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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2022-001301
Case No. 2021-CP-23-3048

Alliance to Preserve the Old White Horse Road Corridor, LLC and Mary Jean Horney, ... Appellant,

v.

RP&L, LLC and the Greenville County Planning Commission,..... Respondents.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Respondent Greenville County Planning Commission has petitioned this Court for a rehearing of its recent published decision in *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, Op. No. 6144 (S.C. Ct. App. filed April 15, 2026). The Respondent Planning Commission respectfully submits that the following points were overlooked or misapprehended by this Court and merit a rehearing:

I.

In the "Conclusion" of its decision, this Court "reverse[s] the circuit court's order upholding the Greenville County Planning Commission's approval of this preliminary

subdivision application." (Slip Op. at 12). Initially, the Court found that there is not a "sufficient record to allow meaningful review of the Commission's 5-4 decision to approve RP&L's preliminary subdivision application." (Slip Op. at 7). Nonetheless, despite finding that the record was "insufficient" for a meaningful review, the Court proceeds then to fully analyze the evidence in the record with respect to the LDR Article 3.1 review criteria, and in doing so, the Court impermissibly strays from strictly applying the applicable standard of review.

In other words, despite finding that the record was "insufficient" for a meaningful review, the Court then analyzes the evidence in the record and nonetheless concludes that "there is no evidence establishing the proposed development satisfies all three criteria of LRD Article 3.1." (Slip Op. at 8). The Court is mistaken in both respects, and for that reason, the Planning Commission respectfully requests a rehearing. Indeed, both rulings may not be simultaneously true. If the record is "insufficient" for meaningful review, the Court erred in conducting that "review" nonetheless and concluding that there is "no evidence" to satisfy the LDR Article 3.1 review criteria.

As for the sufficiency of the record, this Court has previously ruled that "it is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions." *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209, 212 (Ct. App. 2004). *See also*, *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) (same); *Porter v. Labor Depot*, 372 S.C. 560, 643 S.E.2d 96 (Ct. App. 2007) (same). Here, the Court, like the Circuit Court, was able to review the Planning Commission's meeting minutes, a transcript of the meeting, and all file materials presented to the Commission,

including opposition submittals. The complete factual record was available for the appellate review.

Furthermore, the Court respectfully erred in concluding, based on its review of the record, that there is "no evidence" to support the three LDR Article 3.1 review criteria. In reaching that conclusion, the Court reviewed and then impermissibly weighed the conflicting evidence to ultimately substitute its judgment for that of the majority of the Planning Commission. As discussed further below, the vote by the Planning Commission was 5-4. Hence, there were four Commission members who denied the preliminary subdivision plan for The Stables. The Court focused on the questions and comments from those four members as dispositive. Unlike a jury's verdict, the decision of the Planning Commission need not be unanimous, but the "findings" of the minority are not only not dispositive, they are not even material to the review on appeal under an "any evidence" standard. What is dispositive are the "findings" of the majority. Furthermore, the Court cites repeatedly to contradictory evidence, much of which would likely not even be admissible like mere "contentions" by a party that are unsubstantiated or supported by evidence in the record. (Slip Op. at 11-12). Yet, like a jury, the Planning Commission is free to accept or reject any evidence as probative. *See*, *Sauers v. Polin Brothers Homes, Inc.*, 328 S.C. 601, 493 S.E.2d 503, 505 (Ct. App. 1997) ("[a]s a general rule, the jury is free to accept or reject in whole or in part the testimony of any witness, including an expert witness").

As indicated, the Court's rulings strayed from the applicable standard of review. The Court did agree with the Planning Commission's explanation of the applicable standard of review and rejected the standard of review urged by the Appellants. (Slip Op. at 5). To recap, the South Carolina Supreme Court established that standard of review for appeals from a local

planning commission in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008). In that case, the Supreme Court held that "[b]y statute, the trial court must uphold the Commission's 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. *See also, Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161, 166 (2013) ("[b]y statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it").

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"). Most importantly, "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).

As this Court acknowledges, the findings of fact by the Planning Commission "must be treated in the same manner as a finding of fact by a jury." (Slip Op. at 5). Of course, it is well-settled that "the factual findings of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209, 212 (Ct. App. 2004).

In evaluating the three LDR Article 3.1 review criteria, the Court improperly weighs the conflicting evidence and gives improper weight to the comments and opinions of the Planning Commission members who voted against approving the application. The Court also gives weight to clearly inadmissible evidence, which the Planning Commission had the right, like a jury, to reject or give little or no weight to.

