

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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SC Court of Appeals

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

The Honorable Vernon F. Dunbar, Circuit Court Judge

Appellate Case No. 2026-001466

William R. McKibbon, III and Anne McKibbon,Appellants,

v.

Greenville County Planning Commission, Red Oak Developers, LLC,
and Irvin H. Philpot, III,..... Respondents.

INITIAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Statement of Facts.....	2
Standard of Review.....	7
Argument	8
I. ORDER DENYING MOTION TO AMEND - OCTOBER 1, 2025	8
A. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE DENIAL OF APPELLANTS’ MOTION TO AMEND ITS NOTICE OF APPEAL WAS AN ABUSE OF DISCRETION CONTROLLED BY AN ERROR OF LAW.	8
B. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE <i>AUSTIN</i> DOES NOT BAR PARTICULARIZATION OF RECORD-BASED ERRORS THAT COULD NOT BE IDENTIFIED BEFORE THE LOWER TRIBUNAL PRODUCED ITS RECORD.	9
C. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE DENYING AMENDMENT AND THEN REFUSING TO CONSIDER THE SAME ISSUES AS UNPRESERVED DEPRIVED APPELLANTS OF MEANINGFUL JUDICIAL REVIEW.....	11
D. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE ORIGINAL NOTICE OF APPEAL INDEPENDENTLY PRESERVED THE SUBSTANCE OF THE CHALLENGED ISSUES.	13
II. AS TO THE ORDER AFFIRMING THE GREENVILLE COUNTY PLANNING COMMISSION ENTERED JUNE 3, 2026	14
A. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE ANY-EVIDENCE STANDARD DOES NOT INSULATE ERRORS OF LAW, ARBITRARY AND CAPRICIOUS ACTION, OR ABUSE OF DISCRETION.....	14
B. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE COMMISSION COMMITTED LEGAL ERROR BY FAILING TO PROVIDE REVIEWABLE GROUNDS FOR APPROVAL AS REQUIRED BY S.C. Code Ann. §§ 6-29-360(B) AND 6-29-1150(B).	15
C. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE COMMISSION COMMITTED	

LEGAL ERROR BY FAILING TO APPLY THE MANDATORY LDR ARTICLE 3.1 CRITERIA BEFORE APPROVAL.	16
D. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE APPROVAL AFTER THE COMMISSION IDENTIFIED AN UNRESOLVED SUBURBAN EDGE DENSITY INCOMPATIBILITY WAS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION.	17
E. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE APPROVAL WITHOUT RESOLVING MANDATORY ENVIRONMENTAL AND DOWNSTREAM ISSUES WAS ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION, AND AFFECTED BY ERROR OF LAW.	18
F. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE OPEN-SPACE AND APPLICATION DEFECTS IGNORED BY THE PLANNING COMMISSION DEMONSTRATE LEGAL ERROR AND ABUSE OF DISCRETION.	19
G. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE ALLIANCE PRESENTS A NEARLY DIRECT FACTUAL AND LEGAL PARALLEL REQUIRING A REVIEWABLE APPLICATION OF THE SAME MANDATORY LDR CRITERIA.	20
Conclusion	22

TABLE OF AUTHORITIES

CASES

<i>Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC</i> , 447 S.C. 649, 930 S.E.2d 21 (Ct. App. 2026).....	13-22
<i>Austin v. Board of Zoning Appeals</i> , 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004)	7-11, 15, 22
<i>City of Columbia v. Pic-A-Flick Video, Inc.</i> , 340 S.C. 278, 531 S.E.2d 518 (2000).....	11
<i>Grays Hill Baptist Church v. Beaufort County</i> , 431 S.C. 630, 850 S.E.2d 29 (2020).....	14, 21-22
<i>Hodge v. Pollock</i> , 223 S.C. 342, 75 S.E.2d 752 (1953).....	7, 14, 17, 20-22
<i>Kurschner v. City of Camden Planning Commission</i> , 376 S.C. 165, 656 S.E.2d 346 (2008) ...	7, 11
<i>Lee v. Bunch</i> , 373 S.C. 654, 647 S.E.2d 197 (2007).....	7-8
<i>Restaurant Row Associates v. Horry County</i> , 335 S.C. 209, 516 S.E.2d 442 (1999)....	7, 14, 21-22
<i>Royal v. Free Kindergarten Association of Charleston</i> , 445 S.C. 436, 914 S.E.2d 856 (Ct. App. 2025)	13
<i>Smith v. South Carolina Department of Social Services</i> , 284 S.C. 469, 327 S.E.2d 348 (1985) ..	10
<i>Town of Hollywood v. Floyd</i> , 403 S.C. 466, 744 S.E.2d 161 (2013).....	7
<i>Vulcan Materials Co. v. Greenville County Board of Zoning Appeals</i> , 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000)	15, 22

STATUTES, RULES, AND REGULATIONS

S.C. Code Ann. § 6-29-360(B)	1, 15
S.C. Code Ann. § 6-29-1150.....	1-2, 10, 15
Greenville County Land Development Regulations, Article 3.1	1, 13-18, 20-22
Greenville County Land Development Regulations, Article 8.21	5, 19
Greenville County Land Development Regulations, Article 11	19

STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court abused its discretion in denying Appellants’ motion to amend the Notice of Appeal where Appellants were required to file the Notice of Appeal prior to Appellant being given access to the record, namely the Planning Commission file and hearing transcript and Greenville County planning department files.

