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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
In the Court of Common Pleas

The Honorable R. Scott Sprouse,
Circuit Court Judge

APPELLATE CASE NO. 2026-000024

CASE NO. 2025-CP-04-00784

Von Hollen Investment, LLC . . . . . Appellant,

v.

Anderson County Planning Commission . . . . . Respondent.

APPELLANT'S INITIAL BRIEF

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s/Ronald G. Tate, Jr.
Ronald G. Tate, Jr., S.C. Bar No. 5475
Carter R. Massingill, S.C. Bar No. 101802
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, South Carolina 29601
864-271-9580
rtate@gwblawfirm.com
cmassingill@gwblawfirm.com
Attorneys for Appellant

May 6, 2026

Other Counsel of Record:

Todd Russell Flippin, S.C. Bar No. 101197
HOLCOMBE BOMAR, P.A.
Post Office Box 1897
Spartanburg, South Carolina 29304
864-594-5300
tflippin@holcombebomar.com

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STATEMENT OF ISSUES ON APPEAL

I. DID THE SUMMARY DECISION FORMS UTILIZED BY THE PLANNING COMMISSION FAIL TO ARTICULATE DISCERNABLE GROUNDS FOR DENYING A SUBDIVISION APPLICATION IN VIOLATION OF § 6-29-1150(B) AND PREVENT A MEANINGFUL REVIEW OF THE DECISIONS AS REQUIRED UNDER THIS COURT'S PRECEDENT?

II. DID THE CIRCUIT COURT ERR IN DECIDING THE PLANNING COMMISSION'S DECISIONS WERE SUPPORTED BY EVIDENCE WHEN THERE WAS NO COMPETENT, SUBSTANTIAL AND MATERIAL EVIDENCE IN THE RECORD, RENDERING THE COMMISSION'S DECISIONS ARBITRARY AND CAPRICIOUS?

III. DID THE PLANNING COMMISSION VIOLATE APPELLANT'S DUE PROCESS RIGHTS AND SOUTH CAROLINA LAW BY RELYING ON A DOCUMENT THAT WAS NOT PROVIDED TO APPELLANT, NOT ENTERED INTO THE RECORD, AND NOT PRESERVED AS A PUBLIC RECORD MUST?

STATEMENT OF THE CASE

This is an appeal from a decision of the Anderson County Planning Commission denying Appellant's Subdivision Plat Application ("Application") concerning property that Appellant owns and planned to develop in Anderson County known as "Riverdale" ("the Project"). On two occasions, March 11, 2025, and September 9, 2025, Respondent denied the Application.

On April 7, 2025, Appellant filed its initial Notice of Appeal and Request for Pre-litigation Mediation in the Circuit Court related to the March 11, 2025, decision. The appeal to the Circuit Court was made pursuant to S.C. Code Ann. § 6-29-1150(D). Respondent filed and served its response to the Notice of Appeal on May 8, 2025.

Because Appellant requested mediation pursuant to S.C. Code Ann. § 6-29-1155, a mediation conference was conducted. Following the mediation conference, the Application came back before the Planning Commission on September 9, 2025. The Commission again denied Appellant's Application.

On October 9, 2025, Appellant amended its Notice of Appeal in the Circuit Court to include its appeal of the September 9, 2025 decision. Respondent filed its response to the amended Notice of Appeal on November 7, 2025.

A hearing was conducted in the Circuit Court on November 10, 2025. The Circuit Court heard arguments and took the matter under advisement. On November 25, 2025, the Circuit Court issued an Order denying the appeal. On December 5, 2025, Appellant filed its Motion to Reconsider the Circuit Court's Order pursuant to Rule 59(e), SCRCP. The Circuit Court denied Appellant's Motion to Reconsider on December 9, 2025. Appellant filed its Notice of Appeal to this Court on January 5, 2026.