The first criterion under LDR Article 3.1 requires consideration that "[a]dequate existing infrastructure and transportation systems exist to support the project." (R. 372). On appeal, the Appellants argue that the roads are insufficient to support the subdivision, and more particularly, they criticize the Planning Commission for not ordering a traffic impact study prior to making a decision. The Court, however, agreed with the Planning Commission that the ordinance did not require a traffic impact study for this project and "that whether to request a traffic impact study is at the very least discretionary." (Slip Op. at 9). Nonetheless, the Court concludes that "we see nothing in this record to suggest that the existing transportation infrastructure will support The Stables as proposed." (Slip Op. at 10). To the contrary, there is sufficient evidence in the record, including reasonable inferences, to support a finding that the transportation infrastructure will support the project. The ingress and egress from the subdivision is onto Meadow Brook Road, which is a county road. Kevin Tumblin of Freeman and Associates, the civil engineer for the developer, testified that improvements would be made to Meadow Brook Road. (R. 239-240). Thus, there is evidence of improvements to the infrastructure from the licensed engineer. Additionally, the Commission was advised that there were no concerns from the South Carolina Department of Transportation ("SCDOT") with respect to traffic impacts on Old White Horse Road (R. 239), and the staff recommended approval as well. (R. 218). Accordingly, there is sufficient evidence in the record to support a finding that the first criterion is satisfied.

Nonetheless, in impermissibly weighing the evidence, the Court is critical that Tumblin did not sufficiently describe the "improvements" to be made. In his presentation at the hearing, Tumblin stated as follows: "I would point out that on the plat we noted that we will make improvements to Meadowbrook Road from Old White Horse Road up to our new entrance. So, whatever the county asks us to do, whether it's widening or whatever we have to do to improve that section of Meadowbrook Road we'll take care of that." (R. 239). Hence, Tumblin referenced the plat which is in the record and shows the road improvements. (R. 160). Moreover, the Court disregarded the Subdivision Advisory Committee notes which provide detailed "roadway" information from Jason Cisson of SCDOT and Kurt Walters from the County. In fact, Walters' comments describe the "improvements" as "widen Meadow Brook Road to 20 from S/D entrance to Old White Horse Road" and "dedicate 25 ft ROW on development side." (R. 179). Thus, the Planning Commission had before it the evidence of the improvements being required by the County although Tumblin did not describe them in detail in his presentation.

Further, the Court fails to recognize that this is an approval of a *preliminary* subdivision plan. LDR § 3.3.4(C) states: "The preliminary plan shall *conceptually* show all future phases of development so that road, infrastructure, and stormwater management connections and relationships may be considered during review." (Emphasis added). Thus, as the italicized language denotes, the Planning Commission is charged at the preliminary plan stage with considering the roads only at a "conceptual" level. There are other reviews and approvals that occur after a project receives preliminary approval and before final plat approval. As the Subdivision Advisory Committee notes show, SCDOT did not recommend a traffic impact study but did "reserve[] the right to review or comment in the future should the plan be revised or

additional information is discovered that would potentially impact SCDOT right-of-way." (R. 178-179).

The second criterion under LDR Article 3.1 requires that "[t]he project is compatible with the surrounding land use density." (R. 372). The Appellants argue that the project is not compatible with the uses of adjoining tracts, which are primarily agricultural or equestrian uses. The criterion, however, addresses land use *density* – not land uses. The subject property, like the surrounding properties, is zoned Residential-Suburban (R-S). (R. 454). The purpose of the R-S district is "to provide reasonable safeguards for areas in the process of development with predominantly single family dwellings, but are generally still rural in character." (R. 234). The zoning district therefore anticipates single family residential development within a rural area. The recommended density is zero to one dwelling per acre. (R. 234). The evidence, however, reflects that The Stables subdivision will have a density of 1.7 units per acre which is not within the recommended parameters but *is permitted under the R-S zoning for a cluster development*. *See*, Zoning Ordinance, § 7:2 (Table 7.1). (R. 401). The staff recommended approval of the project as a cluster development, and the evidence in the record demonstrates that the second criterion was sufficiently met.

Nonetheless, in impermissibly weighing the evidence, the Court does not even address that The Stables is a cluster development which is permitted under the applicable ordinances. Critically, and what was overlooked by the Court is that a cluster development has a different permissible density for R-S zoning district. Section 7:2.4-5 is titled "permitted density" and "the overall number of dwellings allowed in an Open Space Development under Option #1" is "1.7 per acre" as stated in Table 7.1. (R. 398, 401). The density of 1.7 per acre is clearly allowed for

a cluster development in the R-S zoning district. The Court should not have ignored or even overruled the permissible density allowed by the applicable ordinances.[1]

Further, the record demonstrates that The Stables development is designated as Suburban Edge in the Greenville County Comprehensive Plan. In the Suburban Edge character area, "[r]esidential development may occur as individual single-family structures on large lots, *or clusters of homes designed to preserve large amounts of open space*, which should be interconnected as part of the country's larger open space system." (R. 218). (Emphasis added). Thus, cluster developments are explicitly permitted by the Comprehensive Plan in the Suburban Edge character area.[2] The Court overlooked that very point.

