

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

S.C. SUPREME COURT

Opinion No. 6144
(S.C. Ct. App. filed April 15, 2026)
Case No. 2021-CP-23-3048

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

Respondents,

v.

RP&L, LLC and Greenville County Planning Commission,

Of which, Greenville County Planning Commission is

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on May 28, 2026.

QUESTIONS PRESENTED

- I. Did the South Carolina Court of Appeals err in both ruling that the record was “insufficient” to allow for a meaningful review of the Planning Commission’s decision and also ruling that there is “no evidence” establishing the proposed development satisfies all three criteria of LRD Article 3.1, which are inconsistent rulings?
- II. Did the South Carolina Court of Appeals err in finding that the issues regarding the sufficiency of the evidence LDR Article 3.1 review criteria was properly preserved for review where the Circuit Court never addressed those criteria and no Rule 59(e) motion was filed?
- III. Despite reversing the decisions of the Circuit Court and Planning Commission on inconsistent bases, did the South Carolina Court of Appeals err in never providing for a remand to either lower tribunal and in never providing any direction as to the next steps to be taken on remand?
- IV. Did the South Carolina Court of Appeals err in failing to address whether its decision is moot based on the repeal of the LDR Article 3.1 review criteria?

STATEMENT OF THE CASE

This is an appeal from the Greenville County Planning Commission. This land use matter originated on March 31, 2021, when the developer, RP&L, LLC, filed a preliminary subdivision application with the Greenville County Planning Department. (R. 160, 167-168). RP&L was proposing to subdivide and develop a 43-acre tract of property located at the intersection of Meadow Brook Road and Old White Horse Road in Greenville County, South Carolina. The single-family residential development called “The Stables” was proposed as a cluster development with 73 units on the property and 12.90 acres of open space toward the rear of the property adjacent to the Reedy River, which borders the property to the east.

After receiving comments from the Subdivision Advisory Committee, Kevin Tumblin of Freeland and Associates, the civil engineer for the developer, submitted a revised preliminary plan on April 26, 2021. (R. 96, 172). Ultimately, the request for preliminary plan approval was placed on the agenda for a May 26, 2021 meeting of the Planning Commission. Prior to that date, the Planning Commission and staff received numerous submissions from interested parties, including counsel for the Respondents Mary Jean Horney and Alliance to Preserve Old White Horse Road Corridor, LLC.

At its meeting held on May 26, 2021, the Planning Commission received presentations from interested parties, including the Respondents’ counsel, another resident of the area who was aligned with the Respondents, and Kevin Tumblin, the engineer representing the developer’s interests. (R. 234-241). The Planning Commission had also received a staff report which recommended the approval of the preliminary plan. (R. 217-218). After receipt of the presentations, which included questions posed by Commission members, the Commission voted 5 to 4 to approve the preliminary plan for the Stables subdivision. (R. 241).

On June 25, 2021, the Respondents filed a notice of appeal to the circuit court in accordance with S.C. Code Ann. § 6-29-1150(D). A hearing was held on July 24, 2022, before Circuit Court Judge G.D. Morgan, Jr. By Order filed August 17, 2022, Judge Morgan affirmed the decision of the Planning Commission. (R. 4-14).

The Respondents did not file any motion to alter or amend pursuant to Rule 59(e), SCRCF. Instead, the Respondents filed a Notice of Appeal to the Court of Appeals on September 16, 2022. (R. 458)

On April 15, 2026, the Court of Appeals issued a published opinion “revers[ing] the circuit court's order upholding the Greenville County Planning Commission's approval of this preliminary subdivision application.” (Slip Op. at 12). The Court of Appeals did not explicitly provide for a remand and did not provide any directions or instructions for either the Circuit Court or the Planning Commission for further proceedings. The Petitioner Planning Commission then filed a petition for rehearing which was summarily denied by the Court of Appeals by its order issued May 28, 2026.

