Exhibit A

November 14, 2025 Order of the Honorable Walton J. McLeod

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	
Sage Mill Residential, Ltd.,	)	
	)	Civil Action No. 2025-CP-02-02223
Petitioner,	)	
	)	
v.	)	**ORDER AFFIRMING DECISION OF AIKEN COUNTY PLANNING COMMISSION**
	)	
Aiken County, South Carolina and Aiken County Planning Commission,	)	
	)	
Respondents.	)	

This matter is before this Court on the Petition for Appeal filed by the Petitioner Sage Mill Residential, Ltd., which is the developer of the Hawthorne subdivision which is one phase of a planned unit development (PUD) known as Trolley Run Station located in Aiken County. A hearing was held before this Court on October 7, 2025, with all counsel of record present. After a review of the pleadings, the transcript of the Aiken County Planning Commission meeting at issue, the written submissions by the parties, the appellate record, and the oral arguments of counsel, the Court affirms the decision of the Aiken County Planning Commission at its August 21, 2025 meeting which denied the approval of the Petitioner's Subdivision Review Application and the revised preliminary plat for the Hawthorne subdivision.

BACKGROUND

This is an appeal from a decision by the Respondent Aiken County Planning Commission. On November 4, 2024, the Petitioner submitted a Subdivision Review Application and a preliminary plat with respect to the Hawthorne subdivision. That Subdivision Review Application was scheduled for a public hearing and first review by the Planning Commission on December 19,

2024. The public hearing was held on that date. At that meeting, the Petitioner requested and was granted deferral until the January 16, 2025, meeting. The Petitioner thereafter requested and was granted additional deferrals. Later, the Petitioner submitted a letter on June 17, 2025, requesting postponement until the October 16, 2025, meeting. However, on the following day, June 18, 2025, the Petitioner submitted a letter requesting postponement until the August 21, 2025, meeting. On July 7, 2025, the Petitioner submitted a revised preliminary plat with a letter responding to the staff comments from December 19, 2024.

At its meeting held on August 21, 2025, the Planning Commission received a presentation by the Petitioner's attorney, Ellis Lesemann, as well as brief comments from its design engineer, Tilden Hilderbrand, P.E. There was also a presentation from Joel Duke, who is the Chief Development Officer for Aiken County. The Planning Commission ultimately voted to deny the approval of the Subdivision Review Application and the revised preliminary plat by a 4-2 vote, with one member abstaining.

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a Circuit Court shall apply when considering an appeal from a local planning commission. In *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), the South Carolina Supreme Court cited S.C. Code Ann. § 6-29-840 in holding that the Circuit Court "must uphold the Commission decision unless there is no evidence to support it." 656 S.E.2d at 351. The Supreme Court further explained:

> We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area.

Id. The Supreme Court concluded that the "any evidence" standard had been "consistently utilized

in these types of cases." *Id*. Thus, under the prevailing standard of review, the findings of fact by the Planning Commission "must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840.

The articulation of the applicable standard of review was reaffirmed five years after *Kurschner* in the case of *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and defined the standard of review as follows: "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." 744 S.E.2d at 166.

The standard of review further provides that "[i]n determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). *See, Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004) ("[a]ppeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law"); *Bennett v. Sullivan's Island Board of Adjustment*, 313 S.C. 455, 438 S.E.2d 273, 275 (Ct. App. 1993) ([b]ecause the findings of fact by the Board of Adjustment are final and conclusive on appeal, our scope of review is limited to determining whether the decision of the Board is correct as a matter of law"). It is important to note that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004).

LEGAL ANALYSIS

I. Planning Commission Acted within its Authority to Deny Preliminary Subdivision Plat and the Decision of the Planning Commission Satisfies the Any Evidence Standard

In its Petition for Appeal, the Petitioner challenges the Planning Commission's authority to deny the Subdivision Review Application and the revised preliminary plat. The Petitioner also challenges whether the decision of the Planning Commission is supported by sufficient evidence.

