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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas for the Second Judicial Circuit

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No.: 2026-000123
Trial Court Case No.: 2025-CP-02-02223

Sage Mill Residential, Ltd.,

Appellant,

v.

Aiken County, South Carolina and Aiken County Planning
Commission,

Respondents,

FINAL REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

Respondent Aiken County Planning Commission (the “Planning Commission”) has violated S.C. Code § 6-29-1150(B) by failing to maintain a public record regarding any ground for denying the Revised Preliminary Plat submitted by Appellant Sage Mill Residential, Ltd. (“Sage Mill”).¹ The Planning Commission also failed to refer specifically to any “parts of the County’s comprehensive plan or the County’s land management regulations chapter with which the plat did not conform,” which violates the County’s Land Management Regulations:

c. Upon completion of these reviews, the planning and development director shall forward the preliminary plat to the planning commission, together with all staff and agency comments and recommendations. The planning commission shall act on the application within sixty (60) days of receipt of the application. In its deliberation, the planning commission shall approve, approve conditionally, or disapprove the plat. If the preliminary plat is disapproved or approved conditionally, the reasons for such action shall be conveyed to the applicant. The reasons for disapproval shall refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform. In the event of conditional approval, the commission may require the applicant to resubmit the preliminary plat with all required changes before approving said plat.

Aiken Co. Land Mgt. Reg. § 24-10.10.5. The Planning Commission’s violations of both state law and local ordinance are not harmless technicalities. When a planning commission fails to provide cognizable reasons for its decisions, it precludes meaningful review of its decisions. Furthermore, the failure to provide proper reasons for denying a citizen the use of their land is a fundamental violation of due process that the County’s ordinances specifically guarantee.

As a result, notwithstanding the fact that an “any evidence standard” would apply to *findings of fact*, the lack of a cognizable basis for the decision causes it to be arbitrary, capricious, based on errors of law, and an abuse of discretion. It cannot be upheld. *See Grays Hill Baptist*

¹ South Carolina law requires that “[a] record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.” *See* S.C. Code § 6-29-1150(B).

Church v. Beaufort Cnty., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020) (explaining that a planning commission’s decision “will not be upheld where it is based on errors of law,” or “is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the [commission] has abused its discretion”). This rule has been in place for over seventy years. *See, e.g., Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754–55 (1953) (holding that a “decision of the zoning board will not be upheld where it is based on errors of law, or fraud, or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, or in a discriminatory manner or where, in general, the board has abused its discretion”).

After allowing the Revised Preliminary Plat to be placed on the agenda for action, the Planning Commission arbitrarily denied the plat even though no deficiencies were identified. Instead, Planning Commissioner Bodie’s motion to deny stated only that “the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission,” but again without identifying either the request or the questions. (R. p. 178, lines 18 – 23.) There is no reference in the record to provisions of the County’s comprehensive plan or land management regulations chapter with which the plat did not conform. This requires that the Planning Commission’s decision be vacated and the Revised Preliminary Plat be deemed approved. Sage Mill brought a timely appeal of the Planning Commission’s invalid decision, but the circuit court adopted a proposed order prepared by Respondents that inferred unsaid words and supplied unstated grounds to uphold the Planning Commission’s decision. Sage Mill’s detailed and timely motion for reconsideration was refused. (R. pp. 013 – 014, R. pp. 080 – 093.)

I. RESPONDENTS CANNOT RETROACTIVELY CURE THE PLANNING COMMISSION’S FAILURE TO STATE COMPETENT GROUNDS FOR DENIAL

S.C. Code § 6-29-1150(B) requires that “[a] record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions

attached to the action **must** be maintained as a public record.” *See* S.C. Code § 6-29-1150(B) (emphasis added). The County’s own Land Management Regulations require the same. *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5 (providing that “[t]he reasons for disapproval **shall** refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform”) (emphasis added).

