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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2026-000123
Case No. 2025-CP-02-02223

Sage Mill Residential, Ltd., ... Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondents

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STATEMENT OF THE CASE

This is an appeal from a decision by the Respondent Aiken County Planning Commission. On November 4, 2024, the Appellant Sage Mill Residential, Ltd. submitted a Subdivision Review Application and a preliminary plat with respect to the Hawthorne subdivision as a phase of the Trolley Run Station PUD. That Subdivision Review Application was scheduled for a public hearing and first review by the Planning Commission on December 19, 2024. The public hearing was held on that date. At that meeting, the Appellant requested and was granted deferral until the January 16, 2025 meeting. The Appellant thereafter requested and was granted additional deferrals. Later, the Appellant submitted a letter on June 17, 2025, requesting postponement until the October 16, 2025 meeting, but then on the following day, June 18, 2025, the Appellant submitted a letter requesting postponement until the August 21, 2025 meeting. On July 7, 2025, the Appellant submitted a revised preliminary plat with a letter responding to the staff comments from December 19, 2024.

At its meeting held on August 21, 2025 meeting, the Planning Commission received a presentation by the Appellant's attorney, Ellis Lesemann, as well as brief comments from its design engineer, Tilden Hilderbrand, P.E. There was also a presentation from Joel Duke, who is the Chief Development Officer for Aiken County. The Planning Commission ultimately voted to deny the approval of the Subdivision Review Application and the revised preliminary plat. The minutes and the transcript reflect that Commissioner Lee Bodie made a motion "that we 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." (Tr. 32). That motion passed by a 4-2 vote, with one member abstaining.

The Appellant then filed a Petition for Appeal to the Circuit Court on August 26, 2025. That appeal was heard by Circuit Court Judge Walton J. McLeod on October 7, 2025. On November 14, 2025, Judge McLeod issued an Order affirming the decision of the Aiken County Planning Commission at its August 21, 2025 meeting which denied the approval of the Appellant's Subdivision Review Application and the revised preliminary plat for the Hawthorne subdivision. The Appellant subsequently filed a Motion for Reconsideration on November 24, 2025, which was denied by Form Order filed December 18, 2025.

The Appellant subsequently filed a timely appeal to this Court.

STANDARD OF REVIEW

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

> We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area. Furthermore, this standard of review does not violate the Kurschner's due process rights.

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

The articulation of the applicable standard of review was reaffirmed five years after *Kurschner* in the case of *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and defined the standard of review as follows: "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." 744 S.E.2d at 166. (Citation omitted). Further, "[i]t is important to note that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004).

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning,* 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

ARGUMENTS

I. Contrary to the Appellant's suggestion, the issue of Milligan Avenue creating a "dead-end corridor" issue was raised during the Planning Commission hearing, and the Appellant failed to present evidence to demonstrate compliance with Aiken County Ordinance § 24.7.3(4)(a).

A. In his presentation to the Aiken County Planning Commission, Joel Duke raised the "dead-end corridor" issue and the fact that Milligan Avenue was designed to dead-end at its northern point within the existing PUD which impacted compliance with Aiken County Ordinance § 24.7.3(4)(a).

The Appellant contends that the Circuit Court affirmed the decision of the Aiken County Planning Commission based on evidence that was outside the administrative record. The Appellant argues that "[t]he alleged concern regarding Milligan Avenue was never raised by any member of the Planning Commission or by Joel Duke during the August 21, 205 meeting and is entirely absent from the administrative record." *See,* Appellant's Brief, p. 14. Thus, the Appellant refers to the "Milligan Avenue" as a "post hoc argument" raised for the first time on appeal. As the Circuit Court determined, the Appellant's position is in error both procedurally and on the merits.

Before the Circuit Court, the Appellant argued that the Planning Commission erred in its interpretation and application of Aiken County Ordinance § 24.7.3(4)(a), which provides: "Dead-end streets designed to be permanently closed at one (1) end shall not exceed two thousand five hundred (2,500) feet in length, measured from the right-of-way of the connecting street to the center point of the turn-around." The Circuit Court disagreed and found that "the Planning Commission's ruling [is] supported by evidence in the record and do[es] not constitute an error of law." (Order, p. 6).

As the Circuit Court recognized, prior to August 21, 2025 meeting, the record reflects that Joel Duke sent an email to Denise Fulmer, a representative of the Appellant, where he raised concerns about the Hawthorne plat "exceed[ing] the dead-end corridor maximum distance" as established in Aiken County Ordinance § 24.7.3(4)(a). (Exhibit). Yet, as the Circuit Court also observed, the Appellant erroneously assumed that the concerns with the dead-end corridor maximum distance focused on Keagen Boulevard, but "[a] review of the preliminary plat for the Hawthorne subdivision, however, shows clearly that Keagen Boulevard does not even traverse or even enter the Hawthorne subdivision." (Order, p. 7). The Appellant does not dispute that on appeal.

