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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2026-001445

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

v.

RP&L, LLC and the Greenville County Planning Commission,

Of which, Greenville County Planning Commission is Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This matter involves an appeal from the approval of a 73-home subdivision in northern Greenville County by the Greenville County Planning Commission. Appellants are an adjacent landowner and a limited liability company representing the interests of local citizens who oppose the development on the basis that it fails to comply with the Greenville County Land Development Regulations.

This Court should deny Petitioner Greenville County Planning Commission's Petition for Certiorari. None of the factors from Rule 242(b), SCACR justify the issuance of the writ. There is no novel question of law, no dissenting opinion below, no conflict with this Court's precedents, no constitutional issue, and no federal issue in conflict with the United States Supreme Court. Petitioner has not even attempted to argue otherwise, and the Petition therefore should be denied.

In addition, Petitioner's arguments fail on the merits for the reasons stated below.

STATEMENT OF THE CASE

On March 31, 2021, the developer, RP&L, LLC (“RP&L”) filed a preliminary subdivision application with the Greenville County Planning Commission (“Application”). (R. pp. 167-68, 175).

On April 19, 2021, the Planning Commission Subdivision Advisory Committee (“SAC”) recommended several changes to the preliminary plan for the Stables. (R. pp. 173-74, 176-84).

On April 26, 2021, RP&L submitted a revised preliminary plan (the “Revised Preliminary Plan”) in response to SAC’s recommendations. (R. pp. 200, 208-209, 225).

On May 26, 2021, the Planning Commission held a meeting to decide whether to approve the Stables Revised Preliminary Plan. (R. pp. 234-241). The Planning Commission voted 5 to 4 to approve the Stables. (R. p. 241).

On June 7, 2021, the Planning Commission issued a written decision in the form of a letter to RP&L informing it of its decision to approve the Stables. (R. pp. 186-87).

On June 25, 2021, Appellants timely filed the current appeal in Greenville County. (R. p. 420). Both parties submitted supporting memoranda and the Record on Appeal. (Final Brief of Appellants; Final Brief of Respondents; Final Reply Brief of Appellants; Record on Appeal) (R. pp. 15-63, 90-457).

On July 6, 2022, the lower court issued a Form 4 Order affirming the Planning Commission. (Form 4 Order) (R. p. 1).

On August 17, 2022, the lower court issued its Order Affirming Decision of Greenville County Planning Commission. (Formal Order) (R. pp. 4-14).

On September 16, 2022, Appellants timely filed and served their Notice of Appeal. (Notice of Appeal) (R. pp. 458-471).

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).

On April 30, 2026, Petitioner Greenville County Planning Commission filed a petition for rehearing, which was summarily denied by the Court of Appeals by its order issued May 28, 2026.

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

STATEMENT OF FACTS

Appellant Mary Jean Horney (a Respondent here) owns a small horse farm located at 10010 Old White Horse Road immediately adjacent to the proposed Stables subdivision, and she is impacted by the decision of the Planning Commission. (R. pp. 325-26). She is the organizer of the Appellant Alliance to Preserve the Old White Horse Corridor, LLC (“Alliance”)—a limited liability company formed in the State of South Carolina for the purpose of preserving an area of Greenville County commonly referred to as “the Old White Horse Corridor.” (R. p. 421). The developer, RP&L, proposes to subdivide and develop an approximately 43-acre property located at the intersection of Meadow Brook Road and Old White Horse Road in a rural section of Greenville County. (R. p. 96). The area in which the Stables is proposed to be located consists of rural agricultural and equestrian land. (R. pp. 94, 325-26). Among the immediate surrounding properties of the Stables include Ms. Horney’s 31-acre horse farm to the north; Riverbend Equestrian Park, a 63-acre equestrian facility, to the southeast; as well a 58-acre farm to the east. (R. pp. 94, 325-26). The other surrounding properties consist mainly of agricultural and/or equestrian uses. (R. pp. 94, 325-26).

