THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Consolidated Case Nos. 2023-CP-42-01221, 2023, CDP-42-01226, 2023-CP-42-01367
2023-CP-42-01545

Appellate Case No. 2024-001828

South Carolina Native Plant Society,

Appellant,

vs.

Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms, RV Park,

Respondents.

and

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles, D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms,

Appellants,

vs.

Spartanburg County SC, Spartanburg County Planning Commission, and Blue Sky. Associates, LLC, d/b/a T. Tree Farms RV Park,

Respondents.

FINAL BRIEF OF APPELLANTS THE ENCLAVE, ET AL.

September 16, 2025

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STATEMENT OF ISSUES ON APPEAL

1. The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants (hereinafter collectively the "Homeowners") adopt each and every STATEMENT OF ISSUES ON APPEAL OF APPELLANT SOUTH CAROLINA NATIVE PLANT SOCIETY (hereinafter the "Native Plant Society") and present the following additional ISSUES ON APPEAL.

2. Did the Circuit Court err by not voiding and vacating without remand the approval by the Respondent Spartanburg County Planning Commission (the "Commission") of the T. Tree Farms RV Park (the "RV Park") proposed by the Respondent Blue Sky Associates, LLC ("Blue Sky") because the Spartanburg County Unified Land Management Ordinance (the "Ordinance") upon which the Commission relied, "frustrated the purpose" or "hindered the accomplishment" of the South Carolina Local Government Comprehensive Planning Enabling Act (the "Planning Act") which is controlling authority?

3. Is this appeal premature?

STATEMENT OF THE CASE

The Homeowners adopt the Native Plant Society's Statement of the Case, modified to encompass the Homeowners' Statement of Issues on Appeal and the following uncontested facts.

On or about February 8, 2023, the Respondent Blue Sky submitted to the Respondent Commission an application seeking approval for the RV Park, to contain 49 spaces and to be constructed in the upper part of Spartanburg County surrounded by thousands of acres of well-tended forested, agricultural and residential land largely protected by conservation restrictions. ROA 00707-00711; 00759-00762 . The application was similar to one which Blue Sky had

submitted two years earlier but abandoned after Commission approval because it could not get the Inman Campobello Water District to supply it with public water. ROA 00701-00703. The new application was based upon water from a well. The Commission approved the new application on March 7, 2023. ROA 00657, 00684 – 00686.

The Native Plant Society and the Homeowners requested the Commission to reconsider its action at its next meeting on April 4, 2023. ROA 00687-00695; 01005-01011; 00141-00165. The Commission did not do so.

There ensued four appeals to the Circuit Court, two from the Native Plant Society and two from the Homeowners. ROA 00044-00277; 00278-00477. Each separately appealed the approval and the failure to reconsider. The appeals were consolidated on July 3, 2023. ROA 00002-00004.

The Commission's approval was challenged on various grounds, which included, among others, environmental harm, public health and safety, and failure to comply with the Spartanburg County, SC, Unified Land Management Ordinance and the Planning Act. S.C. Code Ann. Title 6, Chapter 29 (1999). ROA 00044-00277; 00278-0477.

On November 28, 2023, the Hon. J. Mark Hayes, II heard the consolidated appeals. On April 22, 2024, he entered his order granting the appeal on certain grounds, stating "the Court grants Appellants' appeal in part and reverses and vacates the Commission's conditional approval of the T. Tree Farms RV Park site plan dated March 7, 2023." ROA 00014. On May 1, 2024, the Respondents moved to alter or amend. ROA 00581-00584. On September 24, 2024, Judge Hayes held a hearing on that motion and by order dated September 26, 2024, clarified the term "vacate" to mean "that the matter is remanded to the commission." ROA 00015. The

Native Plant Society and Homeowners timely filed Notices of Appeal on October 28, 2024, the Monday following the 30th day, which fell on the previous Saturday. ROA 00598-00599.

On November 20, 2024, Blue Sky moved to dismiss the appeal as premature. ROA 00593-00597. The Commission and Spartanburg County did not join in the motion or file separate motions to dismiss. On January 13, 2025, the Court of Appeal denied the motion "without prejudice to the parties addressing appealability in their briefs." ROA 00018-00021.