The Petitioner Greenville County Planning Commission now seeks a writ of certiorari in this Court.

ARGUMENTS

- I. The South Carolina Court of Appeals erred in both ruling that the record was insufficient to allow for a meaningful review of the Planning Commission’s decision and also ruling that there is “no evidence” establishing the proposed development satisfies all three criteria of LRD Article 3.1, which are inconsistent rulings.**

The Court of Appeals “reverse[d] 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 of Appeals 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 of Appeals then proceeded 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 strayed from strictly applying the applicable standard of review.

In other words, despite finding that the record was “insufficient” for a meaningful review, the Court of Appeals then analyzed the evidence in the record and nonetheless concluded that “there is no evidence establishing the proposed development satisfies all three criteria of LRD Article 3.1.” (Slip Op. at 8). The Court of Appeals erred in both respects, and for that reason, the issuance of a writ of certiorari is warranted. Quite clearly, both rulings may not be simultaneously true. If the record is “insufficient” for meaningful review, the Court of Appeals 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, “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 of Appeals, 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 of Appeals 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 of Appeals 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 voted to deny the preliminary subdivision plan for The Stables. The Court of Appeals 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 of Appeals cited repeatedly to contradictory evidence, much of which would likely not even be admissible like mere “contentions” or “assertions” by a litigant that are unsubstantiated or supported by evidence in

the record. (Slip Op. at 11-12).¹ 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 of Appeals’ 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 Respondents. (Slip Op. at 5). This Court previously established the 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, this 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. This 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

¹ *See, McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered”); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) (“Arguments of counsel are ... not evidence”); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (same).

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).

Indeed, the Court of Appeals acknowledged that 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). And, 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).

Yet, in evaluating the three LDR Article 3.1 review criteria, the Court of Appeals improperly weighed the conflicting evidence and gave improper weight to the comments and opinions of the Planning Commission members who voted against approving the application. The Court also gave 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 Respondents argued that the roads are insufficient to support the subdivision, and more particularly, they criticized the Planning Commission for not ordering a traffic impact study prior to making a decision. The Court of Appeals, 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 of Appeals then concluded 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 ample 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 Planning 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 the finding that the first criterion is satisfied.

Yet, in impermissibly weighing the evidence, the Court of Appeals was 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 in the record which shows the road improvements. (R. 160). Moreover, the Court of Appeals 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 of Appeals failed 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 Respondents argued 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 of Appeals did not even address that The Stables is a cluster development which is permitted under the applicable ordinances. Critically, what was overlooked by the Court of Appeals 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 of Appeals should not have ignored or even overruled the permissible density allowed by the applicable ordinances.²

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).

² The Respondents never challenged the cluster development ordinances, nor did the Court of Appeals find those ordinances to be invalid or unlawful. Accordingly, the allowable density for a cluster development should not have been ignored or overruled.

Thus, cluster developments are explicitly permitted by the Comprehensive Plan in the Suburban Edge character area.³ The Court of Appeals 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 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 Respondents 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 master’s 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.

³ 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).

In its review of this third criterion, the Court of Appeals made little mention of Tumblin's presentation. Instead, the Court of Appeals cited to what the Respondents "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 of Appeals' 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 as articulated in a mere email. At any rate, even in the face of conflicting evidence, the Court of Appeals 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. It was the Planning Commission's prerogative to weigh the evidence, and not that of the Court of Appeals.

In sum, the record demonstrates that there is sufficient record evidence for the 5-4 majority of the Planning Commission to conclude that each of the LDR Article 3.1 review criteria were sufficiently met. The Court of Appeals erred in finding that there was "no evidence" to support those criteria when clearly there is some evidence. (Slip Op. at 8). On rehearing, the Planning Commission requested that the Court of Appeals 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. The Court of Appeals declined to do so in summarily denying a rehearing.