By way of background, the Aiken County Planning Commission was established pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code Ann. § 6-29-310, *et seq*. In accordance with S.C. Code Ann. § 6-29-340, county planning commissions are conferred "with the power to implement and to oversee the administration of regulations for the growth and development of land." *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346, 350 (2008). According to the Supreme Court in *Kurschner*, the General Assembly intended to grant "a planning commission broad discretion in this area." 656 S.E.2d at 352. Specifically, with respect to a planning commission's quasi-judicial role in approving subdivision plans, including preliminary plats, S.C. Code Ann. § 6-29-1150(A) states:

> 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.

S.C. Code Ann. § 6-29-1150(A). Aiken County Ordinances § 17-19(b)(2)(b) broadly authorizes the Planning Commission "to oversee the administration of the regulations [for the subdivision or development of land] that may be adopted." Aiken County Ordinances § 24-10.10.5(10(c) further state that "[i]n its deliberation, the planning commission shall approve, approve conditionally, or disapprove the plat."

The Respondents argue that the Aiken County Planning Commission at its August 21, 2025, meeting exercised that "broad discretion" in reviewing the Petitioner's revised preliminary plat and the July 7, 2025, letter responding to the staff comments from December 19, 2024. Based

on that review, the Planning Commission voted by a 4-2 vote to deny the approval of the Subdivision Review Application and the revised preliminary plat.

The Petitioner has appealed to the Circuit Court raising a number of issues as follows: "The Planning Commission's failure to approve the Preliminary Plat was based on errors of law, was made on the basis of improper considerations, did not follow the legally applicable criteria, had no legal evidence to support it, and/or was the result of arbitrary and unreasonable action, including the motion by Bodie to deny the Preliminary Plat because the Applicant had allegedly 'failed to provide requested information.'" *See*, Petition for Appeal, ¶ 50. The Petitioner further alleges: "Any denial of a preliminary plat must be based on evidence that the preliminary plat does not conform with applicable ordinances or the Comprehensive Plan. There is no evidence of non-conformity in this record." *See*, Petition for Appeal, ¶ 51.

In its appellate brief filed on October 6, 2025, as well as during oral argument before this Court, the Petitioner argues the same issues as errors of law and as constituting an "abuse of discretion" and being "arbitrary and capricious." During the oral argument, the Respondents claimed that the Petitioner's positions were largely based on the speculation and argument of counsel for which there is no evidence in the record. This Court agrees with the Respondents that its review is limited to the evidence as presented in the record. The assertions or arguments of counsel are not evidence. *See*, *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered"); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are ... not evidence").

Based on what is in the record before this Court as gleaned from the Court's review of the record and the transcript of the August 21, 2025, meeting, the Petitioner is claiming that the Planning Commission's decision to deny approval of the Subdivision Review Application and the

revised preliminary plat is unsupported by any evidence. The Petitioner argues that there is no evidence that it failed to provide supporting information needed for the approval of the Subdivision Review Application and the revised preliminary plat for the Hawthorne subdivision. The Petitioner further alleges that the Planning Commission erred in its interpretation and application of Aiken County Ordinance § 24.7.3(4)(a), which provides: "Dead-end streets designed to be permanently closed at one (1) end shall not exceed two thousand five hundred (2,500) feet in length, measured from the right-of-way of the connecting street to the center point of the turn-around." After reviewing these issues in accordance with the standard of review articulated by the Supreme Court, the Court finds that the Planning Commission's ruling are supported by evidence in the record and do not constitute an error of law.

First, the record contains evidence that the July 7, 2025, letter of Tilden Hilderbrand responding to the staff comments from December 19, 2024, was not fully responsive to the issues raised therein. There are several responses by Hilderbrand to specific comments where he declined to provide the requested information or declined to make the requested revisions. A review of those responses shows there are several responses where Hilderbrand took the position that the requests were "not required" for various reasons. This Court concludes that the failure of Mr. Hilderbrand to respond to various comments, which are in the record, meets the "any evidence" standard and supports the Planning Commission's decision that "the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and Commission."