This Court has confirmed that while “the applicable statutes do not require the Planning Commission to issue a formal written decision setting forth findings of fact and conclusions of law,” the record of the planning commission’s actions must nonetheless be sufficient “to allow meaningful review of the Commission’s decision.” *See All. to Pres. the Old White Horse Rd. Corridor, LLC v. RP&L, LLC*, No. 2022-001301, 2026 WL 1017527, at *4 (S.C. Ct. App. Apr. 15, 2026), *reh’g denied* (May 28, 2026) (reversing circuit court’s order affirming the planning commission’s decision where the grounds for the approval as required by S.C. Code § 6-29-1150(B) could not be discerned from the meeting minutes, the transcript of the meeting, and the file material providing the record of the commission’s actions). In *Alliance*, this Court found “[t]here is nothing in the record indicating the Planning Commission’s reasons for approval.” *Id.* at *4. Based on the record before it in *Alliance*, the Court found that “it is unclear what facts the Planning Commission deemed established” and “we are unable to discern how the Planning Commission applied these ‘facts’ to the [Greenville County Land Development Regulations] and applicable zoning ordinance.” *Id.* at *4. Specifically, the Court was unable to “decipher the divided Commission’s reasoning from its series of questions and answers” from the planning commission’s meeting minutes, meeting transcript, and file material. *Id.* at *4. The record of the Planning Commission’s denial of Sage Mill’s Revised Preliminary Plat suffers from the same deficiencies that warranted reversal in *Alliance*.

Respondents argue that “the fact that Milligan Avenue was designed to dead-end at its northern point within the existing PUD was one of the bases for the Planning Commission’s motion and vote.” *See* Resp’ts’ Br. at 9. Commissioner Bodie’s motion to deny the Revised Preliminary Plat did not identify Milligan Avenue, the corridor length regulation in Aiken Co. Land Mgt. Reg. § 24-7.3.4, or any other specific regulation or applicable ordinance, but instead stated a generic belief that Sage Mill failed to provide “supporting documentation”:

I move to deny the application because I believe the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission.

(R. p. 178, lines 18 – 23.) Mr. Bodie’s belief regarding unspecified documentation is deficient under the County’s Land Management Regulations because the Planning Commission’s denial plainly does not “refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform.” *See* Aiken Co. Land Mgt. Reg. § 24-10.10.5. Respondents now attempt to supply a reason for Commissioner Bodie’s motion by pointing to the alleged “fact that Milligan Avenue was designed to dead-end at its northern point within the existing PUD” as the basis for the Planning Commission’s denial of the Revised Preliminary Plat. Respondents attempt to reassure themselves that “there is no question” Joel Duke raised the issue with the north-end of Milligan Avenue during the August 21, 2025 meeting. *See* Resp’ts’ Br. at 8. But Respondents concede, as they must, that “Milligan Avenue” does not appear in the transcript of the August 21, 2025 meeting. *See* Resp’ts’ Br. at 8. (R. p. 186). Any alleged concerns by the Planning Commission relating to Milligan Avenue were first raised to Sage Mill by Respondents’ counsel after the statutory appeal was already pending in the circuit court. (R. pp. 073 – 075, R. pp. 089 – 090, R. p. 135, line 23 – p. 137, line 17.)

A reviewing court cannot substitute the post-hoc theory raised by Respondents' appellate counsel for the Planning Commission's own unstated reasons for denying Sage Mill's preliminary plat. *See Johnson v. Johnson*, 296 S.C. 289, 304, 372 S.E.2d 107, 115 (Ct. App. 1988) (recognizing that "[a] decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion"); *see also Grays Hill*, 431 S.C. at 637, 850 S.E.2d at 33 (confirming that a decision of a county planning commission "will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion"). Because Respondents cannot retroactively supply the grounds for denial that the Planning Commission itself failed to state, the circuit court's Order affirming the Planning Commission's deficient decision should be reversed.

