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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas for the Second Judicial Circuit

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No.: 2026-000123
Trial Court Case No.: 2025-CP-02-02223

Sage Mill Residential, Ltd., Appellant,

v.

Aiken County, South Carolina and Aiken County Planning Commission, Respondents,

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INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On August 21, 2025, the Planning Commission arbitrarily and unlawfully denied Sage Mill preliminary plat application for "Hawthorne," a 102-lot residential development, without identifying any specific provision of the County's Comprehensive Plan or Land Management Regulations with which the plat did not conform. The circuit court upheld the Planning Commission's decision notwithstanding the lack of any competent basis for the denial in the administrative record. The circuit court also refused to apply the correct standard of review and, in doing so, committed a reversible error.

For more than 20 years, Sage Mill has been the developer of a planned unit development located in Aiken County known as "Trolley Run Station," which has involved multiple phases. (Pet. p. 1.) The current phase, known as "Hawthorne at Trolley Run Station" ("Hawthorne"), is a single-family residential development project consisting of one hundred two (102) single family homes. Hawthorne is located within the existing Trolley Run Station PUD that was approved by Aiken County in 2006 and is currently zoned "PUD A." The acreage that constitutes Hawthorne sits within a portion of TMS # 068-00-02-001 and a portion of TMS # 087-00-01-004. (Pet. pp. 1 – 2.) Initially, the County's "Chief Development Official," Joel T. Duke, who wields substantial influence over the County's Planning Commission, claimed that Hawthorne was outside of the existing PUD. Mr. Duke eventually abandoned his position but pivoted to telling Sage Mill that no more applications within the existing PUD would be approved unless Sage Mill requested and obtained an amendment to the PUD that would significantly expand the size of the PUD. (Pet. p. 3.)

On November 5, 2024, the Hawthorne Application for Preliminary Plat Approval was submitted to the County by Sage Mill's project team, Hass & Hilderbrand, Inc. (Pet. p. 3.) The

November 5, 2024 preliminary plat application was placed on the Planning Commission's agenda for its December 19, 2024 meeting. (Mem. Supp. Appeal p. 4.) Based on the County's policies and published meeting schedule, the Planning Commission was required to take action on the preliminary plat application during the public hearing on December 19, 2024. (Pet. pp. 3 – 4.) However, Sage Mill was prevented from asking the Planning Commission to vote on the proposal during the December 19, 2024 meeting because Joel Duke did not provide the Planning Department's response and comments to the application until a few hours prior to the December 19, 2024 meeting. Sage Mill could not address the comments before the meeting that same day. (Pet. pp. 3 – 4.) As a result, Sage Mill was forced to seek deferral of the Planning Commission's vote until the next meeting on January 16, 2025. Otherwise, the Planning Commission would almost certainly have denied the application based on the unresolved, belated comments received from Mr. Duke earlier that day, which would have resulted in a one-year waiting period before an application can be resubmitted. Notably, zero (0) citizens spoke in opposition to Petitioner's application. (Pet. pp. 3 – 5.)

On January 15, 2025, the day before the next meeting, Joel Duke emailed Sage Mill to state that the Planning Commission would not recommend approval of, or even consider, the Preliminary Plat for Hawthorne or any other subdivision that was approved in the 2006 PUD unless and until Sage Mill submits and obtains approval for an additional PUD relating to other parcels, *i.e.,* "Trolley Run Station PUD, Phase 2." (Pet. p. 5; Ex. A to Pet.) Within the email, Mr. Duke indicated that he had engaged in outside communications with one or more Planning Commissioners outside of the regular process and stated that he was of the impression that they agreed with him, *i.e*., that Sage Mill be required to expand the existing PUD or obtain an additional PUD in order to receive action on a preliminary plat application that is within the existing PUD.

(Ex. A to Pet.) As the County's Chief Development Official, Mr. Duke's message to Sage Mill was clear: either submit to Mr. Duke's request or refuse and face certain denial by the Planning Commission. (Pet. pp. 5 – 6.) Based on the County's statements the day before the meeting, Sage Mill again sought deferral of the Planning Commission's review of the Preliminary Plat during the Planning Commission's meeting on January 16, 2025. (Pet. p. 6.)

On June 18, 2025, counsel for Sage Mill asked that the preliminary plat application for Hawthorne be placed on the agenda for the Planning Commission's August 21, 2025 meeting.[1] (Pet. p. 6.) On July 7, 2025, in accordance with the County's published meeting schedule, Sage Mill submitted a revised preliminary plat (the "Revised Preliminary Plat") addressing the comments from the prior submission. (Ex. C to Pet.; HAWTHORNE pp. 0204 – 0207.) During the work session held immediately prior to the August 21, 2025 meeting, Joel Duke stated that Sage Mill had "demanded" that action be taken on the Revised Preliminary Plat prior to the expiration of the County's 45-day review period. (Pet. p. 11.) However, because August 21, 2025 is forty-five (45) calendar days after July 7, 2025, which was also the published submission deadline, Mr. Duke's statement is false, because action by the Planning Commission was required to be taken by state law, not due to any demand by Sage Mill. Furthermore, during the 45-day period between the submission of the Revised Preliminary Plat and the meeting on August 21, 2025, Mr. Duke chose to not issue a staff report or issue any comments regarding the July 7, 2025 submission. (Pet. p. 11; Mem. Supp. Appeal p. 5.)