STANDARD OF REVIEW

Findings of fact by a planning commission must be treated in the same manner as a finding of fact by a jury. S.C. Code Ann. § 6-29-840; *Alliance to Preserve the Old White Horse Road Corridor,* 2026 WL 1017527 (S.C. Ct. App. April 15, 2026). However, the deferential standard of review in an appeal from a planning commission is not a mandate for a court to rubber-stamp an arbitrary decision. This deference is contingent upon the existence of competent, substantial evidence in the record. *See Wyndham Enterprises, LLC v. City of North Augusta,* 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). A decision that lacks such evidentiary support, or is otherwise arbitrary, capricious, or characterized by an abuse of discretion, constitutes an error of law and must be reversed. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020).

The South Carolina Local Government Comprehensive Planning Enabling Act requires the Commission to document the specific grounds for approval or disapproval in the public record. S.C. Code Ann. § 6-29-1150(B). As recently clarified in *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, a record that fails to provide discernible grounds for the Commission's action—thereby preventing a reviewing court from "understand[ing] the Planning Commission's [decision] in light of the evidence before it" is legally insufficient. 2026 WL 1017527 at *4.

ARGUMENT

The decisions of the Planning Commission and the Order of the Circuit Court should be reversed because the Planning Commission decisions were arbitrary, capricious and unsupported by any evidence in the record. Moreover, those decisions were communicated to the Appellant in a summary fashion, with no findings of fact, and the decisions provided Appellant with no meaningful guidance as to how its development could be approved in the future. Further, the Planning Commission considered an alleged letter from a local fire chief that was not placed in the record or presented to the Appellant. This deprived Appellant of its due process rights. These deficiencies violate the requirements of South Carolina statutes and a recent decision of this Court as well as Appellant's constitutional rights.

A. STATEMENT OF FACTS

Appellant Von Hollen Investment LLC owns a tract of land consisting of 82.79 acres of property in an unzoned area of Anderson County. Appellant intended to develop its property to create 52 new single family home sites. The surrounding land use, as noted by the Planning Commission's Staff's Report is residential. (Record at _).

Appellant hired qualified design professionals to prepare the plat. Planning staff presented the project to the Planning Commission at both the March and September 2025 hearings and stated that the project met the requirements of Chapter 24 for land use in Anderson County and that the Project did not require a traffic study. (Record at ____, *March 11 transcript at 19, September 9 transcript at 40*). The Project was relatively small and was in an unzoned portion of the County, but for reasons that were never clearly communicated to the owner, the Planning Commission twice denied its Application.

The reasons for denial were communicated in a vague and inconsistent manner on two check–the–box forms. The decisions themselves were without factual basis and were arbitrary

and capricious. Moreover, while the developer presented substantial evidence backed by expert analysis and opinion by design professionals as well as the expertise of the Planning Commission's professional staff, the only contrary "evidence" that could possibly support the Commission's decisions consisted of anecdotal feelings and opinions of lay people who appeared at the hearings to protest the development. Plainly, the Commission ignored its own rules, ignored its statutory duties and even ignored its own expert staff. In short, the Commission bowed to public outcry while ignoring the facts and the law.

The Application therefore came to the Planning Commission for the first public hearing on March 11, 2025. The owner's civil engineer spoke and described the project:

- 52 homes on 83 acres: all lots were more than half-acre each.
- Density is less than one home per acre.
- 50% of the property would be common area.
- 35 acres of open space including wetlands, buffer zones and flood plain.
- Three acres is dedicated to right of way to Anderson County.
- Three connections to state and county roads "to disperse traffic."
- Forty-foot setbacks will be provided off both access roads and trees will be preserved.
- Stormwater runoff from the development would be diverted to detention ponds, improving the runoff situation for a neighboring subdivision.

(Record at ___ *transcript of March hearing p. 19*).