STANDARD OF REVIEW

The brief of the Native Plant Society correctly cites authorities concerning the standard of review. As noted in that brief, the decision of the Commission must be overturned if it suffers from any one of the following defects:

1. arbitrary or capricious
2. abuse of discretion,
3. arbitrary or unreasonable,
4. error of law,
5. lack of evidentiary support, or
6. lack of discernable reason.

The United States Supreme Court in *Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983), explained what this means.

> The scope of review under the "arbitrary and capricious" standard is narrow, and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 371 U.S. 168 (1962). In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Bowman*

> *Transportation, Inc. v. Arkansas-Best Freight System, Inc., supra*, at 419 U.S. 285; *Citizens to Preserve Overton Park v. Volpe, supra*, at 401 U.S. 416. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency's action that the agency itself has not given. *SEC v. Chenery Corp.*, 332 U.S. 194, 332 U.S. 196 (1947).

Id. at 43

Under this standard, the approval of the RV Park by the Commission must be voided and vacated without remand.

ARGUMENT

The Argument and Statement of Facts in the brief of the Native Plant Society are correct, and the Homeowners adopt them. It would be a waste of the Court's time to repeat them here. The Homeowners do, however, wish to supplement them as follows:

1. This Appeal is Not Premature.

The Joint Response of Appellants to Motion to Dismiss Appeals, filed December 2, 2024, in the Court of Appeals and the Native Plant Society's argument in its brief in the Court of Appeals are sufficient to establish that this appeal is not premature and that the Court of Appeals correctly denied the Respondent Blue Sky's motion to dismiss it. ROA 00598-00628. Joint Response of Appellants to Motion to Dismiss Appeals. Accordingly, the Homeowners

adopt these dispositive arguments without repetition.

2. The Circuit Court Erred in Concluding That the Commission Did Not Violate the Preamble and Sections 3.13(2) (natural features) and 3.13 (8) (septic) of the Ordinance When It Conditionally Approved the RV Park.

The brief of the Native Plant Society sets forth correct arguments concerning environmental and public health matters. There is no reason to repeat them here. These include but are not limited to matters related to an undersized septic system, pollution and rare native plants. The Homeowners adopt and incorporate fully into this brief all the facts and law set forth in this section of the brief of the Native Plant Society.

In addition, the Homeowners wish to emphasize the importance of the word "shall", which appears in subsections 3.13(2) and (8) of the Ordinance that address environmental and public health matters:

> Section 3.13 Camps and Recreational Vehicle Parks (SIC 703)
>
> Camps and recreational vehicles (RV) parks **shall** comply with the following site and design standards.
>
> 2. The site **shall** be developed in a manner that preserves natural features and landscape.
>
> ***
>
> 8. Each park site **shall** be serviced by public water and sewer or other systems approved by DHEC." (Emphasis added)

ARTICLE 6 – DEFINITIONS of the Ordinance provides: "the word **"shall" is always mandatory**." [Emphasis Added]. ROA 01022, 01047, 01055.

If more is needed, one may look to the United States Court of Appeals for the District of Columbia Circuit, which is one of the leading courts in this country. In *Nat'l Ass'n. of Postal Supervisors v. USPS and United Postmasters and M'grs Of America*, No. 1:19-cv-02236 (D.C. Cir. Feb. 22, 2022), the Court of Appeals said unmistakably that "shall" is mandatory.

> The statutory provisions at issue in this case contains explicit language stating what the Postal Service "shall" do. 39 U.S.C. §§ 101(c), 1003(a), 1004(a), 1004(b). That language is undoubtably mandatory. See *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016) ("'shall' is 'mandatory' and 'normally creates an obligation impervious to judicial discretion'" (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998))).

The RV Park not only failed under the Ordinance and *Nat'l Ass'n*, it also failed at DHEC because the DHEC Board revoked the required septic permit. ROA 00696 – 00699.

Under South Carolina statutory law, DHEC had independent authority – indeed, an independent obligation – to examine and rule on Blue Sky's septic application and permit. Chief among the statutes is the South Carolina Pollution Control Act. S.C. Code Ann. 48-1-10 et seq. and the statutory framework for the South Carolina Department of Health and Environmental Control. S.C. Code Ann. 44-1-10 et seq. They charged DHEC with protecting the health of the people of South Carolina and granted it jurisdiction to do so. Although DHEC was divided in the summer of 2024, at all times relevant to this case, it functioned as a single agency operating under these statutes. S.C. Code 48-1-100(C) provided:

> The Department of Health and Environmental Control is the agency of state government having **jurisdiction** over those matters involving **real or potential threats** to the **health** of the people of South Carolina, **including ... septic tanks.** [Emphasis added.]