In its Application, RP&L sought for the Stables to be a “cluster development,” which is characterized by lots clustered to preserve open space for recreational, environmental, or ecological reasons. (R. pp. 167, 387). Cluster development is also referred to as “open space development,” which is defined as “a form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages, and setbacks reduced from conventional sizes provided the density of the tract as a whole shall not exceed the density allowed by the zoning district under existing regulations and the remaining land area is devoted to common open space.” (R. p. 393). By definition, cluster developments “are intended to preserve substantial amounts of

open space for recreational, environmental, and ecological reasons.” (R. p. 397). The open space can consist of “developable” and “undevelopable” land as defined in the Zoning Ordinance and/or LDR. (R. p. 399).

The Stables originally was proposed to be a total of 43-acres, consisting of 73 units, and providing for 14.05 acres of “open space.” (R. p. 167). The lots vary in size, but most are approximately 7800 square feet, or 0.174 acres. (R. pp. 160, 175). With its application, RP&L submitted a preliminary plan also dated March 31, 2021. (R. pp. 160, 175). Notably, this preliminary plan did not label any areas of land as developable open space and also did not specify any proposed uses for the open space as required by the LDR Article 11.3.2(B). (R. pp. 160, 175, 388).

Prior to the meeting, the Planning Commission was provided with several letters in opposition to the development. (R. pp. 242-361). Attorney William F. Childers, Jr. sent a letter on behalf of Appellant, Ms. Mary Jean Horney. (R. pp. 315-322). In total, 19 parties submitted opposition correspondence to the Planning Commission. (R. pp. 242-361). At the meeting, Attorney Childers appeared on behalf of Ms. Horney. (R. pp. 234-35). Attorney Childers argued the Stables’ preliminary plan should be denied because (1) the Stables was incompatible with the surrounding land use density of the area and (2) the preliminary plan did not comply with LDR Article 11 as related to open space requirements of cluster developments. (R. pp. 234-35). Another nearby landowner, Shannon Wilson, also presented in opposition to the Stables. (R. pp. 235-238). Ms. Wilson presented a Petition opposing the Stables with 191 names, (R. pp. 203-207, 236), and she raised several concerns with the Stables related to (1) traffic increases, (2) storm water management and flooding, (3) the safety of the proposed access to the development; (4) density; and (5) the lack of compatibility with the surrounding rural area. (R. pp. 235-38). All of these

matters and concerns raised by Mr. Childers, Ms. Wilson, and the Petitioners were addressed in more detail in the letters. (R. pp. 242-361).

The engineer for the project, Kevin Tumblin, appeared on behalf of the developer in favor of the Stables. (R. pp. 238-41). During the engineer's presentation, at least one Commission member raised concerns related to the proposed access for the subdivision, which is located on Meadow Brook Road, a small county road that only has ingress or egress via the busy Old White Horse Road. (R. pp. 239-40). Specifically, Commissioner Cindy Clark noted the proposed access was an "awkward way to get into the subdivision and leave the subdivision." (R. p. 239). Commissioner Clark also expressed concern that the Greenville County Fire Department had not commented on the proposed access, noting she had "real concerns" about a fire truck being able to access the development and noted she would like to hear from the fire department about that issue. (R. pp. 239-40). In response, Planning Commission staff informed Commissioner Clark they had contacted the Fire Department for comment; however, they had not responded. (R. p. 240). Planning Commission staff noted that the decision to approve the Stables could be delayed until the fire department could comment; however, that did not happen. (R. p. 240). Commissioner Clark also raised issues with flooding in the area as was shown in correspondence received prior to the meeting from a local resident, Don Woodard, who carefully researched the flooding issues in the area. (R. pp. 191-99, 239). Commissioner Clark concluded her position by stating, "Everything west of the Reedy is along this corridor is very rural, large lots. This is not a compatible use along this corridor. And the fact that [the Stables] is sandwiched between 2 equestrian facilities I think is also not a good fit." (R. p. 240).