2. Whether the combined effect of denying the Motion to Amend and later refusing to consider the same record-based issues as unpreserved deprived Appellants of a meaningful opportunity for judicial review. (Motion-to-Amend Tr. pp. 20-23, 27-28.)
3. Whether the circuit court committed legal error by construing the Notice of Appeal as presenting only three narrow grounds when paragraphs 18 through 21 alleged numerous other grounds including the challenge of environmental threats, degradation of water and wildlife, septic concerns, density violations, and failure to investigate substantive opposition. (Notice of Appeal ¶¶ 18-21; Circuit Appeal Tr. pp. 29-31.)
4. Whether the circuit court committed legal error in affirming a Planning Commission decision whose determination letter and/or complete record did not disclose the grounds for approval required by S.C. Code Ann. §§ 6-29-360(B) and 6-29-1150(B), thereby preventing meaningful judicial review.
5. Whether the Planning Commission committed errors of law, acted arbitrarily and capriciously, and abused its discretion by approving Derby Farm without evidence and findings demonstrating compliance with mandatory LDR Article 3.1 criteria, including compatibility with surrounding land-use density and environmental conditions.

STATEMENT OF THE CASE

This appeal arises from the Greenville County Planning Commission's approval of Preliminary Plan Application PP-2024-183 for the proposed Derby Farm subdivision and from two subsequent orders of the Greenville County Court of Common Pleas.

The Planning Commission considered Preliminary Plan Application PP-2024-183 at its November 20, 2024 meeting. Appellants William R. McKibbon, III and Anne McKibbon appeared in opposition and submitted written materials for the Commission's consideration. Following the presentations, the Planning Commission voted to approve the preliminary subdivision plan. (Planning Commission Tr., ROA pp. 155-167.)

On December 20, 2024, Appellants timely filed a Notice of Appeal pursuant to S.C. Code Ann. § 6-29-1150, seeking circuit-court review of the Planning Commission's decision. (Notice of Appeal.)

After the Notice of Appeal was filed, the Planning Commission produced additional portions of the administrative record, including materials produced in response to a Freedom of Information Act request and, subsequently, the transcript of the November 20, 2024 Planning Commission

proceeding. (Motion-to-Amend Tr. pp. 4-7, 15.) Appellants thereafter filed a Motion to Amend the Notice of Appeal to state additional grounds identified from their review of those untimely produced materials. (Motion to Amend Notice of Appeal.)

The circuit court heard Appellants' Motion to Amend on September 23, 2025. (Motion-to-Amend Tr. p. 1.) Following argument, the court denied the Motion to Amend by order entered October 1, 2025. (Order on Motion to Amend, Oct. 1, 2025.) That order is the first order presented for review in this appeal.

The circuit court conducted a hearing on the merits of Appellants' appeal from the Planning Commission on December 17, 2025. (Circuit Appeal Tr. p. 1.) The parties submitted written briefs and presented oral argument concerning the grounds asserted for reversal of the Planning Commission's decision. (Appellants' Circuit Brief; Circuit Appeal Tr.)

On June 3, 2026, the circuit court entered its Order Affirming Decision of Greenville County Planning Commission, affirming the Commission's November 20, 2024 approval of the Derby Farm preliminary subdivision application. (Order Affirming Decision of Greenville County Planning Commission pp. 1, 10.) That order is the second order presented for review.

Appellants timely appealed to this Court, and the appeal was assigned Appellate Case No. 2026-001466.

STATEMENT OF FACTS

Derby Farm is a proposed sixteen-lot cluster subdivision on approximately 13.82 acres adjoining Appellants' property on Old White Horse Road in northern Greenville County. (Appellants' Circuit Brief pp. 2-4; Preliminary Subdivision Application, ROA pp. 43-44.) The parcel is zoned R-S and is designated Suburban Edge under Greenville County's Comprehensive Plan. (Appellants' Circuit Brief pp. 3, 12; Planning Commission Tr., ROA p. 165.) Appellants are the owners of the adjacent 18 acres, which serves as their primary residence. Both the Appellants' land and the land sought to be developed into Derby Farms belonged to the Philpot family. Prior to

purchasing, the Appellants were assured there was no intention to develop the adjacent 13 acres, yet only 2 months after purchasing the property, a development sign and public hearing notice appeared, clearly indicating that a development plan had been in the works for a number of months at least.

Appellants prepared extensive evidence and information to provide to the Greenville County Planning Commission, consisting of water analyses, soil composition, stormwater runoff data, pollution data, among other things, setting forth numerous areas of non-compliance as well as numerous areas of threat to the health of Appellants' property and pond. Despite all such preparation, and the Planning Commission meeting in October 2024, no attention was given to any of the data/evidence provided. Consideration was so absent that it was very apparent that the materials had not been reviewed in any meaningful way by the Commissioners. The Planning Commission approved the preliminary plan for Derby Farm by vote and later issued its determination letter formalizing such approval. Neither at the hearing, nor in the letter, did the Planning Commission provide any analysis, framework, or grounds for approval. Appellants thereafter filed its Notice of Appeal, and Appellants were bound by a 30-day deadline to so file.

By the 30 day deadline, the Respondents had not produced the transcript nor other requested files, and Appellants were forced to file their Notice of Appeal from memory alone, without any benefit of review of the record to have a full and fair opportunity to determine its grounds for appeal. Therefore, though Appellants' Notice of Appeal contained only 3 'bold' type issues, as a matter of caution and preservation of issues, Appellants did include a number of other issues that it believed constituted errors of law or abuses of discretion, but only in cursory fashion because again, Appellants did not have the benefit of ANY of the record. Thereafter, 2 months later in fact, the record was produced for Appellant's review. The Appellants' review revealed clearly that the issues they had given cursory notation of in their Notice of Appeal were worthy of appeal; therefore, out of an abundance of caution, Appellants file a Motion to Amend its Notice of Appeal to further flesh out those particular matters.