In its Final Agency Decision dated January 13, 2022 denying Respondent Blue Sky a septic permit, the DHEC Board specifically noted that it was acting under this section. ROA 00563.

Homeowners' Reply Brief of Appellants, Exhibit A, p.2. The 15-day time limit argued by the Respondents does not apply. That limit arises under a totally different statute limiting a private party – not the DHEC Board itself. S.C. Code 44-1-60. Of note, the DHEC Board independently has the authority to revoke a septic permit pursuant to S. C. Code 48-1-50(5).

> SECTION 48-1-50. Powers of Department.
>
> The Department may:
>
> (5) Issue, deny, revoke, suspend or modify permits, under such conditions as it may prescribe for the discharge of sewage, industrial waste or other waste or air contaminants or for the installation or operation of disposal systems or sources or parts thereof; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing.

The DHEC Board gave Blue Sky a hearing on December 20, 2021. It then revoked the septic permit. ROA 00561-00564. Homeowners' Reply Brief of Appellants, Exhibit A.

Respondent Blue Sky's proposed septic system will discharge millions of gallons of wastewater per year. ROA 00891. The DHEC Board rejected the estimate of the daily peak flow rate of wastewater submitted by Blue Sky's engineers to the DHEC staff, which was half the amount required by the DHEC regulations; the Board determined that the design of its septic system was not supported by data in the permit application. ROA 00561-00564. The DHEC Board revoked the staff's issuance of the permit because the septic system lacks capacity to deal with wastewater from dozens of large RVs. The septic system risks failure and contamination of drinking water wells of nearby homeowners. In addition, failure of the septic system poses a threat of discharge downhill into Gold Mine Creek, which is a first-order tributary of the North Pacolet River and part of the public water supply in Spartanburg. The creek borders Blue Sky's proposed RV park.

It is not the law that the DHEC Board is divested of jurisdiction in all cases where a Request for Review is not submitted within 15 days of a DHEC staff decision. This approach to all matters for review by the DHEC Board disregards its separate powers under the Pollution Control Act and would produce an absurd and dangerous result. With application of an absolute 15-day restriction, the DHEC Board would be precluded from functioning, even in the face of catastrophic harm, if citizens whose health was threatened could not or did not request a review within 15 days of a staff decision. This was not the intent of the General Assembly in enacting the Pollution Control Act and conferring broad powers upon the DHEC Board to protect the health of the people of South Carolina.

The South Carolina Supreme Court has addressed the broad powers granted to DHEC by the General Assembly. *City of Columbia v. Board of Health and Environmental Control*, 292 SC. 199, 355 S.E.2d 536 (1987) (holding that DHEC's powers are construed liberally when the powers concern the protection of the health and welfare of the public.)

Finally, by its own terms, the permit issued by DHEC staff in 2021 is no longer valid. It was based on water being provided by the Inman Campobello Water District. The first page of the permit states in all capital letters, "ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT." ROA 00566. The second page states this condition again, "Any deviations from the plan without prior approval from the Division voids this Permit." ROA 00567; 01013-01014. Homeowners' Reply Brief of Appellants, Exhibit B. Water is not going to be provided by ICW as noted in the plan, which is why Blue Sky applied anew to the Commission in February 2023. ROA 00003. The 2023 application is based upon water from a future on-site well, which is substantially different from the plan submitted

to DHEC in 2021. ROA 00003; 00708. That voids the septic permit.

3. The Circuit Court Erred in Concluding That the Commission's Decision Not to Reconsider its Conditional Approval Was Not Unlawful, Arbitrary, Capricious or an Abuse of Discretion.

In their Request for Reconsideration of Conditional Approval dated March 28, 2023, the Homeowners asked the Commission to reconsider its March 7, 2023 approval of the RV Park. On March 31, 2023, the Native Plant Society did likewise. ROA 00900-00924; 01003-01011. The Commission ignored both requests. The Native Plant Society has adequately briefed this issue. Its arguments apply equally to the Homeowners.

4. The Circuit Court Erred in Concluding That the Commission's Failure to Offer Any Explanation for its Decision Was Not Unlawful, Arbitrary, Capricious or an Abuse of Discretion.