Following Commissioner Clark's comments, Commissioner Frank Hammond asked the engineer if there were any fire safety access issues with the development as proposed to which the

engineer responded negatively; however, the engineer did not cite to any evidence in support of this response, nor was any basis provided for such an opinion by an engineer. (R. p. 240).

Of note, Commissioner Jay Rogers asked the engineer the distance between the Stables and Green Valley Country Club. (R. p. 241). When the engineer was unsure, Commissioner Rogers stated his belief that the Stables was not incompatible with the surrounding area because at least one of the subdivisions near Green Valley has lots that are smaller than one acre. (R. p. 241). It appears from the transcript that Commissioner Rogers was referencing a GIS screen shot presented by Planning Commission staff at the meeting and available at page 63 of the Planning Commission file. (R. pp. 229, 241). Notably, it appears the GIS screen shot that Commissioner Rogers was referencing shows the location of developments east of the Reedy River that are not on Old White Horse Road; whereas, the Stables is located on Old White Horse Road west of the Reedy River. (R. p. 229). This seemingly minor distinction is in fact a major error that impacted the Planning Commission's decision in this case because the land located east of the Reedy is zoned Residential-15 (R-15); however, the land located west of the Reedy is zoned Residential-Suburban (R-S). (R. pp. 395-96). Additionally, the land east of the Reedy is characterized as "Suburban Neighborhood" land-use under the Greenville County Comprehensive Plan, which allows for a gross density of 3 to 5 dwellings per acre. (R. p. 419). However, the land west of the Reedy is labeled as "Suburban Edge," which allows for only 0 to 1 dwelling per acre. (R. p. 419). Stated another way, it appears that Commissioner Rogers in fact compared the Stables to developments in different zoning and land use classifications in his finding that the Stables was compatible with the surrounding area.

After these exchanges, the Planning Commission took a vote and approved the Application with five votes in favor and four votes against. (R. p. 241). On June 7, 2021, the Planning Commission mailed a letter to RP&L informing it of the approval of the Stables, which is the only

written record of the Planning Commission's decision. (R. pp. 186-87).¹

¹ Appellants did not receive a copy of the written decision until receipt of the Commission file via the Planning Commission's counsel on November 2, 2021. (R. p. 20).

ARGUMENT

This Court reviews Petitions for Certiorari under the standard in Rule 242, SCACR. A Petition “will be granted only where there are special and important reasons” such as the five reasons enumerated in the rule, *e.g.*, a novel question of law, a dissenting opinion at the Court of Appeals, when the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court, a substantial constitutional issue, or a conflict with the United States Supreme Court on any question of federal law. *See* Rule 242(b), SCACR. At the certiorari petition stage, the question before this Court is not whether the lower court erred but whether there is a “special and important reason” to grant the petition. *See* Rule 242, SCACR; *see also* Jean H. Toal et al., *Appellate Practice in South Carolina*, 12 (2d ed. 2002) (“The Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.”).

Here, Petitioner has made no effort whatsoever to point to a “special and important reason” for this Court to grant its Petition. None of the specified reasons enumerated in Rule 242(b) subsections (1) through (5) apply to the instant case. There is no novel question of law presented by the Petition. There was no dissent in the Court of Appeals. There is no conflict with a prior decision of this Court or with a prior decision of the United States Supreme Court. There is no constitutional issue presented by the Petition. In sum, there is no reason offered by Petitioner for this Court to grant the Petition. For this reason alone, the Petition should be denied.

With respect to the four questions presented for review, all were decided correctly by the Court of Appeals and do not constitute error. Each issue is discussed in turn.

- 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 LDR Article 3.1, which are inconsistent rulings?**

A. The Court of Appeals correctly ruled that the Planning Commission’s failure to state the grounds for the decision constituted an abuse of discretion.

Despite the clear statutory mandate for the Planning Commission to “keep a record of its resolutions, findings, and determinations, which record must be a public record. *id.* § 6-29-360(B), and for it to set forth in writing “the grounds for its approval or disapproval,” *id.* § 6-29-1150(B), the Planning Commission did not make any findings and did not set forth the grounds for its approval of the Stables. Instead, it simply did an up-or-down vote by which it approved the subdivision 5-4. The Court of Appeals decision below ruled that this up-or-down vote, without any elucidation of the grounds, warranted reversal under *Grays Hill Baptist Church v. Beaufort County*, because it was impossible to “discern” or “decipher” the grounds for the approval. (Slip Op.at 9).

The full statement of the standard of review from *Grays Hill* is as follows:

This Court will not reverse the findings of a county review board unless the board’s findings have no evidentiary support or the board has committed an error of law. . . .[A] decision of the reviewing body will not be disturbed if there is evidence in the record to support its decision. Indeed, we will not substitute our judgment for that of the reviewing body, even if we disagree with the decision. However, the decision of the zoning board [or planning commission] will not be upheld where it is based on errors of law Instead, a decision of a municipal zoning board [or 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.

Grays Hill Baptist Church v. Beaufort Cty., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020) (internal quotations and citations omitted).

The Court of Appeals’ ruling is unquestionably correct because the Planning Commission’s failure to provide any basis for its decision not only violated the statute requiring it to set forth the grounds but also constitutes the epitome of an abuse of discretion. By failing to articulate any grounds for its decision, the Planning Commission failed to exercise any discretion at all. And it

is well established that the failure to exercise discretion in itself is an abuse of discretion. *See, e.g., Lollis v. Dutton*, 421 S.C. 467, 487, 807 S.E.2d 723, 733 (Ct. App. 2017).

As the *Lollis* court explained, when a decision fails to set forth the grounds for its basis or otherwise is “lacking a discernible reason,” this failure is tantamount to the failure to exercise discretion and therefore an abuse of discretion:

As to the merits, the circuit court's summary order denying all post-trial motions did not specifically address the above three grounds or the standards set forth in the corresponding statute or rule. We acknowledge that findings of fact and conclusions of law are generally not required for decisions on motions. See Rule 52(a), SCRCP (“Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).” (emphasis added)); *Woodson v. DLI Props., LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) (citing Rule 52, SCRCP, for the proposition that findings of facts and conclusions of law on motions are not required for appellate review). However, the circuit court’s order indicates it did not exercise any discretion to evaluate the Duttons’ request for fees and costs under Rule 37(c), SCRCP or the UDJA. *See Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (“A failure to exercise discretion amounts to an abuse of that discretion.”); *see also Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the [circuit court] is vested with discretion, but [its] ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”); *Johnson v. Johnson*, 296 S.C. 289, 304, 372 S.E.2d 107, 115 (Ct. App. 1988) (“A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion.”).

Id. (emphasis added).

The same holds true here with respect to the decision of the Planning Commission. Here, the Planning Commission failed to set forth any basis for its decision, as no grounds for approval were provided by the Planning Commission. At the meeting on May 26, 2021, it simply took a vote and declared that the Application passed 5-4. (R. p. 241). On June 7, 2021, the Planning Commission mailed a letter to RP&L informing it of the approval of the Stables, which was the only written record of the Planning Commission’s decision. (R. pp. 186-87). However, this letter failed to include any grounds for its decision, findings of fact, conclusions of law, or other basis for approval. Indeed, it merely stated that the Planning Commission “granted approval of the

above-referenced application.” (R. p. 186).

Such a decision demonstrates the epitome of “[a] decision lacking a discernible reason,” which as noted by *Lollis* is an abuse of discretion. There simply is no way to discern the logic or reasoning of the Planning Commission. In sum, the Planning Commission offered no specific findings of fact, conclusions of law, or any other “grounds for approval or disapproval” to support its decision as required by S.C. Code Ann. § 6-29-1150(B). (R. pp. 186-87). Without a written basis for its decision, it cannot be determined whether the Planning Commission exercised any discretion at all. As a result, the law demands that the Planning Commission be reversed for abuse of discretion and/or violation of the arbitrary and capricious standard. The Court of Appeals was correct to conclude that the Planning Commission’s approval of the Stables must be reversed for these reasons.