The Circuit Court reviewed the transcript of the Planning Commission meeting and recognized, as the Respondents had explained, that the issue pertaining to the "the dead-end corridor maximum distance" focused not on Keagen Boulevard to the south of the Hawthorne subdivision but rather on Milligan Avenue which is located within the Hawthorne subdivision. To that point, the Circuit Court wrote as follows:

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

(Order, p. 7). The Circuit Court then cited to the presentation of Joel Duke where he discussed the road running "north from the extension of Keagen Boulevard," which was clearly a reference to Milligan Avenue although the road's name was not used. Duke stated as follows:

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

(Tr 15:16-22). Given that description, the Circuit Court voiced its understanding that "from the plats in evidence that the reference to Catenary Boulevard is an east-west street to the north of the Hawthorne subdivision, and any future westward expansion of Catenary Boulevard will be outside the approved PUD." (Order, p. 7).

Before the Planning Commission, Joel Duke further stated that:

> The continuation of the PUD being withdrawn, that is not – I mean, this is within the PUD absolutely [referring to Hawthorne]. But there is no definition or definitive answer for the Commission as to whether or not these roads will continue at a future date.

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

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

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

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

(Tr. 32:4-15).

Consequently, based on Duke's presentation before the Planning Commission, there is no question that he raised the "dead-end corridor" issue and the fact that Milligan Avenue was designed to dead-end at its northern point within the existing PUD presented a connectivity concern that did not demonstrate compliance with Aiken County Ordinance § 24.7.3(4)(a). While he did not cite "Milligan Avenue" by name, Duke clearly referenced Milligan Avenue based on his description of the road running "north from the extension of Keagen Boulevard," just as the Circuit Court also observed. The Appellant's suggestion that the issue with the north-end of Milligan Avenue was a "post hoc argument" offered for the first time on appeal is simply not fair or accurate. As demonstrated, the Circuit Court did not affirm the Planning Commission based on evidence outside the record or raised for the first time on appeal, as the Appellant is trying to suggest.

B. Consistent with the Aiken County Planning Commission's motion and vote, no supporting documentation or assurances were provided by the Appellant to show compliance with Aiken County Ordinance § 24.7.3(4)(a).

At the August 21, 2025 meeting, the Aiken County Planning Commission voted to deny the approval of the Subdivision Review Application and the revised preliminary plat. The minutes and the transcript reflect that Commissioner Lee Bodie made a motion "that we 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." (Tr. 32). That motion passed by a 4-2 vote, with one member abstaining.

While the Appellant argues that "Milligan Avenue" was not explicitly mentioned in the Planning Commission's motion that was passed, the transcript and the issues addressed clearly demonstrate, as the Circuit Court found, that the "dead-end corridor" issue and the fact that Milligan Avenue was designed to dead-end at its northern point within the existing PUD was one of the bases for the Planning Commission's motion and vote. The Planning Commission found that the Appellant had not demonstrated compliance with Aiken County Ordinance § 24.7.3(4)(a) because, as discussed at the meeting and for which there is support, the Appellant provided no evidence or assurances that Milligan Avenue would eventually be connected to Catenary Boulevard in the future, which would be needed to comply with Aiken County Ordinance § 24.7.3(4)(a). Such connectivity depended on the future westward expansion of Catenary Boulevard, but that would have to take place outside the approved PUD. As the Circuit Court observed,

> While the Appellant's counsel was permitted to and attempted to respond to Duke's concerns with the dead-end corridor maximum distance during the August 21, 2022 meeting, he never addressed the concerns with Milligan Avenue dead-ending at its north end within the Hawthorne subdivision or that the property to the north could not be counted on with certainty for future development because it was outside the approved PUD and the Appellant had withdrawn the application to revise the PUD to include those areas.

(Order, p. 8). Thus, consistent with the Planning Commission's motion and vote, no supporting documentation or assurances were provided by the Appellant to show compliance with the

"dead-end corridor maximum distance." For this reason, the Circuit Court's affirmance of the Planning Commission's vote should also be affirmed.[1]

II. The Appellant's position that the north end of Milligan Avenue is not a "dead-end street" requiring compliance with Aiken County Ordinance § 24.7.3(4)(a) is not an issue preserved for appeal because the Appellant did not present that argument to the Aiken County Planning Commission despite having the opportunity to do so and failed to raise the issue in his Petition for Appeal to the Circuit Court.

The Appellant also attempts to argue that the Planning Commission failed to correctly apply the definition of "dead-end streets" in the Aiken County Ordinances. The Appellant contends that there are no "dead-end streets" in the Hawthorne subdivision, and while the north-end of Milligan Avenue may appear to be a dead-end, it was not permanently closed or designed to be permanently closed. The Appellant's argument fails for procedural and substantive reasons.

First, as the Circuit Court recognized, the Planning Commission record reflects that "Petitioner failed to address the dead-end corridor maximum distance associated with the northern end of Milligan Avenue and specifically did not provide any assurances of future connectivity with Catenary Boulevard which would be outside of the approved PUD. The Petitioner's counsel was given the opportunity to address that issue before the Planning

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[1] In its brief to this Court, the Appellant also argues for the first time on appeal to this Court that the Planning Commission abused its discretion in requiring the Appellant "to provide 'assurances of future connectivity' where no such requirement exists in the County's ordinances." *See*, Appellant's Brief, p. 25. This is yet another issue raised for the first time on appeal. Nonetheless, the preservation issue aside, the Appellant is mistaken. The necessity of evidence or at least "assurances" of future connectivity is part of the analysis in assessing compliance with Aiken County Ordinance § 24.7.3(4)(a) because the Appellant was required to demonstrate the dead-end at the north-end of Milligan Avenue was not permanent or intended to be permanent – but rather would be connected to an east-west street such as Catenary Boulevard in the future.

Commission and failed to do so." (Order, p. 9). The Appellant then attempted to rectify that by making an untimely and improper attempt to address the dead-end corridor maximum distance associated with the northern end of Milligan Avenue for the first time during the appeal hearing before the Circuit Court.[2] The issue was not even mentioned in the Petition for Appeal or in the pre-hearing appellate brief. To recap, in its Order, the Circuit Court found:

> While the Appellant's counsel was permitted to and attempted to respond to Duke's concerns with the dead-end corridor maximum distance during the August 21, 2022 meeting, *he never addressed the concerns with Milligan Avenue dead-ending at its north end within the Hawthorne subdivision or that the property to the north could not be counted on with certainty for future development because it was outside the approved PUD and the Appellant had withdrawn the application to revise the PUD to include those area*s. As the Respondents have pointed out, the Appellant's avoidance of those concerns has continued in its appeal to this Court. *In its Petition for Appeal, the Appellant makes no mention of the dead-end of Milligan Avenue at its north end within the Hawthorne subdivision and only addresses the south-end that ties into the traffic circle within the Ashland subdivision (although the Appellant misidentifies Milligan Avenue as Trolley Run Boulevard). See, Petition for Appeal, ¶ 31. Likewise, in its appellate brief filed October 6, 2025, the Appellant only addresses the dead-end corridor maximum distance with respect to Keagen Boulevard, which again is not a street within the Hawthorne subdivision*.

(Order, pp. 8-9). (Emphasis added).

This issue thus presents two critical procedural hurdles that the Appellant cannot meet. First and foremost, South Carolina law does not permit a litigant from arguing a ground for appeal that was not raised in its Petition for Appeal. Moreover, the law does not permit an

[2] Of note, the Circuit Court also ruled as follows: "While the Petitioner's counsel addressed the issue before this Court, his arguments were raised for the first time on appeal, which is untimely, and additionally, those arguments do not compel finding of any legal error committed by the Planning Commission." (Order, p. 9). On appeal to this Court, the Appellant does not challenge this ruling that the merits of the issue related to Milligan Avenue was untimely asserted for the first time during the Circuit Court oral argument.

amendment of the Petition for Appeal more than thirty days after the appeal is filed. This issue is governed by this Court's decision in *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). In that case, this Court ruled that "the circuit court correctly refused Austin's request to amend the petition after the expiration of [the] 30-day period for filing the appeal." 606 S.E.2d at 214. This Court explained that "[w]hen reviewing a Board decision, the circuit court sits as an appellate court," and as such, the Rules of Civil Procedure, including Rule 15, does not apply to nor authorize amendments of a notice of appeal. *Id*. In this case, the Appellant made no attempt to amend, but instead he attempted in a Motion for Reconsideration to argue the merits with respect to the dead-end corridor maximum distance associated with the northern end of Milligan Avenue. However, as the Circuit Court correctly ruled, and which the Appellant does not dispute, the issue as to the northern end of Milligan Avenue was never raised in the Petition for Appeal nor in the Appellant's appellate brief filed with the Circuit Court on October 6, 2025. Second, as another procedural hurdle, it is well settled that "a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (2014). *See also*, *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