A number of citizens spoke at the March 2025 Planning Commission hearing. Their generalized concerns were largely irrelevant and unsupported by facts. The following are representative comments in the record:

- A neighbor was "worried about the drainage" and water flowing onto his property (Record at ____. *hearing at 20*) notwithstanding the engineer's assurances to the contrary.
- Lay opinion that Von Hollen Road "not in any condition to handle any more traffic" (*Id.*) notwithstanding that the small project did not require a traffic impact study.
- Lay opinion, without basis, that the soil was not suitable for septic and "does not perc at all." (*Id.*).

- Lay opinion, without basis, that Von Hollen Road is "dangerously congested" (Record at ____, *hearing at 21*).
- Lay opinion without support that emergency response was already "stretched thin." (*Id.*)
- The same speaker opined that school overcrowding was in crisis (*Id.*), that her privacy would be impacted by having headlights from cars using the entrances shining into her home, and she speculated that a car could crash into her home. (Record at ____, *hearing at 22*)
- A speaker gave his opinion that the County needs to prioritize road improvements and "we need infrastructure that can keep pace with the population growth." (*Id.)* This is irrelevant to the discussion of this project as it is the province of county councils to provide roads adequate to serve the population.
- The same speaker gave a litany of other concerns including water pressure, burden on schools, wetlands, soil permeability, wetlands, and septic tanks. (Record at ____, *hearing at 23*)
- A speaker opined without foundation that growth was "dehumanizing our kids" and children are considered "collateral and data mining collections." (Record at ____, hearing at 24)
- A speaker speculated without any basis there might be gravesites on the property. (Record at ____, hearing at 27)
- The same speaker asked for a 75-foot riparian buffer (*Id.*) though no such buffer is required in the land-use ordinances.

Commissioner Jane Jones seemed to testify as a witness against the development and commented on road conditions, water runoff and drainage into a creek. She then made a motion to deny the Application based on "the inadequacy of the infrastructure. That includes all phases of it, the schools, the roads, the emergency service, *all the different types of infrastructure*." (Record at ____, hearing at 29). The Planning Commission voted to deny the Application. The decision was communicated on a preprinted form and the reasons for the denial are discussed below.

With the initial notice of appeal to the Circuit Court of the Planning Commission's March decision, Appellant filed a request for mediation. The Owner mediated with the Planning Commission, and the Application was resubmitted following mediation. On September 9, 2025, the Application came for another hearing before the Planning Commission. The Planning

Commission staff presented the project consistently with its presentation to the initial March hearing. The developer's representative testified at length regarding the improvements made to the Project after the mediation including a new road layout to address neighbors' concerns, adding a cul-de-sac, and drainage improvements. (Record at ____, *September hearing at 41*). When citizens were allowed to comment on the project, they stated many of the same lay opinions, speculations and irrelevant comments as the Commission heard in March.

Prior to the vote, Commissioner Jane Jones referred to a letter from the local fire chief. She stated that the letter expressed concern about fire equipment accessing the subdivision (Record at ___, *hearing at 48*). That letter was never placed in the record, however. Commissioner Moore made a motion to approve the project noting "they've done everything to address what they needed in order to move forward." (Record at ___, *hearing at 48*). There was no further discussion in the Commission's deliberations and the motion to approve failed four to two. (*Id.*)

The Planning Commission communicated the decisions in writing on pre-printed forms. The asserted grounds contained on the preprinted forms were:

March 11 Form	**September 9 Form**
Handwritten comments under "other" "Based on infrastructure, schools, roads, and 'energy services'."	☑ "Compatibility with traffic levels."
	☑ "Concerns for public, health (sic), safety, convenience, prosperity and general welfare."

B. THE SUMMARY DECISION FORMS FAIL TO ARTICULATE DISCERNABLE GROUNDS FOR DENYING THE APPLICATION IN VIOLATION OF § 6-29-1150(B) AND PREVENT A MEANINGFUL REVIEW OF THE DECISIONS. ACCORDINGLY, REVERSAL IS REQUIRED UNDER *ALLIANCE*.