II. RESPONDENTS' ISSUE PRESERVATION ARGUMENT FAILS BECAUSE SAGE MILL COULD NOT RESPOND TO AN ISSUE NEVER RAISED BY THE PLANNING COMMISSION

Respondents failed to provide a sufficient record to allow meaningful review of the Planning Commission's decision to deny Sage Mill's preliminary plat for the reasons discussed above, which requires reversal. Nevertheless, Respondents argue that Sage Mill's issues on appeal are "unpreserved" because Sage Mill did not present the argument regarding the north end of Milligan Avenue to the Planning Commission. *See Resp'ts' Br.* at 10–13. Respondents' argument has the preservation doctrine backwards, as Sage Mill cannot be expected to respond to (or file a circuit court appeal) regarding an issue that was never raised by the Planning Commission during the meeting. As the record unmistakably reflects, it was *Respondents* who failed to raise the issue of Milligan Avenue until the circuit court appeal. The circuit court unfortunately adopted the after-the-fact basis for denial that Respondents posited for the first time on appeal. A denial by the Planning Commission must have a specific basis that is tied to specific nonconformities with the County's land development standards. None exists. When the members of the Planning

Commission fail to follow this rule, the circuit court cannot retroactively cure the deficiency on their behalf. However, that is what the circuit court did, an error that Sage Mill unquestionably raised.² The issues presented on appeal are preserved for appellate review and warrant reversal of the circuit court's order affirming the Planning Commission's denial of the Revised Preliminary Plat.

Respondents assert that Sage Mill's argument relating to the requirement that Sage Mill provide assurances of future connectivity, where no such requirement exists in the County's ordinances or applicable regulations, was raised "for the first time on appeal to this Court." *See Resp'ts' Br.* at 10 n. 1. Respondents misrepresent the record on appeal, as confirmed by the pleadings on file with the circuit court. Sage Mill's Petition for Appeal alleges that Joel Duke portrayed the ordinance as requiring "assurances" of future connectivity, which was contrary to both the language of the ordinance and the County's interpretation. (R. pp. 022 – 023, R. p. 028.) In the Memorandum in Support of the Petition for Appeal, Sage Mill argued that Joel Duke's suggestion that the road design might violate the length requirements applicable to "dead-end streets" absent certainty of future connectivity was contrary to the Aiken County Land Management Regulations. (R. pp. 056 – 057.) Sage Mill expressly sought reconsideration of the circuit court's ruling on Sage Mill's argument that the Planning Commission abused its discretion in its interpretation of the County's road length requirements in § 24-7.3.4, which does not include the word "assurance," but speaks to design. (R. pp. 085 – 086.) *See Aiken Co. Land Mgt. Reg.* § 24-7.3.4 ("Dead-end streets ***designed*** to be permanently closed at one (1) end shall not exceed two

² The transcript of the August 21, 2025 meeting contains no references to Milligan Avenue. (R. p. 186). The Planning Commission's decision cannot be affirmed on the basis of an implied ground for denial that Respondents did not present until this matter was on appeal.

thousand five hundred (2,500) feet in length, measured from the right-of-way of the connecting street to the center point of the turn-around.”)(emphasis added).

Sage Mill’s position has always been that: (1) the Planning Commission failed to identify any specific nonconformity with the comprehensive plan or land management regulations; (2) the dead-end street ordinance was incorrectly construed; and (3) the denial was arbitrary, capricious, and an abuse of discretion. (R. pp. 023 – 029, R. pp. 058 – 065.) Milligan Avenue was never raised before the Planning Commission and was first raised by Respondents’ counsel after the statutory appeal had been pending before the circuit court. The preservation problem belongs to Respondents, not Sage Mill.

III. THE PUBLIC RECORD DOES NOT REFLECT THE GROUNDS FOR DISAPPROVAL AS REQUIRED UNDER S.C. CODE § 6-29-1150(B)

Section 6-29-1150(B) requires “[a] record of all actions” on plans or plats submitted to the Planning Commission with “the grounds for approval or disapproval” to be “maintained as a public record.” *See* S.C. Code § 6-29-1150(B). In denying Sage Mill’s Revised Preliminary Plat, the Planning Commission did not identify either Milligan Avenue, dead-end corridors, or Aiken County Ordinance § 24-7.3.4 as the grounds for disapproval. Respondents argue that the transcript provides an adequate basis for the Planning Commission’s decision. Respondents again refer to the Planning Commission’s sole articulated ground for denial, which is confined to one sentence by Commissioner Bodie that “the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission.” *See* Resp’ts’ Br. at 16. (R. p. 178, lines 18 – 23.) Respondents also argue that Joel Duke’s questions and comments made during the August 21, 2025 meeting were sufficient to raise the dead-end corridor issue relating to Milligan Avenue. *See* Resp’ts’ Br. at 5 – 8.