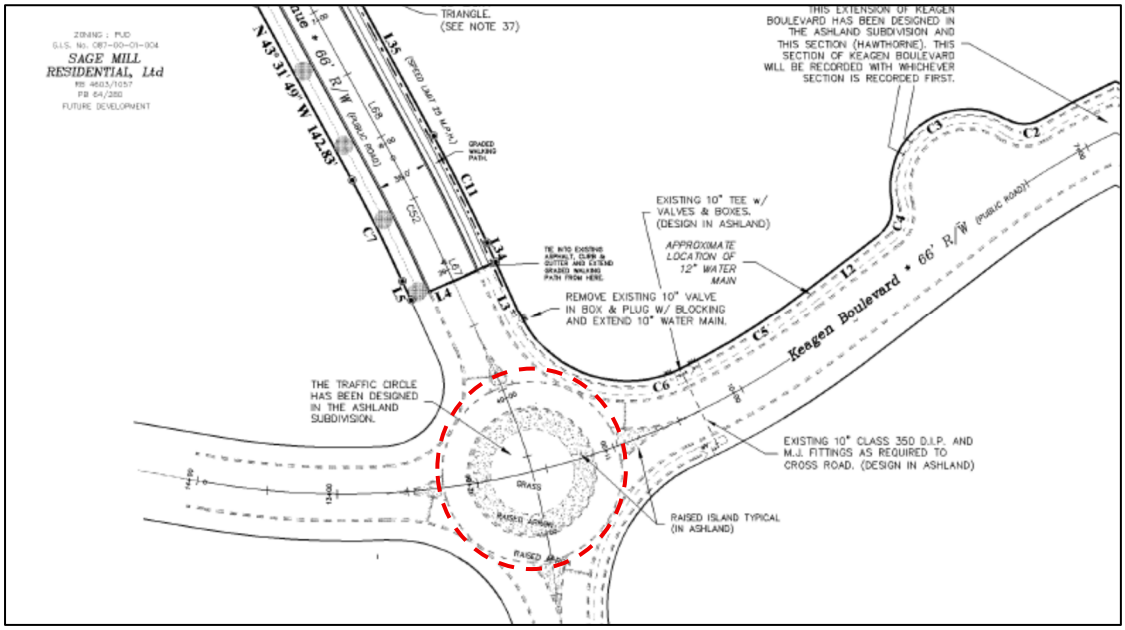
[1] Although the November 5, 2024 preliminary plat submission was superseded by Sage Mill's Revised Preliminary Plat submitted on July 7, 2025, the agenda packet for the August 21, 2025 meeting included comments about the November 5, 2024 preliminary plat submission only.

A. August 21, 2025 Planning Commission Meeting

During the August 21, 2025 meeting, Sage Mill provided a presentation relating to the Revised Preliminary Plat through legal counsel and the engineer of record, Tilden Hildebrand, P.E. (HAWTHORNE pp. 0084 – 0110.) The Chairman of the Planning Commission, Jason Palmer, repeatedly interrupted Sage Mill's presentation by interjecting a series on objections. (HAWTHORNE p. 0092, lines 11 – 15.) Each of Mr. Palmer's objections was conclusively addressed. The Chairman's first asserted objection related to the "outstanding concern of 2,500 feet of ingress/egress." (HAWTHORNE p. 0093, lines 15 – 20.) In response, Mr. Duke suggested that the road design might violate the County's length requirements applicable to "dead end streets" absent certainty when the road would connect in the future. (HAWTHORNE p. 0094, line 19 – p. 0097, line 9.) Mr. Duke responded that the "question about whether or not there's a dead-end corridor still exists." (HAWTHORNE p. 0097, lines 8 – 9.)

Under the Aiken County Land Management Regulations, a "dead-end street" is "[a] street with a single common ingress and egress point and without a turnaround at the end." *See* Aiken Co. Land Mgt. Reg. § 24-2.10.12 ("*Street, dead-end.* A street with a single common ingress and egress point and without a turnaround at the end.") The length requirement cited by the Chairman states as follows: "***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." *See* Aiken Co. Land Mgt. Reg. § 24-7.3.4 (emphasis added). Sage Mill, through counsel and the engineer of record, explained that the Revised Preliminary Plat does not involve a dead-end street under the County's ordinances, by definition and as applied. (HAWTHORNE p. 0097, line 15 – p. 0099, line 18; HAWTHORNE p. 0102, line 2 – p. 0106, line 7.) A review of the Revised Preliminary Plat, even by a layperson,

confirms that Trolley Run Boulevard is not "designed to be permanently closed at one (1) end," as there is a traffic circle shown with roads or stub-outs going in all four directions:



(HAWTHORNE p. 0208; Pet. p. 9; Mem. Supp. Appeal pp. 6 – 7; red circle added for emphasis.) The traffic circle is already under construction, which was known to the Planning Commission and to Mr. Duke during the August 21, 2025 meeting, as the Planning Commission had previously approved its construction. (Pet. p. 9.) It is illogical to consider a traffic circle to be a dead-end street. Mr. Hilderbrand, a licensed engineer and principal of Hass & Hilderbrand, Inc., confirmed during the August 21, 2025 meeting that "if there were no plans to extend the road, then you wouldn't stub out a traffic circle in four directions." (HAWTHORNE p. 0102, lines 10 – 12.)

Furthermore, the County and the Planning Commission have regularly approved subdivision plats with roads exceeding the stated distance of 2,500 feet where the roads have incorporated turnarounds with sufficient radius to accommodate emergency vehicles or that have stub-outs and features, like with Trolley Run Boulevard, which indicate that the road is not designed to be permanently closed. (HAWTHORNE p. 0098, line 2 – p. 0100, line 18; Pet. p. 10.) In an email submission to the County on August 21, 2025, Sage Mill identified at least ten

neighborhoods in Aiken County previously approved with corridors exceeding 2,500 feet where stub-outs or interim turnarounds were present. (Pet. p. 10.) Sage Mill recited this list to the Planning Commissioners and to Mr. Duke during the August 21, 2025 meeting. (HAWTHORNE p. 0098, lines 10 – 20; p. 0100, lines 7 – 10. One example discussed during the August 21, 2025 meeting is the Ashland Subdivision within Trolley Run that was previously approved by the Planning Commission. Mr. Duke attempted to explain that, although it was true that the prior applications had been approved, the Planning Commission was now taking a different approach. (HAWTHORNE p. 0100, line 8 – p. 0101, line 14.) Notwithstanding the fact that Hawthorne is one of multiple phases within the existing Trolley Run Station PUD, which has already been considered and approved by the County, the Planning Commission's Chairman expressed his "personal feeling that we're just adding more homes, more roadways without any relief to that area that is already a concern for the County and DOT." (HAWTHORNE p. 0106, lines 14 – 17.)