A hearing was held in circuit court September 23, 2025 on Appellants' Motion to Amend. The circuit court initially questioned whether amendment was even necessary because legal arguments could ordinarily be developed from the record in the appellate brief, suggesting to the parties the Court's initial belief that Appellants' needs to argue the points of amendment could be made in his brief.. (Motion-to-Amend Tr. pp. 20-22.) Appellants noted their belief that the statutory appeal procedure required grounds to be stated in the Notice, thus the substantial importance of the amendment. (Id. pp. 22-23.) Counsel for the Commission likewise stated that these appeals require the grounds to be stated in the notice. (Id. pp. 27-28.) The circuit court denied Appellants' motion on October 1, 2025.

At the later merits hearing, as Respondents attempted to argue that Appellants had failed to preserve certain issues for appeal, Appellants argued that paragraphs 18 through 21 of the original Notice of Appeal clearly set forth its objections to the Planning Commission's determinations pertaining to environmental, density, water, septic, and failure-to-investigate issues. (Circuit Appeal Tr. pp. 29-31.) The final circuit court order on appeal nevertheless limited appellate review to three subjects that were in 'bold' type in the original Notice of Appeal. (Final Order pp. 4-5.), and, relying upon the 'any evidence' rule, simply, but incorrectly, affirmed the Planning Commission's preliminary approval of Derby Farm.

When Appellants filed their Notice of Appeal on December 20, 2024, they did not possess the County's application file, Commission communications, minutes, or hearing transcript. FOIA materials were produced in February 2025, and the Commission transcript was not supplied until April 2025. (Motion-to-Amend Tr. pp. 4-7, 15.) Appellants then sought and failed to amend the Notice to particularize legal issues identified from the administrative materials. (Id. pp. 7-10.). Once those materials were presented, particularly the hearing transcript, Appellants were able to clearly note each legal and factual issue addressed at the Planning Commission hearing – appealable issues.

Before the November 20, 2024 Planning Commission meeting, Appellants submitted a written opposition package addressing stormwater runoff, the downstream pond, watershed impacts, septic systems, slope, soils, buffers, open space, and density. (Appellants' Circuit Brief pp. 4-5; ROA pp. 12-33, 79-83, 99-142.) The submission included five videos depicting substantial runoff during major rain events, an annotated preliminary plat showing runoff paths and culverts, EPA material concerning urbanization and stormwater, SCDNR and Clemson watershed materials, portions of Greenville County's Stormwater Management Design Manual, septic-system materials, slope and soil information, and buffer literature. (Id.) No one on the commission indicated they had reviewed the materials nor asked any questions despite the enormous amounts of verifiable and scientific data provided by the opposition.

At the Planning Commission hearing, Appellants challenged the cluster-development and open-space calculations. They argued that the plat's open-space arithmetic could not be reconciled, that two versions of the same plat reflected different pond acreage. In the same vein, the developers' proposed twenty-foot buffer along Appellants' driveway was noncompliant with the regulations. The 'buffer' is pasture, but under the law, buffers must be natural vegetative which is characterized by mature trees/wooded areas, not grasses/wheat fields. (Appellants' Circuit Brief pp. 14-16; Circuit Appeal Tr. pp. 14-16.) The Subdivision Advisory Committee comments indicated that Lots 1, 2, and 11 through 16 did not touch meaningful open space and that a majority of lots were required to touch such open space. (ROA p. 241, as cited in Appellants' Circuit Brief p. 16.)

The environmental issues were also addressed during the hearing. The project engineer stated that Red Oak was "very, very liable if something were to go wrong to that pond" and represented that the detention ponds would control the 100-year storm. (Planning Commission Tr., ROA pp. 159-160.) Red Oak later stated that the ponds had originally been planned for a 25-year event and were changed after discussions with Mr. McKibbon. (ROA p. 166.) Incidentally, Red Oak nor the property owner Mr. Philpot ever approached the McKibbons about their intent to develop the land or to discuss

the development plan. In fact, prior to this subdivision application, Red Oak attempted to get a subdivision approved that would have utilized the McKibbons' private pond as a detention pond for its development without McKibbons' knowledge nor consent. When Commissioner Hammond suggested water-quality testing of the pond from the anticipated polluted runoff from the proposed subdivision, Chairman Bichel quickly responded that the issue was "not in our purview." (ROA p. 167.)

During the Commission meeting, Chairman Bichel asked whether Lot 16 could be eliminated and stated to Red Oak, "you didn't meet the density requirements of the Suburban Edge character." (Planning Commission Tr., ROA pp. 164-165.) Red Oak responded that eliminating the lot would hurt the project financially. (ROA p. 165.) No follow up question was asked; instead, the Commission simply voted and approved the plan. (ROA pp. 165-167.)

The County's Stormwater Management Design Manual states that downstream analysis is required for development sites absent a waiver or variance and explains that the analysis is performed before sizing stormwater quantity-control structures because it may demonstrate that more stringent controls are necessary to prevent downstream impacts. (Stormwater Manual, ROA pp. 105-108; Appellants' Circuit Brief pp. 16-17.) The Subdivision Advisory Committee separately required a downstream analysis concerning Appellants' lake. (SAC comments, ROA p. 239, as cited in Appellants' Circuit Brief p. 17.) Appellants maintained below that no completed downstream analysis was conducted, and certainly did not appear in the record on which preliminary approval was granted. (Appellants' Circuit Brief pp. 17-19; Circuit Appeal Tr. p. 11.)

