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**Also Admitted in North Carolina*

February 21, 2025

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Feb 21 2025

S.C. SUPREME COURT

Via Email Only

The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
Email: suptfilings@sccourts.org

RE: The Altamont Road Safety Alliance, *et al.* v. Greenville County Board of Zoning Appeals
Appellate Case Number: 2024-001138
Civil Action Number: 2023-CP-23-6416
Our File Number: 79.20722

Dear Ms. Howard:

Pursuant to Section (b)(2) the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended April 26, 2024), please find enclosed for filing **Respondent's Motion to Transfer Case to South Carolina Court of Appeals** with regard to the above referenced appeal. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

My firm's \$50.00 check for the filing fee will be mailed to the Court via U.S. Mail. If you have any questions, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosure

cc: Robert C. Childs, III, Esquire (*w/out Enclosure*)

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Feb 21 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2024-001138
Case No. 2023-CP-23-6416

The Altamont Road Safety Alliance, Sussane Beattie, Brenda Cale, Elaine Carter, Ron And Ava Chitty, Aaron & Heather Collins, Margaret & Robert Degiorgio, Elliot & Jennifer Earle, Laura Edge, Travis Elmore, Marilyn Endler, John Fields, Jim Hambright, Leah Hunter, Lauren Johnson, Cynthia Kinghorn, Alex Kiriakides, Jason Kraning, Elaine & Bill Landreth, Robert & Patricia Lanning, Frank & Barbara League, Louis & Ann Leblanc, Frank Lewkowicz, Forrest & Jane Long, George & Fain McDaniel, Brian Mcsharry, Ronald And Kathy Mercer, Steven & Anna Mickle, Helen & Fred Moorhead, John Parker, Audrey Pasin, Jim Sheets, Matthew Phillips, Shannon Pierce, Michael Rawls, Ronald & Tommie Reece, Daniel And Kimberly Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden,.....

Appellants,

v.

Greenville County Board of Zoning Appeals,

Respondent.

**RESPONDENT’S MOTION TO TRANSFER CASE
TO SOUTH CAROLINA COURT OF APPEALS**

The Respondent Greenville County Board of Zoning Appeals hereby moves this Court, pursuant to Rule 204(a) and Rule 203(d)(1)(A), SCACR, for an Order transferring this appeal to the South Carolina Court of Appeals.

Rule 204(a), SCACR, governs the process whereby an appeal is filed in the wrong appellate court. Using the mandatory language “shall,” that rule states: “In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.” Rule 204(a), SCACR.

This appeal was filed initially in the Supreme Court based on Rule 203(d)(1)(A)(ii), SCACR, which reads:

Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

Rule 203(d)(1)(A)(ii), SCACR. Using similar mandatory language, Rule 203(d)(1)(A) further states that “[i]n all other cases the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.” Rule 203(d)(1)(A), SCACR.

In a letter dated July 4, 2024, which accompanied the filing of the Notice of Appeal, the Appellants’ counsel justified the filing of this appeal in the Supreme Court rather than the Court of Appeals by asserting that the Appellants intended to challenge the constitutionality of the Greenville County ordinances at issue. The Appellants’ counsel wrote:

This appeal is being filed with the Supreme Court because pursuant to Rule 203(d)(ii) since the Appellant’s challenge the constitutionality of a provision of the Greenville County Zoning Ordinance, whose challenges include but are not limited to the issues that this ordinance provision purportedly treats citizen initiated text amendments differently than citizen initiated rezoning requests and purportedly requires citizen petitions for text amendments to be approved by a County Council Committee prior to being reviewed by the Planning Commission which Appellant’s allege is contrary to the provisions of the Local Government Comprehensive Planning Enabling Act of 1994, and in violation of

S.C. Const. art. VIII, §7 and S.C. Const. art. VIII, §14, among other legal issues to be more fully set forth in Appellant's brief.

See, Letter from Robert Childs, dated July 4, 2024.

On January 23, 2025, the Appellants filed their initial brief with the Court. In that brief, the issues on appeal are stated as follows:

1. Did the trial court err in failing to find the County failed to comply with the Enabling Act?
2. Did the trial court err in failing to find that the legislative intent of the Greenville County Zoning Ordinance requires a public hearing first?
3. Did the trial court err by considering an argument by the County that it is common for zoning processes and procedures to differ by jurisdiction?

See, Appellants' Initial Brief, p. 6. None of those issues raise a constitutional challenge or issue. Moreover, as a review of the arguments contained in their Initial Brief confirms, the Appellants have not raised any constitutional challenge to any Greenville County ordinances. There is no mention, let alone any discussion, of any ordinances being unconstitutional or, more specifically, in violation of equal protection.

At the time that the Notice of Appeal was filed, the Respondent was dubious that this appeal was properly filed in the Supreme Court because the Appellants' raised no constitutional challenge in the lower court. However, because the Appellants' counsel represented to the Court in his July 4, 2024 letter otherwise, the Respondent decided to await the arguments to be made in the Appellants' Initial Brief before raising this challenge and seeking a transfer to the Court of Appeals. In effect, until the initial brief was filed, a definitive determination of what issues were being raised on appeal was premature. It was certainly possible that the Appellants would raise a

constitutional issue that had not been raised in the court below, and that would have to be addressed on preservation grounds in this Court.

However, that has not occurred. At this point in the appeal, the nature of the issues raised on appeal have now been established, and there is no question that the Appellants have not raised any constitutional issue nor have met any of the other criteria set forth in Rule 203(d)(1)(A).

For those reasons, the Respondent respectfully requests that the Court, in exercise of its discretion, transfer this appeal to the Court of Appeals consistent with the application of Rule 204(a) and Rule 203(d)(1)(A).

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

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*Counsel for Respondent Greenville County
Board of Zoning Appeals*

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v.

Greenville County Board of Zoning Appeals, Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Respondent, does hereby certify that service of **Respondent’s Motion to Transfer Case to South Carolina Court of Appeals** was made upon all counsel of record by email only this the 21st day of February 2025, as follows:

Robert C. Childs, III, Esquire
Childs Law Firm LLC
Email: robert@lawyerchilds.com

s/ Andrew F. Lindemann