Planning Commissioner Robert "Lee" Bodie made a motion to deny the Revised Preliminary Plat. As indicated in the transcript of the August 21, 2025 meeting, Mr. Bodie moved to deny the application on the following basis:

> I move to deny the application because I believe the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission.

(HAWTHORNE p. 0113, lines 18 – 23.) The motion passed by a 4-2 vote, with one member abstaining. (HAWTHORNE p. 0115, lines 22 – 23.) Three of the Commissioners who voted to deny the Revised Preliminary Plat were included in the email from Mr. Duke dated August 15,

2025 that was sent outside of the Planning Commission meeting to three members who voted to deny Sage Mill's application, but not to the other members.[2] (Pet. p. 6.)

During the August 21, 2025 meeting, the Sage Mill team presented the fully compliant Revised Preliminary Plat and no evidence or explanation was presented by the Planning Commission or the County to show that the Revised Preliminary Plat did not comply with the County's Land Management Regulations or the Comprehensive Plan. Although Mr. Duke and the Chairman of the Planning Commission attempted to raise the issue of corridor distance, their position is contradicted by the language of the ordinance and the interpretation that has been applied by the County for decades. In fact, Mr. Duke acknowledged during the meeting that the language of the ordinance "does state – there's no way to – to state otherwise that is says, 'designed to be permanently closed at one end.'" (HAWTHORNE p. 0112, lines 12 – 18.) Nevertheless, the Planning Commission applied an arbitrary and contradictory interpretation to deny the Revised Preliminary Plat.

B. Appeal to the Circuit Court

On August 26, 2025, Sage Mill filed the Petition of Appeal with the circuit court in accordance with S.C. Code § 6-29-1150 on the grounds that 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." (Pet.; Mem. Supp. Appeal.)

[2] The three members of the Planning Commission included on the email were: (i) Jason Palmer; (ii) Liz Stewart; and (iii) Lee Bodie, each of whom voted to deny Sage Mill's application.

A hearing on the Petition for Appeal was held on October 7, 2025. The undersigned counsel appeared on behalf of Sage Mill. Andrew Lindemann appeared on behalf of Respondents. During the hearing, counsel for Respondents argued that the information that was lacking "obviously" related to Milligan Avenue. (Hearing Tr. 36 – 40.) No mention of Milligan Avenue was made at any time during the August 21, 2025 Planning Commission meeting. (HAWTHORNE pp. 0082 – 0116.) In fact, the word "Milligan" does not appear once in the hearing transcript, (HAWTHORNE p. 121). Nor was "Milligan Avenue" a basis for the motion to deny. (HAWTHORNE p. 0113, lines 18-23.) The alleged concern relating to Milligan Avenue was not obvious to Sage Mill because it was never cited as a concern by the County or the Planning Commission. Likewise, it was not "obvious" to Tilden Hilderbrand, the Engineer of Record for Hawthorne, who addressed the issue raised by Joel Duke and members of the Planning Commission during the August 21, 2025, Planning Commission meeting relating to the length of Keagen Boulevard. (HAWTHORNE p. 0096, lines 16 – 25; HAWTHORNE p. 0102, lines 2 – p. 0103, line 10.) Neither Mr. Duke nor any member of the Planning Commission indicated an issue relating to Milligan Avenue.

In affirming the decision of the Planning Commission, the circuit court concluded that the "any evidence" standard was met because Mr. Hilderbrand, the Engineer of Record for Hawthorne, failed to respond to "various comments" without further analysis into whether the Planning Commission had articulated a discernible, ordinance-based request for the information sought in response to the "various comments." (Order p. 6.) The Circuit Court was informed of the applicable exceptions and relevant modifications to the "any evidence" standard that are applicable to this case, but refused to apply them. In addition, the circuit court found that Sage Mill "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." (Order p. 9.) The circuit court found that Sage Mill's "counsel was given the opportunity to address that issue before the Planning Commission and failed to do so." (Order, p. 9.) The circuit court found that the concerns by Joel Duke and the member of the Planning Commission in denying the Revised Preliminary Plat "***likely*** focused on Milligan Avenue," a factual determination that has no basis in the record before the Planning Commission. (Order p. 7.) The transcript of the August 21, 2025 Planning Commission meeting confirms that the northern end of Milligan Avenue was not raised by the Planning Commission or the County during the August 21, 2025 meeting of the Planning Commission. (HAWTHORNE pp. 0082 – 0116.) Milligan Avenue is entirely absent from the administrative record but appears throughout the Order affirming the Planning Commission's decision. (Order pp. 7 – 9.)

The circuit court did not rule on the issue raised by Sage Mill relating to the Planning Commission's interpretation of the term "dead-end street" being contrary to the plain wording of the County's Ordinances. (Pet. pp. 9 – 12.) The circuit court found that Sage Mill waived this argument because Sage Mill "failed to address the dead-end corridor maximum distance associated with the northern end of Milligan Avenue." (Order p. 9.) This was circular reasoning; an applicant would not be expected to address something (i.e., Milligan Avenue) that was never raised. Separately, the illegitimacy of the County's proffered interpretation of the term "dead-end street" was discussed at length during the August 21, 2025 Planning Commission meeting, with specific reference to Keegan Boulvard. (HAWTHORNE p. 0097, line 15 – p. 0099, line 18; HAWTHORNE p. 0102, line 2 – p. 0106, line 7.) The alleged concern regarding Milligan Avenue was never raised by the Planning Commission or Joel Duke, is entirely absent from the record of the August 21, 2025 meeting of the Planning Commission, and was advanced by for the first time during the

circuit court appeal by Respondents, not Sage Mill. Throughout this frustrating exercise, the fact that there are no "dead end streets" within the proposed development somehow got lost, even though Sage Mill dutifully repeated this fact until it was blue in the face. The same result occurred when Sage Mill reiterated that the legal standard was different in this case because it involved application of a zoning ordinance. After receiving the Court's ruling, Sage Mill filed a motion for reconsideration, which was denied December 18, 2025.

STANDARD OF REVIEW

S.C. Code § 6-29-840, provides that "[t]he **findings of fact** by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." *Id.* (emphasis added). A decision of a county planning commission will be overturned on appeal where the findings "have no evidentiary support," or the Planning Commission "has committed an error of law." *See Grays Hill Baptist Church v. Beaufort Cnty.,* 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020). Separately, however, a decision of a zoning board (such as a planning commission) "will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose," or when the commission "has abused its discretion." *Id*. In addition, a decision will not be upheld where it is "based on errors of law, where there is no legal evidence to support it." *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 174, 656 S.E.2d 346, 351 (2008) An abuse of discretion occurs when a decision is based upon an error of law or lacks evidentiary support. *See, e.g., Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 103, 825 S.E.2d 721, 724 (Ct. App. 2019) ("An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the [c]ourt's order is based on factual conclusions without evidentiary support").

Additionally, South Carolina law calls for a modified standard of review if the issue before a zoning board concerns the construction of an ordinance. "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, '**a broader and more independent review is permitted when the issue concerns the construction of an ordinance.**'" *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (internal citation omitted) (emphasis added); *see also Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals*, 424 S.C. 358, 361, 818 S.E.2d 30, 31 (Ct. App. 2018) (confirming that "[i]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.")

"As to questions of law, this [C]ourt's standard of review is de novo." *Id*. The South Carolina Supreme Court has recognized that while great deference is accorded the decisions of those charged with interpreting and applying local ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *See Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995); *see also Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals*, 424 S.C. 358, 361, 818 S.E.2d 30, 31 (Ct. App. 2018) ("Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.") Furthermore, when the issue involves a ***zoning*** ordinance, an additional modification to the standard of review for a decision from a zoning board applies:

> [O]rdinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose."

Keane/Sherratt P'ship by Keane v. Hodge, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987), citing *Purdy v. Moise,* 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953).

ARGUMENT

It defies common sense to allow the Planning Commission to arbitrarily deny a preliminary plat that complies with the County's Ordinances and regulations. It is contrary to public policy to invoke the "any evidence" standard to uphold an arbitrary and capricious decision by a local Planning Commission that is not grounded in the governing ordinances and regulations. Section 6-29-1150(B) provides that "[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." *See* S.C. Code § 6-29-1150(B) (emphasis added). When denying an application for preliminary plat approval, the Planning Commission must provide "[t]he reasons for disapproval" and "***shall*** refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform." *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5 (emphasis added). The clear purpose of these mandates is to prevent subjective or arbitrary denials for reasons that are not articulated to the property owner. Respondents convinced the circuit court to uphold the decision of the Planning Commission based on a nonexistent dead-end street (Milligan Avenue) that is different from the nonexistent dead-end street discussed during the Planning Commission meeting (Keagan Boulevard). As confirmed by the record, no deficiencies or nonconformities were identified by the Planning Commission in denying the Revised Preliminary Plat. Commissioner Lee Bodie moved to deny the revised application on that alleged basis that the applicant "failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission" without guidance on how to correct the application. (HAWTHORNE p. 0113, lines 18 – 23.) The decision of the Planning Commission violates the County's Ordinances and regulations, as well as South Carolina law

which does not permit an arbitrary and capricious decision to be sustained under the "any evidence" standard.

Accordingly, the Order affirming the decision of the Planning Commission should be reversed and the Revised Preliminary Plat should be approved in accordance with the County's applicable ordinances and regulations.

I. THE CIRCUIT COURT ERRED BY AFFIRMING THE PLANNING COMMISSION BASED ON MATTERS OUTSIDE THE ADMINISTRATIVE RECORD

The alleged concern regarding Milligan Avenue was never raised by any member of the Planning Commission or by Joel Duke during the August 21, 2025, meeting and is entirely absent from the administrative record. Respondents first raised the alleged issue with Milligan Avenue after Sage Mill filed the statutory appeal with the circuit court. (Mem. in Opp. to Appeal pp. 7 – 9.) Sage Mill learned of the alleged issue involving the northern end of Milligan Avenue on October 7, 2025 when counsel for Respondents argued that the denial of the Revised Preliminary Plat was due to Milligan Avenue, not Keagan Boulevard. (Hearing Tr. p. 36, line 25 – p. 38, line 23; Mem. in Opp. to Appeal pp. 7 – 9.) The circuit court accepted the Respondents' post hoc arguments and affirmed the Planning Commission's decision based on the theory that Sage Mill "failed to address the dead-end corridor maximum distance associated with the northern end of Milligan Avenue." (Order p. 9.) The circuit court exceeded its appellate role by affirming the decision of the Planning Commission.

When reviewing the decision of a planning commission, the circuit court sits as an appellate court. *See Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004). In that appellate capacity, the circuit court's review is "strictly limited to the facts and arguments raised to the [Planning Commission] below" and it is "expressly forbidden from considering any

new facts." *Id.* (*citing* S.C. Code § 6-29-840(A), which provides that the circuit "court may not take additional evidence"). However, where the certified record is insufficient for review, the proper remedy is remand to the Board or Commission for rehearing. *See* S.C. Code § 6-29-930(A) (providing that "[i]n the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing"). The circuit court's role as an appellate reviewer stands in "stark contrast" to its role as a factfinder in original jurisdiction proceedings. *See Austin*, 362 S.C. at 38, 606 S.E.2d at 214. Thus, although the circuit court may rely on uncontroverted facts appearing in the record, even if not expressly included in the Board's findings, it may not reach beyond the record to find or consider new facts. *See Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 491–92, 536 S.E.2d 892, 898 (Ct. App. 2000). By adopting the County's arguments that were raised for the first time on appeal and not supported by any evidence in the record, the circuit court committed reversable error.

A. The Alleged Concern Regarding Milligan Avenue Was Never Raised Before the Planning Commission and Was Advanced for the First Time During the Circuit Court Appeal.