S.C. Code Ann. § 6-29-360(B) requires a Planning Commission to adopt rules and keep a record of its findings and determinations, which must be a public record. As demonstrated in the

table above, the stated grounds for the Commissions' decisions were vague generalities and they were inconsistent. In the March hearing, Commissioner Jones made a motion to deny the project motion to deny the Application based on "the inadequacy of the infrastructure. That includes all phases of it, the schools, the roads, the emergency service, *all the different types of infrastructure*." (Record at ____, hearing at 29). "All the infrastructure" is too broad and too general to allow a reviewing court to know the true basis for the decision. Moreover, it does not inform the Owner of what it can do to receive approval.

The Court in *Alliance* found that the record in that case lacked support necessary for the Court of Appeals to understand the Planning Commission's approval of the project that had been challenged. The Greenville County Planning Commission violated S.C. Code Ann. § 6-29-360(B) concerning the record of Planning Commission findings and it violated S.C. Code Ann. § 6-29-1150(B) that provides a record of all actions on all land development plans and subdivision plats must be maintained with the grounds for approval or disapproval and any conditions attached to the action.

> 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 conclusion 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 Commissions 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 reason 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.

2026 WL 1017527 at *4.

Applying these principles to this appeal, while the Anderson Planning Commission did issue something of a written decision, the decision absolutely failed to convey the basis for that decision or what facts the Planning Commission deemed established according to *Alliance*. The written form decisions provided inconsistent reasons for denial. And, as discussed below, these reasons really were no more than pretextual and they were wholly without evidentiary or factual support of any kind.

Notably, the *Alliance* Court addressed the issue of traffic concerns. It stated that the Appellant's traffic concerns were significant "because we see nothing in this record to suggest that existing transportation infrastructure will support The Stables as proposed. (Developer's Engineer) provided no testimony (or other evidence) that the *existing transportation infrastructure* will support The Stables. To the contrary, he indicated RP&L "will make improvements" to the road but did not specify what such improvements might entail other than 'whatever the County asks us to do.'" 2026 WL 1017527 at *6.

Finally, as was the case in *Alliance*, the Planning Commission's check-the-box forms do not identify which facts were found. These forms did not state what standards were applied, thereby thwarting the requirement of S.C. Code Ann. § 6-29-1150(B) that discernable grounds must be stated. Simply, Anderson County's procedures do not withstand scrutiny under the requirements of this Court as set forth in *Alliance*. Because the Commission failed to provide grounds, as required by *Alliance*, it is impossible to verify if the decision was based on substantial evidence as required by *Wyndham,* as discussed below.

C. THE PLANNING COMMISSION'S DECISIONS WERE NOT SUPPORTED BY COMPETENT, SUBSTANTIAL AND MATERIAL EVIDENCE; THEREFORE THEY WERE ARBITRARY AND CAPRICIOUS.

This appeal is not about weighing the evidence. The law is clear that this is not within the authority of courts considering the decisions of Planning Commissions. *Kurschner v. The City of*

Camden Planning Commission, 376 S.C. 165, 656 S.E.2d 346 (2008); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999). But, where there is no evidence, the decision must be reversed. Here, there is no evidence to support the Planning Commission's decisions.

In *Wyndham Enterprises v. The City of North Augusta*, 401 S.C. 144, 735 S.E.2d 659 (2012) (Ct. App. 2012), the Court of Appeals considered an appeal from a Board of Zoning Appeals. The reasoning of the Court is applicable to this case. The Court of Appeals found the BZA's decision was arbitrary and capricious. Just as here, the Board's decision to deny the requested exemption was based solely on opinion and conjecture. Specifically, at the hearing, local residents testified as to their concerns regarding the applicant, a fireworks business. Their concerns included an increase in traffic, decline in property values, and a detrimental impact on the character of the surrounding area. The Court found that the citizens' comments were based on speculation and opinion and that the testimony of the residents was not competent to support the denial of the exemption. 401 S.C. at 149-150; 735 S.E.2d at 662.