Additionally, prior to August 21, 2025, meeting, the record reflects that Joel Duke sent an email to Denise Fulmer, a representative of the Petitioner, where he raised concerns about the Hawthorne plat "exceed[ing] the dead-end corridor maximum distance" as established in Aiken County Ordinance § 24.7.3(4)(a). The Petitioner takes the position that the interpretation and

application of this ordinance is legally erroneous. However, as demonstrated by the discussion in its appellate brief filed October 6, 2025, the Petitioner has assumed that the concerns with the dead-end corridor maximum distance focus on Keagen Boulevard. A review of the preliminary plat for the Hawthorne subdivision, however, shows that Keagen Boulevard does not traverse or enter the Hawthorne subdivision.

Instead, as the record reflects, the concerns that were articulated by Joel Duke and the members of the Planning Commission likely focused on Milligan Avenue, which is a north-south roadway that is designed to tie into Keagen Boulevard to the south but which dead-ends to the north. The concern is that the Hawthorne subdivision is entirely within the approved PUD, but the property to the north of the Hawthorne subdivision is outside the approved PUD. Thus, any future development into which the north-end of Milligan Avenue could ultimately be connected is outside the scope of the approved PUD. For that reason, the County planning staff had had discussions with the Petitioner about revising the PUD, but that approach was rejected by the Petitioner whose attorney conceded that the application for a revised PUD "was withdrawn in the spring." (Tr. 13:5-6).

During the hearing, Joel Duke explained the issue as follows:

> The Hawthorne subdivision is an extension or is off of a road that runs north from the extension of Keagen Boulevard, but there are – there's nothing in the – in the record that shows that there will ever be a connection to Catenary or any other existing continuous street.

(Tr 15:16-22). The Court understands from the plats in evidence that the reference to Catenary Boulevard is an east-west street to the north of the Hawthorne subdivision, and any future westward expansion of Catenary Boulevard will be outside the approved PUD. That led Joel Duke to comment:

> The continuation of the PUD being withdrawn, that is not – I mean, this is within the PUD absolutely [referring to Hawthorne]. But

> there is no definition or definitive answer for the Commission as to whether or not these roads will continue at a future date.

(Tr. 14:12-17). Duke further explained:

> Again, as I mentioned before, there are two – there's east-west road Keagen and Catenary that basically (inaudible). It's been indicated in documents that have been provided to you but withdrawn that there will be a connection in the future, but that's not something that you can look at with any certainty. The applicant has actually represented that that's not a valid conversation at this point. So I would say to that, yes, that question about whether or not there's a dead-end corridor still exists.

(Tr. 15:23-16:9). Duke closed his comments by again stating that "[a]t this point you're over the distance, and you don't have any certainty as to when you're going to see connection." (Tr. 31:23-25). He also pointed out that the Petitioner was given options to provide the necessary certainty, but the Petitioner rejected such options:

> I would – I would submit that the Commission has offer the applicant opportunities to go ahead and solve that question with a – with a minor amendment to the PUD to show that connection or with a – a discussion about the remainder of the property that they have discussed as being part of the planned development. I think there are certainly ways to get that certainty. But that's – and it seemed that we were on that path to arrive at that until that was withdrawn at end of last year.

(Tr. 32:4-15).

While the Petitioner's counsel was permitted to and attempted to respond to Duke's concerns with the dead-end corridor maximum distance during the August 21, 2022 meeting, he never addressed the concerns with Milligan Avenue dead-ending at its north end within the Hawthorne subdivision or that the property to the north could not be counted on with certainty for future development because it was outside the approved PUD and the Petitioner had withdrawn the application to revise the PUD to include those areas. In its Petition for Appeal, the Petitioner makes no mention of the dead-end of Milligan Avenue at its north end within the Hawthorne subdivision and only addresses the south-end that ties into the traffic circle within the Ashland

subdivision (although the Petitioner misidentifies Milligan Avenue as Trolley Run Boulevard). *See*, Petition for Appeal, ¶ 31. Likewise, in its appellate brief filed October 6, 2025, the Petitioner only addresses the dead-end corridor maximum distance with respect to Keagen Boulevard, which again, is not a street within the Hawthorne subdivision.