In sum, the Appellant's unpled and untimely argument does not require a reversal of the Planning Commission's decision. The transcript from the August 21, 2025 meeting reflects that the dead-end corridor maximum distance associated with the northern end of Milligan Avenue was raised and discussed by Duke, and as the Circuit Court correctly found, the Appellant never addressed the issue despite having the opportunity to do so. (Order, p. 9). It is too late to make those arguments for the first time on appeal, when they should have been made to the Planning

Commission, and that is particularly true when they are not even raised in the Petition for Appeal. Importantly, the Planning Commission denied the approval of the Subdivision Review Application and the revised preliminary plat because "the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and Commission." (Tr. 32). As the Circuit Court correctly ruled, that decision is supported by the evidence.

The Appellant also in vain attempts to fall back on its previous position that Joel Duke and the Planning Commission were focused on the Keagen Boulevard rather than Milligan Avenue. That, however, is not borne out by the transcript. Duke referenced the "road that runs north from the extension of Keagen Boulevard," that being Milligan Avenue. (Tr. 15:16-22). The concerns were expressed with respect to the connectivity (or lack thereof) with Catenary Boulevard, which is an east-west street to the north of the Hawthorne subdivision and which never intersects with Keagen Boulevard (also an east-west street). As discussed above, the Circuit Court's analysis on this issue was correct. In particular, the Circuit Court ruled:

> [A]s the record reflects, the concerns that were articulated by Joel Duke and the members of the Planning Commission likely focused on Milligan Avenue, which is a north-south roadway that is designed to tie into Keagen Boulevard to the south but which dead-ends to the north. The concern is that, while the Hawthorne subdivision is entirely within the approved PUD, but the property to the north of the Hawthorne subdivision is outside the approved PUD. Thus, any future development into which the north-end of Milligan Avenue could ultimately be connected is outside the scope of the approved PUD.

(Order, p. 7). Accordingly, as to the merits, the Appellant did not demonstrate to the Planning Commission nor on appeal to the Circuit Court that the north end of Milligan Avenue is not intended to be a "dead-end street." The plat shows the north end of Milligan Avenue as a dead-end, and if there is no future expansion of Milligan Avenue north of the Hawthorne subdivision

and beyond the parameters of the current approved PUD, there is no connectivity to Catenary Boulevard. Additionally, as discussed above, the Appellant did not establish before the Planning Commission that the plat complies with Aiken County Ordinance § 24.7.3(4)(a) without the requisite evidence or assurances that there would eventually be connectivity to Catenary Boulevard. As the Circuit Court ruled, neither the interpretation nor the application of the ordinance was in error. Indeed, the Circuit Court found that "the dead-end corridor maximum distance associated with the northern end of Milligan Avenue is a legitimate issue of concern which cannot be characterized as 'arbitrary' or 'capricious.'" (Order, p. 9). That ruling should be affirmed.

III. The Appellant's appeal is barred by operation of the "two-issue rule" because the Appellant failed to appeal each separate and alternative basis by the Circuit Court for affirming the decision of the Aiken County Planning Commission.

As the Circuit Court also found, the "dead-end corridor" issue was not the only issue where the record reflects that the Appellant did not satisfy the questions of staff and the Commission. As the Circuit Court explained, the record contained evidence that the July 7, 2025 letter of Tilden Hilderbrand responding to the staff comments from December 19, 2024, was not fully responsive to the issues raised therein. As the Circuit Court observed, "there are a number of responses by Hilderbrand to specific comments where he declined to provide the requested information or declined to make the requested revisions. A review of those responses shows there are numerous responses where Hilderbrand took the position that the requests were 'not required' for various reasons." (Order, p. 6). Accordingly, the Circuit Court ruled "that the failure of Mr. Hilderbrand to respond to various comments, which are in the record, meets the 'any evidence' standard and supports the Planning Commission's decision that 'the applicant has

failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and Commission.'" (Order, p. 8).

The Appellant, however, has not appealed from that separate and independent ruling by the Circuit Court. Hence, the Circuit Court's decision should be affirmed, at the very least, based on the "two-issue" rule. In applying the "two-issue" rule, the Supreme Court has explained that "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900, 903 (2010). Similarly, in *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), this Court held that "[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal." 348 S.E.2d at 845. In short, the unappealed ruling is the law of the case and, separate from the "dead-end corridor" issue, that ruling on its own requires an affirmance of the court below.