> Regarding the residents' traffic concerns, we note that although there was testimony that residents felt the fireworks business would increase traffic, they failed to offer any competent evidence to support their opinions (Internal citations omitted). Multiple neighborhood residents provided accounts of problems exiting and entering the neighborhood at the location of the proposed fireworks business. However, this testimony failed to establish how adding the fireworks store would increase traffic problems in any way other than a conjectural manner. Additionally, the City's own traffic consultant determined the proposed fireworks business would not generate a significant amount of traffic.

401 S.C. at 150-151; 735 S.E.2d at 663.

It is also telling that the Court of Appeals determined that the Board's decision to give deference to residential neighborhoods outside of the commercial zoning district in which the fireworks decision would be located was arbitrary and capricious. "The record is void of any factual evidence to support the testimony that this particular fireworks business would have a

detrimental impact on the character of the surrounding area." 401 S.C. at 151, 735 S.E.2d at 663. In this case, the Planning Commission ignored that its own staff stated that the Project complied with the land use regulations of Anderson County and elected simply to defer to generalized neighborhood opposition based on speculation, conjecture and anecdotal tales. And in denying the Application, the Commission invoked "All the infrastructure" as its stated grounds.

"All the infrastructure" is totally outside of the Owner/Developer's control and implies there is nothing the Owner can do to meet whatever standards the Planning Commission applies to judge an application. That is by definition arbitrary and capricious. When the written decision was published from the March meeting, Appellant was told it was denied "Based on *infrastructure, schools, roads, and 'energy services'*." Obviously there was nothing in the record concerning "energy services."

The Planning Commission's decision based on "infrastructure" and roads is also legally insufficient. State statutes give the Planning Commission the ability to judge whether a planned subdivision has sufficient streets, traffic access and circulation "*in and through* new land developments" (S.C. Code Ann. § 6-29-1120(2)) and provide that regulation of land development is authorized for enumerated purposes. Likewise, S.C. Code Ann. § 6-29-1130 provides that the local Planning Commission may recommend to the governing body (County Council) regulations for the coordination of streets within subdivision and other types of land developments with other existing or planned streets. Nothing in 6-29-1120 or 1130 provides that a Planning Commission may deny a subdivision application based on surrounding streets as long as the subdivision has access to public roads.

In the absence of duly enacted ordinances or regulations, a Planning Commission would have no right or authority to, essentially, declare a moratorium on developments in certain areas. That authority rests squarely with County Council and, as of the date of the subdivision application

in question, no moratorium had been pending or enacted.

The property in issue is unzoned. Professionals who work for the Planning Department testified the Project met the requirements of Title 24, Land Use. The hue and cry of neighbors who want no growth in their community is not competent evidence sufficient to support a planning commission's decision so the decisions of the Commission and of the Circuit Court should be reversed.

D. THE PLANNING COMMISSION VIOLATED APPELLANT'S DUE PROCESS RIGHTS AND SOUTH CAROLINA LAW BY RELYING ON A DOCUMENT THAT WAS NOT PROVIDED TO APPELLANT, NOT ENTERED INTO THE RECORD AND NOT PRESERVED AS A PUBLIC RECORD MUST.

In the September meeting of the Planning Commission prior to voting on the Project, Commissioner Jane Jones referred to a letter she stated that she received from the local fire chief. She stated that the letter expressed concern about fire equipment accessing the subdivision. That letter was never placed in the record; nor does the Record show that the letter was presented to the Appellant or its agents. There was no further discussion in the Commission's deliberations after Commissioner Jones referred to it and the motion to approve the Application failed. That letter still has not been provided for the record.