In sum, the Court agrees with the Respondents that the Planning Commission was acting within its "broad discretion" per the *Kurschner* decision to deny the Subdivision Review Application and the revised preliminary plat for Hawthorne subdivision because the Petitioner failed to address the dead-end corridor maximum distance associated with the northern end of Milligan Avenue and specifically did not provide any assurances of future connectivity with Catenary Boulevard which would be outside of the approved PUD. The Petitioner's counsel was given the opportunity to address that issue before the Planning Commission and failed to do so.

While the Petitioner's counsel addressed the issue before this Court, his arguments were raised for the first time on appeal, which is untimely, and additionally, those arguments do not compel finding of any legal error committed by the Planning Commission. To the contrary, this Court finds that the record from Planning Commission includes sufficient evidence to satisfy the "any evidence" standard. Additionally, the dead-end corridor maximum distance associated with the northern end of Milligan Avenue is a legitimate issue of concern which this Court does not view as "arbitrary" or "capricious."

Likewise, the Petitioner has not demonstrated any abuse of discretion. To reiterate, the Planning Commission is bestowed by state law and local ordinances with "broad discretion" to administer the land development regulations, and that is what the Planning Commission did with its vote to deny approval of the Petitioner's Subdivision Review Application and the revised preliminary plat. Simply put, there is evidence in the record to support the Planning Commission's decision. Accordingly, this Court concludes that the Petitioner's appeal should be denied.

II. Petitioner's Final Ground was Not Raised in its Petition for Appeal

As the final argument in its appellate brief filed October 6, 2025, the Petitioner argues that the Planning Commission "may have failed to take any action on the July 7, 2025 revised submission within the required sixty-day period." *See*, Petitioner's Brief, pp. 8, 14-16. The Respondents, however, have pointed out that this is a ground for appeal that is not included in the Petition for Appeal, and as a result, is not properly or timely raised on appeal. This Court agrees.

As the record shows, the Petitioner attempts to assert this new, unpled argument without even attempting to amend its Petition for Appeal. However, South Carolina law does not permit an amendment of the Petition for Appeal more than thirty days after the appeal is filed. Thus, this Court is precluded from even considering the Petitioner's appellate brief filed October 6, 2025, as an amendment of the Petition for Appeal. This issue is governed by the Court of Appeals' decision in *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). In that case, the Court of Appeals ruled that "the circuit court correctly refused Austin's request to amend the petition after the expiration of [the] 30-day period for filing the appeal." 606 S.E.2d at 214. The Court of Appeals explained that "[w]hen reviewing a Board decision, the circuit court sits as an appellate court," and as such, the Rules of Civil Procedure, including Rule 15, does not apply to nor authorize amendments of a notice of appeal. The Court of Appeals further explained:

> The procedures governing appeals of Board decisions to the circuit court are prescribed by statute. Section 6-29-820 requires that the aggrieved party must file a written petition with the clerk of court "setting forth plainly, fully, and distinctly why the decision is contrary to law." Furthermore, this petition "must be filed within thirty days after the decision of the board is mailed." The statute makes no provision for amendment of the grounds set forth in the petition.

606 S.E.2d at 213. (Citation omitted).

The same is true for appeals from a local planning commission to the circuit court. The appeal in this case was filed pursuant to S.C. Code Ann. § 6-29-1150, which includes no provision

for the amendment of the notice of appeal. Thus, as dictated by the decision in *Austin*, the Petitioner is precluded from amending its Petition for Appeal filed on August 26, 2025, and certainly is prohibited from asserting a new, unpled ground for reversal after the thirty-day appeal time has expired. As such, this Court declines to consider the Petitioner's "sixty-day" argument as untimely asserted.

IT IS, THEREFORE, ORDERED that the Petitioner's appeal is denied and the Court hereby affirms the decision of the Aiken County Planning Commission from its August 21, 2025, meeting which denied the approval of the Petitioner's Subdivision Review Application and the revised preliminary plat for the Hawthorne subdivision as a phase of the Trolley Run Station PUD

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

Aiken Common Pleas

Case Caption: Sage Mill Residential Ltd VS Aiken County South Carolina , defendant, et al

Case Number: 2025CP0202223

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod