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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
In the Court of Common Pleas

The Honorable R. Scott Sprouse,
Circuit Court Judge

APPELLATE CASE NO. 2026-000033

CASE NO. 2025-CP-04-00784

Von Hollen Investment, LLCAppellant,

v.

Anderson County Planning Commission.....Respondent.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Respondent's brief confirms the defects in the Anderson County Planning Commission's denial of the Riverdale application. Respondent concedes that the Commission was required to record "the grounds for approval or disapproval," S.C. Code Ann. § 6-29-1150(B), and concedes that this Court's decision in *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, 447 S.C. 649, 930 S.E.2d 21 (Ct. App. 2026) controls. Respondent then attempts to defend three indefensible facts: the Commission used two pre-printed, check-the-box forms that recite conclusory *labels* but disclose no discernible *reasoning* for its decision; denial of the application based on "infrastructure" grounded in the lay protesters' speculation that was directly contradicted by the opinions of the developer's engineers and the Commission's own professional staff; and a vote influenced by a phantom letter from a fire chief that no one but a single commissioner ever saw. None of this survives appellate review under the standard Respondent invokes.

ARGUMENTS

A. THE PLANNING COMMISSION'S CHECK-THE-BOX FORMS DO NOT SET FORTH GROUNDS THIS COURT CAN REVIEW, AND *ALLIANCE* THEREFORE REQUIRES REVERSAL.

As an initial matter, Appellant does not contend that the Planning Commission was required to issue formal findings of fact and conclusions of law. *Alliance* does not require that, and Appellant accepts that holding. But *Alliance* does not stop there. It holds that Section 6-29-1150(B) requires more than the bare existence of a record: the grounds for decision must be discernible enough that a reviewing court can understand the

decision in light of the evidence before the Commission. The *Alliance* Court reversed because it was “unable to discern the grounds for approval as required by section 6-29-1150(B),” could not tell “what facts the Planning Commission deemed established,” and could not determine “how the Planning Commission applied these ‘facts’ to the LDR and applicable zoning ordinances.” *Alliance*, 447 S.C. at 658, 930 S.E.2d at 26.

Respondent’s entire answer to *Alliance* is a single factual distinction: the Greenville County Planning Commission issued no written decision, whereas the Anderson County Planning Commission checked boxes on a pre-printed form. That distinction fails on the face of *Alliance*. In *Alliance*, the circuit court had held that the meeting minutes, the hearing transcript, and the “file material” together satisfied Section 6-29-1150(B). This Court reversed that holding. The presence or absence of a written decision was never the test; instead, the test is whether the stated grounds permit meaningful review. A record from which grounds cannot be discerned does not satisfy the statute, whether the record is a transcript or a form.

Anderson County’s pre-printed forms fail that test. They recite conclusory labels such as “Compatibility with Traffic Levels” and “Concerns for public, (sic) health, safety, convenience, prosperity and general welfare”, but they do not identify a single fact the Commission found or explain how any fact was measured against the County’s subdivision criteria. Worse yet, the two forms are inconsistent: the March 11 form cited “infrastructure, schools, roads, and energy services,” while the September 9 form cited “compatibility with traffic levels” and a list of generalized “concerns.” Respondent defends each form in isolation but never reconciles them or explains what the operative

basis for denial actually was. Moreover, “energy services”—a ground stated on the March form—finds no support anywhere in the record, a defect Respondent’s brief does not even attempt to answer. Under *Alliance*, a decision whose stated grounds cannot be reviewed must be reversed. 447 S.C. at 658, 930 S.E.2d at 26.

Section 6-29-1150(B) requires not only that the Commission's grounds be recorded but also that “the developer must be notified in writing of the actions taken.” A statement of grounds so conclusory that neither a reviewing court nor the developer can discern why the application failed serves neither purpose. Under *Alliance*, grounds must be discernible enough to permit meaningful review; grounds this vague also leave the property owner to guess how the project could ever be brought into conformity and approved.

B. THE COMMISSION’S RELIANCE ON LAY SPECULATION OVER AN UNCONTRADICTED PROFESSIONAL RECORD FAILS EVEN THE “ANY EVIDENCE” STANDARD.

Appellant does not ask this Court to apply a substantial-evidence standard. *Kurschner* establishes that the “any evidence” standard governs review of a planning commission’s subdivision decision, and Appellant accepts that standard. *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 656 S.E.2d 346 (2008). But “any evidence” still means evidence—not the anecdotal feelings, guesses, and grievances of neighbors generally opposed to growth. *Alliance* proves the point: applying the same “any evidence” standard Respondent invokes, this Court still reversed, because it could find no evidence in the record supporting the criteria the commission was required to apply.

The “evidence” in the record before the Commission in this case was uncontradicted and required approval. The Commission’s own planning staff presented the project at both hearings and confirmed that it met the requirements of the County’s land-use ordinances and did not require a traffic study. The developer’s engineer established that the project would build fewer than one home per acre, preserved roughly thirty-five acres of open space, and diverted stormwater to on-site detention ponds that would improve—not worsen—drainage for the neighboring subdivision. The South Carolina Department of Transportation reviewed the preliminary plat, and the developer’s engineer explained that the condition of the surrounding public roads falls within the jurisdiction of the Anderson County Roads and Bridges Department, not the developer.

Against this record of evidence from professionals, Respondent counters with only lay opinion and speculation: a neighbor “worried about the drainage” despite the engineer’s contrary assurances; a lay person’s assertion that a road was “not in any condition to handle any more traffic” though no traffic study was required; a wholly unsupported assertion by a neighbor that the soil “does not perc at all”; speculation that a car might crash into a home; conjecture that there “might be gravesites on the property”; and the complaint that growth was “dehumanizing our kids.” This is not evidence of anything the Commission was charged with deciding. As this Court held in the analogous zoning context, resident testimony “based on speculation and opinion” about traffic and neighborhood impact is “not competent” to support a land-use decision. *Wyndham*

Enters., LLC v. City of North Augusta, 401 S.C. 144, 150, 735 S.E.2d 659, 662–63 (Ct. App. 2012).

A decision supported only by lay speculation and contradicted by the *uncontradicted* record of evidence from professionals, is arbitrary and capricious and cannot stand even under a deferential standard. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020).

C. THAT DUE PROCESS IS “FLEXIBLE” DOES NOT MEAN NO PROCESS AT ALL; THE UNDISCLOSED FIRE CHIEF’S LETTER ILLUSTRATES THE CHAOS OF COMMISSIONERS SOLICITING EVIDENCE OUTSIDE THE RECORD.

Respondent concedes that Appellant was entitled to “notice, an opportunity to be heard, and judicial review.” That concession defeats Respondent’s own argument. The observation in *Kurschner* that due process is “flexible” describes the amount of process due; it does not envision a proceeding with no meaningful process at all. *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 349. That case presupposes that the decision rests on a record the applicant can see and a reviewing court can examine. Indeed, *Kurschner* rejected the applicants’ procedural challenge precisely because the commission there “did not preclude the [applicants] from accessing the evidence in opposition,” which “mostly consisted of public information.” *Id.* at 172–73, 656 S.E.2d at 350–51. Here, the opposite occurred.

At the September 9th hearing, Commissioner Jane Jones referenced a letter from a local fire chief expressing concern about fire-equipment access to the subdivision. Respondent concedes that the letter “was not part of the planning staff report and was not

sent to any other member of the Planning Commission.” Respondent’s own statement of the issue concedes “its absence from the record.” The letter was never provided to Appellant, never entered into the record, and never subjected to any response.

A single commissioner’s injection of a private letter that the applicant could neither see nor answer is not the sort of process that *Kurschner* contemplates. It is the opposite of the “opportunity to be heard” that Respondent concedes Appellant was owed. This Court has recognized, in the analogous setting, that fundamental fairness forbids resting a decision on an accuser’s untested, out-of-record statement. *City of Spartanburg v. Parris*, 251 S.C. 187, 190–91, 161 S.E.2d 228, 229–30 (1968). The letter is a stark example of why a planning commissioner should not be permitted to independently gather evidence and spring it on an applicant at the hearing.

Appellant further objects to Respondent’s placing the fire chief’s letter into the record on appeal. Respondent’s brief now recounts the substance of a letter said to have been authored by Chief Cory McDowell and dated August 6, 2025, describing the ability of a fire engine to pass on Von Hollen Drive and the proximity of a proposed entrance to Caledonia Drive. The appellate record is limited to what was actually before the tribunal below. A document that was not placed in the record, apparently not shared with other commissioners, and withheld from Appellant cannot be introduced for the first time on appeal to supply an evidentiary record that is otherwise lacking. Respondent cannot have it both ways: defending the letter’s exclusion from the record as harmless while simultaneously relying on its contents to justify the denial. The letter and any description of its contents should be stricken from or disregarded in the record on appeal.

CONCLUSION

The Planning Commission's denial of the Riverdale preliminary subdivision application was procedurally defective under *Alliance*, was unsupported by any competent evidence in the record, and was tainted by reliance on undisclosed material Appellant never had the opportunity to see or answer. For these reasons, and those stated in Appellant's main brief, Appellant respectfully requests that this Court reverse the Circuit Court's order and direct approval of the Riverdale preliminary subdivision plat or, in the alternative, reverse and remand for further proceedings on a proper record.

Respectfully submitted,

s/Ronald G. Tate, Jr.

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