In sum, the issuance of a writ of certiorari is warranted in this case to reaffirm the applicable standard of review as articulated in *Kurschner, supra*, and to confirm that it is the Planning Commission's role, like that of a jury, to weigh the evidence. The judgment of the

Planning Commission as to what the evidence shows cannot be then overturned by an appellate court with a differing view of the evidence. Moreover, by granting a writ of certiorari, this Court can provide needed guidance to the bar and bench that comments and opinions voiced during a hearing by the Planning Commission members who voted in the minority are not evidence nor reasonable bases for rejecting the decision of the majority as well as to confirm that “contentions” or “assertions” by a litigant (Slip Op. at 11-12) do not constitute evidence.

II. The South Carolina Court of Appeals erred in finding that the issues regarding the sufficiency of the evidence LDR Article 3.1 review criteria was properly preserved for review where the Circuit Court never addressed those criteria and no Rule 59(e) motion was filed.

As a threshold matter, the Planning Commission pointed out that the Respondents did not even preserve the LDR Article 3.1 issues for appellate review. The record clearly reflects that while the Respondents 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 Respondents 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 of Appeals acknowledged that “the circuit court did not reference LDR Article 3.1 by section in considering the issues raised by Appellants in their notice of appeal.” (Slip Op. at 8). The Court, nonetheless, rejected that preservation defense by observing that the Circuit Court addressed the Comprehensive Plan and a cluster development issue under LDR Article 11, and also found preservation based on the content of the Form Order which was merely a conclusory statement of the ultimate ruling. (Slip Op. at 8). This Court is respectfully asked to correct this error with the issuance of a writ of certiorari. 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 or conclusory. 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 the Court of Appeals could have even reviewed. 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), the Court of Appeals 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. In the case at bar, the Court of Appeals similarly misconstrued and misperceived 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 said in *Cheap-O’s*, it is placing form over substance. The Court of Appeals should have found the issues related to the LDR Article 3.1 review criteria are unpreserved. The Respondents could have and should have moved under Rule 59(e), but as the Court acknowledges, they did not do so. Thus, the appeal should have been denied for preservation reasons.

III. Despite reversing the decisions of the Circuit Court and Planning Commission on inconsistent bases, the South Carolina Court of Appeals erred in never providing for a remand to either lower tribunal and in never providing any direction as to the next steps to be taken on remand.

The Court of Appeals “reverse[d] the circuit court's order upholding the Greenville County Planning Commission's approval of this preliminary subdivision application.” (Slip Op. at 12). The Court of Appeals summarized 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 of Appeals “reverse[d] the circuit court's finding that evidence exists in this record to support the decision of the Planning Commission” (Slip Op. at 12), the Court of Appeals did not explicitly provide for a remand nor provide any remand instructions for the Circuit Court to follow. For instance, the Court of Appeals did 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 of Appeals did 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).⁴ In effect, the Court of Appeals did not direct what the next steps should be since 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 of Appeals did not order a remand nor dictate what should occur on remand.

The Court of Appeals did not correct this deficiency on rehearing, despite being requested to do so. Accordingly, the Planning Commission submits that a writ of certiorari is warranted, at the very least, to determine the next steps both procedurally and substantively. The Court of Appeals should not have left the lower tribunals, both the Circuit Court and the Planning Commission, to guess as to how to proceed based on the Court of Appeals’ decision.

IV. The South Carolina Court of Appeals erred in failing to address whether its decision is moot based on the repeal of the LDR Article 3.1 review criteria.

In addition to the issue not being preserved for appellate review as discussed above, the Court of Appeals’ 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 now moot and thus does not support the exercise of appellate jurisdiction to address those criteria.

⁴ The Court of Appeals 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 this 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. 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 indicates 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, RP&L 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 the Court of Appeals’ 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 RP&L re-submits its preliminary subdivision application, the LDR Article 3.1 review criteria will have no applicability.

Consequently, this Court of Appeals' 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

Based on the foregoing discussion, the Petitioner Greenville County Planning Commission respectfully requests that this Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

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