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**Jun 05 2026**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas**

**Frank R. Addy, Jr., Circuit Court Judge**

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**Case No. 2022-CP-36-00392**

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**The Pointes of Plantation Pointe  
Owners Association, Inc., ..... Appellant,**

**v.**

**Michael D. Lucas and Angelita R. Lucas, ..... Respondents.**

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**PETITION FOR REHEARING**

**Opinion No. 2026-UP-255  
Submitted April 1, 2026 – Filed May 27, 2026**

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**Attorney for Appellant**

Under Rule 221(a), SCACR, Appellant, The Pointes of Plantation Pointe Owners Association, Inc. ("PPPOA"), submits this Petition for Rehearing on the points overlooked or misapprehended by this Court in its Opinion No. 2026-UP-255 filed on May 27, 2026:

The Court's unpublished opinion filed May 27, 2026, affirmed the circuit court's grant of summary judgment and held that the absence of a genuine issue of material fact as to breach of the restrictive covenants was dispositive, expressly declining to address PPPOA's remaining appellate issues. Appellant respectfully submits that the Court overlooked and misapprehended both the record and the governing legal principles, and that rehearing is necessary because the opinion resolves this appeal on an artificially narrow ground that neither fairly addresses the issues presented nor reflects the record in the light most favorable to Appellant, as summary judgment review requires. See, e.g., *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

I. THE COURT MISAPPREHENDED THE NATURE OF APPELLANT'S PLEADING

The Court affirmed on the premise that the record does not contain a genuine issue of material fact as to whether Respondents breached the restrictive covenants recorded between 1989 and 1999. But that holding effectively adopts the trial court's view that PPPOA failed because its complaint did not identify a sufficiently specific covenant provision. The circuit court's order expressly relied on that point, stating that the complaint did not identify any particular covenant allegedly violated.

That treatment misapprehends the posture of the case. PPPOA's appellate position was not that it had failed to identify the governing documents, but that the complaint referenced the governing documents and alleged that Respondents constructed a permanent improvement without approval and in violation of setback

requirements. The Reply Brief explicitly argued that the complaint referenced the governing documents, alleged the construction of a permanent improvement without ARC approval, and maintained that South Carolina law requires liberal construction of pleadings. See Rule 8(f), SCRPC ("All pleadings shall be so construed as to do substantial justice.").

The opinion does not engage that argument. Instead, it elevates a pleading objection into a complete merits bar and then uses that pleading objection to avoid the substantive appellate questions. Rehearing is warranted because the Court's analysis treats the complaint as if it were required to prove the entire case at the pleading stage, rather than merely allege a claim grounded in the governing recorded documents identified in the complaint.

## II. THE COURT OVERLOOKED THE FACT THAT APPELLANT'S THEORY WAS NOT LIMITED TO THE CIRCUIT COURT'S NARROW "STRUCTURE" ANALYSIS

The opinion notes that PPPOA argued the circuit court erred in determining the concrete pad was not a "structure," in finding that PPPOA failed to plead a specific covenant violation, in dismissing injunctive relief, and in failing to consider material factual disputes. Then the opinion declares the pleading issue dispositive and declines to address the rest.

That is precisely the problem. PPPOA's appellate briefing did not confine the dispute to whether the slab was a "structure" in a narrow, technical sense. The Reply Brief argued that the HOA's governing documents — including Regulation No. 1 and the Architectural Guidelines — define "horizontal improvements" as permanent structures less than eighteen inches above grade that require ARC approval and must meet setback

requirements, and it specifically asserted that the 36-by-16-foot concrete pad fell within that definition. The Reply Brief further argued that the trial court's narrow reading of "structure" contradicted the language used in the HOA documents.

By refusing to address those arguments and cutting off review based on a pleading rationale, the opinion never confronts the actual appellate theory advanced by PPPOA. Rehearing is warranted because the opinion resolves a more limited issue than the one presented and thereby leaves the central questions in the case unanswered.

### III. THE COURT OVERLOOKED MATERIAL FACTUAL DISPUTES THAT PRECLUDE SUMMARY JUDGMENT

The opinion states that the record does not contain a genuine issue of material fact. But PPPOA's Reply Brief identified specific factual disputes that were expressly presented to the Court, including: (a) whether any valid approval existed for the concrete pad; (b) whether earlier approvals had expired under the guidelines; and (c) whether the pad violated the 10-foot setback requirement. The Reply Brief also argued that the HOA's survey evidence showed the setback violation and that Respondents provided no rebuttal evidence on that point.

The circuit court order likewise confirms the factual background: Respondents installed a jungle gym in 2012, installed the concrete slab in 2022 in the same location, received a July 20, 2022, letter alleging the slab was not approved, disputed the validity of the alleged violation, and triggered this litigation. The record, as summarized in the parties' appellate briefing, plainly involved disputed questions concerning approval, expiration, applicability of guidelines, and setback location.

The opinion does not explain why those disputes are immaterial; it simply bypasses them. That is not a harmless omission. It is the central reason rehearing is necessary. Where an appellant specifically identifies record-based factual disputes and the Court resolves the appeal without addressing them, the Court has overlooked matters that go directly to the propriety of summary judgment.

#### IV. THE OPINION IMPROPERLY USES A DISPOSITIVE SHORTCUT TO AVOID THE REMAINING ISSUES

The opinion expressly states, “Because this issue is dispositive, we decline to address PPPOA’s remaining issues.” But the issue deemed dispositive was not actually dispositive unless the Court first rejected PPPOA’s arguments regarding liberal construction of the pleadings, the governing documents referenced in the complaint, and the factual record showing an unapproved permanent improvement allegedly violating setback requirements.

In other words, the opinion assumes the answer to the very question under review. The disposition effectively adopts the trial court’s narrowest rationale without separately engaging with the record evidence or the arguments raised in Appellant’s briefing. The opinion’s Rule 220(b) affirmance is not the problem by itself; the problem is that the abbreviated disposition leaves unaddressed arguments that were squarely raised and necessary to a fair resolution of the case.

Rehearing is appropriate when the Court’s reasoning bypasses the arguments that matter. Here, the opinion’s dispositive ruling rested on a contested premise without addressing the arguments that directly challenged it, warranting reconsideration under Rule 221(a).

V. THE COURT ALSO OVERLOOKED THE CONSEQUENCE OF ITS HOLDING FOR THE INJUNCTIVE RELIEF CLAIM

The unpublished opinion notes that PPPOA argued the circuit court erred in dismissing injunctive relief, but the Court declined to reach that issue because it found the covenant issue dispositive. PPPOA's Reply Brief, however, argued that injunctive relief remained appropriate because the pad remained in place, was unapproved, and constituted a continuing violation causing ongoing irreparable harm to the Association's ability to enforce its governing documents. The denial of injunctive relief flowed entirely from the trial court's allegedly erroneous conclusion that no violation occurred.

Thus, once the Court declined to reach the covenant analysis, it necessarily foreclosed the injunctive relief issue as well. That result further demonstrates why rehearing is necessary: the opinion did not merely reject one issue; it precluded the Court's consideration of the rest by treating a contested predicate issue as settled.

**CONCLUSION**

This Court overlooked or misapprehended at least four critical matters: (1) the nature and sufficiency of Appellant's pleading, (2) the broader regulatory theory advanced by Appellant concerning ARC approval and horizontal improvements, (3) the existence of material factual disputes identified in the briefing and record, and (4) the independent significance of the remaining appellate issues, including injunctive relief.

The opinion should be withdrawn because it resolves this appeal on an unduly narrow basis that does not fairly address the issues actually presented. Appellant respectfully requests that the Court grant rehearing, withdraw the unpublished opinion, and upon reconsideration, reverse the circuit court's grant of summary judgment and

remand for further proceedings, or in the alternative, reconsider the appeal with full consideration of all arguments and record evidence presented.

Respectfully submitted,



June 5, 2026

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**PROOF OF SERVICE**

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I certify that I have served the Petition for Rehearing on June 5, 2026, by emailing a copy of same to Respondent's counsel of record, Kathleen M. McDaniel, Esquire, at kmcdaniel@burnetteshutt.law. A copy of said email is attached hereto as Exhibit "A"

June 5, 2026



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# Exhibit "A"

**From:** [William Booth](#)  
**To:** ["kmcdaniel@burnetteshutt.law"](mailto:kmcdaniel@burnetteshutt.law)  
**Bcc:** [William Booth](#)  
**Subject:** The Pointes of Plantation Pointe Owners Association vs. Lucas – Appellate Case No. 2025-001400 (Our File No. 5519.2422)  
**Date:** Friday, June 5, 2026 1:15:28 PM  
**Attachments:** [Petition for Rehearing.pdf](#)

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Kathleen - Attached in Adobe format for service upon you is a Petition for Rehearing of the Court's Opinion.

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