On October 7, 2025, after Sage Mill's appeal was already pending, Respondents first introduced the alleged issue relating to Milligan Avenue. (Hearing Tr. p. 36, line 25 – p. 41, line 20; Mem. in Opp. to Appeal pp. 7 – 9.) During the hearing before the circuit court, counsel for Respondents argued it was appropriate "for the Planning Commission to be concerned about the failure to comply with the ordinance dealing with dead-end corridor maximum distances with that north end of Milligan Avenue." (Hearing Tr. p. 41, lines 5 – 10.) Respondents argued that Joel Duke and the members of the Planning Commission were "focused" on Milligan Avenue, and that these "concerns" were articulated to Sage Mill. (Mem. in Opp. to Appeal p. 7.) Respondents

assured the circuit court that "the record reflects" that these alleged "concerns" were "focused on Milligan Avenue" and "articulated by Joel Duke and the members of the Planning Commission" to the Sage Mill team. (Mem. in Opp. to Appeal p. 7.) These assurances are not supported by evidence or citations to the record or references to the record. The Planning Commission's record contains no findings of fact concerning the northern end of Milligan Avenue, or even any discussion about the northern end of Milligan Avenue. To the extent that Milligan Avenue had been a legitimate issue of concern, such concern was never articulated to Sage Mill.

Rather than confining its review to the record, the circuit court found that the northern end of Milligan Avenue was "a legitimate issue of concern which this Court does not view as 'arbitrary' or 'capricious.'" (Order, p. 9.) The circuit court improperly substituted its own judgment for that of the Planning Commission by relying on facts outside the record based on additional evidence that the Planning Commission apparently had not considered prior to October 7, 2025. Because the Planning Commission made no findings regarding Milligan Avenue, there is no record basis upon which the circuit court could affirm the Commission's decision on that ground. The circuit court's independent fact-finding in this statutory appeal from the decision of the Planning Commission pursuant to S.C. Code § 6-29-1150 was an error that warrants reversal of the Order.

B. Because the Planning Commission Made No Discussion or Findings Regarding "Milligan Avenue," There Was No Evidentiary Basis for the Circuit Court to Affirm on that Ground.

As grounds for the statutory appeal to the circuit court pursuant to S.C. Code § 6-29-1150, Sage Mill alleged that the Planning Commission abused its discretion and acted arbitrarily in denying the Revised Preliminary Plat by failing to "refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform," which is a legal requirement in order to deny a preliminary plat. (Pet. pp. 12 – 13.) The

Planning Commission's August 21, 2025 decision lacked any evidentiary or factual foundation in the record for the denial. After the statutory appeal to the circuit court had been pending for six (6) weeks, Respondents advanced the alleged concern regarding Milligan Avenue for the first time. In response, Sage Mill pointed out the fact that the Planning Commission had never articulated any concern relating to Milligan Avenue prior to Sage Mill's statutory appeal, as confirmed by the Planning Commission's record. (Hearing Tr. p. 44, lines 14 – 15.) The circuit court dismissed Sage Mill's argument on the ground that it was "raised for the first time on appeal."(Order, p. 9.) As a result, Sage Mill was deprived of meaningful appellate review of the issue raised in the statutory appeal.

South Carolina law recognizes that a decision that lacks a discernible reason in the record is, by definition, arbitrary and an abuse of discretion. *See Johnson v. Johnson*, 296 S.C. 289, 304, 372 S.E.2d 107, 115 (Ct. App. 1988). The basis for Sage Mill's appeal to the circuit court was the Planning Commission's failure to articulate, on the record, a discernible reason for denial of the revised application with reference to the specific parts of the comprehensive plan or land management regulations chapter with which the plat does not conform. The post-hoc issue regarding Milligan Avenue, which is not included in the Planning Commission's record, falls squarely within the proper scope of an appeal from the decision of a planning commission. *See, e.g., Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 174, 656 S.E.2d 346, 351 (2008) (holding that courts reviewing planning commission decisions must determine whether the decision is supported by any evidence in the record). The circuit court erred in dismissing Sage Mill's argument as waived without resolving the issue on the merits. As a result, the circuit court issued a ruling in the Order that was based on an error of law and not supported by the evidence. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (recognizing that

a trial judge's decision that was based on an error of law or is not supported by the evidence will not be upheld). Accordingly, the Order should be reversed.

II. THE PLANNING COMMISSION ACTED ARBITRARILY AND CAPRICIOUSLY BY CHANGING ITS CORRIDOR LENGTH REQUIREMENTS BASED ON AN INCORRECT CONSTRUCTION OF THE ORDINANCE