IV. The written record, including the transcript, sufficiently provides the basis for the Aiken County Planning Commission's decision, and if the decision was unclear, the Appellant should have requested clarification from the Planning Commission rather than raising the issue for the first time on appeal.

The Appellant further argues that the Planning Commission cannot deny the revised preliminary plat unless it identifies a nonconformity with requirements of the comprehensive plan or applicable ordinances and regulations. The Appellant contends that the Planning Commission refused to provide the reasons for the denial of the Subdivision Review Application and the revised preliminary plat as presented. That is not the case.

To recap, the minutes and the transcript reflect that Commissioner Lee Bodie made a motion “that we 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.” (Tr. 32). That motion passed by a 4-2 vote. Thus, the denial of the application and plat was based on the absence of sufficient evidence to demonstrate compliance with the applicable ordinances. If effect, as the Planning Commission indicated, the Appellant failed to provide supporting documentation to address the questions raised by the staff and the Commission members. That is a sufficient basis for a denial.

Yet, if the Appellant truly believed that the basis for the denial was unclear, the record reflects that there was no request made by the Appellant or its counsel, who was present when the vote was taken, for any clarification of the motion or the ultimate decision. (Tr. 32-35). Instead, this issue was raised for the first time on appeal to the Circuit Court, which is untimely.

Nonetheless, the law provides that that the decision of the Planning Commission and the basis for that decision may be gleaned from the transcript of the proceedings. There is no requirement under Section 6-29-1150 for a Planning Commission to issue a formal order. *See*, *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) (agreeing the lower 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”). Moreover, as this Court has previously ruled, “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). Further, this Court has explained that "not all situations require a detailed order, and … [a] form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal." *Porter v. Labor Depot*, 372 S.C. 560, 643 S.E.2d 96, 100 (Ct. App. 2007). In this case, the written record, including the transcript, sufficiently provides the basis for the Planning Commission's decision, as discussed herein, and if the decision was unclear, the Appellant should have requested clarification from the Planning Commission rather than raising this issue for the first time on appeal.

V. The Circuit Court applied the correct standard of review.

Lastly, the Appellant contends that the Circuit Court applied an incorrect standard of review. This is also an issue raised for the first time on appeal to this Court. It was never raised to nor addressed by the Circuit Court, and in fact, the Appellant had the opportunity in its Motion for Reconsideration to challenge the standard of review as applied by the Circuit Court in its initial order affirming the Planning Commission's decision, but it did not do so

In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by,* the trial court." *Id.* (Emphasis in original). The reason for that is

clear: the trial court must have "the opportunity promptly to correct their own alleged errors." *Elam,*, 602 S.E.2d at 779.[3] *See also*, *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673, 675 (1993) (issue not preserved for appeal where the ruling is made first in a post-trial order and is not challenged by a subsequent Rule 59(e) motion); *I'On, LLC,* 526 S.E.2d at 724 ("[t]he losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred").

The preservation issues aside, the record reflects that the Circuit Court did apply the correct standard of review. The Circuit Court, as required by the decision in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), applied an "any evidence" standard to factual questions and a *de novo* standard to any issue of law. After identifying the issues on appeal, the Circuit Court writes: "After review of these issues in accordance with the standard of review articulated by the Supreme Court, the Court finds that the Planning Commission's ruling [is] supported by evidence in the record and do[es] not constitute an error of law." (Order, p. 6). The Circuit Court later found that "the dead-end corridor maximum distance associated with the northern end of Milligan Avenue is a legitimate issue of concern which cannot be characterized as 'arbitrary' or 'capricious.'" (Order, p. 9). Moreover, the Circuit Court found that the "the Petitioner has not demonstrated an abuse of discretion." (Order, p. 9). Consequently, the order reflects that the Circuit Court applied the correct standard of review, and certainly, the Appellant has not demonstrated any specific ruling that indicated to the contrary. Thus, if this issue related to the standard of review is even preserved since it was

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[3] This rule of law is consistent with the longstanding precedent that "South Carolina appellate courts do not recognize the 'plain error rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party." *Elam,* 602 S.E.2d at 780.

not raised by way of a Rule 59(e) motion to the Circuit Court after its initial decision was issued, the record demonstrates that the correct standard of review was indeed applied.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents Aiken County and Aiken County Planning Commission respectfully request that this Court affirm the Orders issued by Circuit Court Judge Walton J. McLeod, which in turn affirmed the decision of the Aiken County Planning Commission at its August 21, 2025 meeting.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondents Aiken County and Aiken County Planning Commission

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