Despite all of the above, the Planning Commission did not initiate any inquiry at all – not one – regarding Red Oak's compliance with land development regulations, all of which was required in order for approval to be given. Despite all technical and authoritative evidence provided by the Appellants, the Planning Commission blatantly and ignored all bona fide objections, to the ultimate

benefit of Red Oak simply upon Red Oak indicating that any changes to the plan would cause financial detriment.

STANDARD OF REVIEW

The two appealed orders require distinct standards. As to the October 1, 2025 order denying the Motion to Amend, a ruling on a motion to amend is ordinarily reviewed for abuse of discretion. *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007). An abuse of discretion exists when the ruling is controlled by an error of law or rests on a factual conclusion without evidentiary support. Thus, although allowing an amendment is discretionary, the discretion is not insulated when the court applies an incorrect legal rule. The amendment issue here is principally legal: whether the circuit court, in relying upon *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004) properly extended that case to a statutory appeal in which the governmental record necessary to particularize the grounds was not produced until after the filing period.

As to the June 3, 2026 merits order, Planning Commission fact findings receive deferential review, but deference does not protect legal error. *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008); *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013). A zoning decision will not be upheld when based on an error of law and must be overturned when it is arbitrary or capricious, bears no reasonable relation to a lawful purpose, or constitutes an abuse of discretion. *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

Hodge v. Pollock supplies the essential limiting principle: although a zoning body possesses discretion, it is not free to make whatever determination appeals to its sense of justice; it must comply with the standards prescribed by the governing ordinance and statutes. 223 S.C. 342, 348-50, 75 S.E.2d 752, 754-55 (1953). Appellants therefore do not ask this Court to reweigh technical evidence.

They ask the Court to enforce mandatory legal standards and to reverse a decision reached without a reviewable application of those standards.

ARGUMENT

I. AS TO ORDER DENYING MOTION TO AMEND - OCTOBER 1, 2025

A. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE DENIAL OF APPELLANTS' MOTION TO AMEND ITS NOTICE OF APPEAL WAS AN ABUSE OF DISCRETION CONTROLLED BY AN ERROR OF LAW.

A motion to amend is ordinarily addressed to the circuit court's sound discretion. *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007). But "discretion" does not mean unreviewable choice. A ruling constitutes an abuse of discretion when it is controlled by an error of law or by a factual conclusion lacking evidentiary support. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000). Accordingly, if the circuit court applied Austin as establishing a categorical legal bar in circumstances Austin did not decide, the resulting denial is reversible as an abuse of discretion because the discretion was exercised under an erroneous legal premise.

That point is important here because the October 1 order had consequences far beyond the motion itself. The June 3 merits order later relied on the denial of the Motion to Amend to hold that most of Appellants' substantive arguments were not properly before the court. (Final Order pp. 4-5.) The ruling on the Motion to Amend therefore became the procedural foundation for excluding the very issues that the later-produced administrative record revealed. A mistaken legal premise at the amendment stage did not merely affect pleading form; it foreclosed merits review.

Ordinary Rule 15 cases also illuminate the nature of discretionary review even though Austin holds that Rule 15 itself does not govern statutory zoning appeals after the filing period. South Carolina courts repeatedly explain that amendment discretion is directed toward fairness, notice, and prejudice, and that legal error in the exercise of discretion is reversible. *See Lee*, 373 S.C. at 660, 647 S.E.2d at 200. Here, Respondents were not confronted with new evidence or a new factual transaction. The proposed amendment concerned the same Derby Farm approval, the same

Commission proceeding, and the same preexisting administrative record. (Motion-to-Amend Tr. pp. 7-10.) The principal question was therefore not prejudice from a new controversy; it was whether the statutory appeal mechanism could lawfully prevent Appellants from particularizing errors that could not be identified until the government produced its own record.

B. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE *AUSTIN* DOES NOT BAR PARTICULARIZATION OF RECORD-BASED ERRORS THAT COULD NOT BE IDENTIFIED BEFORE THE LOWER TRIBUNAL PRODUCED ITS RECORD.

The lower court applied the *Austin* case improperly to the facts of this case. *Austin v. Board of Zoning Appeals* must be read precisely. There, the appellant filed a statutory petition and, several months later, sought to add two new grounds. 362 S.C. 29, 37-41, 606 S.E.2d 209, 213-15 (Ct. App. 2004). The Court held that the statute governing that Board of Zoning Appeals proceeding required the petition to state plainly, fully, and distinctly why the decision was contrary to law, imposed a thirty-day filing period, and made no provision for amendment. *Id.* *Austin* rejected an attempt to import Rule 15's liberal amendment regime into an appellate proceeding. *Id.* at 39-42, 606 S.E.2d at 214-16. At first glance, it would be a seemingly easy argument to just shift the *Austin* logic to the present case, but the Court should not have done that because the distinguishing factors between *Austin* and the present case are absolutely paramount.

Austin's rationale rested on a materially different procedural setting than the present case. *Austin* did not hold that an appellant must be required to identify every record-based legal error before a governmental body supplies the administrative record necessary to identify those errors (keeping in mind the present Appellants were not provided the record prior to the deadline for the Notice of Appeal). Further, *Austin* did not involve a timely Notice of Appeal that already contained the factual subjects which were later particularized (the Appellants' did). Most importantly, *Austin* itself emphasized the distinction between adding new facts and reviewing the record made below. It is true that the circuit court sits in an appellate capacity and may not take new evidence. *Id.* at 39-40,

606 S.E.2d at 214-15. However, here the Appellants did not seek the Court to take new evidence. They sought to identify legal consequences of the record that already existed when the Commission acted. (Motion-to-Amend Tr. pp. 7-10.)