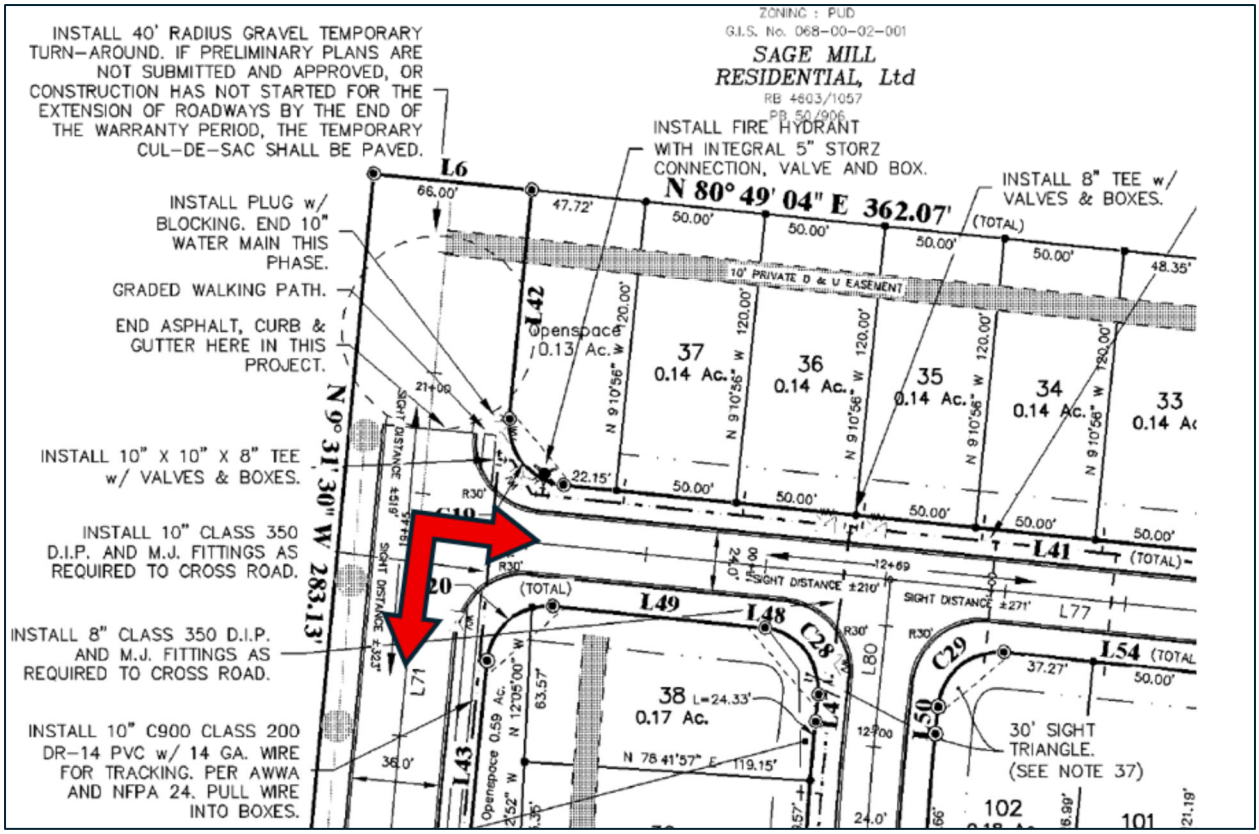
The Planning Commission applied an incorrect and misguided interpretation of "dead-end street" that is contrary to the plain language of the County's Ordinances and violates the rules of construction applicable to zoning ordinances. The arbitrary and capricious decision by the Planning Commission to deny the Revised Preliminary Plat cannot be salvaged by the "any evidence" standard. *See Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91–92, 791 S.E.2d 305, 308 (Ct. App. 2016) (stating that "[t]his court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support **or the board commits an error of law**" and confirming that "issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact") (emphasis added).

A. The Planning Commission's Interpretation Contradicts the Plain Language of the "Dead-End Street" Ordinance, Which Applies Only to Streets "Designed to be Permanently Closed at One (1) End."

There are no "dead-end streets" in Hawthorne, as that term is defined by the County's Ordinances. *See* Aiken Co. Land Mgt. Reg. § 24-2.10.12 ("*Street, dead-end.* A street with a single common ingress and egress point and without a turnaround at the end.") The length requirement cited by the Chairman during the August 21, 2025 meeting states as follows: "***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." *See* Aiken Co. Land Mgt. Reg. § 24-7.3.4 (emphasis added). (HAWTHORNE p. 0093, lines 15 – 20.) As written, the County's Ordinance applies only to streets designed to be

permanently closed at one end. The Revised Preliminary Plat does not depict any dead-end street because the roads are specifically designed to have a turnaround and connections in four directions. (Mem. Supp. Appeal pp. 6 – 7.) During the August 21, 2025 meeting, the Sage Mill team explained that the road length limitations in the County's Land Management Regulations apply only to "[d]ead-end streets designed to be permanently closed at one (1) end." *See* Aiken Co. Land Mgt. Reg. § 24-7.3.4. (HAWTHORNE p. 0097, line 15 – p. 0099, line 18; HAWTHORNE p. 0102, line 2 – p. 0106, line 7.) Neither the Planning Commission nor the County's Chief Development Official, Joel T. Duke, sought further clarification as to Milligan Avenue or to correct any alleged discrepancy. Sage Mill demonstrated to the Planning Commission and County during the August 21, 2025 meeting that Keagan Boulevard is not "designed to be permanently closed at one (1) end," but has a turnaround and "stub-outs" in four directions that will be connected and extended in the future. (HAWTHORNE p. 0102, lines 2 – 12; p. 0208; Pet. p. 9; Mem. Supp. Appeal pp. 6 - 7.)

To construe the Revised Preliminary Plat as containing a dead-end corridor under the County's Ordinance would necessarily mean that it contains "[d]ead-end streets designed to be permanently closed at one (1) end." *See* Aiken Co. Land Mgt. Reg. § 24-7.3.4. The roads in Hawthorne do not have a single point of ingress and egress, as they are interconnected. Also, the roads are not dead-end streets designed to be permanently closed at one (1) end, as they have traffic circles, turn-arounds, and/or stub-outs that are designed to connect with other streets in the future. This includes the newly alleged "dead end" on Milligan Avenue, where a motorist can clearly make a turn and the presence of a stub-out **and** a 40' radius temporary turn around clearly demonstrate that this is not a road that is neither permanently closed nor "designed" to be permanently closed:



Mot. for Recons., p. 5. Although the County's ordinances are clear as to when the road length limitation should apply, the Planning Commission abused its discretion by ignoring the plain terms of the relevant ordinances and imposing substituted terms in their place.

B. The Planning Commission Acted Arbitrarily and Capriciously by Departing from the Longstanding Interpretation of the Corridor Length Requirements in Denying the Revised Preliminary Plat.

South Carolina law does not allow a local government to swap out interpretations in this manner. *See, e.g., Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) (declaring that it would "unconscionable" to allow a municipality to repudiate its former interpretation of an undefined term in its ordinance "based upon a re-assessment of the meaning"); *Keane/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (holding that while "[l]ocal governments have wide latitude to enact ordinances regulating what people can do with their property," they "must draft their ordinances so that people

can have a clear understanding as to what is permitted and what is not"). Under South Carolina law, a decision is arbitrary if it is without rational basis, is based solely on will and not upon reasoning or judgment, is made at pleasure without adequate guiding principles, or is governed by no fixed rules or standards. *See Converse Power Corp. v. S.C. Dep't of Health & Env't Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002); *see also Hatcher v. S.C. Dist. Council of Assemblies of God, Inc*., 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976) (finding "arbitrary" to mean based alone upon one's will without adequate determining principle and "not governed by any fixed rules or standard").

