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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-23-03356 (S.C. Ct. App. filed Jan. 30, 2023)
Appellate Case No. 2023-000144

Citizens for Quality Rural Living, Inc., ……Appellant,

v.

LyonJay and the Greenville County Planning Commission, ……Respondents.

RESPONDENT LYONJAY'S AMENDED FINAL BRIEF

Dated: August 4, 2023

Greenville, South Carolina

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III. Appellant failed to preserve any issues on appeal from the Greenville County Planning Commission below.

STATEMENT OF THE CASE AND FACTS

Citizens for Quality Rural Living, Inc. (hereinafter "Appellant" or "CQRL") has appealed a decision of the Greenville County Planning Commission (hereinafter the "GCPC") approving the preliminary plan for a proposed subdivision called River Preserve in Greenville County. Respondent LyonJay intends to develop River Preserve and is under contract to purchase the land in question, approximately 220 acres in rural Simpsonville, South Carolina. To that end, LyonJay filed a preliminary plan with the GCPC on April 6, 2022 (R. p. 87 – 88) as the Greenville County

Land Development Regulations (LDR){ TA \l "Greenville County Land Development Regulations (LDR)" \s "Greenville County Land Development Regulations (LDR)" \c 6 } require (*see* R. pp. 676 – 881). LyonJay's preliminary plan submissions included a wetlands and riparian buffer delineation report (hereinafter the "Wetlands Delineation") (R. pp. 112 – 130), multiple traffic impact studies (TIS) (R. pp. 357 – 486), and various other documents related to the planned subdivision (*e.g.,* Preliminary Plats at R. pp. 87 – 90; Letters of Transmittal at R. pp. 132 – 353). The Wetlands Delineation was prepared by Jon Pruitt, a qualified environmental consultant of twenty-seven (27) years and President of Atlantic Environmental Services, Inc (R. pp. 354 – 365). The TIS were prepared by Allen Reid, a Professional Engineer with Impact Designs, Inc. (R. pp. 357 – 486).

A lengthy pre-submittal and committee review process followed. Respondent LyonJay met with GCPC Subdivision Advisory Committee members and incorporated several recommended changes and inclusions in revised preliminary plan submissions (*e.g.,* R. pp. 87 – 90; R. pp. 132 – 353). All such submissions were a matter of public record maintained by Greenville County (*see* R. pp. 882 – 884).[1] After the conclusion of this feedback and resubmission process, the GCPC

[1] Respondent Greenville County Planning Commission has previously furnished an affidavit from Greenville County's Subdivision Administrator describing the recordkeeping process for subdivision-related materials, and the availability of those materials as a matter of public record. *See* R. p. 75 (describing such testimony). However, in the course of preparation of final briefs, counsel for both Respondents realized that Appellant had omitted that affidavit from the Record on Appeal, as well as another affidavit from Respondent LyonJay's environmental consultant, all exhibits to all motions filed below, all exhibits to all briefing filed below, one Traffic Impact Study, letters of transmittal to the GCPC, and the meeting minutes approving the Preliminary Plan for River Preserve, the decision of which Appellant now seeks review from this Court. All such items were designated to be included in the Record on Appeal. Counsel for Respondents promptly communicated with each other and counsel for Appellant to redress these omissions. Appellant has filed a request with the Court for an extension to supplement the Record on Appeal and file the final briefs, simultaneously, to Friday, August 4, 2023. Respondent filed its initial Final Brief on August 1, 2023 to comply with its deadline to do so per Rule 211, SCACR. Counsel for Appellant subsequently circulated and filed an Amended Record on Appeal via email on August

voted at a normally scheduled public meeting on May 25, 2022 to approve the preliminary plan (hereinafter the "Plan") for River Preserve (R. pp. 92 – 111). Several of Appellant's "members" attended and spoke in opposition to the Plan at this meeting. *Notice of Appeal from GCPC* at ¶ 21 (R. pp. 20 – 21).

Appellant filed its Notice of Appeal of the GCPC's decision with the Greenville County Court of Common Pleas on June 24, 2022, pursuant to S.C. Code Ann. § 18-7-10{ TA \l "S.C. Code Ann. § 18-7-10" \s "S.C. Code Ann. § 18-7-10" \c 2 } *et seq*., Rule 74, SCRCP{ TA \l "Rule 74, SCRCP" \s "Rule 74, SCRCP" \c 4 }, and provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (S.C. Code Ann. §6-29-310 to 1640{ TA \l "S.C. Code Ann. §6-29-310 to 1640" \s "S.C. Code Ann. §6-29-310 to 1640" \c 2 }, hereinafter the "LGCPEA").[2] In essence, Appellant claimed that (1) the Wetlands Delineation failed to consider certain waterways, (2) the TIS were improperly conducted utilizing a supposedly insufficient number of intersections, and (3) Appellant did not receive due process (R. pp. 17 – 36). Appellant engaged in significant briefing, to which LyonJay and the GCPC responded (R. pp. 37 – 86). Respondents submitted that the wetlands delineation and TIS were both conducted in accordance with the requirements of the LDR, and that Appellant received sufficient due process throughout the planning process (*see id.*).

On September 23, 2022, Judge Edward W. Miller heard the parties at oral argument (transcript at R. pp. 632 – 675), and rendered an Order on November 4, 2022 affirming the GCPC's

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4, 2023, and this Amended Final Brief incorporates revised citations corresponding thereto. Additionally, it appears that the Amended Record on Appeal still does not include an Order from a similar case in Greenville County, cited and discussed extensively below, despite a reminder of its designation and need for inclusion being sent during the discussion of record supplementation. Said Order is attached hereto as "**Exhibit A**."