B. The Court of Appeals correctly ruled that there was no evidence in the record supporting the approval.

The Court of Appeals also correctly ruled that there was no evidence establishing that all three elements of LDR Article 3.1 were satisfied.

i Existing infrastructure

The first of these required elements was “adequate existing infrastructure and transportation systems.” (Slip. Op. at 11). The Court of Appeals stressed that the existing infrastructure had to be adequate and reviewed the lack of evidence for existing infrastructure, noting that the developer’s engineer merely stated they “will make improvements” to Meadow Brook Road, which was a county road and the point of access to the Stables. (Slip Op. at 12). Petitioner completely fails to address this point (that improvements would be in the future as opposed to “existing”) but instead cites to the engineer’s promise that improvements “would be

made to Meadow Brook Road.” (Pet. at 8). Thus, Petitioner merely repeats and reinforces the point made by the Court of Appeals—that the only evidence concerned future infrastructure, not existing infrastructure.

Petitioner also states that its engineer informed the Planning Commission that he talked to the SCDOT who said they had no concerns about Old White Horse Road. (Pet. at 8; R. 239). But this is nothing more than classic hearsay. Regardless, Petitioner concedes that the point of ingress and egress was Meadow Brook Road, a county road, and not Old White Horse Road, a state road. (Pet. at 8). It follows that the engineer’s reference to the SCDOT’s concerns is not sufficient evidence of existing infrastructure with respect to Meadow Brook Road.

Petitioner also cites to approval by the “staff” of the Planning Commission, referencing the staff report at page 218 of the Record. (Pet. at 8; R. 218). But this staff report is nothing more than a recommendation to approve, without including any specific evidence relating to infrastructure. (R. 218). This report cannot possibly constitute evidence supporting LDR Article 3.1. Thus, the Court of Appeals correctly ruled there was no evidence supporting the first element of “existing infrastructure.”²

ii *Surrounding land use density*

The second element is “compatib[ility] with the surrounding land use density.” (Slip. Op. at 12). The Court of Appeals notes that the evidence shows that surrounding properties include a 31 acre horse farm, a 63-acre equestrian facility, a 58-acre farm, and other properties devoted primarily to agricultural or equestrian use; that the R-S zoning designation is designed for a rural

² The Petition also argues that the subdivision plan is merely “preliminary,” (Pet. at 9), but this argument is to no avail because the approval of the preliminary plan is the only point in the process where there is an opportunity for the public to object and potentially appeal the Planning Commission’s approval prior to the approved plat being recorded, which creates vested rights. *See* S.C. Code Ann. § 6-29-1140, -1150, -1530.

character; and that the Suburban Edge classification is for “low-density residential areas” targeting 0 to 1 home per acre. (Slip Op. at 12). The Court of Appeals contrasted this existing density with the proposed Stables subdivision (to consist of 73 homes, creating a density of over 5.5 homes per acre, as clustered). (*Id.*) The Court of Appeals further noted that some developments with higher densities were located on the other side of Reedy River and in a completely different zone (*i.e.*, R-15, allowing for 2.9 units per acre) and therefore were not relevant to this element.

Petitioner argues that there is a difference between surrounding land *uses* (such as agricultural or equestrian uses) and surrounding land *density*, which involves the number of units per acre, and that the proposed density is permitted under the R-S zoning designation and the cluster ordinance, which allow for 1.7 homes per acre. (Pet. at 9). But Petitioner’s argument is invalid, as it fails to appreciate that LDR Article 3.1 establishes criteria that are wholly independent from what the zoning or cluster ordinances otherwise might allow. In addition, it is misleading to argue that surrounding uses are different than surrounding density. A cluster development of 73 homes—which includes homes on lots as small as 0.174 acres, (R. pp. 160, 175) and which translates to 5.75 homes per acre as compared to 1.7 homes per acre allowed by the zoning—necessarily introduces unprecedented density in a neighborhood of large tracts used for horse farms and agricultural purposes.

Petitioner fails to identify any evidence in the record that satisfies the second requirement that the development be compatible with the surrounding land use density. The Court of Appeals correctly ruled that there was no evidence satisfying this element.

iii *Environmental conditions*

The third element under LDR Article 3.1 is 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.” (Slip Op. at 13). The Court of Appeals found no evidence supporting this criterion and noted flooding concerns in the record in relation to an existing pond on the property that serves as the headwaters for a watercourse called the Branch. (*Id.*; R. 191-92). The Court of Appeals concluded that the engineer’s testimony failed to address these concerns. Although the engineer stated that they proposed a new detention pond and that the existing pond would remain unchanged, he also stated “that once the developers enter the design phase, they would ‘closely look at the existing pond to see if [there are] any issues.” (Slip Op. at 14). A promise to review flooding issues in the future (from an existing pond with a history of flooding) is not evidence in support of this criterion.

In response, Petitioner argues that the Court of Appeals impermissibly relied upon a citizen’s opinions about flooding over the statements of an engineer. But this is a mischaracterization of the Court of Appeals’ opinion. The Court of Appeals relied upon factual statements offered by a local citizen who described and documented his firsthand experience with flooding from the Branch following heavy rains as it flowed from the pond on the Stables property. (R. 191-92). These concerns were validly presented to the Planning Commission by a written email. (*Id.*)³ In contrast, the developer’s engineer merely stated that they would look at the flooding situation with the pond at some point in the future. The Court validly found a lack of evidence.

Petitioner fails to identify any evidence in the record that satisfies the third requirement

³ Petitioner faults the citizen for not speaking at the Planning Commission meeting where there could have been an opportunity for questions, but this point ignores the reality that the public *collectively* only had a single ten-minute opportunity to speak at the hearing. See Greenville County Planning Commission Bylaws, Article IV, Section 2 (providing parties in opposition 10 minutes to speak on a matter before the Planning Commission) (R. p. 438). Moreover, the Planning Commission cut off the only citizen to speak (other than Respondent Horney’s attorney, Will Childers). (R. 237-38 (“Are you about to finish, please hurry. . . . Ma’am you’ve gone over several sentences. I have to stop you.”)). There simply was no available time for all the concerned citizens to speak.

that the development be compatible with environmental conditions, including flooding. The Court of Appeals correctly ruled that there was no evidence satisfying this element.

C. These two rulings are consistent.

Petitioner argues that it was inconsistent for the Court of Appeals to conclude both that the record was insufficient for meaningful review of the Commission's 5-4 vote to approve the Stables and that there was insufficient evidence in the record to establish all three criteria of LDR Article 3.1. These rulings are entirely consistent because it theoretically is possible for there to be a lack of evidence supporting approval and for a planning commission nonetheless to grant approval. Indeed, this is exactly what happened. Petitioner makes no compelling case as to why it thinks these two options are mutually exclusive.

Moreover, even under the assumption that there was sufficient evidence in the record to support approval (and hence that the second ruling of the Court of Appeals was incorrect), the first ruling by the Court of Appeals nonetheless would remain valid (and independently support reversal) because the Planning Commission failed to exercise its discretion by announcing the grounds for its decision. As noted above, the failure to exercise discretion equates to the abuse of discretion. The statutory requirement to set forth the grounds for approval or disapproval is not a hollow requirement devoid of meaning. To the contrary, it forces the Planning Commission to exercise its discretion. And the failure to do so warrants reversal, regardless of whether there is sufficient evidence in to record to support approval.