When the issue of corridor length was raised by Mr. Duke during the August 21, 2025 meeting of the Planning Commission, Sage Mill and Mr. Hildebrand explained the issue in detail. (HAWTHORNE pp. 0097 – 0106.)[3] Mr. Hilderbrand confirmed that the interpretation being presented by Joel Duke at the meeting was inconsistent with the interpretation of the same provisions that had been in place for four decades. (HAWTHORNE p. 0103, lines 20 – 22.) There are numerous examples of other developments within Aiken County with similar road design that were approved by the County. (Pet. p. 10; HAWTHORNE p. 0098, lines 10 – 20.) The County and the Planning Commission, having previously approved at least ten neighborhoods with corridors exceeding 2,500 feet where stub-outs or interim turnarounds were present, changed their interpretation of the corridor length regulations when denying Sage Mill's Revised Preliminary Plat. (Mem. Supp. Appeal pp. 12 – 14; HAWTHORNE p. 0098, lines 10 – 20.)

The Planning Commission may not reinterpret an ordinance in a manner that conflicts with its plain language and departs from the interpretation that has governed the provision for decades.

[3] As noted above, the words "Milligan Avenue" were never mentioned during the August 21, 2025 meeting, which does not support the Circuit Court's finding that it had been discussed.

See Landing Dev. Corp., 285 S.C. at 221, 329 S.E.2d at 426. The "fixed rules or standards" that the Planning Commission is to apply and follow are the County's Ordinances. Although the wording of the County's corridor length regulations has not changed, the subjective interpretation by the County and Planning Commission has changed. (HAWTHORNE p. 0100, line 8 – p. 0101, line 14.) In the absence of any identified deficiencies or nonconformities, the unexplained departure from the County's past interpretation of the Ordinance renders the Planning Commission's decision to deny the Revised Preliminary Plat arbitrary and capricious.

III. THE PLANNING COMMISSION ABUSED ITS DISCRETION BY DENYING THE FULLY COMPLIANT REVISED PRELIMINARY PLAT WITHOUT IDENTIFYING ANY NONCONFORMITY

Under the County's Ordinance, "approval shall be given by the Planning Commission" where the preliminary plat conforms to the applicable requirements. *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5 (confirming that, "[i]f the preliminary plat is found to conform to all requirements of the comprehensive plan and all applicable ordinances and regulations, **approval shall be given** by the Planning Commission") (emphasis added). If approval is not given by the Planning Commission, then "[t]he reasons for disapproval **shall** refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform." *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5 (emphasis added). The requirement to refer specifically to the comprehensive plan or land management regulation is there to allow the applicant opportunity to understand why their plan was denied and more importantly what issues the applicant must address to comply with the comprehensive plan or land management regulations.

However, in rendering a decision on the Revised Preliminary Plat, the Planning Commission both: (i) refused to approve the Revised Preliminary Plat that conforms to all requirements of the comprehensive plan and all applicable ordinances and regulations; and (ii) refused to provide the reasons for the disapproval that refers "specifically" to any applicable ordinance violation. The August 21, 2025 decision of the Planning Commission constitutes abuse of discretion.

A. The Planning Commission Cannot Insulate Itself from Appellate Review of an Arbitrary and Unlawful Decision by Simply Refusing to Explain it.

Under South Carolina law, an abuse of discretion occurs when a decision is unsupported by the evidence or controlled by an error of law. *See Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) ("An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.") In exercising its discretion, a local zoning board "must abide by and comply with the standard prescribed by the local ordinance and zoning statutes." *See Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953). The Planning Commission is not free to deny a preliminary plat for unarticulated reasons. The Planning Commission's authority to act is limited to the authority granted to it by the legislature and by local ordinance. The Planning Commission's decision to deny the Revised Preliminary Plat was made without the support of a valid reason for the denial and without reference "specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform." *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5.

The Revised Preliminary Plat conforms to all requirements of the County's Comprehensive Plan, as well as all applicable ordinances and regulations. (Pet. p. 14; HAWTHORNE p. 0093, lines 2 – 5.) Despite this full compliance, the Planning Commission refused to approve the Revised Preliminary Plat. The Planning Commission's refusal to identify a specific provision of the County's ordinances or regulations with which the plat does not conform deprives the applicant of the ability to correct the application. It also contradicts the ordinance's specificity requirement. The decision of the Planning Commission cannot be upheld under the Ordinance's specificity requirement where there is no discernible basis for the denial.

Furthermore, the Planning Commission's refusal to approve the Revised Preliminary Plat and to provide reasons for the disapproval left a void in the administrative record. By refusing to explain the denial, with specific reference to the applicable ordinance or regulation, the Planning Commission's decision has frustrated meaningful appellate review of the issues raised in this appeal. Sage Mill sought appellate review of the Planning Commission's decision based on the clear abuse of discretion, including, but not limited to, its failure to identify the specific provision(s) with which the revised application failed to comply. (Pet., p. 8, ¶ 29, p. 13, ¶¶ 42 – 46, p. 15, ¶ 51.) However, Respondents took advantage of the Planning Commission's failure to articulate a basis for the denial of the Revised Preliminary Plat. Rather than address the merits of the statutory appeal, the circuit court accepted Respondents' argument that Sage Mill's allegations amounted to mere "speculation […] for which there is no evidence in the record," and concluded that "assertions or arguments of counsel are not evidence." (Order p. 5.) That is, the circuit court found that the evidentiary gaps in the record were the product of Sage Mill's failure to present evidence, not the Planning Commission's failure to comply with Ordinance's specificity

requirement governing the disapproval of a preliminary plat. *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5.