[2] While the Notice of Appeal, Appeal, and Summons filed with this Court are dated June 23, 2022, the file stamps on these documents indicate that they were in fact filed on June 24, 2022.

decision to approve the Plan (R. pp. 4 – 13). Appellant moved for reconsideration on November 10, 2022 (R. pp. 596 – 609), which was denied via Form 4 Order on January 18, 2023 (R. pp. 14 – 16). Appellant's Notice of Appeal of both Orders to this Honorable Court followed on January 30, 2023.

STANDARD OF REVIEW

S.C. Code § 6-29-1150{ TA \s "S.C. Code Ann. §6-29-310 to 1640" } provides a right to appeal planning commission decisions, and various procedural statutes such as S.C. Code Ann. § 18-7-180{ TA \l "S.C. Code Ann. §18-7-180" \s "S.C. Code Ann. §18-7-180" \c 2 } and -190 and common law establish standards for review. As for alleged errors of fact, planning commission decisions receive the same level of deference as that given to findings of fact by a jury. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008){ TA \l "*Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 173, 656 S.E.2d 346 (2008)" \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" \c 1 }; *see also Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000){ TA \l "*Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000)" \s "Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000)" \c 1 } ("The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision."). This high degree of deference is commonly known as the "any evidence" standard. It is well-established that a South Carolina court must uphold a planning commission decision unless there is no evidence to support it. *Kurschner{* TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" *},* 376 S.C. at 173, 656 S.E.2d at 351; *Town of Hollywood v. Floyd,* 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013){ TA \l "*Town of Hollywood v. Floyd,* 403 S.C. 466, 744 S.E.2d 161 (2013)" \s "Town of Hollywood v. Floyd, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013)" \c 1 }. Trial courts are not free to substitute their judgment for that of the Commission.

Town of Hollywood{ TA \s "Town of Hollywood v. Floyd, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013)" }, 403 S.C. at 476, 744 S.E.2d at 166 (2013); *Kurschner*{ TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" }, 376 S.C. at 173-174, 656 S.E.2d at 351 (2008). The "any evidence" standard is the ***most deferential standard*** of review recognized by South Carolina's courts, and planning commissions receive this deference because of our Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Kurschner*{ TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" }, 376 S.C. at 173-174, 656 S.E.2d at 351.

It is also correct that planning commission decisions are subject to review for errors of law. *Kurschner*,{ TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" } 376 S.C. at 173-174, 656 S.E.2d at 351; and can "be overturned if [they are] arbitrary, capricious, [have] 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){ TA \l "*Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)" \s "Rest. Row Assocs. v. Horry Cty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)" \c 1 }; *see also Gurganiuous v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995){ TA \l "*Gurganiuous v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995)" \s "Gurganiuous v. City of Beaufort, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995)" \c 1 } (decision to be upheld absent abuse of discretion).

ARGUMENT

I. CONSIDERING SUFFICIENT EVIDENCE BEFORE IT AND UTILIZING THE DISCRETION IT IS AFFORDED BY LAW, THE GCPC PROPERLY APPROVED THE PRELIMINARY PLAN.

The Circuit Court correctly held that the GCPC did not err in approving the Plan. The GCPC's decision bore sufficient evidentiary support under the "any evidence" standard, and neither it nor the Circuit Court committed any errors of law warranting reversal. Our Supreme Court has now several times admonished against trial courts substituting their judgment for the judgment of county planning commissions as democratic bodies where no abuse of discretion is obvious from the record, and the Circuit Court here was correct in assessing that the GCPC did not abuse its discretion in approving the Plan. *See, e.g., Town of Hollywood v. Floyd{* TA \s "Town of Hollywood v. Floyd, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013)" *},* 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) ("By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it.") (citing S.C. Code Ann. § 6–29–840 (2005)); *Bear Enterprises v. Greenville County*, 319 S.C. 137, 459 S.E. 2d 883 (1995){ TA \l "*Bear Enterprises v. Greenville County*, 319 S.C. 137, 459 S.E. 2d 883 (1995)" \s "Bear Enterprises v. Greenville County, 319 S.C. 137, 459 S.E. 2d 883 (1995)" \c 1 }.

Here, the Circuit Court explicitly considered and rejected Appellant's prior attempts to disguise its challenges to development as specious questions of law:

> Despite the South Carolina Supreme Court's admonition to the judiciary to give planning commission decisions a wide berth, CQRL asks this Court to substitute its opinion for that of the Planning Commission by asking this Court to weigh the sufficiency and adequacy of evidence available in the record. However, this Court does not engage in a de novo review. The Planning Commission's consideration of the wetlands delineation and the traffic impact study is neither fatal to the decision for approval nor warrants reversal. As with any evidence offered, debate may be taken on a document's content and opinions presented for and against the document. Evidence in the record shows that CQRL presented similar arguments before the Planning Commission as it does now before this Court. ***However, arguments on the sufficiency or adequacy of evidence are still arguments regarding evidence considered by the Planning Commission. CQRL's opposite viewpoint to that evidence does not constitute an error of law in the Planning Commission's consideration and determination of that evidence.***

Nov. 4, 2022 Order at 4 (emphasis added) (R. p. 7). Appellant CQRL strives to convince this Court that the Circuit Court overlooked repeated arguments that the GCPC had made legal miscalculations. The emphasized language from the Circuit Court's Order demonstrates that the lower court is not guilty of oversight. Rather, the Circuit Court openly searched for an error of law and found none. Further, per our Supreme Court in *Kurschner,* overturning the GCPC's decision to approve even had a genuine error of law been encountered would have only been appropriate if the decision was "controlled by" that error. *Kurschner{* TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" *},* 376 S.C. at 175, S.E.2d at 352. There is no evidence of any such "controlling" error here, and therefore the Circuit Court's decision must be affirmed.