In other words, approval without exercising discretion, even if it could be justified, is not equivalent to exercising discretion. And exercising discretion is the very role for which the Planning Commission members are appointed. Petitioner contends that the Court of Appeals has substituted its judgment for the judgment of the five members of the Planning Commission who

voted to approve, but those five members did not set forth the grounds for their decision, and so there is no evidence or indication that they engaged in any judgment involving the exercise of discretion. It follows that the Petitioner’s argument is invalid and that the Court of Appeals’ rulings are consistent and correct.

D. There are alternative sustaining grounds for the reversal.

The Respondents presented additional arguments to the circuit court and the Court of Appeals that are not addressed above. These arguments include the lack of approval from the fire department, the failure to comply with the “cluster development” requirements of LDR Article 11, and a due process issue. These arguments serve as alternative sustaining grounds for the reversal, and Respondents reserve the right to present these arguments if this Court grants the Petition.

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?

Petitioner contends that Respondents failed to preserve their argument that the evidence in the record did not support the three elements under LDR Article 3.1. To be preserved, an argument simply must be raised and ruled upon. See, e.g., *S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). The “issue preservation rules should not be applied in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Any doubts should be resolved in favor of preservation. (Slip Op. at 10 (quoting *Royal v. Free Kindergarten Ass’n of Charleston*, 445 S.C. 436, 454, 914 S.E.2d 856, 865 (Ct. App. 2025) (“[W]here the question of [issue] preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.”) (alterations in original) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323,

333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring))).

Here, the argument concerning the sufficiency of the evidence in support of LDR Article 3.1 was (1) raised in the Notice of Appeal, (R. 425-433); (2) raised in the appellate brief to the circuit court, (R. 023-027, 035-036); and (3) raised in oral argument to the circuit court, (R. 064, 069-076, 087-088). In addition, this issue necessarily was ruled on when the circuit court entered its Form 4 Order on July 6, 2022, affirming the Planning Commission. (Form 4 Order) (R. p. 1):

This matter is before the Court on Appellants Alliance to Preserve the Old White Horse Road Corridor and Mary Jean Horney's appeal from the Planning Commission. Based on review of the file and oral arguments of the parties, the decision of the Planning Commission is affirmed. Respondent's counsel to prepare order and submit to law clerk via email

(*Id.*)

In this Form 4 Order, the court specifically referenced the review of the file and oral arguments of the parties. Although the Form 4 Order did not specify that there was sufficient evidence in the record in support of the LDR Article 3.1 criteria, it necessarily decided this issue in favor of the Planning Commission because it could not have ruled in favor of the Planning Commission if the evidence had been insufficient. There is ample legal authority that a Form 4 Order is effective to preserve all legal issues presented to the circuit court that were necessary to the circuit court's decision:

DOR contends the issue of attorney's fees and costs is not preserved for appellate review because the Form 4 order did not explicitly reference the issue. We disagree, for Sloan sought attorney's fees and costs in his complaint and the issue was argued at the hearing. *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) ("[A]ll this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court." (quoting *Hubbard v. Rowe*, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939))). By denying all requested relief and "ending" the case, the Form 4 order **necessarily ruled on Sloan's request** for attorney's fees and costs, as well as his request for injunctive and declaratory relief.

Sloan v. S.C. Dep't of Rev., 409 S.C. 551, 555 n.4 762 S.E.2d 687, 689 n. 4 (2014) (emphasis

added). Thus, this issue was preserved.

The issuance of the subsequent, more formal order submitted by Planning Commission's counsel does not change the fact that the Form 4 Order ruled on this issue, thereby preserving it for appeal. Moreover, even though the subsequent more formal order did not expressly state that there was sufficient evidence in support of LDR Article 3.1, (R. 003-014), it did reference and rule upon the issue of sufficiency of evidence in support of LDR Article 3.1 when it referenced the sufficiency of evidence concerning "traffic or road access issues" and "flooding potential," (R. 010-011), and this was recognized by the Court of Appeals. (Slip Op. at 10 n. 7 ("We further note section II, D of the circuit court's order specifically addresses traffic and access issues encompassed by LDR Article 3.1's review criteria."))). In addition, as recognized by the Court of Appeals, "(1) the circuit court's formal order addresses in detail the County's Comprehensive Plan, which Appellants challenged as violative of LDR Article 3.1's stated criteria; [and] (2) the circuit court ruled on issues concerning LDR Article 11 (addressing cluster developments) as they relate to the density considerations of LDR Article 3.1." (*Id.* at 10). Thus, the formal order did rule upon the relevant issue, and the issue is preserved.