For numerous reasons, this was improper. First, planning commissions' activities may be quasi-judicial in nature[1]. This is a novel question in South Carolina, but the Attorney General has considered the issue and reasoned that some functions of planning commissions are quasi-judicial. "Courts in this State have never ruled on whether planning commissions are quasi-judicial in nature. However, courts in other jurisdictions have found that planning commissions are quasi-

[1] In *Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165 (2008), the Court held that the commission decision was an exercise of "discretionary authority, as opposed to adjudicatory power," and that the "additional procedures that the Kurschners request would not aid the Commission in making its decision, but would greatly hinder its ability to make an informed and reasoned decision, as well as intrude upon a municipality's statutorily-granted legislative authority." The Court stated that the appellant received due process through procedures in place and that the "any evidence" standard did not violate due process.

judicial bodies. [internal citations omitted]. Consistent with these opinions, it would appear that in exercising a portion of its functions, the Planning Commission would be quasi-judicial in nature." 1997 WL 568829, at *1 (S.C.A.G. July 9, 1997).

Second, Commissioner Jones violated Appellant's right of due process guaranteed by our state and federal constitutions. In deciding a fired policeman's appeal from a Spartanburg Civil Service Commission decision, the Supreme Court considered whether the commission improperly considered an affidavit which reflected negatively on the officer's integrity, thereby depriving him of the right to confront and cross-examine his accuser. On appeal to the Circuit Court, the court held that it was error to admit the affidavit because it denied the officer his right to be confronted by his accuser and to cross-examine him. The Supreme Court held:

> The Commission is an administrative body and is charged with a number of administrative duties. However, in conducting a hearing for the purpose of determining whether an employee has been discharged in good faith and for cause the Commission acts in a quasi-judicial or adjudicatory capacity. *While the strict rules of evidence are not applicable to such a hearing*, *Richards v. City of Columbia*, 227 S.C. 538, 552, 88 S.E.2d 683, 689, *the substantial rights of the parties must be preserved*. *Southern Stevedoring Co. v. Voris*, (5th Cir.) 190 F.2d 275, 277. It is generally held that these rights include a reasonable opportunity to cross-examine the important witnesses against a party when their credibility is challenged. The following rule is aptly phrased and finds strong support in the decisions cited in the footnotes to the text:
> 'The right to cross-examine witnesses in quasi-judicial or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision, as a requirement of due process of law or the right to a hearing, and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization therefor. * * *' 2 Am.Jur. 234, 2 Am.Jur. 234, Administrative Law, Sec. 424.

City of Spartanburg v. Parris, 251 S.C. 187, 190–91, 161 S.E.2d 228, 229 (1968). The Court held that "fundamental fairness" required the exclusion of the contested affidavit. 251 S.C. at 191, 161 S.E.2d at 230.

In this case, the alleged letter was discussed at the hearing by Commissioner Jones. It is wholly improper for a quasi-judicial officer to essentially wave a letter from a public official around at a public hearing to influence the commission without either entering the letter into the record or allowing the developer and its agents to review and rebut it. When Ms. Jones referred to it, it became a public record. Appellant had a right to review this alleged record and refute its contents at the public hearing. It was deprived of that opportunity. On appeal to the Circuit Court and now in the Court of Appeals, this public record should be available for reviewing courts, but it is not.

CONCLUSION

The Anderson County Planning Commission's denial of the Appellant's application was procedurally defective under this Court's guidance in *Alliance* and was wholly unsupported by evidence and therefore was arbitrary and capricious. The Planning Commission exceeded its authority under the enabling legislation. And the manner that the Commission conducted the hearing violated Appellant's due process rights. Accordingly, Appellant requests that this Court reverse the Circuit Court and order approval of the Riverdale preliminary subdivision plat.

Respectfully submitted,

s/Ronald G. Tate, Jr.
Ronald G. Tate, Jr., S.C. Bar No. 5475
Carter R. Massingill, S.C. Bar No. 101802
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, South Carolina 29601
864-271-9580
rtate@gwblawfirm.com
cmassingill@gwblawfirm.com
Attorneys for Appellant