A. The Circuit Court did not err in holding that the GCPC properly considered the Wetlands Delineation, which was conducted in accordance with the LDR requirements, as sufficient evidence for Plan approval.

Appellant CQRL's criticism of the Wetlands Delineation as tantamount to error of law is nothing more than an attempt to relitigate claims of factual insufficiency that CQRL has now asserted numerous times without success.[3] In essence, Appellant claims that the Wetlands Delineation was factually and/or legally insufficient because Appellant falsely declares it assessed "waters of the United States," as opposed to "waters of the State."[4] This argument comes in spite of the fact that in its initial Notice of Appeal from the GCPC, Appellant admitted that the GCPC only voted to approve the Plan after further "discussion regarding delineation of waterways and

[3] Appellant has produced absolutely no factual evidence whatsoever in opposition to either the Wetlands Delineation or the TIS at any point. Appellant has not pointed to any areas of the proposed Plan that would actually violate the waterway, wetland, or riparian buffer requirements.
[4] "Waters of the United States" is an arguably more narrow definition, though Appellant admits that the precise definition of "waters of the United States" has a "tortured regulatory and judicial history." *Appellant's Initial Br.* at 18, fn. 8.

wetlands on site. . .” at the publicly held May 25, 2022 meeting, without restriction of discussion to any specific definition of “waters.” *Notice of Appeal from GCPC* at ¶ 22 (R. p. 21). Setting aside for the moment technical definitions, however, the Delineation’s conclusions are *facts* which were before the GCPC, not law. At no point did the GCPC render a legal conclusion as to the Wetlands Delineation that would be subject to judicial review as a question of law. Appellant’s conjurings around this argument must therefore fall away – the Wetlands Delineation was “any evidence” in front of the GCPC, and Appellant simply disagrees with the GCPC’s conclusions drawn therefrom.[5]

More concerningly, however, Appellant continues to press its legal sufficiency argument even when faced with sworn testimony to the contrary, and without presenting any evidence whatsoever of its own. Environmental 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.” *Pruitt Aff., Ex. 1 to Resp. Br. in Opposition* at ¶ 7 – 8 (R. pp. 354 – 356; Mr. Pruitt’s testimony is also substantively described and excerpted at R. pp. 63 – 65). This Affidavit was filed below and Appellant has seen it. Despite

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[5] Likewise, Appellant decries the fact that the Circuit Court “never referenced or analyzed the term ‘waters of the State.’” Appellant’s Initial Br. at 22. Acting in its capacity as an appellate court for a lower tribunal, the Circuit Court was under no obligation to incorporate Appellant’s briefing language in its Order. *See, e.g., Dreher v. S.C. Dep't of Health & Env't Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015){ TA \l "*Dreher v. S.C. Dep't of Health & Env't Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015)" \s "Dreher v. S.C. Dep't of Health & Env't Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015)" \c 1 } ("[A]n appellate court may affirm the lower court's decision for any reason appearing in the record. [T]he prevailing party may—but is not required to—raise additional sustaining grounds to support the lower court's decision."); Rule 220(c), SCACR{ TA \l "Rule 220(c), SCACR" \s "Rule 220(c), SCACR" \c 4 } ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

ample opportunity to revise its arguments accordingly, Appellant has refused to do so, and has indeed *explicitly stated to this Court* that the Wetlands Delineation "appl[ied] the incorrect standard" and "fails to comply with the LDR's requirement to delineate all waters of the State." *Appellant's Initial Br*. at 21 – 22.

The factual record itself contradicts this false argument, as well. While the Wetlands Delineation was initially to be submitted to the United States Army Corps of Engineers (USACOE), no jurisdictional determination was ever received by the USACOE as it is not presently issuing such determinations.[6] *Ex. 1 to Resp. Br. in Opposition* at ¶ 9. Nowhere in the Wetlands Delineation itself does it claim that Mr. Pruitt only considered "waters of the United States." While the USACOE may only consider the presence of "waters of the United States" for purposes of determining jurisdiction, that does not mean that Mr. Pruitt only considered or included "waters of the United States" in preparing his Wetlands Delineation. Indeed, the Wetlands Delineation includes a map entitled "Depiction of Aquatic Resources" ***without caveat*** (R. p. 120). This statement, coupled with Mr. Pruitt's Affidavit, proves that he considered all waters on site, not just "waters of the United States."

While Appellant has challenged the admissibility of this Affidavit, that does not change the fact that it contains sworn testimony in direct factual contradiction to an argument that

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[6] Moreover, Mr. Pruitt's submission to the USACOE was made subject to 18 U.S.C. § 1001{ TA \l "18 U.S.C. § 1001" \s "18 U.S.C. § 1001" \c 2 }, which provides that:

> Whoever, in any manner within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or devises a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Appellant continues to put forward before this Court.[7] Moreover, Appellant's desired remedy, remand to the GCPC for "compliance with the LDR," would be meaningless, as a proper Wetlands Delineation in compliance with the LDR has already been conducted and considered.[8] *Appellant's Initial Br.* at 22. The Circuit Court's affirmation of the GCPC's consideration of the Wetlands Delineation was therefore not error.

B. The Circuit Court did not err in holding that the GCPC properly considered the Traffic Impact Study, which was likewise conducted in accordance with the LDR requirements, as sufficient evidence for Plan approval.

Appellant has additionally attempted to disguise its challenges to the factual sufficiency of the TIS via a tortured reading of plain language within the LDR. LDR Article 9.2(A){ TA \s "Greenville County Land Development Regulations (LDR)" } requires the completion of a TIS prior to subdivision approval, with specific limits on the scope of the TIS set forth in the LDR. In unzoned areas like the subject River Preserve property, the TIS area must "be limited . . . ***not to exceed*** adjacent or nearby 3 intersections within a ¾ mile radius from the property boundary." (emphasis added) "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.{* TA \s "Greenville County Land Development Regulations (LDR)" *}* (emphasis added). The LDR therefore affords the County Traffic Engineer with a significant degree of discretion to require the conduct of traffic studies as he or she sees fit under the circumstances. It

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[7] Respondent maintains that this Affidavit is properly before the Court. It solely describes and illuminates facts that were set forth before the GCPC, both in the Wetlands Delineation itself and heard at the various pre-approval meetings. Furthermore, the Affidavit was submitted in support of motions below.

[8] Appellant's argument that the Plan fails to observe the LDR's riparian buffer requirements consequently fails, because all waters were properly delineated. Moreover, Respondent's submissions to the GCPC properly demarcated all required buffer zones. *See, e.g., February 3, 2022 Revised Preliminary Plat Letter of Transmittal* at 00004 ("All lots have been removed from the 50' undisturbed buffer and this area is now counted towards open space.").

does not impose a ***requirement*** upon the County Traffic Engineer to expand a TIS at any point, as Appellant implies in its brief.[9]

Here, the County Traffic Engineer considered these facts appropriately and thoroughly as they are found throughout more than one hundred and thirty (130) pages of documentation, all conducted in compliance with the LDR. Appellant admits that the GCPC discussed the TIS at its public pre-approval meeting on May 25, 2022. *Notice of Appeal from GCPC* at ¶ 22 (R. pp. 20 – 21; 487 – 497). However, Appellant bemoans the inclusion of consideration of the impact of "nonexistent intersections" (i.e., to-be-built intersections) within the TIS. *Appellant's Initial Br.* at 27. In doing so, Appellant disregards the fundamental purpose of why these planned future intersections were included within the study: to assess the impact of their construction on area traffic. Specifically, Respondent intends to construct the two new intersections for ingress and egress onto Wasson Way and Woodside Road. The TIS properly considered the vehicular travel through these two intersections and at the existing intersection of Wasson Way and Woodside Road.[10] The County Traffic Engineer considered expanding the study to include the intersection at S.C. Highway 418 and Woodside Road (which is more than three quarters of a mile from the

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[9]Appellant further claims that ". . .the Circuit Court never referenced or analyzed the LDR's language establishing the requirements for TIS." *Appellant's Initial Br.* at 29. Appellant put forth significant oral argument regarding this language at the hearing, and the Nov. 4, 2022 Order included the following: "CQRL also asserts the traffic impact study in the record failed to properly evaluate the effect of the proposed subdivision on existing roads pursuant to Article 9 of the LDR." *See, e.g., Transcript* at 38:13 – 39:18.

[10] *See* R. pp. 357 – 486. Appellant also implies in its Initial Brief that the TIS failed to consider "existing" and "no build" traffic conditions, as the LDR requires. *See* Art. 9.2(A), LDR. This is not factually correct. In reality, the TIS considered "existing" and "no build" traffic conditions for both Woodside Road and Wasson Way, the only two nearby roads: "Using the existing, no-build, and build traffic volumes, intersection analyses were conducted for the study intersections under Existing (2022) conditions, No-Build (2027) conditions, and Build (2027) conditions." *April 26, 2022 Traffic Impact Study Submission* at 11 (R. p. 432) (capitalization in original). 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.

property boundary), but deferred to the South Carolina Department of Transportation (SCDOT) because S.C. Highway 418 is a State road (R. p. 527)

This action was squarely within the discretion that the unambiguous language of the LDR affords. Appellant's arguments that the TIS was legally defective because it reflected the Greenville County Traffic Engineer's discretionary selection of intersections is again nothing more than an effort by CQRL to elevate its subjective determinations over those of GCPC. An exercise of discretion that the LDR explicitly confers is not error of law or fact.

II. APPELLANT RECEIVED MORE THAN ADEQUATE DUE PROCESS THROUGHOUT THE PLAN SUBMISSION PROCESS.

As the Circuit Court correctly concluded, Appellant's argument that it did not receive adequate due process is wholly "unsupported by law." *Nov. 4, 2022 Order* at 9 (R. p. 12). "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner{* TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" *}*, 376 S.C. at 171, 656 S.E.2d at 350. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.{* TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" *}* However, no particular procedure is required, as "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Id.*,{ TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" } 376 S.C. at 172, 656 S.E.2d at 350; *see also SCDSS v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733-34 (2002){ TA \l "*SCDSS v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733-34 (2002)" \s "SCDSS v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733-34 (2002)" \c 1 } ("The requirements in a particular case are dependent upon the

importance of the interest involved and the circumstances under which the deprivation may occur.").

The South Carolina Supreme Court has concluded that the procedure that is due a subdivision applicant is different from and less formal than might be required in a traditional trial. *Kurschner*,{ TA \s "Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)" } 376 S.C. at 171-173, 656 S.E.2d at 350. Due process requires only that an applicant receive notice and an opportunity to be heard at some point before the Commission makes a final decision, but not at each level of the subdivision decision process. *See Ross v. MUSC*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997){ TA \l "*Ross v. MUSC*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997)" \s "Ross v. MUSC, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997)" \c 1 }; *see also Donadieu v. Morgan Cnty. Planning Comm'n*, 2016 W. Va. LEXIS 726, *15-16 W. Va. (2016){ TA \l "*Donadieu v. Morgan Cnty. Planning Comm'n*, 2016 W. Va. LEXIS 726, *15-16 W. Va. (2016)" \s "Donadieu v. Morgan Cnty. Planning Comm'n, 2016 W. Va. LEXIS 726, *15-16 W. Va. (2016)" \c 1 } ("With respect to documents that did exist in Planning Commission's files, petitioners appear to complain that the Planning Commission did not disclose those documents to them in advance of the public hearing. However, they misconstrue the nature of Planning Commission hearings; they are not akin to civil trials where parties are entitled to certain discovery disclosures. Rather, everything in the Planning Commission's file was available for public inspection, and as the Planning Commission noted, petitioners did not avail themselves of that access."); *Board of Curators v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124, 136 (1978){ TA \l "*Board of Curators v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124, 136 (1978)" \s "Board of Curators v. Horowitz, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124, 136 (1978)" \c 1 } ("An administrative agency's failure to follow its own rules and regulations does not create

a constitutional due process right on behalf of a party who suffers some wrong at the hands of the administrative body.").