Regardless, the issue was squarely presented to the circuit court, and the circuit court's order necessarily rejected it, even if not explicitly addressed in the order. Otherwise, the circuit court could not have ruled in favor of the Planning Commission. It follows under the same reasoning offered in *Sloan* that the issue is preserved because it necessarily was ruled upon. For all these reasons, Petitioner's argument concerning issue preservation is without merit.

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

Third, Petitioner argues that the case must be remanded with further instructions. This argument is not supported by citation to any case law and for that reason should be rejected. Furthermore, remand is governed by Rule 220(a), SCACR, which treats reversal and remand as separate forms of disposition. *See* Rule 220(a), SCACR (“The court may affirm, reverse, or modify the decision below or remand all or any issues for further proceedings.”). There is no requirement in the rule to remand, and a reversal is appropriate where no evidence supported the Planning Commission’s decision and/or the Planning Commission otherwise abused its discretion in approving the Stables. The effective outcome of the reversal without remand is to nullify the approval, and there simply is no further action for the Planning Commission to take. If the developer chooses, it may submit a new application and try again. It follows that remand is not mandated and that there was no error in reversing without remanding.

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?

Petitioner’s final argument is that the reversal by the Court of Appeals is moot because LDR Article 3.1 was repealed. But a case only “becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy.” *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Here, the judgment would have a very practical legal effect, namely to prevent the current Stables subdivision application from moving forward. It is a fundamental principle that the law in effect at the time of the subdivision approval governs the outcome, not subsequent changes. *See, e.g., Town of Hollywood v. Floyd*, 403 S.C. 466, 478–79, 744 S.E.2d 161, 167 (2013) (applying the ordinance in effect at the time the developer sought

approval of the subdivision application). This rule also protects developers, as they do not lose rights once they obtain an approval simply because the ordinances might change. *Cf. id.*; see *Cuseo v. Horry Cnty. Plan. Comm'n*, 315 S.C. 498, 503, 445 S.E.2d 644, 647 (Ct. App. 1994) (protecting a developer against changes in ordinances); S.C. Code Ann. § 6-29-1530 (granting vested rights to developers following approval).

Also, Petitioner assumes that a judgment would have no practical legal effect because the developer simply could resubmit the application and that it would not be governed by LDR Article 3.1 and be approved. But this assumption is incorrect because LDR Article 3.1 was only one of many grounds raised by Respondents to overturn the approval of the subdivision. In addition, changes to other ordinances and in the Planning Commission's application of the ordinances would govern any resubmission of the application, and the mere fact that LDR 3.1 has been repealed does not dictate the outcome of a new application. For example, a 2025 Greenville County Ordinance has imposed a moratorium upon cluster developments, and so it is inaccurate that the developer simply could move forward with the original application under this moratorium or under any new ordinances that may arise out of it. Whether or not a resubmitted application would be successful depends upon the current state of the law. For these reasons, the issue is not moot.

CONCLUSION

The Petition should be denied because Petitioner has not cited to a single “special and important” reason that would justify the exercise of this Court’s discretion to grant the Petition. Rule 242(b), SCACR. Moreover, there simply are no “special and important” reasons for this Court to review the matter. There is no novel question of law, no dissenting opinion, no conflict with precedent, and no constitutional issue at stake. The Court of Appeals’ opinion is consistent with existing law. Respondents therefore respectfully request that this Court deny the Petition.

Respectfully submitted,

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