For the Planning Commission to refuse to approve the Revised Preliminary Plat, refuse to explain the disapproval, benefit from the resulting holes in the record, and then argue that the applicant's challenge lacks evidentiary support is the epitome of arbitrary and capricious action. Sage Mill filed a motion for reconsideration of the Order under Rule 59(e), SCRCP, seeking to obtain a ruling on the issues raised in the statutory appeal to the circuit court. However, the circuit court denied Sage Mill's motion. (Mot. for Recons., pp. 10 – 12; Order Denying Mot. for Recons.)

The Planning Commission's decision to deny the Revised Preliminary Plat is untethered from the governing ordinances and constitutes abuse of discretion. The Order affirming the Planning Commission should be reversed.

B. The Planning Commission Abused its Discretion by Seeking to Impose Additional and Discretionary Requirements Not Found in the County's Ordinances.

In affirming the decision of the Planning Commission, the circuit court found as that Sage Mill "did not provide any assurances of future connectivity with Catenary Boulevard which would be outside of the approved PUD." (Order p. 9.) The circuit court simply adopted Respondents' argument that Sage Mill "specifically did not provide any assurances of future connectivity with Catenary Boulevard" into the Order. (Order p. 9; Memo. Opp. to Appeal p. 9.) However, the circuit court reached this conclusion without reviewing the administrative record or the applicable ordinances and regulations and without ruling on the issue of whether Sage Mill was required to provide "assurances of future connectivity" where no such requirement exists in the County's ordinances.

When exercising discretion, a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. *Peterson Outdoor Advert. v.*

City of Myrtle Beach, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997) (holding that permit standards that were so broad and subjective that they failed to provide any guidance to an applicant of the basis for denial for actions necessary to obtain approval). The demand for "assurances of future connectivity" as a condition of preliminary plat approval has no basis in the County's Comprehensive Plan, the Aiken County Land Management Regulations, or any other applicable ordinance or regulation. That language does not appear in the County's applicable ordinances and regulations and is not a defined standard. "Assurances of future connectivity" is not a codified requirement. Joel Duke's demands for "assurances" do not correspond to any requirement in the County's ordinances or regulations. (Pet. pp. 7 – 9.) Imposing arbitrary, subjective criteria as a condition for approval is an abuse of discretion. *See Peterson,* 327 S.C. at 235, 489 S.E.2d at 633 (recognizing that a decision will not be upheld where the standards guiding the decision were subjective and lacked definiteness). To the extent that the Planning Commission denied the revised application on the basis of unspecified "assurances" of future connectivity, the Planning Commission acted in an abuse of discretion that warrants reversal of the August 21, 2025 decision. The circuit court's reliance on Respondents' subjective and vague requests for "documentation" and "assurances" in affirming the decision is based on an error of law.

C. The Arbitrary Decision of the Planning Commission is Invalid Even Under the Deferential "Any Evidence" Standard, Which Is Not The Correct Standard Here.

Even under the deferential "any evidence" standard of review, an arbitrary or capricious decision by the Planning Commission is invalid and cannot be upheld. *See Rest. Row Assocs. v. Horry Cnty*., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (holding that "a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion"). The "any evidence" standard presupposes a decision that is grounded in "evidence." *See Town of Hollywood v. Floyd,* 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") (emphasis added).

The Planning Commission's denial of the fully compliant Revised Preliminary Plat was not based on an actual or existing requirement of the County's comprehensive plan and applicable ordinances and regulations. The reasons for denying the Revised Preliminary Plat, *i.e.*, the failure to provide requested "documentation" and "assurances" of future connectivity, do not correspond to any applicable ordinance or regulation and therefore, do not provide a lawful basis for the Planning Commission to deny the revised application. The Planning Commission's discretion is limited by the governing ordinances and regulations and applicable law. Based on the administrative record and the County's applicable ordinances and regulations, the Planning Commission's denial of the Revised Preliminary Plat was a clear abuse of discretion. The circuit court erred in affirming the decision. Accordingly, the Order should be reversed.

IV. THE CIRCUIT COURT ERRED BY FAILING TO APPLY EXCEPTIONS AND MODIFICATIONS TO THE LEGAL STANDARD THAT ARE APPLICABLE TO AN APPEAL INVOLVING A ZONING ORDINANCE.

The standard of review employed by the Court focused on the any evidence standard as articulated in *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008). However, the court failed to address that notwithstanding the generalized application of an "any evidence standard," it is also true that "a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *See Boehm,* 813 S.E.2d at 880. This limitation was first recognized by the South Carolina Supreme Court in the case of *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754–55 (1953) (holding that a "decision of the zoning board will not be upheld where it is based on errors of law, or fraud, or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, or in a discriminatory manner or where, in general, the board has

abused its discretion." The Supreme Court has applied this limitation specifically to county planning commissions. *See, e.g., Grays Hill Baptist Church v. Beaufort Cnty.,* 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020) (confirming that a decision "will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.") This limitation is acknowledged in *Kurschner v. City of Camden Plan. Comm'n*, in which the Supreme Court confirmed that " a decision of zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion.*"* 376 S.C. at 174, 656 S.E.2d at 351. Despite being asked to review the decision of the Planning Commission under this standard, the Circuit Court did not do so, which is error.

The standard of review is also modified when the appeal involves construction of a municipal ordinance. "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, 'a broader and more independent review is permitted when the issue concerns the construction of an ordinance.'" *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (internal citation omitted). Subsequent decisions continue to apply this principle. *See, e.g., Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals*, 424 S.C. 358, 361, 818 S.E.2d 30, 31 (Ct. App. 2018) ("Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.") The Circuit Court also failed to apply this broader standard of review or make a determination that the proposed Preliminary Plat involved a dead-end street at all.

Lastly, the "any evidence" standard applies to findings of fact, not questions of law. *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91–92, 791 S.E.2d 305, 308 (Ct. App. 2016)(stating that

"[t]his court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support **or the board commits an error of law**" and confirming that "issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact") (emphasis added).

CONCLUSION

For the foregoing reasons, Appellant Sage Mill Residential, Ltd. respectfully requests that this Court reverse the Order Affirming Decision of Aiken County Planning Commission and further order that the Revised Preliminary Plat is approved.

Respectfully submitted,

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