Here, Appellant claims that the GCPC allowed Respondent to submit revisions to the Plan in an "untimely" manner. Specifically, Appellant claims that the GCPC "improperly accepted revisions fifteen days and twenty-six days past the deadline for the applicant submittal deadline." *Notice of Appeal from GCPC* at ¶ 96 (R. p. 33). Despite claiming that the GCPC and LyonJay (a private, nongovernmental entity) somehow violated Appellant's due process rights, Appellant admits that it received notice of submissions of documentation in support of the Preliminary Plan, submitted written comments to the GCPC, and that several of its members were actually able to speak before the GCPC regarding River Preserve (R. pp. 20 –21; 92– 111). Appellant admits that these plan revisions were considered, reviewed, discussed, and accepted at the GCPC's public meeting on May 25, 2022, which Appellant admits its "members" attended and were permitted to provide "comments." *Notice of Appeal from GCPC* at ¶ 21 (R. pp. 20 – 21). Moreover, the LDR explicitly contemplates that an initial subdivision plan will be revised prior to the GCPC public hearing. LDR Art. 3.3.3{ TA \s "Greenville County Land Development Regulations (LDR)" } ("The Authorized Representative will ensure that all comments made at the Subdivision Advisory Committee meeting are fully addressed on the plan during an identified revision period. It is the revised plan that is submitted for the Planning Commission's review and approval, hold or denial."). Additionally, LDR Article 1.6.1{ TA \s "Greenville County Land Development Regulations (LDR)" } specifically empowers the GCPC to deviate from its subdivision review calendar if "agreed upon by both the applicant and the Commissioners." There is no evidence in the record that LyonJay and the Commissioners disagreed on the deviations from the calendar here.

Notwithstanding the provision of this public forum and its participation within that forum, Appellant claims that it somehow suffered prejudice as a result of these allegedly "untimely" submissions. To establish a procedural due process claim, Appellant must prove that the alleged deprivation caused them substantial prejudice. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987){ TA \l "*Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987)" \s "Tall Tower, Inc. v. S.C. Procurement Review Panel, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987)" \c 1 } (emphasis added). In its Initial Brief, Appellant misconstrues the burden: "Furthermore, the meeting minutes do not reflect that either of [Appellant's members] commented on the effect of this late change *because* the submission a month after the deadline prevented their adequate notice and opportunity to meaningfully comment." Appellant's Initial Br. at 32. The operative question here is not whether Appellant's members were able to comment, but whether they suffered substantial prejudice.[11] Appellant fails to identify exactly what this substantial prejudice was, any effect this prejudice had, what specific changes in the plan documents constituted prejudice, or how any such prejudice rose to the height of a due process violation. Indeed, a Mr. John Cook appears to have submitted a memorandum to the GCPC on Appellant's behalf on May 20, 2022 which discusses in detail the very same alleged waterway impact that Appellant claims it was not able to review in time for the May 25, 2022 GCPC meeting (R. pp. 487 – 496). Likewise, Mr. Jim Moore, CQRL's President, both emailed the GCPC expressing his thoughts prior to the May 25 meeting and spoke at the meeting himself (*id.; see also* R. pp. 103). Appellant has presented no factual material related to how an earlier submission would have changed those comments.

[11]Further, Appellant provides no factual support or explanation for its contention that the submission date somehow prevented its members from commenting. Nor does Appellant claim that its members did not actually review the revised submission.

The record is clear: CQRL had full and fair opportunity to voice its concerns to the GCPC as a democratic body in a public forum. CQRL did so, received a result that it did not like, and now attempts to relitigate issues before this Court that the GCPC and the Circuit Court have already properly decided. CQRL properly received notice and had an opportunity to publicly speak prior to the GCPC's final decision – indeed, it did so. This satisfied the due process requirement. *See Ross*,{ TA \s "Ross v. MUSC, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997)" } 328 S.C. at 68, 492 S.E.2d at 71.

III. APPELLANT FAILED TO PRESERVE ANY ISSUES ON APPEAL FROM THE GREENVILLE COUNTY PLANNING COMMISSION BELOW.

Based on the record before the Court, the inescapable conclusion is that Appellant failed to preserve any issues for appeal. Since the Circuit Court acted in an appellate capacity, as a matter of law the Court was required to refrain from considering issues that were not raised to and ruled upon by the Planning Commission:

> [A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. SCDOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004){ TA \l "*Elam v. SCDOT*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)" \s "Elam v. SCDOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)" \c 1 } (emphasis added); *see also Brick v. Richland Cnty. Plan. Comm'n*, No. 2014-000583, 2016 WL 3200138 at *1 (S.C. Ct. App. June 8, 2016) (unpub.){ TA \l "*Brick v. Richland Cnty. Plan. Comm'n*, No. 2014-000583, 2016 WL 3200138 at *1 (S.C. Ct. App. June 8, 2016) (unpub.)" \s "Brick v. Richland Cnty. Plan. Comm'n, No. 2014-000583, 2016 WL 3200138 at *1 (S.C. Ct. App. June 8, 2016) (unpub.)" \c 1 } (in planning commission appeal, "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon

by the trial [court] to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998){ TA \l "*Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)" \s "Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)" \c 1 }); *Rutter v. City of Columbia Design/Development Review Comm'n*, 2021 S.C. App. Unpub. LEXIS 265, *5, 2021 WL 2701549 (Ct. App. 2021){ TA \l "*Rutter v. City of Columbia Design/Development Review Comm'n*, 2021 S.C. App. Unpub. LEXIS 265, *5, 2021 WL 2701549 (Ct. App. 2021)" \s "Rutter v. City of Columbia Design/Development Review Comm'n, 2021 S.C. App. Unpub. LEXIS 265, *5, 2021 WL 2701549 (Ct. App. 2021)" \c 1 } (finding error for a circuit court to consider a procedural due process issue in an appeal from an architectural review board decision when the appellant failed to object during the board hearing).

Here, despite Appellant's numerous contentions that the GCPC acted unlawfully and violated Appellant's due process rights during the process of approving the River Preserve Plan, Appellant has provided absolutely no factual basis supporting a conclusion that it actually raised, argued, and received decisions on any of these specific issues before the GCPC. Appellant has thinly pleaded that it "submitted written comments prior to the May 25, 2022 [GCPC] meeting," and that some of its members "also spoke in opposition to the subdivision." *Notice of Appeal from GCPC* at 4 - 5, ¶ 21 (R. pp. 18 – 21). Nowhere in its appeal has Appellant actually described the substance of such "comments" or "opposition," who these "members" are, whether they were authorized to speak on Appellant's behalf, or whether the GCPC ruled on any issues so raised. Vague "comments" and "opposition" do not amount to preservation of any issues on appeal. *See Elam{* TA \s "Elam v. SCDOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)" *}*, 361 S.C. at 23, 602 S.E.2d at 779-80; *see also Rockville Cars, LLC v. City of Rockville*, *Md.*, 891 F.3d 141, 149 (4th Cir. 2018){ TA \l "*Rockville Cars, LLC v. City of Rockville*, *Md.*, 891 F.3d 141, 149 (4th Cir.

2018)" \s "Rockville Cars, LLC v. City of Rockville, Md., 891 F.3d 141, 149 (4th Cir. 2018)" \c 1 }.

Appellant has cited to *Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011){ TA \l "*Newton v. Zoning Bd. of Appeals for Beaufort Cnty*., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011)" \s "Newton v. Zoning Bd. of Appeals for Beaufort Cnty., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011)" \c 1 } for the proposition that it merely needed to plead issues on appeal to the Circuit Court to preserve them. Appellant's reliance on *Newton* is misplaced, but more importantly misses the point. 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. Given the absence of the GCPC's ability to (1) depart from LDR procedural provisions, or (2) impose an LDR requirement for federal confirmation of wetlands delineation, there was no concomitant entitlement of the GCPC to rule on those issues. The right to amend the Greenville County LDR lies with the Greenville County Council alone. LDR Art. 1.1.{ TA \s "Greenville County Land Development Regulations (LDR)" } Hence, Appellant's appeal failed to state a claim upon which the Circuit Court or this Court could grant relief, insofar as it seeks relief in the form of this Court imposing requirements on the GCPC that the LDR do not.

As an elementary threshold matter, Appellant must put forth some evidence in the record that it objected below on the grounds it now raises on appeal. *E.g., Wilder Corp*.{ TA \s "Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)" }, 330 S.C. at 76, 497 S.E.2d at 733; *Rutter*{ TA \s "Rutter v. City of Columbia Design/Development Review Comm'n, 2021 S.C. App. Unpub. LEXIS 265, *5, 2021 WL 2701549 (Ct. App. 2021)" }, 2021 S.C. App. Unpub. LEXIS

265, *5, 2021 WL 2701549 (Ct. App. 2021). Because Appellant has failed to put forth any such evidence, this Court should grant judgment in favor of Respondents and affirm the decision of the Circuit Court. *See Elam{* TA \s "Elam v. SCDOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)" *}*, 361 S.C. at 23, 602 S.E.2d at 779-80.

CONCLUSION

The Circuit Court committed no reversible error. The GCPC's approval decision bore sufficient evidentiary support, it made no errors of law (and, if it did, all such errors were harmless), and Appellant was afforded ample due process prior to the approval decision. Appellant's tactic of couching questions of evidentiary sufficiency as questions of law is unavailing, and should not persuade this Court to overlook the considerable degree of deference that our Legislature and Supreme Court have afforded county planning commissions to regulate their land as they see fit. On the foregoing grounds, Respondent LyonJay respectfully requests this Honorable Court affirm the decision of the Greenville County Court of Common Pleas to affirm the decision of the GCPC approving the River Preserve preliminary plan.

~ Signature Page to Follow ~

Dated: August 4, 2023

Greenville, South Carolina

Respectfully submitted,

FOX ROTHSCHILD LLP

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2021-CP-23-03048
Alliance to Preserve the Old White Horse Road Corridor, LLC and Mary Jean Horney, Appellants, v. RP&L, LLC and the Greenville County Planning Commission, Respondents.	)	**ORDER AFFIRMING DECISION OF GREENVILLE COUNTY PLANNING COMMISSION**

Appellants appealed the decision of the Greenville County Planning Commission ("Commission") approving RP&L, LLC's preliminary plan application for a subdivision called The Stables. For the reasons set forth herein, this appeal is denied and the decision of the Commission is affirmed.

I. STATEMENT OF THE FACTS

In March of 2021, RP&L filed a preliminary plan application seeking to subdivide and develop an approximately 43-acre property located along Meadow Brook Road and Old White Horse Road in a rural section of Greenville County. After the developer met with Greenville County planning staff, the application was referred to the Greenville County Subdivision Advisory Committee, which recommended several changes to the preliminary plan. Thereafter, an Updated Preliminary Plan was submitted and became part of Greenville County's subdivision file for The Stables in late April 2021. While Appellants contend that the Updated Preliminary Plan was "never made available to the public in advance of the Commission meeting held on May

EXHIBIT A

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26, 2021,"[1] the undisputed evidence before this court is that the Updated Plan has been part of the public record maintained by the County and available to the public for review since the April 2021 filing.

The Commission considered RP&L's application, with its Updated Preliminary Plan, at the Commission's regularly scheduled meeting on May 26, 2021. Appellants do not contest the appropriateness of the notice given as to the meeting. Several representatives of Appellants spoke in opposition to the preliminary plan application, including counsel for Appellants. Appellants contended the application should be denied for a variety of reasons, including (a) the lack of findings of fact and conclusions of law in the Commission's decision; (b) violation of Appellants' due process rights; (c) public safety issues; (d) failure to comply with the open space requirements of Section 11 of the County's Land Development Regulations, and (d) incompatibility with the Greenville County Comprehensive Plan.

The Commission voted to approve the preliminary plan application. This appeal followed.

II. RULING

A. Standard of review

S.C. Code § 6-29-840 controls this court's review of the Commission's decision and requires the same level of deference as that given to a finding of fact by a jury. It is commonly referred to as the "any evidence" standard. This Court is not free to substitute its judgment for that of the Commission. *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-174, 656 S.E.2d 346, 351 (applying the "any evidence" standard of review applicable in appeals of jury verdicts to appeals

[1] The source of this contention is that the Updated Preliminary Plan had not been posted on the Greenville County website.

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of planning commission decisions). The "any evidence" standard is the most deferential standard of review recognized by South Carolina's courts, and planning commissions receive this deference because of our Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Kurschner*, 376 S.C. at 173-174, 656 S.E.2d at 351; see *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) ("The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision.").

B. Decisions of the Commission are not statutorily required to include findings of fact and conclusions of law

Appellants contend that the Commission must issue findings of fact and conclusions of law in making its decisions. While Appellants quote accurately from several lower court orders, they do not quote the controlling law, as provided by the South Carolina Legislature in S. C. Code § 6-29-1150:

> *SECTION 6-29-1150. Submission of plan or plat to planning commission; record; appeal.*
>
> *(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.*
>
> *(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.*

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(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(C)(1).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

The entire statute is set forth above in order to demonstrate that it contains no requirement for the inclusion of findings of fact and conclusions of law in a Commission decision. That absence is even more striking when one compares the statute to the provisions of S. C. Code § 6-29-830 governing appeals from Boards of Zoning Appeals, found in the same chapter, and enacted at the same time:

SECTION 6-29-830. Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings

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> *held before the board of appeals, including a transcript of the evidence heard before the board, if any,* ***and the decision of the board including its findings of fact and conclusions.***
>
> *(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. (emphasis added)*

The fact that the Legislature opted to require findings of fact and conclusions for one type of administrative appeal, but not for another, is dispositive of the intent of the legislature. The Court is well aware that:

> "[T*]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.*
>
> *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581, 2000 S.C. LEXIS 132, *3-4

The inescapable conclusion of a review of the applicable statutes is that the Commission is not required to issue findings of fact and conclusions of law. The Court also finds that the Commission's meeting minutes, the transcript of the meeting, and the file material, which includes written opposition to the proposed subdivision, provides the record of the Commission's actions and grounds for approval satisfying the requirements of S.C. Code Ann. § 6-29-1150(B).

C. Appellants received due process

There is no issue of fact as to whether the updated preliminary plan was available as a public record for a month prior to that meeting. Appellants' claim of lack of due process because of the perceived unavailability of that document is without basis. The Commission afforded the Appellants a meaningful opportunity to be heard, and their due process rights were not violated.

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"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* However, no particular procedure is required, as "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Id.*, 376 S.C. at 172, 656 S.E.2d at 350; *see SCDSS v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733-34 (2002) ("The requirements in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur.").

The South Carolina Supreme Court has concluded that the procedure that is due a subdivision applicant is different from and less formal than might be required in a traditional trial. *Kurschner*, 376 S.C. at 171-173, 656 S.E.2d at 350. In the end, due process requires that an applicant receive notice and an opportunity to be heard at some point before the Commission makes a final decision, but not at each level of the subdivision decision process. *See Ross v. MUSC*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997)

It appears from the uncontested affidavit testimony of Rashida Jeffers-Campbell that accepted subdivision applications in Greenville County generate a file with a distinct file number. The contents of these files are available to the public from the opening of the file. The County Subdivision Administrator and her staff maintain and update these files as public records, which any citizen can view at County Square during the County's normal operating hours

As the Jeffers-Campbell affidavit demonstrates, Subdivision Administration initially made a copy of the original filed preliminary plan available on the County's website. The public record,

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however, continued to be kept in Subdivision Administration's physical office. Between the filing of the original application and the date the Commission considers the application, the public file grows, as items like Subdivision Advisory Committee comments and iterative updated versions of the preliminary plan are added when changes are made to address issues raised by planning staff and committees. The County does not add these items to the website. Instead, the County makes them available to the public as part of the subdivision file maintained at County Square.