The third criterion under LDR Article 3.1 requires that the project be "compatible with the site's environmental conditions, such as but not limited to, wetlands, flooding, endangered species and/or habitat, and historic sites and/or cemeteries." (R. 372). As Kevin Tumblin testified, the project was designed as a cluster development to create open spaces to the rear of the property and to create a 750-foot buffer from the Reedy River. (R. 238). In addition, the Planning Commission received testimony from Tumblin that flooding and stormwater

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[1] The Appellants have not challenged the cluster development ordinances, nor has the Court found those ordinances to be invalid or unlawful. Accordingly, the allowable density for a cluster development should not have been ignored or overruled.

[2] The Comprehensive Plan is intended to provide only guidance to a governing body. As the Supreme Court has explained in *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2d 777 (2010), the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 allows for the creation of a local planning commission to "develop and maintain a comprehensive plan to *guide* development in its area of jurisdiction." 690 S.E.2d at 780, n.1, *citing* S.C. Code Ann. § 6–29–510(A). (Emphasis added). Further, "[t]he Enabling Act permits the governing body of a county to adopt zoning ordinances to help implement a comprehensive plan." 690 S.E.2d at 780, *citing* S.C. Code Ann. § 6-29-720. Similarly, a comprehensive plan was recently described by a federal district court as "a legally required, long-range policy document adopted by local governments to guide growth, development, and preservation." *MBSC Property South, LLC v. City of Myrtle Beach*, 2025 WL 2484183, *1, n.2 (D.S.C. 2025).

management is not an issue in that the design will include a stormwater detention pond and that water currently flowing to an existing pond on the property will be redirected to the detention pond. (R. 239). He opined that "any flooding for that pond should improve." (R. 239). In contrast, the Appellants rely on an email from Donald Woodard on the stormwater issue, but according to the email, Woodard has no engineering or subject matter expertise. He is literally identified as the "proprietor" of Firstfruits Farm of South Carolina, LLC, and holds an undergraduate degree in zoology and a masters degree in biochemistry. (R. 191-192). Moreover, Woodard did not testify or speak at the Planning Commission hearing, and hence, was not subject to any questions.

In its review of this third criterion, the Court makes little mention of Tumblin's presentation. Instead, the Court cites to what the Appellants "contend" and erred in treating such "contentions" as evidence that overrides anything else in the record. (Slip Op. at 11-12). Even more troublesome is the Court's reliance on the unreliable "opinions" of Woodard, who is not an engineer like Tumblin. Quite frankly, Woodard's opinions would never be admissible in a court of law, and certainly it would be reasonable for the Planning Commission members to reject or place no weight on his opinions. At any rate, even in the face of conflicting evidence, this Court should not have weighed the evidence and given credence to Woodard over Tumblin and the same is true with respect to giving credence to the Appellant's unsubstantiated "contentions." That is clearly in contravention of the deferential standard of review that is applicable here.

In sum, the record demonstrates that there is sufficient evidence for the 5-4 majority of the Planning Commission to conclude that each of the LDR Article 3.1 review criteria was sufficiently met. The Court erred in finding that there was literally "no evidence" to support those criteria. (Slip Op. at 8). On rehearing, the Planning Commission requests that the Court

comply with the deferential standard of review and find that there is at least "some evidence" supporting the decision of the Planning Commission to approve the preliminary subdivision plan for The Stables project.

II.

As a threshold matter, the Planning Commission pointed out that the Appellants did not even preserve the LDR Article 3.1 issues for appellate review. The record clearly reflects that while the Appellants did raise issues related to LDR Article 3.1 in their notice of appeal to the Circuit Court, the lower court did not address those issues in its order filed August 17, 2022, and the Appellants failed to file a Rule 59(e) motion requesting the lower court to address and specifically rule on those issues. As a result, those issues have been waived for appellate review.

The Court rejected that preservation defense by observing that the Circuit Court addressed the Comprehensive Plan and a cluster development issue under LDR Article 11, and even based on the content of the Form Order. The Court is respectfully asked to rehear this issue. The Circuit Court's very brief reference to the Comprehensive Plan makes no mention of any review criteria in LDR Article 3.1 by name or subject matter. (R. 12-13). The discussion of the cluster development had *nothing* to do with "land use density" but rather addressed only the calculation of the acreage of open space. Finally, the Form Order could not be more general. The Circuit Court wrote: "Based on review of the file and oral arguments of the parties, the decision of the Planning Commission is affirmed." (R. 1). That says nothing about the LDR Article 3.1 review criteria and presents no analysis which this Court could even review. Moreover, it is well-settled that a form order is not a final order. In fact, in *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 567 S.E.2d 514, 518 (Ct. App. 2002), this Court wrote: "We hold there is a final order in this case. The appellants misconstrue and misperceive the potency

of a Form 4 order. In effect, the argument of the appellants negates practicality and places form over substance." 567 S.E.2d at 518. With due respect, this Court is similarly misconstruing and misperceiving the potency of the Form Order as demonstrating that the lower court actually addressed the LDR Article 3.1 review criteria. This is not in the least an issue preservation question subject to "multiple interpretations." As this Court said in *Cheap-O's*, it is placing form over substance. The Court respectfully should have found the issues related to the LDR Article 3.1 review criteria are unpreserved. The Appellants could have and should have moved under Rule 59(e), but as the Court acknowledges, they did not do so.