This Court recently rejected a similar approach to the requirements of Section 6-29-1150(B) that Respondents urge this Court to adopt. In *Alliance*, this Court reversed the circuit court’s finding that evidence existed in the record to support the decision of the Planning Commission where the meeting minutes, meeting transcript, and file materials were insufficient to allow meaningful review of the planning commission’s 5-4 decision to approve a preliminary subdivision application. *See Alliance*, 2026 WL 1017527, at *4. The Court found that it could not “decipher the divided Commission’s reasoning from its series of questions and answers” from the Planning Commission’s record. *Id.* In this appeal, even the circuit court acknowledged in the Order that the record lacks the support necessary to understand the Planning Commission’s decision when it found, “as the record reflects, the concerns that were articulated by Joel Duke and the members of the Planning Commission likely focused on Milligan Avenue[.]” (R. p. 007 (emphasis added).)

While a formal written decision was not required under state law, the Planning Commission was required to maintain a public record of the grounds for disapproval, which it failed to do. *See* S.C. Code § 6-29-1150(B). However, the problem that Respondents fail to address or even acknowledge is that the Planning Commission is also subject to the County’s Land Management Regulations, which require that the Planning Commission specify “those parts of the County’s comprehensive plan or the County’s land management regulations chapter with which the plat did not conform.” It is not subject to debate that the Planning Commission violated Aiken Co. Land Mgt. Reg. § 24-10.10.5. By doing so, the Planning Commission violated a due process protection that Aiken County has intentionally adopted. Property owners should be informed of the specific reasons why their submission did not meet applicable standards so that the deficiencies can be corrected. Conversely, when no deficiencies are identified following review, a property owner’s

submission should be approved. If a reviewing body is not required to tie their decisions to the applicable standards and criteria, there is nothing to protect citizens against arbitrary decisions.

Respondents argue that if the reasons for the Planning Commission's denial were unclear, then Sage Mill should have asked for clarification. *See* Resp'ts' Br. at 16 – 17. Section 6-29-1150(B) places the obligation on the Planning Commission to maintain a record of all actions on plans or plats taken within the Planning Commission's authority, not the applicant. The purpose of satisfying the requirements of S.C. Code § 6-29-1150(B) is to ensure transparency and avoid a Planning Commission's denial for unstated reasons. Respondents' attempt to blame Sage Mill for failing to extract the grounds for the Planning Commission's denial is improper and contrary to South Carolina law.

IV. THE TWO-ISSUE RULE DOES NOT BAR THIS APPEAL

Respondents seek to invoke the two-issue rule by arguing that the circuit court's finding regarding the responses from the engineer of record, Tilden Hilderbrand, to staff comments constitutes a "separate and independent" ruling that Sage Mill has not appealed. *See* Resp'ts' Br. at 15. Respondents' argument misapplies the two-issue rule and should be rejected.

The two-issue rule provides that "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). The two-issue rule applies only where there are separate, independent rulings. The scope of this appeal from the circuit court's order affirming the Planning Commission's denial of Sage Mill's preliminary plat is limited to the Planning Commission's denial of the Revised Preliminary Plat during the August 21, 2025 meeting. The Planning Commission's decision was limited to a single generalized determination that the applicant "failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission." (R. p. 178, lines 18 –

23.) The circuit court concluded that Mr. Hilderbrand's failure to respond to "various comments" satisfied the any evidence standard and "supports the Planning Commission's decision that 'the applicant has failed to provide the supporting documentation that is needed to satisfy the request and questions of both staff and commission.'" (R. p. 006.) The Order itself confirms that the finding regarding Mr. Hilderbrand's responses to "various comments" is not a "separate and independent ruling" from the circuit court's conclusion that the evidence in the record supported the Planning Commission's decision. (R. p. 009.) Furthermore, Sage Mill has unquestionably appealed the decision on the basis that it violates the County's own requirements under Aiken Co. Land Mgt. Reg. § 24-10.10.5, an argument that squarely addresses both the actual and invented bases for denial as none of them comply with the ordinance.