The chronology demonstrates why a mechanical application of *Austin* was legal error. Appellants filed the Notice on December 20, 2024. They did not then possess the County’s application file, Commission communications, minutes, or hearing transcript. FOIA materials were produced in February 2025; the Commission transcript was not supplied until April 2025. (Motion-to-Amend Tr. pp. 4-7, 15.) The additional grounds sought to be particularized concerned defects in those preexisting materials, including the application, SAC comments, regulatory requirements, and what the Commission actually said and did at the hearing. (Id. pp. 7-10.)

The statutory structure makes that distinction consequential. Section 6-29-1150(B), S.C. Code Ann., requires the Commission to maintain a public record of its actions on land-development plans “with the grounds for approval or disapproval and any conditions attached.” That record exists to make judicial review possible. The statute should not be construed to require an appellant to particularize every legal defect before the governmental body has supplied the very record the statute requires for review, and then to prohibit particularization after the record arrives. Such a construction would turn the public-record requirement into an empty formality and would reward the absence or delayed production of a reviewable record.

Smith v. South Carolina Department of Social Services, on which *Austin* relied, is likewise distinguishable. *Smith* involved a petition that failed to specify an error within the statutory period. 284 S.C. 469, 471, 327 S.E.2d 348, 349 (1985). Here, the timely Notice did specify grounds and factual concerns; Appellants sought to particularize those grounds after receiving the governmental record. (Circuit Appeal Tr. pp. 29-31.) The difference between curing a petition that states no error and particularizing already asserted grounds from a later-produced record is substantial.

The circuit court therefore abused its discretion because its ruling was controlled by an overbroad legal reading of *Austin*. The correct question was not simply whether the statutory period had expired. The court was required to address whether the requested amendment truly added a new controversy or instead particularized existing grounds from a record unavailable during the filing period. The order did not undertake that necessary analysis, erring at law and fatally injuring the Appellants' case.

C. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE DENYING AMENDMENT AND THEN REFUSING TO CONSIDER THE SAME ISSUES AS UNPRESERVED DEPRIVED APPELLANTS OF MEANINGFUL JUDICIAL REVIEW.

The practical effect of the two circuit-court rulings is central to the due-process analysis. At the hearing on the Motion to Amend, the circuit court initially suggested that amendment might be unnecessary because an appellant ordinarily can develop legal arguments from the record in the appellate brief. (Motion-to-Amend Tr. pp. 20-22.) Appellants responded that this statutory appeal was different because the grounds had to be stated in the Notice. (Id. pp. 22-23.) Counsel for the Commission ultimately agreed that the statutory procedure requires the grounds to be stated in the notice. (Id. pp. 27-28.)

That exchange matters because it exposes the procedural dilemma later created by the final order. If amendment was unnecessary because record-based arguments could be developed in the merits appeal, then the circuit court should have considered those arguments when Appellants presented them. If, instead, every particularized ground had to appear in the Notice, then denying the Motion to Amend after the record became available left Appellants without any avenue to obtain review of errors that could not reasonably have been identified earlier. The two propositions cannot fairly operate together to defeat review.

Kurschner recognizes that procedural due process requires notice, an opportunity to be heard in a meaningful way, and judicial review. 376 S.C. at 171, 656 S.E.2d at 350. Appellants do not claim

a constitutional right to unrestricted amendment or to a trial-type Commission proceeding. Their narrower contention is that a statutory appeal cannot be administered so that the appellant must identify record-based errors before receiving the record and is then prohibited from raising those errors once the record is supplied.

The prejudice was concrete. The final order expressly used the denial of the Motion to Amend to exclude the application-signature issue, open-space requirements, downstream analysis, environmental compatibility, and other regulatory challenges from merits review. (Final Order pp. 4-5.) Those were not collateral matters; they were the principal legal questions bearing on whether the Commission complied with mandatory development regulations. The denial of the Motion to Amend therefore became “massive” in consequence: it transformed delayed access to the record into forfeiture of substantive judicial review.

A constitutionally sound and statutorily coherent construction is readily available. *Austin* can continue to bar genuinely new grounds raised after the statutory period while permitting a court to recognize particularization of grounds already fairly stated when the administrative record was unavailable during the filing period. Alternatively, the circuit court could have remanded for a sufficient record before determining preservation. Either approach respects *Austin* without allowing the timing of record production to extinguish meaningful review.

D. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE ORIGINAL NOTICE OF APPEAL INDEPENDENTLY PRESERVED THE SUBSTANCE OF THE CHALLENGED ISSUES.

The Court need not reverse the amendment order to reach the principal merits issues because the original Notice itself contained their factual substance. At the December hearing, Appellants directed the circuit court to paragraphs 18 through 21 of its Notice of Appeal and explained that those paragraphs alleged environmental threats, degradation of water and wildlife, septic concerns, density violations, and failure to investigate substantive opposition. (Circuit Appeal Tr. pp. 29-31.)

Paragraph 21 also stated that Commission materials had not been published or supplied during the appeal period and requested the ability to modify or amend when the information became available. (Id. p. 30.). Appellants argued then and now that the identification of those issues to the best of their ability without the benefit of the record sufficiently preserved the issues for appeal. And while the Motion to Amend should have been granted, its denial does not change the reality that the issues the Circuit Court refused to consider had in fact been sufficiently preserved.

The final order nevertheless reduced the Notice to three narrow labels and excluded all other grounds. (Final Order pp. 4-5.) That was an error of law because preservation is concerned with whether the issue was fairly presented, not whether the appellant used the precise regulatory section number later revealed by the record.

Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC is unusually instructive. There, the circuit court did not identify LDR Article 3.1 by section number and the appellants did not file a Rule 59(e) motion directed to that omission. Nevertheless, this Court held the Article 3.1 issues preserved because the circuit court substantively addressed matters encompassed by Article 3.1 and the parties had argued them. 447 S.C. 649, 665-66, 930 S.E.2d 21, 29-30 (Ct. App. 2026). Citing *Royal v. Free Kindergarten Association of Charleston*, the Court resolved doubt about preservation in favor of preservation. Id.