III.

In the "Conclusion" of its decision, this Court "reverse[s] the circuit court's order upholding the Greenville County Planning Commission's approval of this preliminary subdivision application." (Slip Op. at 12). The Court summarizes the basis of its decision as follows:

> Although we do not disagree with the circuit court's ruling that the applicable statutes do not require the Planning Commission to issue a formal written decision setting forth findings of fact and conclusions of law, we are not convinced that the meeting minutes, meeting transcript, and "file material" in this case provide a sufficient record to allow meaningful review of the Commission's 5-4 decision to approve RP&L's preliminary subdivision application. We are unable to discern the grounds for approval as required by section 6-29-1150(B) from the record before us. There is nothing in the record indicating the Planning Commission's reasons for approval, and it is unclear what facts the Planning Commission deemed established. Moreover, we are unable to discern how the Planning Commission applied these "facts" to the LDR and applicable zoning ordinances, nor can we decipher the divided Commission's reasoning from its series of questions and answers. Accordingly, we reverse the circuit court's finding that evidence exists in this record to support the decision of the Planning Commission.

(Slip Op. at 7).

While the Court reverses "the circuit court's finding that evidence exists in this record to support the decision of the Planning Commission," the Court does not explicitly provide for a remand nor provide any remand instructions for the Circuit Court to follow. For instance, the Court does not direct the Circuit Court to take any further action or, for that matter, to remand to the Planning Commission, which is a quasi-judicial body, for further action. Likewise, the Court does not itself remand to the Planning Commission with directions to take any specific action, such as for the Planning Commission to hold an additional hearing to receive further evidence to support the LDR Article 3.1 review criteria or for the Plaintiff Commission to express on the record "the grounds for approval as required by section 6-29-1150(B)" or "what facts the Planning Commission deemed established." (Slip Op. at 7).[3] In effect, the Court does not direct what the next steps should be given that the Court found that there is not a "sufficient record to allow meaningful review of the Commission's 5-4 decision to approve RP&L's preliminary subdivision application." (Slip Op. at 7). Clearly, some type of remand would seem to be required, but the Court does not order a remand nor dictate what should occur on remand.

IV.

In addition to the issue not being preserved for appellate review as discussed above, the Court's analysis of the LDR Article 3.1 criteria as the *sole* basis for reversing the Circuit Court's order upholding the Planning Commission's approval of the preliminary subdivision application is arguably moot and thus does not support the exercise of appellate jurisdiction to address those criteria.

[3] The Court did correctly rule that "the applicable statutes do not require the Planning Commission to issue a formal written decision setting forth findings of fact and conclusions of law." (Slip Op. at 7).

As the Supreme Court has held, our appellate courts generally will "only consider[] cases presenting a justiciable controversy." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474, 477 (2006). "A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." *Id*. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. There are two exceptions where a moot issue may be addressed by an appellate court: "a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the action again." *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861, 864 (1996).

On August 17, 2021, the Greenville County Council enacted Ordinance No. 5316 which, in pertinent part, repealed in its entirety the LDR Article 3.1 review criteria. *See*, Ordinance No. 5316, § 4 (copy attached). In Section 5 of Ordinance No. 5316, it does state that the provisions "apply prospectively only, beginning on the date of approval of this Ordinance and applying to preliminary plat application submitted after that date." *See*, Ordinance No. 5316, § 5. That would suggest that the repeal of LDR Article 3.1 is not applicable to this appeal or the review of the Planning Commission's approval of the preliminary subdivision application at issue. However, from a practical standpoint, the Respondent RP&L, LLC on remand may re-submit the preliminary subdivision application, as permitted by ordinance and state law, and that application would not be governed by the LDR Article 3.1 review criteria. Accordingly, that scenario renders this Court's review and analysis of the LDR Article 3.1 review criteria, which have been

since repealed, moot and made in absence of appellate jurisdiction. Neither of the exceptions to the mootness defense are applicable here. Certainly, if the Respondent RP&L, LLC re-submits its preliminary subdivision application, the LDR Article 3.1 review criteria will have no applicability.

Consequently, this Court's sole reliance on an analysis of the LDR Article 3.1 review criteria in reversing the Circuit Court is without appellate jurisdiction for there is no longer, from a practical standpoint, a justiciable case or controversy.

CONCLUSION

The Respondent Greenville County Planning Commission respectfully requests that the Court rehear its decision in this case for the reasons argued herein. The Court is requested to affirm the Order of Circuit Court Judge G.D. Morgan, Jr. which affirmed the May 26, 2021 decision of the Greenville County Planning Commission.