Respondents' attempt to portray Sage Mill's statutory appeal from the decision of the Planning Commission under Section 6-29-1150 as having multiple alternative grounds that could independently sustain a judgment is contrary to South Carolina law. The circuit court in its appellate role when reviewing the decision of the Planning Commission was "strictly limited to the facts and arguments raised to the [Planning Commission] below" and "expressly forbidden from considering any new facts." *See Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004); *see also* S.C. Code § 6-29-840(A) (providing that the circuit "court may not take additional evidence"). Neither the Planning Commission nor Commissioner Bodie articulated multiple, independent grounds for denial. The determination was that unspecified "supporting documentation" had not been provided to satisfy unspecified requests and questions. This action violated state law and local ordinance. The Planning Commission's authority to act on the Revised Preliminary Plat is limited to the governing ordinances and regulations and applicable law, while the circuit court's decision is limited to the record. The circuit court erred in upholding

the Planning Commission's denial of Sage Mill's preliminary plat because the grounds for disapproval were not "maintained as a public record" and did not "refer specifically to those parts of the comprehensive plan or land management regulations chapter with which the plat does not conform." *See* S.C. Code § 6-29-1150(B); *see also* Aiken Co. Land Mgt. Reg. § 24-10.10.5. On appeal, Respondents have failed to reconcile their failure to comply with their own ordinances. They did not even address the issue.

Respondents cannot backfill grounds for denial on a retroactive basis. Nor can Respondents manufacture alternative grounds that were not the basis for the Planning Commission's decision and invoke the two-issue rule to resuscitate a legally defective decision that violated state law and local ordinance. The circuit court was limited to the record on appeal but departed from it at Respondents' invitation. Sage Mill has preserved and thoroughly demonstrated all necessary grounds of this appeal. Accordingly, the two-issue rule does not bar this appeal.

V. EVEN UNDER THE "ANY EVIDENCE" STANDARD OF REVIEW APPLICABLE ONLY TO FINDINGS OF FACT, REVERSAL IS WARRANTED

Respondents argue that the circuit court applied the correct standard of review when it found that the Planning Commission's decision was "supported by the evidence in the record," did not "constitute an error of law," cannot be characterized as "arbitrary or capricious," and that Sage Mill had not demonstrated an "abuse of discretion." *See* Resp'ts' Br. at 17 – 19. (R. pp. 006 – 009.) Sage Mill does not dispute that the "any evidence" standard applies to findings of fact by the Planning Commission. *See, e.g., Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) ("By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it"); *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 174, 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.”) The inquiry does not end with whether the circuit court applied the “any evidence” standard to its review of the decision of the Planning Commission. The “any evidence” standard does not insulate from review the Planning Commission’s decision that is “arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *See Grays Hill*, 431 S.C. at 637, 850 S.E.2d at 33; *see also Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351 (recognizing that the decision of a planning commission will not be upheld where it is based on errors of law, there is no legal evidence to support it, or where the commission acts arbitrarily or unreasonably or has abused its discretion).

The statements by members of the Planning Commission and the County’s Chief Development Official during the August 21, 2025 meeting indicate that the Planning Commission’s decision to deny Sage Mill’s preliminary plat was based on an improper interpretation of the County’s ordinances that was demonstrably inconsistent with Respondents’ prior interpretation and application of the same provisions. The Planning Commission’s decision to deviate from the County’s long-standing interpretation of the County’s ordinances relating to the definition of a “dead-end street” to deny Sage Mill’s Revised Preliminary Plat was arbitrary, capricious, legally erroneous, and constitutes an abuse of discretion. This issue was raised both to the Planning Commission and the circuit court and is preserved for appellate review. (R. pp. 023 – 026, R. pp. 059 – 060, 063, R. pp. 083 – 086, R. p. 165, line 15 – p. 168, line 22.)