The same substance-over-label approach applies here with greater force. A Notice alleging environmental threats, water degradation, septic concerns, density violations, and failure to investigate opposition fairly encompasses the later legal contention that the Commission failed to apply mandatory density and environmental criteria. The later identification of Article 3.1 did not create a new factual controversy; it supplied the legal framework for facts already asserted. The circuit court's contrary construction was legal error and should be reversed independently of the ruling on the Motion to Amend.

II. AS TO THE ORDER AFFIRMING THE GREENVILLE COUNTY PLANNING COMMISSION ENTERED JUNE 3, 2026

A. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE ANY-EVIDENCE STANDARD DOES NOT INSULATE ERRORS OF LAW, ARBITRARY AND CAPRICIOUS ACTION, OR ABUSE OF DISCRETION.

The merits appeal turns on keeping the categories of review distinct. Deference applies to supported factual findings. It does not authorize a Planning Commission to disregard mandatory law. *Grays Hill Baptist Church v. Beaufort County* states that a zoning decision will not be upheld when based on an error of law and will be overturned when it is arbitrary or capricious, has no reasonable relation to a lawful purpose, or constitutes an abuse of discretion. 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020). *Restaurant Row Associates v. Horry County* states the same rule. 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

Hodge v. Pollock explains what those principles mean in practice. A zoning body may possess broad discretion, but it is not free to make whatever determination appeals to its sense of justice; it must comply with the standards prescribed by the governing ordinance and statutes. 223 S.C. 342, 348-50, 75 S.E.2d 752, 754-55 (1953). Thus, when the Commission fails to apply a mandatory criterion, the defect is an error of law. When it approves despite acknowledged material conflicts without a rational explanation, the action is arbitrary and capricious. When it exercises discretion without applying the standards that constrain that discretion, it abuses its discretion.

The *Alliance* case applied these principles to this same Greenville County Planning Commission. The South Carolina Court of Appeals accepted the deferential standard for factfinding but reversed because the record did not permit the court to discern the Commission's grounds and did not contain evidence from which the Commission could properly determine all mandatory LDR Article 3.1 criteria. 447 S.C. at 660-70, 930 S.E.2d at 27-32. This Court's own ruling, from just April of 2026, required more from the Commission's findings. But in the present case, the Planning Commission proceeded the very same way and produced the very same end product – nothing. A

vote to approve occurred at the Planning Commission hearing, and the subsequent written determination was equally as concise and with no substance. There is nothing from the Commission on the record to permit the Court to discern the Commission's grounds nor any evidence from which the Commission could properly determine all mandatory LDR criteria. Therefore, the very same reasoning applies to this case as *Alliance*, and the legal issues and accompanying facts being strikingly similar, the very same result is the only appropriate one – the lower court must be reversed and the case remanded to the Planning Commission.

B. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE COMMISSION COMMITTED LEGAL ERROR BY FAILING TO PROVIDE REVIEWABLE GROUNDS FOR APPROVAL AS REQUIRED BY S.C. Code Ann. §§ 6-29-360(B) AND 6-29-1150(B).

The Planning Commission must maintain a public record of its actions on land-development plans “with the grounds for approval or disapproval and any conditions attached.” S.C. Code Ann. 6-29-360(B) (1976). This section likewise requires a public record of the Commission's resolutions, findings, and determinations. These provisions impose legal duties; they are not optional drafting preferences.

Vulcan Materials Co. v. Greenville County Board of Zoning Appeals held that the form of a final decision is less important than whether its substance is sufficiently detailed to permit a reviewing court to determine whether the decision is supported by the facts. 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000). *Austin* repeated that principle and cautioned that more complicated cases require greater detail because written findings eliminate confusion and accurately transmit the tribunal's reasoning to affected parties and reviewing courts. 362 S.C. at 33-36, 606 S.E.2d at 211-13.

The *Alliance* opinion applied the principle to Greenville County preliminary subdivision approval. It held that a formal findings-and-conclusions order is not invariably required, but the assembled record must disclose enough for the reviewing court to determine the Commission's

grounds, the facts it deemed established, and how it applied those facts to the LDR and zoning ordinances. 447 S.C. at 662-65, 930 S.E.2d at 28-30.

The Planning Commission in the present case suffers the exact same legal failure. The Commission heard evidence concerning runoff, the downstream pond, slope, soils, septic systems, water quality, density, open space, and buffers. (Planning Commission Tr., ROA pp. 155-167; ROA pp. 12-33, 79-83, 99-142.) Its chairman expressly stated that Derby Farm did not meet the Suburban Edge density requirement. (ROA pp. 164-165.) Its engineer acknowledged potential liability if something happened to Appellants' pond. (ROA pp. 159-160.) Yet the approval contains no findings resolving those conflicts or explaining how the mandatory criteria were satisfied.

That omission is an error of law because the statutes require grounds sufficient for review, and the *Alliance* case solidified that as to the Planning Commission in reversing its approval of a subdivision similarly situated in character and location to the proposed Derby Farm. It also renders the approval arbitrary and capricious because the Commission moved from acknowledged regulatory and factual conflicts to approval without a stated rational path. Finally, it constitutes an abuse of discretion because discretion must be exercised through the governing standards rather than through an unexplained vote.

C. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE COMMISSION COMMITTED LEGAL ERROR BY FAILING TO APPLY THE MANDATORY LDR ARTICLE 3.1 CRITERIA BEFORE APPROVAL.