Respectfully submitted,

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April 30, 2026

No. 5316

AN ORDINANCE

TO AMEND THE GREENVILLE COUNTY LAND DEVELOPMENT REGULATIONS TO UPDATE THE REGULATIONS WITH ADDITIONAL PLAN AND PLAT INFORMATION, AND TRAFFIC REQUIREMENTS; TO ADD DEFINITIONS; TO PROVIDE RURAL CONSERVATION SUBDIVISION DESIGN STANDARDS; TO REPEAL LAND DEVELOPMENT REGULATION SECTION 3.1 "REVIEW CRITERIA"; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Greenville County Council adopted Plan Greenville County in 2020 recognizing the need for more harmonious development in the rural and suburban parts of Greenville County; and

WHEREAS, there is a need to improve design standards in rural areas of the county so as to clarify the rules for new residential subdivision developments; and

WHEREAS, the lack of rural conservation design standards in the current Land Development Regulations along with the problems associated with administration of Section 3.1 of the Regulations make it necessary to bring these amendments forward.

NOW, BE IT ORDAINED by the County Council of Greenville County, South Carolina:

Section 1. Amend various sections of the County Land Development Regulations to update requirements.

Several sections of the County Land Development Regulations (LDR) are hereby amended as follows:

A. Amend LDR Subsection Section 3.3.4 I "Plan Requirements" as follows:

"I. The location of watercourses, live streams, marshes, known wetlands, floodplains and floodways, wooded areas, water impoundments, endangered or threatened species, habitat of endangered or threatened species, existing cemeteries and burial grounds, houses, barns, garages or storage sheds on site and any other significant features on the land proposed for approval. Additionally, the following requirements are part of the plan:

- The location of any historic sites or cemeteries, which merit protection on site.
- Protective measures shall be listed on the plan in a narrative form with ownership and location identified in the notes. These measures shall be in accordance with the laws, ordinances, and regulations of the County of Greenville, State of South Carolina, or Federal Government.

- Existing cemeteries shall be deeded as a separate lot in the subdivision and shall be accessed by a minimum twenty (20) foot wide private or public easement. Major subdivisions shall provide access with a minimum twenty (20) foot wide right-of-way (road construction is not required). Cemeteries shall be fenced in a manner to protect the cemetery and control access. Lots where cemeteries are located are not subject to the provisions of Section 22.3.2.

B. Amend LDR Subsection Section 3.4.11 E. (5) "Plat Requirements" to add the following:

"5. All obvious and apparent rights of way, watercourses, floodplains present, endangered or threatened species, habitat of endangered or threatened species, utilities, roadways, cemeteries and burial grounds, historic structures present, and other such improvements shall be located ~~and~~ in undeveloped areas. Protective measures specified in this ordinance will be required, and easements provided. Unless specific instructions are made requiring the digging up of or uncovering of buried utilities, the location of the utilities shall reflect the marked locations as indicated by an underground utility locator service or the respective utility provider."

C. Amend LDR Section 3.5.4 Plan Requirements (Minor Subdivisions) to add the following subsection:

"R. Endangered Species, habitat for endangered or threatened species."

D. Amend LDR Sections 9.2 A, 9.3, and 9.4 to read as follows:

"9.2 Study Requirements

A. A TIS shall be under the direct charge of and sealed by a registered SC Professional Engineer with expertise in traffic engineering. An impact study shall analyze traffic conditions for the existing year conditions, build-out background year "no build" conditions, and build-out year "build" conditions. The study will be used to assess the need for changes in traffic control devices and roadway improvements necessary to accommodate the new development traffic. The study must also justify the proposed access plan and demonstrate the effects of the development on public roadways. The study shall be conducted in accordance with the requirements of Article 9 of this ordinance. The study area will be limited to a maximum of 3 peak hours and not to exceed adjacent or nearby 3 intersections within a ½ mile radius from the property boundary. In unzoned areas, a TIS will be conducted when a subdivision will generate 50 peak-hour trips and the study area will be limited to a maximum of 3 peak hours and not to exceed adjacent or nearby 3 intersections within a ¾ mile radius from the property boundary. 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. A study area site map showing the site location is required."

"9.3 Responsibility for Mitigation

The developer of a site will be responsible for making roadway improvements and installing traffic control devices that may be necessary due to the impacts on the new development based on the recommendations from the study. ~~These include impacts through the study area of the development wherever possible.~~ If additional right-of-way is required as a result of the study, the developer shall make a reasonable effort to obtain the necessary right-of-way to perform the recommended improvements, including offering an amount as appraised by a licensed S.C. real estate appraiser. If right-of-way cannot be obtained, the developer is required to make a written request to the appropriate county staff for a waiver, including documentation of the "fair market value" offer. The waiver will be granted under the conditions that County staff determines that one or more of the following conditions exists and that the applicant pays a fee in lieu of constructing the recommended improvements (including right-of-way acquisition) as determined by the average cost of similar projects for the most recent 3-year period: A. The project will be in conflict with an approved and funded GPATS, SCDOT, C-Funds or County project. B. The project is proposed to be constructed where sufficient right-of-way cannot be obtained. C. The reasonable offer is not accepted. D. The project cost is environmentally prohibitive.