Since the Appellant's due process argument hinges on the alleged unavailability of the April 26, 2021 updated preliminary plat prior to the May 26, 2021 meeting, that plat's availability in the County's physical subdivision file for the month preceding the meeting is fatal to this argument. *See Donadieu v. Morgan Cnty. Planning Comm'n*, 2016 W. Va. LEXIS 726, *15-16 W. Va. (2016) ("With respect to documents that did exist in Planning Commission's files, petitioners appear to complain that the Planning Commission did not disclose those documents to them in advance of the public hearing. However, they misconstrue the nature of Planning Commission hearings; they are not akin to civil trials where parties are entitled to certain discovery disclosures. Rather, everything in the Planning Commission's file was available for public inspection, and as the Planning Commission noted, petitioners did not avail themselves of that access.").

D. The Evidence in the Record Demonstrates that the addressed public safety concerns

Appellants claim that the Commission erred in approving the preliminary plan application in issue without adequately addressing public safety concerns and without any input from the Greenville County Fire Department. This argument fails because although Appellants acknowledge that the appropriate standard of review is the "any evidence" standard, they then argue not that there is no evidence as to consideration of public safety concerns, but that those concerns were not "adequately" addressed. Appellant's own brief makes specific reference to

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discussion and/or consideration of traffic or road access issues (App. Brief pp. 4, 10, and 17), flooding potential (App. Brief, pp. 4, 5, and 13) and fire safety issues (App. Brief pp.5, 16). Viewed through the required standard of review, this argument must fail.

E. Appellants' LDR Article 11 arguments fail because the Commission's approval was based on an appropriate exercise of discretion.

A court must refrain from interfering with a planning commission's decision unless there is no evidence in the record to support it. *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013); *Kurschner*, 376 S.C. at 173-174, 656 S.E.2d at 351 (applying the any evidence standard of review applicable in appeals of jury verdicts to appeals of planning commission decisions). The "any evidence" standard is the most deferential standard of review recognized by South Carolina's courts, and planning commissions receive this deference because of our Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Id.*; *see Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) ("The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision.").

Despite the South Carolina Supreme Court's admonition to the judiciary to give planning commission decisions a wide berth, the Appellants ask this Court to substitute its opinion for that of the Planning Commission. The Appellants first argue that the Commission's approval violated LDR Article 11.4's instructions to developers concerning open spaces in cluster developments:

> The required open space must be directly accessible to the largest *practical* number of lots within the development. Non-adjoining lots must be provided with safe, convenient access to the open space.

LDR Art. 11.4 (emphasis added). The Appellants point to the preliminary plan and declare that because only four of the proposed lots adjoin the designated open space, the plan violates LDR

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Art. 11.4 as a matter of law. The Planning Commission's decision is entitled to the same deference as a jury's verdict; the Appellants' arguments do not meet that high threshold.

Similarly, there is no merit to Appellants' argument that the Court should reverse because the preliminary plan did not state whether the proposed open space was "developable" or "undevelopable" or show what the proposed uses would be for the open space. First, the Court notes that the Updated Preliminary Plan designates open space Area E as "Developable" and open space Area F as "Undevelopable." In addition, the Updated Plan designates the use as general open space. The County's LDR and Zoning Ordinance require nothing more. In addition, while LDR Article 11.3.2 tells developers to include this information on their preliminary plans, nothing in the LDR, the Zoning Ordinance, or South Carolina law suggests that the absence of this information is fatal or warrants a reversal of a planning commission decision. *See* LDR Art. 11; Zon. Ord. § 7.2. If this information were missing from the approved preliminary plan, the technical error would, at worst, be a harmless error. *See* Zon. Ord. § 7:2.4-6 (stating that the required open space "may include both developable and undevelopable property" which makes the technical designation on the plan informational only).

F. The Greenville County Comprehensive Plan is not controlling law, and the Commission's decision cannot be reversed for a purported failure to follow that plan.

The Comprehensive Plan is not law, but only an advisory document for the County. The Plan expressly states that is "is a guiding policy document that reflects a community's vision for its future." *See* Ordinance 5155, Resolution, and Comp. Plan ("[T]his Comprehensive Plan will serve as a guide . . . [The Comprehensive Plan is adopted] as "general guides for change and development within the County."). Greenville County's approach, here, is consistent with the South Carolina Local Government Comprehensive Enabling Act of 1994 which instructs planning commission's to "develop and maintain a comprehensive plan to guide development in its area of

jurisdiction." *Sinkler v. County of Charleston*, 387 S.C. 67, 69 n.1, 690 S.E.2d 777, 778 n.1 (2010) (citing S.C. Code Ann. § 6-29-510(A)). That the Greenville County Comprehensive Plan is not codified as mandatory and that, as adopted, it represents itself as a guide only, requires this Court to conclude that any alleged failure to follow that plan is not error.

III. CONCLUSION

For the reasons set forth herein, the Court rules that this appeal is denied, and the decision of the Commission is affirmed.

Dated:
Greenville, SC

ELECTRONICALLY FILED - 2022 Aug 17 8:53 AM - GREENVILLE - COMMON PLEAS - CASE#2021CP2303048

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Greenville Common Pleas

Case Caption: Alliance To Preserve The Old White Horse Corridor LLC , plaintiff, et al VS RP&L Llc , defendant, et al

Case Number: 2021CP2303048

Type: Order/Other

So Ordered

G.D. Morgan Jr.

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Aug 04 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-23-03356 (S.C. Ct. App. filed Jan. 30, 2023)
Appellate Case No. 2023-000144

Citizens for Quality Rural Living, Inc., ……Appellant,

v.

LyonJay and the Greenville County Planning Commission, ……Respondents.

RESPONDENT LYONJAY'S RULE 211(b), SCACR CERTIFICATION

The undersigned hereby certifies that Respondent LyonJay's Amended Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

~ Signature Page to Follow ~

Dated: August 4, 2023

Greenville, South Carolina

FOX ROTHSCHILD LLP

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