The *Alliance* case identifies LDR Article 3.1 as a threshold review provision. Submitted subdivisions may be approved if they meet all stated criteria, including adequate existing infrastructure and transportation, compatibility with surrounding land-use density, and compatibility with the site's environmental conditions. 447 S.C. at 666, 930 S.E.2d at 30. *Alliance* examined the record for evidence supporting each criterion and reversed when the evidence was insufficient. *Id.* at 666-70, 930 S.E.2d at 30-32.

The circuit court did not conduct that analysis because it excluded Article 3.1 as unpreserved. (Final Order pp. 4-5.) Once Article 3.1 is properly before the Court, the Commission's failure to apply it is an error of law. *Hodge* requires a land-use body to comply with the standards prescribed by its ordinance and statutes. 223 S.C. at 348-50, 75 S.E.2d at 754-55.

Respondents argued below that stormwater and downstream matters could be addressed after preliminary approval. (Circuit Appeal Tr. pp. 27-28.) *Alliance*, however, demonstrates why that position cannot answer Article 3.1. Environmental compatibility is itself a criterion governing the preliminary subdivision decision. 447 S.C. at 666-70, 930 S.E.2d at 30-32. A promise to develop necessary evidence later is not evidence that the mandatory criterion is satisfied at the time approval is granted.

D. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE APPROVAL AFTER THE COMMISSION IDENTIFIED AN UNRESOLVED SUBURBAN EDGE DENSITY INCOMPATIBILITY WAS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION.

The circuit court treated density primarily as a question of whether 1.16 units per acre fell below the maximum cluster density allowed by R-S zoning. (Final Order pp. 5-7.) Article 3.1 asks a separate question: whether the proposed subdivision is compatible with surrounding land-use density. *Alliance*, 447 S.C. at 668-69, 930 S.E.2d at 31. The Comprehensive Plan's Suburban Edge designation is therefore relevant evidence of compatibility even if the Plan does not independently supersede the zoning ordinance.

At the Planning Commission hearing, Chairman Bichel asked whether Lot 16 could be eliminated and told Red Oak that it "didn't meet the density requirements of the Suburban Edge character." (Planning Commission Tr., ROA pp. 164-165.) Red Oak answered that eliminating the lot would hurt the project financially. (ROA p. 165.) The Commission then approved the subdivision without explaining why the acknowledged incompatibility no longer prevented approval. (ROA pp.

165-167.) Instead, it seemed entirely satisfied with a response that indicated the developer would make less money by making the development comply with density requirements.

That sequence is arbitrary and capricious because an identified criterion-based problem was followed by a financial response unrelated to compatibility and then unexplained approval. It is an abuse of discretion because the Commission bypassed the legal standard that constrained its discretion. The circuit court's reliance on the zoning ceiling was itself an error of law because it conflated maximum zoning density with the separate Article 3.1 compatibility inquiry.

E. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE APPROVAL WITHOUT RESOLVING MANDATORY ENVIRONMENTAL AND DOWNSTREAM ISSUES WAS ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION, AND AFFECTED BY ERROR OF LAW.

Article 3.1 expressly requires compatibility with environmental conditions, including conditions such as wetlands and flooding. *Alliance*, 447 S.C. at 666, 669-70, 930 S.E.2d at 30, 32. Environmental compatibility was therefore within the Commission's legal responsibility. Chairman Bichel's statement that water quality was "not in our purview" cannot remove from consideration environmental evidence that bears directly on a mandatory LDR criterion. (Planning Commission Tr., ROA p. 167.) To the extent the Commission approved on that premise, it committed an error of law.

The record contained concrete evidence: videos of actual runoff, mapped natural flow paths, County stormwater provisions, watershed material, soil and slope information, septic-risk information, and evidence concerning the existing downstream pond. (ROA pp. 12-33, 79-83, 99-142.) The SAC specifically required a downstream analysis for Appellants' lake. (ROA p. 239, as cited in Appellants' Circuit Brief p. 17.) The County Stormwater Manual states that downstream analysis is required absent waiver or variance and is performed before sizing quantity-control structures because it may demonstrate the need for stricter controls. (ROA pp. 105-108.) None of these were present, yet the Planning Commission approved the subdivision.

The developer's own statements heightened the concern. Its engineer stated that Red Oak was "very, very liable if something were to go wrong to that pond" and represented that the detention ponds would control the 100-year storm. (ROA pp. 159-160.) Red Oak later stated that the ponds had originally been planned for a 25-year event and were changed after discussions with Mr. McKibbin. (ROA p. 166.) Yet as stated above, the Commission made no finding that the required downstream analysis had been completed, waived, or lawfully deferred.

Approving the plan in the face of those unresolved matters without applying the mandatory environmental criterion was arbitrary and capricious and an abuse of discretion. Alliance involved flooding and water movement and a proposal to address drainage later; this Court held it could not find evidence from which the Commission could properly determine environmental compatibility and reversed. 447 S.C. at 669-70, 930 S.E.2d at 32. Derby Farm presents the same legal problem with a more developed environmental record.

F. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE THE OPEN-SPACE AND APPLICATION DEFECTS IGNORED BY THE PLANNING COMMISSION DEMONSTRATE LEGAL ERROR AND ABUSE OF DISCRETION.

The cluster-development regulations impose additional mandatory standards. The zoning ordinance describes open-space development as permitting variation in lot sizes in exchange for preservation of substantial open space, tree cover, scenic vistas, natural drainage ways, and outstanding natural topography. (Appellants' Circuit Brief pp. 13-14, quoting Zoning Ordinance § 7:2.1.) LDR Article 11 requires the Commission to determine whether the preliminary plan is consistent with the purpose and intent of the zoning ordinance. (Appellants' Circuit Brief p. 13.)