Use of fees - All fees collected by the County pursuant to these provisions shall be accounted for separately from other monies, shall be expended only for any necessary road improvements and shall be expended within the timeframe as outlined in state law regarding "Fee-in-lieu-of."

"9.4 Mitigation Alternatives

The traffic impact study will ~~help to~~ determine what, if any, mitigation measures are needed and applicable on County roads. ~~Mitigation will only be required if the LOS increases higher than LOS C, if SCDOT left-turn lane guidelines are met, or if the delay for any movement increases by 25% or more.~~

~~Additionally, improvements may be required if a project is located in a "high-growth corridor" as identified by County Planning and Engineering Staff. "High-growth corridors" are identified as roads or groups of roads (and intersecting streets when applicable) in areas that have experienced at least 1.5% annual population growth, or roads/intersections currently operating at LOS D or higher.~~

Mitigation measures are not limited to physical improvements. It can include operational improvements along the roadway, at off-site intersections and site access points, as well as programs and incentives designed to specifically alter travel behavior, or a combination of measures. Table 9.2 above outlines some examples of mitigation measures."

Section 2. Adding definitions to the County Land Development Regulations.

Amend Article 2 of the LDR to add the following definitions:

Endangered Species - An endangered species is identified as endangered by the U.S. Fish & Wildlife and Fisheries Service.

Threatened Species - A threatened species is any species that is identified as threatened by the U.S. Fish & Wildlife and Fisheries Service.

Endangered Species Act - The Endangered Species Act (ESA) was enacted by Congress in 1973. Under the ESA, the U.S. Fish & Wildlife Fisheries Service has the responsibility to protect endangered species (species that are likely to become extinct throughout all or a large portion of their range), threatened species (species that are likely to become endangered in the near future), and critical habitat (areas vital to the survival of endangered or threatened species).

Historic Site - Historic site is an official location designated by a federal or state government as a historic site where pieces of archeological, architectural, political, military, cultural, or social history have been preserved due to their cultural heritage value. For the purposes of this ordinance, a site is considered a Historic Site if it is properly listed on the National Register of Historic Places by the U.S. Department of Interior.

Cemetery - A cemetery is a spatially defined area where the remains of dead people are buried or otherwise interred. The term cemetery implies that the land is specifically designated as a burial ground. Cemeteries can be privately, publicly or family owned. A cemetery also can be a Historic Site.

Open Space - Land areas which are set aside for landscaping, preservation of natural features, or passive recreation.

Section 3. Add Article 22 to the County Land Development Regulations to provide Rural Conservation Subdivision Design Standards. Article 22 is hereby added to the County Land Development Regulations to read as follows:

ARTICLE 22 RURAL CONSERVATION SUBDIVISION

22.1 Intent

This section is intended to serve as guidelines for the submittal of preliminary plans for all major subdivisions in the unzoned areas.

22.2 Preliminary Plan Procedure

22.2.1 Pre-Submittal Meeting

A Pre-Submittal Meeting is required for all Rural Conservation Subdivision applications. The purpose of this meeting is to determine and ensure a preliminary plan complies with the Land Development Regulations of the County of Greenville. Pre-Submittal Meetings for subdivisions are scheduled with Subdivision Administration in accordance with the Subdivision Activity Calendar.

Pre-submittal applications shall include a concept plan and site assessment diagram, both at a scale of not less than 1 inch to 100 feet. The site assessment diagram shall be conducted by a registered engineer, land surveyor, landscape architect, architect, or land planner. The pre-submittal application and checklist are available on the Subdivision Administration website.

The Concept Plan is a draft preliminary plan with basic plan elements to include the following:

- North arrow, legend, graphic scale, date.
- Topography, not greater than 12 foot intervals.
- Boundaries of tract with bearings and distances.
- Existing zoning of subject area and all abutting property.
- Current county tax identification number.
- The utility provider name and location of existing sewer and size, water and size(if known), gas mains, and other utilities immediately adjacent to the subdivision (if water and sewer are not on or adjacent to the tract, indicate the direction, distance to, and size of nearest accessible main and the name of the utility providers).
- The location of adjacent existing streets/roads (with right-of-way widths) county/state owned and inventory number and public or private, bridges, culverts, railroads, etc.
- The location of watercourses, live streams, marshes, known wetlands, wooded areas, water impoundments, existing cemeteries and burial grounds.
- Floodplain information / 1% Areas of Special Flood Hazard.
- The location of houses, barns, garages, or storage sheds and other significant features on the land proposed for approval.
- Locations and widths of proposed streets and associated right-of-way, road centerline radii, etc.
- Proposed lot lines, approximate dimensions, and lot numbers.
- Location of the Cluster Box unit and appropriate pull-off.
- Location and dimensions of open space tract.
- Location and delineation of required buffers
- Areas held in common ownership, or areas that are required for storm water or other infrastructure facilities (mailbox areas, detention ponds, etc.) labeled "Undeveloped Area – A, B, C, etc." and identified as to use, responsibility, and ownership in plan notes and other areas proposed to be dedicated to the public or intended for public use.

The Site Assessment Diagram is a base map with site analysis notes that identifies development opportunities and constraints associated with the proposed development site at the same scale as the draft preliminary plan. The site assessment map shall include a delineation of site characteristics and considerations such as:

- Topography, slope, and soils
- Property configuration
- Existing vegetation
- Water, wetlands, drainage, and floodplains
- Adjacent land uses
- Views and visual characteristics

- Access and potential circulation patterns
- Utility locations and existing easements
- Existing development encumbrances on the site

22.2.2 Preliminary Subdivision Approval

In addition to the requirements in Article 3, General Subdivision Standards, the following information must be provided at the time of submittal for preliminary approval.

A. Required buffer yards shall be shown on the preliminary plat.
B. Open space delineation: all property designated for open space shall be delineated on the preliminary plat.
C. Open space table: a breakdown of developable open space and undevelopable open space should be shown on the preliminary plat in total acres.
D. Access to open space: All open space shall have a minimum of one primary access point from an internal subdivision road. Additional secondary access points may be included. Access points to the open space shall have the following restrictions:

    1. The primary access point shall be twenty (20) feet in width.
    2. Additional secondary access point(s) shall be not less than six (6) feet in width.
    3. The primary and any secondary access points to the open space shall be shown as part of the open space and shall not be part of an individual lot nor shall it be an easement.

22.3 Rural Conservation Subdivision Design Standards

The standards outlined in Greenville County LDR Article 8: General Design Standards and Article 9: Traffic Impact Studies apply herein, except where specified below:

22.3.1 Minimum Subdivision Area

Eligible subdivision sites shall consist of one or more contiguous parcels or it may be divided by an existing public or private road.

22.3.2 Minimum Lot Size

Subdivision lots subject to this Article shall conform to a minimum of six thousand (6,000) square feet in size in areas where municipal sewer and water, provided by a municipal water or sewer utility, is available or planned to serve the lot or lots. In areas not served by a municipal sewer and/or water utility, the lot or lots must be properly sized to conform to the setback and spacing requirements established in South Carolina law and regulation for the installation of onsite wastewater and/or onsite drinking water systems.

22.3.3 Minimum Lot Frontage

Subdivision lots shall have a minimum of twenty feet (20 ft.) of access to and frontage on an approved access to a public street or on a private road constructed to current County road standards.

22.3.4 Setbacks

Subdivision lots are not subject to any minimum internal setback requirements.

22.3.5 Buffers and Screening

The following standards shall apply:

A. A minimum fifty (50) foot buffer shall be provided for the perimeter of the development. However, if a buffer of at least 25 feet already exists in one or more adjoining subdivision(s) or property(ies), a 25-foot buffer is required for the portion of the proposed development's perimeter where the 25-foot or larger buffer already exists in the adjoining subdivisions(s) or property(ies). Within the fifty (50) foot buffer, existing vegetation shall not be clear-cut and existing significant trees shall be preserved unless a plan is submitted to and approved by the Administrator that addresses site-specific conditions like the presence of invasive species, to remove dead or dying plants and trees, to improve screening, or other factors that may make removal of existing vegetation beneficial to the subdivision.

B. In those areas where existing vegetation does not create a visual screen between the development and adjoining road frontages and adjoining parcels, a landscape screen at least 6 feet in height shall be provided. Screening shall consist of evergreen plant material at least 6 feet in height at time of planting, and capable of forming a continuous screen. Screening plant material shall not be placed within twenty-five (25) feet of the road right-of-way and shall be arranged in an informal manner.

C. Berms, privacy fences and walls may not be utilized to meet the screening requirements and are not permitted within the required buffer area.

D. The 50 foot buffer provided along the existing road frontage adjoining the subdivision shall be designated as open space or common area. Permitted activities and development within the road frontage buffer are as follows:

    1. Street access.
    2. Walkways, paths, trails and other elements associated with passive recreation or the provision for continuous pedestrian and bicycle connections between adjoining properties.
    3. Entrance features and signage to the extent permitted.
    4. Clearing for sight distances as required for reasonable traffic safety.

E. A minimum fifty (50) foot riparian buffer shall be provided on all waters of the state.

22.3.6 Required Open Space (Open Space Network)

The following open space requirements shall apply:

A. Required Open Space

Average Lot Size	Open Space Required
2 Acres or Greater	None
1 Acre to 1.99 Acres	At least 10%
0.5 Acre to .99 Acre	At least 15%
Under 0.5 Acre	At least 25%

The Open Space required in the above table shall be the percentage of land area of the total acreage to be subdivided, which shall be set aside as protected open space for natural habitat preservation, passive recreation, and/or conservation for agriculture.

B. Designated open space does not have to be contiguous with open space uses on adjacent parcels.
C. All open space areas shall have a minimum of one primary access point from an internal subdivision road. Additional secondary access points are encouraged. The primary access points shall not be less than twenty (20) feet in width. Additional secondary access points shall not be less than six (6) feet in width. Primary and secondary access points to open space shall be shown as part of the open space and shall not be part of an individual lot nor shall it be an easement.
D. Rights of way of existing and proposed streets, community swimming pool(s), tennis court(s), club houses, high tension power lines, fenced detention areas used for stormwater management and similar construction shall not be considered as Open Space or count towards the Open Space required. Buffers, existing or new conservation easements, and underground utility easements/rights of way shall be counted as open space.
E. All required buffers may be credited toward meeting open space requirements.
F. Septic drain fields as part of a community wastewater collection and treatment system may be permitted within the required open space.

22.3.7 Ownership of Open Space

The developer or subdivider shall select the land dedicated for open space and type of ownership. Ownership of the designated open space may be held by:

A. Homeowners Association.
B. Third-party corporations who can accept easements.
C. Public jurisdictions or agencies, subject to their acceptance.

22.3.8 Maintenance of Open Space

Designated open space shall be maintained in a natural condition, but may be modified to improve appearance, functioning or overall condition. Normal maintenance and the removal of dead or fallen trees are permitted and recommended. The cost and responsibility of maintaining open space and any facilities located thereon shall be borne by the property owner and/or homeowners association. Permitted modifications may include:

A. Reforestation, forest management;
B. Pasture or cropland management;
C. Landscaping to enhance appearance and screening;
D. Stream bank protection; and
E. Passive recreation such as trails, picnic areas, common greens.

22.4 Final Plats

When recording a Final Plat for a Rural Conservation Subdivision, in addition to the requirements in Article 3, the following apply:

A. The recorded required acreage for open space on each final plat must be proportional or greater to the total acreage being platted in each phase. Subsequent final plats must also meet the proportional requirements for the overall platted acreage.
B. The following information must be shown on the final plat at the time of submittal:

    1. Open space table, using the same format as on the preliminary plan, and shall include the proportional acreage being recorded.
    2. Notations indicating the delineated open space, including metes and bounds, are to be shown on the Final Plat.

C. Open Space Easements:

    1. Prior to the recording of a subdivision final plat, an easement shall be placed on all lands and private waters used to satisfy the open space requirements of the Rural Conservation Subdivision.
    2. The easement shall be solely for the purpose of ensuring the land remains undeveloped and shall not, in any way, imply the right of public access or any other right or duty not expressly set forth by the terms of the easement.
    3. The easement shall run with the land, provide for protection in perpetuity, and be granted to an approved owner.
    4. The easement shall include a complete metes and bounds of the property being designated as open space.

D. Notes to be included on the Final Plat:

1. This development has been approved by the Planning Commission as a Rural Conservation Subdivision and has provided certain acreage of open space.
2. Open Space Easement. The removal of trees and natural vegetation is permitted in the development phases for the purpose of utility crossing easements, passive recreational uses and drainage ways with the proper notations on the final plat. Neither the developer, property owners, or other subsequent contractors or builders shall be granted permission to remove or destroy any trees or natural vegetation from the open space area for passive recreational or any other purposes without the express written permission of the community board, or homeowners' association, or property owners, or trustees having jurisdiction over the implementation and enforcement of the subdivision covenants. If some part of the open space was designated to meet stormwater management requirements, permission must be obtained from the Land Development Division for any alteration of the designated open space. Normal maintenance and the removal of dead or fallen trees are permitted and recommended.
3. The open space for this development is protected by an easement that has been recorded at the Greenville County Register of Deeds Office (Instrument #) and as outlined in the Subdivision Covenants (Instrument #).

E. Subdivision Covenants: the covenants for the subdivision shall include provisions for the protection of trees and other natural amenities within the property designated for open space. A copy of the covenants is to be provided prior to the recording of a final plat.

F. Access to open space shall be shown on the final plat in conjunction with the requirements of LDR Article 3.

22.5 Jurisdiction

22.5.1 All major subdivision applications in the unzoned areas of the County shall follow the guidelines and requirements set forth in this Article for the Rural Conversation Subdivision.

Section 4. Repeal County Land Development Regulation Section 3.1 - "Review Criteria".

Section 3.1, *Review Criteria* of the County Land Development Regulations is hereby repealed.

Section 5. Application. The provisions of this Ordinance shall apply prospectively only, beginning on the date of approval of this Ordinance and applying to preliminary plat applications submitted after that date.

Section 6. Severability. Should any section, paragraph, clause, phrase, or provision of this Ordinance be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

Section 7. **Effective Date.** This Ordinance shall take effect on the date of its adoption.

DONE IN REGULAR MEETING THIS 17th DAY OF AUGUST, 2021.

Willis H. Meadows, Chairman
Greenville County Council

Regina McCaskill
Clerk to Council

Joseph M. Kernell
County Administrator