

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY
In the Court of Court of Common Pleas

SC Court of Appeals

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.

INITIAL BRIEF OF RESPONDENT ANDERSON COUNTY PLANNING COMMISSION

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June 29, 2026

Spartanburg, South Carolina

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RESTATED ISSUES ON APPEAL

- I. WERE THE PLANNING COMMISSION'S GROUNDS FOR DENYING VON HOLLEN'S DEVELOPMENT APPLICATIONS SET FORTH ON THE DECISION FORMS AND SUPPORTED BY EVIDENCE IN THE RECORD AS REQUIRED BY § 6-29-1150(B) AND DEMONSTRATED IN ALLIANCE?
- II. BECAUSE THE PLANNING COMMISSION'S DENIAL OF VON HOLLEN'S APPLICATION WAS SUPPORTED BY RECORD EVIDENCE, AND BECAUSE THERE IS NO CLEAR ERROR OF LAW, MUST THIS COURT AFFIRM THE TRIAL COURT'S ORDER?
- III. IF UNDER S.C. LAW, A DEVELOPMENT APPLICANT HAS LIMITED RIGHTS TO PROCEDURES BECAUSE THE PLANNING COMMISSION ACTS IN A DISCRETIONARY, NOT QUASI-JUDICIAL, CAPACITY WHEN MAKING LAND USE DECISIONS, DID COMMISSIONER JONES'S PASSING REFERENCE TO A LETTER, DESPITE ITS ABSENCE FROM THE RECORD, VIOLATE THE CONSTITUTION?

STATEMENT OF THE CASE

Anderson County Planning Commission denied Appellant's preliminary subdivision application concerning property that Appellant owns and planned to develop in Anderson County. The proposed neighborhood is called "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), SCRPC. 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

The South Carolina Supreme Court established that standard of review for appeals from a local planning commission in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008). In that case, the Supreme Court held that “[b]y statute, the trial court must uphold the Commission’s decision unless there is no evidence to support it.” 656 S.E.2d at 351.

The Supreme Court further explained:

We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature’s intent in granting a planning commission broad discretion in this area. 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.* A planning commission decision will be overturned only if it is “based on errors of law,” if “there is no legal evidence to support it,” if the commission “act[ed] arbitrarily or unreasonably,” or if the commission “abused its discretion.” *See Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351.

Five years later, this standard of review was reaffirmed in *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and described 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. This Court will uphold the trial judge’s decision unless it was based on an error of law or is not supported by the evidence.” 744 S.E.2d at 166. (Citation omitted).

ARGUMENTS

I. THE PLANNING COMMISSION’S GROUNDS FOR DENYING VON HOLLEN’S DEVELOPMENT APPLICATIONS WERE SET FORTH ON THE DECISION FORMS AND SUPPORTED BY EVIDENCE IN THE RECORD AS REQUIRED BY § 6-29-1150(B) AND DEMONSTRATED IN ALLIANCE. ACCORDINGLY, THE CIRCUIT COURT’S ORDER SHOULD BE AFFIRMED.

A. The Regulatory Scheme Governing Preliminary Subdivision Applications in Anderson County are Consistent with the Enabling Act.

The General Assembly in 1994 enacted the S.C. Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6–29–310, *et al.* The Act authorizes counties to undertake reasonable land use planning and zoning tools to guide land uses and development in the community. The functions and duties of a local planning commission, when created by a county council, include the implementation of technical standards and the enforcement of aspirational objectives. In particular, the planning commission is to

undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction.

S.C. Code Ann. § 6-29-340(A). Planning commissions are charged with maintaining a planning process to “guide the development and redevelopment” of a county. S.C. Code Ann. § 6-29-510(A). To that end, planning commissions are granted powers to exercise two main policy functions: to prepare comprehensive plans and amendments thereto and to recommend ordinances, policies, and procedures to the local governing body. S.C. Code Ann. § 6-29-340(B).

These policy functions include the power to recommend subdivision regulations for land development within the county. The purpose of these regulations include “the harmonious development of the municipality and the county” ... “to create conditions favorable to health,

safety, convenience, appearance, prosperity, or the general welfare.” S.C. Code Ann. § 6-29-1130(A). A county’s land development regulations “must include a specific procedure for the submission and approval or disapproval by the planning commission .” S.C. Code Ann. § 6-29-1150(A).

Anderson County’s ordinances, as authorized by the Enabling Act, define the Anderson County Planning Commission’s duties when weighing the appropriateness of subdivision development applications. See Anderson County Ordinances, Sec. 24. The principal purposes of Anderson County’s land use ordinances include protecting “land values through good and responsible development,” conserving the county’s “natural and scenic resources for future generations to enjoy,” and securing “the safety of residents from the hazards of improper development.” Sec. 24-25. Any subdivision development must be submitted to and approved by the planning commission before being filed or recorded. Sec. 24-50(d).

Anderson County’s ordinances include specific rules for subdivision development because “[t]here are few activities that have a more lasting effect upon our community’s environment and appearance.” Sec. 24-304(a). These ordinances include aspirational, sometimes intangible, values to be weighed along with the technical design standards controlling subdivision developments.

The people of the county have a legitimate interest in the development of subdivisions and these subdivision regulations are designed to provide the county with an instrument to control such development. The ultimate purpose of subdivision regulations is the same as that of all planning regulations; namely, the creation of a better community for the citizens of a county. Specific objectives of these subdivision regulations include ... (6) To balance the interests of the homeowner, the public, and the subdivider.

Ord. § 24-304(b).

Anderson County Ordinance §§ 24-335 and 24-336 apply to the preliminary approval process for subdivisions and set forth the information that must be contained in developer’s

application and preliminary plat for review by planning staff. The preliminary subdivision plat submitted for approval must include 18 categories of data. § 24-336. The planning staff reviews the application against the County's technical development standards. §§ 24-401 through 24-488. The planning staff is authorized to reject, subject to appeal to the planning commission, any application failing to comply with these technical criteria. § 24-335(xxx).

Anderson County Council amended land use ordinance 24-335 with ordinance number 2024-042. R. p. ___. According to the amendment "the land use administrator shall send a copy of the preliminary plat for review and comments to the appropriate school district, fire marshal, EMS, the utility providers, and the South Carolina Department of Transportation (DOT), if state roads are impacted." §24-335(2). The input received from these regulators, utilities, and service providers are included in the planning staff report and contribute to the record the planning commission relies upon to approve or disapprove land development applications.

After the planning staff reviews the subdivision plat and confirms it meets the technical standards described above, the planning staff presents the preliminary subdivision plat to the Commission for consideration at one of its monthly, public meetings. At the Planning Commission meeting, the planning staff present the development application, the developer or owner, along with members of the public are invited to speak regarding the project.

In addition to planning staff report, the Planning Commission must also consider the following criteria when making its decision regarding a preliminary subdivision application:

1. Public health, safety, convenience, prosperity, and the general welfare.
2. Balancing the interests of subdividers, homeowners, and the public.
3. The effects of the proposed development on the local tax base.
4. The ability of existing or planned infrastructure and transportation systems to serve the proposed development.

§ 24-335(4)(d).

The Anderson County Planning Commission uses a form (“Decision Form”) to record its decision to approve, approve with conditions, or deny each preliminary subdivision application. In order to report the grounds for their decision, the Planning Commission may select from one or more of several categories consistent with the design standards and aspirational goals of the County’s ordinances. Alternatively, or in addition to the listed categories, the Planning Commission may hand-write or append other grounds for their decision.

- | | |
|---|--|
| ☐ Compatibility with Future Land Use Map | ☐ The recommendation of staff |
| ☐ Compatibility with Traffic Levels | ☐ Compatibility with surrounding properties |
| ☐ Compatibility with Density Levels | ☐ Use and value of surrounding properties |
- ☐ Concerns for public, health, safety, convenience, prosperity and general welfare,
☐ Concerns for the balance of the interest of sub-dividers, homeowners and public.
☐ Concerns for the effects of the proposed development on the local tax base.
☐ Concerns for the ability of existing or planned infrastructure and transportation system to serve the proposed development.

R., at p. ___ & p. ___. The grounds provided on the pre-printed forms are drawn directly from the ordinances controlling preliminary subdivision applications in Anderson County.

B. The Planning Commission Must Make a Record of its Decision to Approve or Deny a Subdivision Application and Provide the Grounds for that Decision.

The Enabling Act requires the Planning Commission maintain as a public record “all actions on all land development plans and subdivision plats with the grounds for approval or disapproval....” S.C. Code Ann. § 6-29-1150(B). As has been repeatedly recognized, the statutes governing planning commission review of development applications are distinct from those controlling zoning boards of appeal. *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (“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.”); *All. to Pres.*

the Old White Horse Rd. Corridor, LLC v. RP&L, LLC, 447 S.C. 649, --- S.E.2d ----, 2026 WL 1017527, *4 (Ct. App. 2026), *reh'g denied* (May 28, 2026) (agreeing with the trial court's ruling that the Enabling Act does not “require the Planning Commission to issue a formal written decision setting forth findings of fact and conclusions of law”).

In contrast, when a zoning board of appeals approves or disapproves a variance from a zoning ordinance, “[a]ll findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.” S.C. Code Ann. § 6-29-800(F); *see also*, Ordinance Sec. 24-56(d) (providing that all final decisions of the board of zoning appeals “shall be in writing” and include “findings of fact and conclusions of law”). That same requirement, however, was not made of a local planning commission, likely in recognition of the differing roles the two bodies play. Importantly, the absence of the requirement for a formal decision with findings of fact and conclusions of law in the statute governing a local planning commission demonstrates that the General Assembly did not intend to require such a formal decision when a planning commission considers a preliminary subdivision application. Simply stated, the requirement for recording “grounds for approval or disapproval” is not the equivalent of setting forth “findings of fact and conclusions of law.”

Appellant argues that when it denied its preliminary subdivision application, the Planning Commission failed to “convey the basis for that decision” which “were no more than pretextual and ... wholly without evidentiary or factual support of any kind.” (Brief, p. 9). Inarguably, the Planning Commission’s decision forms from its hearings on March 11, and September 9, indicate the Commission’s grounds for disapproval. R. p. ___ & p. ___. The question for this Court is whether the record includes *any* evidence consistent with *any* of the grounds cited by the Planning Commission. Because the Planning Commission’s decision was supported by record evidence, the

Court should affirm the circuit court's decision affirming the denial of Appellant's development application.

C. The Grounds Cited in the Planning Commission's March 11, 2025, Decision were Adequately Supported by Record Evidence.

Appellant's development application for a subdivision named Riverdale was before the Planning Commission for the first time on March 11, 2025. (R. p. ____). The Commission's denial of the application was recorded on a Decision Form indicating "infrastructure, schools, roads, and energy services" as grounds for the decision. (R. p. ____). These grounds were each supported by record¹ evidence received by the Planning Commission at the hearing.

Riverdale's preliminary application sought approval of 52 residential lots on 82.79 acres. (R. p. ____). The preliminary plat included three entrances to the neighborhood, one on Three Bridges Rd. and two on Von Hollen Drive. (R. pp. ____). An overhead view of the existing density of the area shows a residential neighborhood that exists onto Three Bridges Road at its intersection with Von Hollen Drive. *Id.* Several existing homes front Von Hollen Drive across from two proposed entrances to Riverdale.

An email from SCDOT's District 2 Permit Engineer² indicates that he reviewed the preliminary plat, but did not "visit the site to verify anything in the field." R. p. _____. Easley Combined Utilities advised the planning staff that it did not have capacity to service the Riverdale development. R. p. _____.

¹ The record before the Planning Commission consists of Appellant's development application, the planning staff's file, which includes correspondence with various community stakeholders the staff solicit for input, the transcript of the Planning Commission meeting, and the Decision Form used to record the Planning Commission's decision. R. p. ____, p. ____, p. ____, & p. _____.

² SCDOT's input regarding Riverdale was solicited by the planning staff in accordance with Ordinance 2024-042, which amended § 24-335(2) to require the agency's comments on any project abutting state-maintained roads such as Three Bridges Road.

At the March 11 Planning Commission hearing, the developer's engineer, Kevin Tumblin, presented the project. He provided that "one of the Hornbuckle neighbors asked me about stormwater runoff. So I told him, there is a portion of our site that drains into that development, but because of the way we're doing it, we'll have to capture that water and divert it to the detention ponds on our site. So hopefully it'll improve their situation." R. p. ___ Ln. ___ to p. ___ Ln. ___.

Several members of the public spoke in opposition to the Riverdale project. One speaker was an environmental engineer named Dan Curry, who owns a home on Hornbuckle that backs up to the proposed development. He testified that he was concerned about drainage because "water flows downhill and it will flow right onto my property. We already have an issue with stormwater running off in the backyards, across those property lines, washing out everything in the backyard." (R. p. ___ 20:8-28). Mr. Curry described video footage from a recent storm that he was willing to share with the Commission.

Mr. Curry also raised concerns about the condition of Von Hollen Road. (R. p. ___ 20:30-42). He described the road as not in a condition to handle more traffic, where two cars can barely pass each other on that road, and as being in "very, very poor shape." Mr. Curry pointed to the staff report where a SCDOT representative admitted that he did not conduct a site visit. The environmental engineer also addressed the project's reliance on septic service, which he testified would threaten area wetlands because the soil does not percolate. R. p. ___ (20:45-50).

Shannon McCombs, a resident on Von Hollen Drive, emotionally described that a car lost control and crashed into trees that were the only thing preventing the vehicle from penetrating into her daughter's bedroom. R. p. ___ (21:15-22:24). She described South Carolina as having the highest rural road fatality rate in the nation with Von Hollen Drive and Three Bridges Road among the most hazardous roads in Powdersville. In addition to these dangers, she described the gridlock on

Three Bridges Road and the lack the dedicated fire and police support available in the unincorporated area. Ms. McCombs also spoke from her perspective as a former middle school teacher and reported that overcrowding in local schools was already a crisis. Likewise, Kathleen DiPasquale complained that Concrete Elementary School already required portables to support their student population. R. p. __ (23:48-25:11).

Paul Nichols, also a resident of Hornbuckle Drive, echoed the other speakers' concerns and described the strained infrastructure causing traffic at the stop signs on Three Bridges Road. R. p. __ (22:30-23:45). Despite owning a business that depends on growth, Mr. Nichols complained of existing infrastructure problems including low water pressure, which he believed would worsen with additional housing units.

Also speaking that night was Michael Dent, who described his experience as an insurance professional. R. p. __ (25:26-26:33). Mr. Dent reported that the frequency and severity of auto accidents is rising. This problem was exacerbated in the unincorporated area due to a lack of continuous law enforcement presence to deter speeding and reckless driving. Relatedly, he reported that the all-volunteer fire department responded to over 601 calls in the previous year. As to overcrowded schools, Mr. Dent pointed out that portables could be accessed without going through the school's checkpoints, resulting in risk to student safety.

After the public comments, Mr. Tumblin responded that as "far as the schools, I didn't, I didn't say anything about the schools. I haven't heard from staff that there's a problem here. Maybe there is." R. p. __ (29:2-30). "The big picture questions ... I can't really address are questions for the state or Anderson County."

Commissioner Jane Jones moved to "deny the project based on ... the inadequacy of the infrastructure. That's including all phases of it, the schools, the roads, the emergency service." R.

p. __ (29:35-49). Her motion carried and the Von Hollen project was denied. The Decision Form cited substantially similar grounds for the decision. (R. p. __). As is clear from the public comments and correspondence in the staff report, these grounds are amply supported by record evidence.

D. The Grounds Cited in the Planning Commission’s September 9, 2025, Decision were Adequately Supported by Record Evidence.

When the Riverdale development appeared before the Planning Commission again on September 9, 2025, Appellant’s engineering firm revised the application and described changes made since the prior hearing in a letter³ dated July 16, 2025. (R. p. __). One change was eliminating one of the two entrances on Von Hollen Drive, apparently on the basis of Shannon McCombs’ public comments regarding the potential of headlights shining into her home. R. p. __ (22:1-5). The only other change described was a “20’ drainage easement” between several lots and the adjacent, downslope properties in the Hornbuckle subdivision. R. p. __. The updated preliminary plat reflected these changes.

In addition to the materials in the March 11 staff report, the September report included a letter from Dr. Jeff Wilson, Assistant Superintendent for Anderson County School District One.⁴ R. p. __. According to the assistant superintendent of the district, “Riverdale ... would have a negative impact on class sizes in our schools.”

³ The same improvements were discussed by a representative of the property owner in his presentation after the staff read its report into the record. R. p. __ (41:6-42:22).

⁴ Although the letter, which was dated March 10, 2025, was not in the staff report for Riverdale at the March hearing, the Planning Commission was aware of the school district’s overcrowding problems. The project appearing before the Planning Commission immediately prior to Riverdale at the March meeting included an email from Dr. Wilson, who voiced the school district’s opposition to any “new subdivisions in our area until we have had a chance to work with the county and developers to develop a ‘plan for growth’” for the district’s attendance zone. R. p. __. The letter was discussed during public comments for the Thomas Crossing preliminary subdivision application. R. p. __, lines ____).

Public speakers included Anthony Burns, a resident of the Hornbuckle subdivision. (R. p. __ 42:30-43:38). Mr. Burns cited South Carolina Department of Health and Environmental Control standards on the benefits of wetlands and noted that a buffer zone of 100 feet is not shown on the plat. He described the area flood plain feeding Hollen pond dam (South Carolina dam number D-3138), which was not shown on the Riverdale plat. Mr. Burns noted that despite SCDOT's position that there should be no stormwater detention on SCDOT roadways, one pond is too close to Three Bridges Road. Mr. Burns explained that on the other side of the Hornbuckle subdivision, wetlands were destroyed and flooding resulted around Hornbuckle after a subdivision was developed.

Shannon McCombs returned to speak out against the project despite her appreciation that the revisions removing the proposed entrance that was directly in front of her home on Von Hollen Drive. R. p. __ (43:49-44:42). "[W]hile that detail has improved, the larger issues have not." Von Hollen Drive she reported, "is still narrow, and the steep hill makes it nearly impossible to see oncoming traffic." She invited the Commission to "consider the residents of Von Hollen and Three Bridges where speeding and cut-through traffic are already ignored and dangerous." Ms. McCombs reiterated that "emergency services remain stretched thin with limited fire and police coverage." Once again, she described the local schools as "beyond capacity" with travel to Concrete Primary, just one and a half mile from her home, taking 25 minutes in the morning and at least an hour for in the afternoon.

Kevin Tumblin acknowledged that the visibility and site lines will require encroachment permits from Anderson County and SCDOT. (R. p. __ 46:6-48:1). He explained that the developer cannot control speeding on these roads. As to Anderson County's schools, he offered that crowding is a "problem that this property owner and this developer is not going to solve or be able to address" because it is a "systemic, larger issue." As for traffic concerns, he suggested that the surrounding

counties “need to stop all residential, commercial, health care, any traffic generators that could put traffic on Three Bridges Road.” Further, he offered that Von Hollen Drive is a problem for Anderson County Roads and Bridges Department.... They have an obligation and [an] absolute jurisdiction of providing safe roads for Anderson County. That's not in our purview.”

Commissioner Jane Jones raised concerns with heavy traffic on Von Hollen and Three Bridges. R. p. __ (44:49-45:47). She also cited potential problems with water runoff and septic tank drainage on property with the slope indicated on the plat. In response to Mr. Tumblin’s comments about the absence of input from fire or EMS, Commissioner Jones referenced a letter given to her by the fire chief at the Powdersville Volunteer Fire Department. R. p. __ (48:5-48:30). The chief was concerned about their fire truck being able to get down Von Hollen Drive and into the subdivision.

After Commissioner Will Moore moved to approve the project the Planning Commission denied the Riverdale application by a four to two vote. R. p. __ (48:35-49). In its Decision Form denying the Riverdale development after the September 9, 2025, meeting, the Planning Commission selected the following grounds for their decision:

Compatibility with Traffic Levels

Concerns for public, health, safety, convenience, prosperity and general welfare.

Concerns for the balance of the interest of sub-dividers, homeowners and public.

Concerns for the effects of the proposed development on the local tax base.

Concerns for the ability of existing or planned infrastructure and transportation system to serve the proposed development.

R. p. __.

The materials in the staff report and the public comments support these grounds and satisfy the “any evidence” standard. One ground for the Planning Commission’s decision was concern for the ability of existing infrastructure to serve the proposed development. This was supported by evidence in the form of the school district’s letter citing overcrowding as a risk posed by the new

neighborhood and the public comments that flood plain feeding dam number D-3138 was not accounted for in the plat. Public comments regarding speeding and cut-through traffic, long traffic lines at Concrete Elementary, and poor site lines support the ground of compatibility with traffic levels. Testimony that emergency services remain stretched thin with limited fire and police coverage speaks to the Planning Commission's ground citing concerns for public, health, and safety. Appellant interprets these public concerns as "generalized neighborhood opposition based on speculation, conjecture and anecdotal tales." (Brief, p. 11). However, the Planning Commission's decision was clearly supported by record evidence and thus far from "arbitrary and capricious."

E. In its Recent Decision in *Alliance v. RP&L, LLC*, this Court Applied the Any Evidence Standard and Refused to Require Planning Commissions to Adjudicate the Competency, Substantiality, or Materiality of Evidence.

Appellant relies heavily on this Court's recent decision in *Alliance*⁵ in its attempt to undermine the Planning Commission's basis for rejecting the Riverdale development applications. *All. to Pres. the Old White Horse Rd. Corridor, LLC v. RP&L, LLC*, 447 S.C. 649, --- S.E.2d ----, 2026 WL 1017527 (Ct. App. 2026), *reh'g denied* (May 28, 2026). However, the Court's analysis of the record evidence in that case validates the grounds for the Planning Commission's denial of Appellant's applications. That case rejects Appellant's argument that the Planning Commission should be required to defer to "substantial evidence backed by expert analysis and opinion by design professionals as well as the expertise of the Planning Commission's professional staff" or reject the "anecdotal feelings and opinions of lay people who appeared at the hearings to protest

⁵ This Court denied the *Alliance* respondent's Petition for Rehearing on May 28, 2026. Accordingly, the deadline to submit a petition for writ of certiorari in *Alliance* is Monday, June 29, 2026.

the development.” (Brief, p. 4). In *Alliance*, the Court neither elevated “experts” nor disregarded the “hue and cry of neighbors.” Instead,

Unlike the Decision Reports issued by the Planning Commission in this appeal, the planning commission in *Alliance* did not record a written decision providing the grounds upon which it relied in approving the preliminary subdivision application. In the absence of such a record, the Court analyzed the record evidence against three factors of the county’s design criteria: infrastructure and transportation systems; compatibility with surrounding land use; and compatibility with the site's environmental conditions.

The record on review in *Alliance* consisted of: 1) letters from 19 “parties” opposing the development; 2) the two-page staff report; 3) the transcript of the planning commission meeting, which included: a) presentations by the developer’s engineer and counsel for the opponents; b) public comments from local landowners opposing the project; and, c) commission member comments. In reversing the circuit court’s affirmation of the planning commission’s approval of the project, the Court focused on three development standards listed in LDR Article 3.1 that the record evidence did not provide the planning commission with grounds for approving the project.

The first LDR Article 3.1 design standard addressed was whether “[a]dequate existing infrastructure and transportation systems exist to support the project.” Turning to the record evidence suggesting compliance with infrastructure and traffic review criteria, the Court found none. Rather than crediting the circuit court’s finding that the developer satisfied the LDR’s technical requirements, the Court reversed the approval because the developer failed to show that the roads were adequate. The staff recommendation, which merely described the access road, did not rescue the developer from failure.

As to the issue of traffic, the Court compared the comments at the meeting by project opponents, the developer, and commission members. The opponents “spoke about additional concerns regarding ... likely traffic increases” and the “safety of a proposed access.” *Alliance*, at 2. One commission member “opined that access to the subdivision was awkward,” noted her concerns about emergency vehicle access, and commented on the lack of input from the fire department. *Alliance*, at 2. When asked about emergency vehicle access, the developer offered only that “whatever the county recommends, there won't be any issues.” *Id.*, at 3. On the basis of this record, the Court held that the planning commission lacked grounds to approve the project. The take-away is clear. The Court in *Alliance* applied the “any evidence” standard without deference to qualified witnesses or credentialed experts.

The Court in *Alliance* next considered the LDR Article 3.1 design standard weighing whether the “project is compatible with the surrounding land use density.” Evidence regarding the compatibility criteria cited by the Court included public comments opposing the development, commissioner’s comments, and the staff report.

Properties adjacent to the proposed development were “devoted primarily to agricultural or equestrian uses,” which one commissioner described as indicating an incompatible land use. *Alliance*, at 6. A different commissioner cited nearby neighborhoods to find that the proposed development was not incompatible with the area. *Id.*, at 3. According to the record, however, those neighborhoods were not within the Old White Horse Road Corridor and were zoned Residential-15 (R-15), which allowed “for a significantly greater gross density of 3 to 5 dwellings per acre.”

Id., at 3. Unlike those neighborhoods, the proposed development was designated⁶ “Suburban Edge” with a target density of “0 to 1 dwellings per acre.” *Id.*, at 6.

The third LDR Article 3.1 design standard analyzed by the Court asked if “[t]he project is compatible with the site's environmental conditions, such as but not limited to, ... flooding....” The Court cited a letter in the record from a neighbor indicating that the project is sited in a flood prone area. *Id.*, at 7. At the hearing, one of the commissioners relied on the letter when discussing flood risks. The planning staff report provided only that the development was within the Reedy River watershed. Those opposing the project provided photographs of flood damaged properties along the drainage route between a pond on development property and the Reedy River. The developer’s engineer responded to these concerns by stating they would “closely look at the existing pond to see if [there are] any issues.” *Id.*, at 7.

F. Appellant Erroneously Argues that the Enabling Act Requires Findings of Fact in Decisions Regarding Preliminary Subdivision Applications.

Appellant erroneously argues that the Planning Commission was required to make a “record of its findings and determinations” in reliance on § 6-29-360(B).⁷ That section, however, is simply not applicable to Appellant’s development application. The statute relied on by Appellant is found within Article One of the Enabling Act, which sets out the organization roles of local planning commissions. §§ 6-29-310 - 380. In addition to announcing the planning commission’s

⁶ It is not clear from the Court’s opinion in *Alliance* whether the classifications and target densities provided in Greenville County's Comprehensive Plan (such as “Suburban Edge” and “Suburban Neighborhood”) were consistent with the zoning designations applicable to either the proposed development or the nearby neighborhood cited as compatible.

⁷ Appellant also argues in error that in *Alliance* this Court concluded that the Greenville County Planning Commission violated § 6-29-360(B) by failing to make a record of its findings. Brief, p. 8. Although that statute is cited in passing, nowhere did the Court describe the it as altering the “any evidence” standard. *All. to Pres. the Old White Horse Rd. Corridor, LLC v. RP&L, LLC*, 2026 WL 1017527, *4.

aspirational goals of promoting the county's "public health, safety, morals, convenience, prosperity, ... general welfare ... efficiency and economy," §6-29-340 grants powers and duties to achieve these goals. This planning process includes preparing plans and programs for the development and redevelopment of the county through the recommendation of zoning ordinances, regulations for the subdivision or development of land, an official map, landscaping ordinances, and a capital improvements program. §6-29-340(2).

In this context, the Planning Commission is required to "adopt rules of organizational procedure and keep a record of its resolutions, findings, and determinations." § 6-29-360(B). The Planning Commission's obligations for recording its discretionary role in approving or denying a development application are limited to providing its "grounds for approval or disapproval." § 6-29-1150(B). Based on the plain language of the Enabling Act, and the difference between the requirements for a zoning board of appeals and a planning commission, the Decision Form must provide "the grounds for approval or disapproval" but need not provide "findings of fact."

II. BECAUSE THE PLANNING COMMISSION'S DENIAL OF VON HOLLEN'S APPLICATION WAS SUPPORTED BY RECORD EVIDENCE, AND BECAUSE THERE IS NO CLEAR ERROR OF LAW, THIS COURT MUST AFFIRM THE TRIAL COURT'S ORDER.

Appellant errs in its second issue on appeal by inserting an evidentiary review standard applicable in appeals from the administrative law court. The "any evidence" standard required by the Enabling Act does not require the Planning Commission rely on "competent, substantial, and material" evidence in support of its decision to approve or deny a subdivision application. (Brief, p. 9.) Like the appellant in *Kurschner*, Appellant suggests this Court "adopt an appellate review somewhere between substantial evidence and de novo in examining decisions of a planning commission." *Kurschner*, 376 S.C. at 173, 656 S.E.2d at 351.

The appellants in *Kurschner* argued that due process entitled them to notice of opposing evidence prior to the hearing, a prohibition against hearsay evidence, the opportunity to cross-examine adverse witnesses, and the opportunity to conduct *voir dire* questioning of commission members. *Id.*, 376 S.C. at 171, 656 S.E.2d at 349. This was soundly rejected by the Supreme Court. Specifically, the court held that the planning commission’s role in considering an application to subdivide property “was an exercise of discretionary authority, as opposed to adjudicatory power.” *Id.*, 376 S.C. at 172, 656 S.E.2d at 350.

The court in *Kurschner* rejected the appellant’s invitation to apply a standard of review “somewhere between a substantial evidence⁸ and de novo in examining decisions of a planning commission.” *Kurschner*, 376 S.C. at 173, 656 S.E.2d at 351. Courts are prohibited from applying any standard of review other than the “any evidence” standard because of the plain language of the Enabling Statute. “By statute, the trial court must uphold the Commission’s decision unless there is no evidence to support it.” *Id.*, (citing S.C. Code Ann. § 6-29-840).

Appellant’s reliance on this Court’s opinion in *Wyndham Enters., LLC v. City of N. Augusta* is similarly misplaced. 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). *Wyndham* involved an appeal from a municipal board of zoning appeals’ refusal to grant a variance for the appellant’s fireworks store. At issue in the case was the competency of evidence relied on by the zoning board of appeals in denying the application.

⁸ The substantial evidence standard of review has no application to the review of a planning commission’s decision regarding a land use application. Instead, the standard applies to the review by the Administrative Law Court of the factual findings of a state agency. *Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000) (citing South Carolina Administrative Procedures Act (“APA”), S.C. Code Ann. § 1-23-10, *et seq.*). Reversal of an agency decision is justified where the agency’s “administrative findings, inferences, conclusions, or decisions are ... clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” S.C. Code Ann. § 1-23-380(5)(e).

The BZA, “[i]n making quasi-judicial decisions, ... must ascertain the existence of facts, investigate the facts, hold hearings, weigh evidence and draw conclusions from them, as a basis for official action, and exercise discretion of judicial nature.” Decisions of the BZA must be supported by “competent, substantial, and material evidence.” *Id.*

Wyndham, 401 S.C. at 148, 735 S.E.2d at 662 (*citing* the North Augusta Development Code). Because of the heightened standard applied to boards of zoning appeals when adjudicating variance requests, the Court in *Wyndham* rejected as based on “speculation and opinion” the testimony of concerned residents regarding increased traffic, reduced property values, and the negative impact of the fireworks store on the local area. *Id.* The plain language of the statutes governing boards of zoning appeals and planning commissions in their respective evaluation of zoning variances and land use applications renders the outcome in the *Wyndham* case inapposite to this appeal.

III. UNDER S.C. LAW, A DEVELOPMENT APPLICANT HAS LIMITED RIGHTS TO PROCEDURES BECAUSE THE PLANNING COMMISSION ACTS IN A DISCRETIONARY, NOT QUASI-JUDICIAL, CAPACITY WHEN MAKING LAND USE DECISIONS. COMMISSIONER JONES’S PASSING REFERENCE TO A LETTER, DESPITE ITS ABSENCE FROM THE RECORD, DOES NOT VIOLATE THE CONSTITUTION.

Appellants argue that the Planning Commission violated their procedural due process rights by failing to make a single letter referenced by Commissioner Jane Jones’s part of the public record. In *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), the Supreme Court established the parameters for the due process to which parties to a local planning commission proceeding are entitled. As an initial observation, the Supreme Court explained that “due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” 656 S.E.2d at 350.

During the Planning Commission meeting on September 9, 2025, Commissioner Jane Jones described a letter submitted to her by Powdersville Fire Chief Cory McDowell. (R. p. __ 48:5-22). That letter was not part of the planning staff report and was not sent to any other member of the Planning Commission.

In his letter of August 6, 2025, Chief McDowell describes his experience operating a fire engine on Von Hollen Drive, which is the primary access road for Appellant's development. (R. p. __). Chief McDowell notes that in his personal experience, a fire engine and "average vehicle" cannot safely pass side by side without one of the vehicles coming to a complete stop to allow the other to pass. (R. p. __). He also cited safety concerns caused by placing the entrance to Appellant's development directly across from Caledonia Drive, which accesses nearly 250 existing homes.

Appellant cites the *City of Spartanburg v. Parris*, 251 S.C. 187, 161 S.E.2d 228 (1968), to argue that "fundamental fairness" requires exclusion of evidence such as a letter of a fire chief that is not part of the public record. (Brief, pp. 12-13). In *City of Spartanburg*, the court considered an appeal from a civil service committee meeting to determine continued employment of a police officer. Appellant cites the case for its reference to the general practice of requiring an opportunity to cross-examine a "witness against a party when their credibility is challenged." *Id.*, 251 S.C. at 190–91, 161 S.E.2d at 229. It is unclear how or if the fire chief's letter has impugned Appellant's creditability. Given the well-established statutes and case law directly addressed to land use applications, this 58-year-old opinion sheds no light on the procedures to which Appellants is entitled in this case.

In support of its due process argument, Appellant cites an informal S.C. Attorney General's opinion regarding the propriety of a planning commission member having *ex parte*

communications⁹ with a party with a matter pending before the commission. *Re: Informal Opinion*, 1997 WL 568829, at *1 (S.C.A.G. July 9, 1997). Reliance on this informal opinion demonstrates the lengths necessary to find persuasive authority suggesting that a meeting before a planning commission requires procedural protections like sworn witnesses, cross examinations, and the right to confront one's accusers.¹⁰

At the time of the informal opinion, the responding assistant attorney general concluded that the “[c]ourts in this State have never ruled on whether planning commissions are quasi-judicial in nature.” 1997 WL 568829, at *1. That attorney did not have the benefit of *Kurschner* which held that when a planning commission considers a development application, it is acting not in a quasi-judicial or adjudicatory capacity but is exercising discretionary authority. 376 S.C. at 171, 656 S.E.2d at 349. Accordingly, the informal opinion of an assistant attorney general contributes nothing to this analysis.

⁹ Appellants do not argue, nor could they, that the letter referenced by Ms. Jones suggested an improper *ex parte* communication. The author of the letter was not a party to the application before the Planning Commission.

¹⁰ In fact, the planning staff report includes numerous emails and letters from various agencies, utilities, and service providers, as required by Ord. § 24-335(2). (R. p. ____). Applicants before the Planning Commission do not have the ability to examine the authors of this correspondence.

CONCLUSION

The Planning Commission adequately noted the grounds it relied on when it denied Appellant's preliminary subdivision applications. These grounds were amply supported by evidence before the Planning Commission at its meetings on March 11, and September 9, 2025. Because the Planning Commission is acting with its discretionary authority when it considers land development applications, Appellant was not entitled to due process rights beyond the essential elements of notice, an opportunity to be heard, and judicial review. Therefore, this Court should affirm the circuit court's order denying Appellant's appeal from the Planning Commission.

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse,
Circuit Court Judge

Appellate Case No. 2026-000033
Case No. 2025-CP-04-00784

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Jun 30 2026

SC Court of Appeals

Von Hollen Investment, LLC, Appellants,

v.

Anderson County Planning Commission..... Respondents.

PROOF OF SERVICE

I certify that I have served Respondent Anderson County Planning Commission's Initial Response Brief and Designation of Matter via electronic mail on June 29, 2026, addressed to the following counsel of record in this matter as set forth below:

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June 29, 2026

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