Respondents’ preservation argument fails. Sage Mill has consistently maintained that the Planning Commission misinterpreted and misapplied Aiken County Ordinance § 24-7.3.4 by treating a roadway not “designed to be permanently closed at one end” as a dead-end street and by imposing a requirement of “assurances” of future connectivity that does not appear in the text of

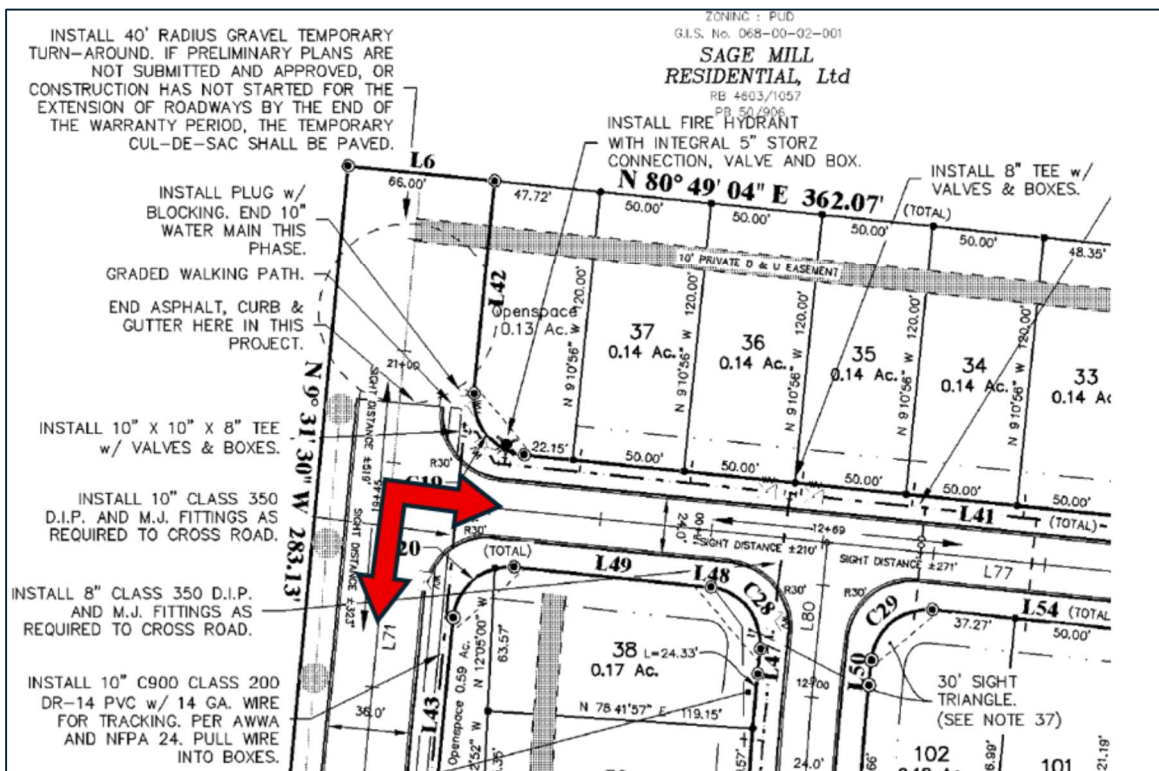
the ordinance. The interpretation of an ordinance is a question of law. *See Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (holding that “[i]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact”). The questions of law in this appeal, *i.e.*, whether the Planning Commission’s interpretation of the County’s ordinances relating to “dead-end streets” and the requirement of “assurances” of future connectivity were proper, were repeatedly presented to and ruled upon by the circuit court and therefore preserved for appellate review. Preservation requires only that an issue be raised to and ruled upon by the circuit court. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779–80 (2004) (recognizing that issues and arguments are preserved for appellate review when they are raised to and ruled on by the lower court).

The Planning Commission’s decision is invalid under any applicable standard of review, even the deferential “any evidence” standard, because it failed to maintain a public record of the grounds for disapproval, failed to identify any nonconformity with the comprehensive plan or land management regulations, was based on an improper construction of the County’s dead-end street ordinance in a manner that conflicts with Respondents’ longstanding interpretation, and imposed requirements not found in the County’s ordinances. Accordingly, reversal of the circuit court’s Order affirming the August 21, 2025 decision of the Planning Commission is warranted.

VI. MILLIGAN AVENUE IS NOT A VALID BASIS FOR DENIAL

Even if Respondents were to be allowed to create new bases for denial after a decision has already occurred, a denial based on the design of Milligan Avenue would be invalid, arbitrary, and an abuse of discretion. Sage Mill has raised this issue, but Respondents have failed to address it. As the record reflects, Milligan Avenue is not a dead-end street that is designed to be permanently closed at one (1) end. Therefore, it is not subject to the road length limitation of 2,500 feet that is

only applicable to dead-end streets that are designed to be permanently closed at one (1) end.³ A review of the Revised Preliminary Plat demonstrates that Milligan Avenue (which is the street that runs north/south on the left side of the plan) connects with another street and has a “stub-out” indicating that it is designed for future extension:



(R. p. 084.) Sage Mill has demonstrated, and Respondents have failed to rebut, that a denial of the Revised Preliminary Plat on the basis of Milligan Avenue being a “dead-end street” is arbitrary, capricious, and an abuse of discretion. If you can turn right at the end of a street, it is not a dead-end street. To the extent that Respondents argue that the definition of dead-end street is subject to their (shifting) interpretations, this also fails to provide a sustainable basis for the denial. First, the definition speaks for itself and does not require interpretation. Respondents fail to address the fact

³ “*Dead-end streets designed to be permanently closed at one (1) end* shall not exceed two thousand five hundred (2,500) feet in length, measured from the right-of-way of the connecting street to the center point of the turn-around.” See Aiken Co. Land Mgt. Reg. § 24-7.3.4

that the County's Chief Development Official, Joel Duke, was forced to acknowledge, on the record of the August 21, 2025 meeting, that the ordinance "does state ... 'designed to be permanently closed at one end.'" (R. p. 180, lines 12 – 18.) Similarly, Respondents fail to respond to Sage Mill's showing that the Planning Commission departed, without explanation, from the manner in which the corridor length requirement had been applied for decades, which is demonstrated by the County's approval of at least ten neighborhoods with corridors exceeding 2,500 feet where stub-outs or interim turnarounds were present, including the Ashland Subdivision that is located within the same Planned Unit Development. *See* Appellant's Br. at 20 – 22. Under South Carolina law, a departure from a longstanding interpretation of an unchanged ordinance is deemed so arbitrary that it has been called "unconscionable." *See Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985). Respondents' silence on all of these issues merely underscores that this was an arbitrary and indefensible denial that should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Sage Mill Residential, Ltd., respectfully requests that this Court reverse the circuit court's Order affirming the decision of Respondent Aiken County Planning Commission and further order that the Revised Preliminary Plat is approved. In the alternative, Sage Mill requests that this Court reverse the circuit court's Order and remand with instructions that the Planning Commission state, with specificity, the "grounds for approval or disapproval" in accordance with S.C. Code § 6-29-1150(B) with reference to the particular provisions of the comprehensive plan or land management regulations with which the plat allegedly does not conform, as applicable, consistent with Aiken County Ordinance § 24-10.10.5.

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August 3, 2026

Charleston, South Carolina

Attorneys for Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas for the Second Judicial Circuit

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No.: 2026-000123
Trial Court Case No.: 2025-CP-02-02223

Sage Mill Residential, Ltd.,

Appellant,

v.

Aiken County, South Carolina and Aiken County Planning
Commission,

Respondents,

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Reply Brief of Appellant Sage Mill Residential, Ltd., complies with Rule 211(b), SCACR.

August 3, 2026

Respectfully submitted,

By: *s/Ellis R. Lesemann*

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