty peak-hour trips—the provision requires analysis of three nearby intersections not to exceed a ¾ mile radius from the property boundary,

but that radius can be expanded beyond ¾ mile if there are not three intersections within that radius.[9] The phrase "3 intersections" is used three times—in zoned areas where the study area will encompass 3 intersections within a ½ mile radius from the property boundary and in unzoned areas where the study area will encompass 3 intersections within a ¾ mile radius from the property boundary—before the next provision provides that the study area may be expanded "*if 3 intersections are not available within a ¾ mile radius from the property boundary*." LDR, Article 9.2(A) (R. p. 676). Respondents' arguments that Article 9.2 does not require inclusion of three intersections in the TIS, arguing that the language "not to exceed" modifies the number of intersections required instead of the radius of the study area ignores the remainder of the regulation, which authorizes the traffic engineer to expand the radius of the study area "*if 3 intersections are not available*." LDR, Article 9.2(A) (R. p. 676).[10] Taken together, Section 9.2(A) makes it clear three intersections—no more and no less—are required for a TIS under the LDRs.

Respondents' positions also ignore that the purpose of a TIS is to evaluate "the effect a development's traffic may have on *existing* roads." *LDR*, Article 9.1 (R. p. 676) (*emphasis added*). Article 9.2(A) outlines the specific requirements for the TIS and plainly states that an "impact study shall analyze traffic conditions for the *existing year conditions*, build-out background year 'no build' conditions, and build-out year 'build' conditions." *LDR*, Article 9.2(A) (R. p. 676).

[9] Remarkably, Respondent GCPC argues that the required TIS does not have to evaluate any intersections if the traffic engineer decided. Respondent GCPC Brief pp. 9-11. This position ignores the fact there would be no point to a TIS that doesn't analyze any intersections. The LDRs plainly require 3 intersections. The whole scheme envisions that. The only instance where the county engineer would need to expand the study area (*i.e.* the radius of the study area) is when there are not 3 intersections within the 3/4 mile study area. Respondent Lyonjay also helpfully illustrates the problem. *See* Respondent Lyonjay Brief at 12 n. 9 ("It is unclear how the TIS could have incorporated present traffic volume data from intersections which do not presently exist, as Appellant suggests is necessary.") That is precisely the problem. It couldn't incorporate such data, which is why including these *nonexistent* intersections violates the LDR's requirement to evaluate 3 *existing* intersections.

[10] Where a phrase is utilized multiple times—as is the case of Section 9.2(A) of the LDR where the phrase "3 intersections" is used three times—within "a single statutory scheme, the same word[s] should be given consistent meaning." *Sparks v. Palmetto Hardwood, Inc*., 406 S.C. 124, 750 S.E.2d 61 (2013); *see also Doe v. South Carolina Dept. of Health and Human Servs*., 398 S.C. 62, 73 n. 11, 727 S.E.2d 605, 611 n. 11 (2011) ("We adhere to the basic principle that the same word should not be given disparate meanings within a single statutory scheme.").

(*emphasis added*). Respondents' submission and approval of an analysis that failed to properly evaluate the effect River Preserve will have on existing roads by analyzing two—out of the three required—intersections that *do not exist* constitutes clear error, and the Circuit Court's failure to construe the LDR's language and give the provision effect similarly constitutes error.

V. CONCLUSION

This Court should reverse the Circuit Court's Order affirming Respondent GCPC's approval of River Preserve because the Circuit Court overlooked the correct standard of review, failed to conduct any analysis of the LDR language, and incorrectly concluded CQRL failed to establish a due process claim. Accordingly, the River Preserve preliminary plan should be remanded for compliance with all applicable Land Development Regulations.

Respectfully submitted,

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Mount Pleasant, South Carolina
June 12, 2023

THE STATE OF SOUTH CAROLINA
GREENVILLE COUNTY CIRCUIT COURT

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

_____

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

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Citizens for Quality Rural Living Inc.,
Appellant,

v.

LyonJay and the Greenville County Planning Commission,
Respondents.

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PROOF OF SERVICE

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

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