Appellants identified concrete compliance problems: the plan stated that more than 4.15 acres qualified as open space, but the plat numerically delineated only 3.05 acres; two versions gave different acreage figures for non-wetland waters; a twenty-foot strip along Appellants' driveway was pasture rather than the natural vegetative buffer described by LDR Article 8.21; and SAC comments

stated that eight of sixteen lots did not touch meaningful open space even though a majority were required to do so. (Appellants' Circuit Brief pp. 14-16; ROA p. 241.)

These are regulatory-compliance questions, not merely disputes about evidentiary weight. Approval without resolving whether the plan satisfies mandatory open-space requirements is an error of law and an abuse of discretion under *Hodge*.

The application record raises the same legal problem. The application at ROA pp. 43-44 bears the earlier file number PP-2024-048 and contains a blank owner-signature line. County correspondence stated that a signed application was required and that failure to provide it would render the submission incomplete for SAC purposes. (ROA pp. 37-44.) If the administrative record contains no executed PP-2024-183 application satisfying the mandatory filing requirement, approval was affected by error of law. At minimum, the unexplained record cannot support an appellate assumption that the defect was cured.

G. THE LOWER COURT SHOULD BE REVERSED AND THE CASE REMANDED TO THE PLANNING COMMISSION BECAUSE *ALLIANCE* PRESENTS A NEARLY DIRECT FACTUAL AND LEGAL PARALLEL REQUIRING A REVIEWABLE APPLICATION OF THE SAME MANDATORY LDR CRITERIA.

Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC is an unusually persuasive because it is not a general zoning analogy. It concerns the same Greenville County Planning Commission, the same Old White Horse Road corridor, R-S zoning, a Suburban Edge designation, a cluster/open-space subdivision, neighboring landowner opposition, density compatibility, environmental and flooding concerns, staff review followed by Commission approval, and a record that failed to explain how the Commission applied mandatory LDR criteria. 447 S.C. at 651-70, 930 S.E.2d at 22-32.

The factual parallels to the present case are precise. In *Alliance*, this Court found the record inadequate to reveal the Commission's grounds and found insufficient evidence from which the Commission could properly determine all Article 3.1 criteria. *Id.* In the present case, the Commission

chairman affirmatively identified the Suburban Edge density problem; the SAC identified a downstream-analysis requirement; the project engineer acknowledged the downstream pond risk; Appellants supplied extensive environmental evidence; and the Commission nevertheless approved without findings resolving those matters. (ROA pp. 155-167, 239; Appellants' Circuit Brief pp. 4-19.)

The environmental parallel is particularly strong. *Alliance* involved evidence of flooding and water movement and a proposal to address drainage later. 447 S.C. at 669-70, 930 S.E.2d at 32. In the present case, the record adds actual runoff videos, mapped flow paths, soil and slope information, existing pond-water data, a County downstream-analysis requirement, and an engineer's express acknowledgment of potential liability. (ROA pp. 12-33, 79-83, 99-142, 159-160, 239.) If the record in *Alliance* could not support a proper environmental-compatibility determination, the unexplained Derby Farm approval certainly cannot be sustained merely because staff recommended approval.

The density parallel between the *Alliance* case and the case at bar is equally compelling. *Alliance* separately examined surrounding-density compatibility rather than treating the zoning maximum as dispositive. 447 S.C. at 668-69, 930 S.E.2d at 31. Here, the Commission chairman expressly stated that Derby Farm did not meet the Suburban Edge density requirement. (ROA pp. 164-165.) The circuit court nevertheless affirmed because the project remained below the R-S cluster maximum. (Final Order pp. 5-7.) *Alliance* demonstrates that those are distinct inquiries.

The legal consequence should be stated plainly. Failure to apply Article 3.1 and the statutory record requirements is error of law. Approval despite acknowledged and unresolved density and environmental conflicts without a rational explanation is arbitrary and capricious. Exercising discretion without applying the standards that constrain that discretion is abuse of discretion. *Grays Hill*, 431 S.C. at 637, 850 S.E.2d at 33; *Restaurant Row*, 335 S.C. at 216, 516 S.E.2d at 446; *Hodge*, 223 S.C. at 348-50, 75 S.E.2d at 754-55.

Reversal therefore does not require this Court to substitute its judgment for the Commission. It requires the opposite: enforcement of the legal boundaries within which the Commission's judgment must operate. The any-evidence standard protects supported factual choices; it does not protect a decision affected by legal error, reached arbitrarily or capriciously, or produced through an abuse of discretion.

CONCLUSION

The October 1, 2025 order denying the Motion to Amend should be reversed because the circuit court abused its discretion by applying the *Austin* rationale under a materially different procedural circumstance without addressing the unavailable administrative record, the grounds already contained in the timely Notice, or the resulting denial of meaningful judicial review. At minimum, the amendment order must be construed so that it does not erase grounds fairly stated in the original Notice of Appeal.

The June 3, 2026 order affirming the Planning Commission should separately be reversed because the Commission's approval was affected by errors of law, was arbitrary and capricious, and constituted an abuse of discretion. The Commission failed to provide reviewable grounds for approval; failed to demonstrate compliance with mandatory LDR Article 3.1 criteria; approved despite an expressly acknowledged density incompatibility; and approved without resolving material environmental, downstream, open-space, and application-compliance issues. Under *Alliance*, *Grays Hill*, *Restaurant Row*, *Hodge*, *Vulcan Materials*, and *Austin's* own insistence upon a reviewable administrative record, those defects require reversal or remand for a lawful and reviewable determination.

Respectfully submitted,

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