Likewise, the arguments of the Native Plant Society in its brief on this issue apply equally to the Homeowners. There are also several other reasons that absolute reversal and vacatur of the Commission's decision should occur under this heading.

First, the Ordinance itself required the Commission to make specific findings. By granting Blue Sky's request for approval of the RV Park against the requirements of the Ordinance, the Commission in effect granted Blue Sky a variance. This action of the Commission is analogous to inverse condemnation, which South Carolina has long recognized. *Vick v. S.C. Dep't. of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (2001). Just as the government cannot evade its obligation to pay compensation by failing to file a formal condemnation action, the Commission cannot evade its obligation to make findings because Blue Sky has not filed for and

the Commission has not formally considered a variance. What Blue Sky sought and what the Commission granted was a variance.

To grant a variance, the Commission was required to make specific factual findings. That is required by the Ordinance. It is not a recommendation. It is the law. It is worth quoting the entirety of the Ordinance's section on variances to show the importance of doing exactly what the Ordinance requires for the proper development of land in Spartanburg County. The Planning Commission has the power and duty:

> To grant variances in specific cases from the regulations pertaining to subdivisions and major land development as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in the unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship *if the Commission finds* [Emphasis added]:
>
> (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
> (b) These conditions do not generally apply to other property in the vicinity;
> (c) Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
> (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the area.
>
> The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Ordinance, Article 5, Section 5.01-2. Powers and Duties of the Planning Commission, Sub-Section 2(f)(2).

It is no surprise that the Commission made no findings as required by the Ordinance. There are no facts to support any such finding. Indeed, all the facts are contrary to approval of the RV Park. The Homeowners' Appeal from Spartanburg County Planning Commission And Request For Declaratory Relief, verified by Russell Rock's Affidavit (Exhibit B), sets forth the facts. Appeal, pp. 5-20, Brief of Appellants. ROA 00044-00094; 00509-00525. Frank Holleman's brief on behalf of the South Carolina Native Plant Society provides additional explanation. Native Plant Society Brief, pp. 5-10. ROA 00479; 00487-00492

The requirement of specific factual findings cannot be evaded. The South Carolina Supreme Court is unequivocal on this point:

> The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. Citing *Hill v. Jones*, 255 S.C. 219, 178 S.E. 2d 142 (1970). Implicit findings of facts are not sufficient. Where material facts are in dispute, the administrative body must make specific, express findings of fact. *Hamm v. SC PSC*, 298 S.C. 309, 380 S.E.2d 428 (1989).

This is exactly what the United States Supreme Court previously said. "Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its actions, including a rational connection between the facts found and the choice made". *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983), citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962). This is the law.

5. **The Circuit Court Erred By Not Voiding and Vacating Without Remand the Approval by the Commission of the RV Park Proposed by Blue Sky Because the Ordinance Upon Which the Commission Relied "Frustrated the Purpose" or "Hindered the Accomplishment" of the South Carolina Local Government Comprehensive Planning Enabling Act Which Is Controlling Authority.**

The Ordinance does not stand alone. It was created pursuant to – and must conform to – the South Carolina Local Government Comprehensive Planning Enabling Act. S.C. Code Ann. 6-29-310 et seq. In describing the "functions, powers and duties of local planning commissions", that statute requires that "The plans and programs **must** be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction." S.C. Code Ann. 6-29-340(A). [Emphasis added]. They must follow the "Legislative intent; purposes", which are stated as follows: "The public health, safety, economy, good order, appearance, convenience, morals, and general welfare **require** the harmonious, orderly, and progressive development of land within the municipalities and counties of the State." [Emphasis Added] S.C. Code Ann. 6-29-1120. "All local governments that have adopted a local comprehensive plan... **shall** revise their local comprehensive plans to comply with the provisions of this act ...". [Emphasis Added] 2007 Act No. 31, Section 6, Editor's Note preceding S.C. Code Ann. 6-29-510. "A local comprehensive plan **must** include ... the following elements: ... "unique, natural or scenic resources, ... **fire protection**, [and] **transportation**." [Emphasis Added] S.C. Code Ann. 6-29-510(D)(4), (5) & (8). A specific purpose of the transportation element under the statute is "to **assure** the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian . . .." [Emphasis Added] S.C. Code Ann. 6-29-1120(3).

The Ordinance has no elements for fire protection or traffic safety and the Commission ignored those requirements of the Planning Act. The Ordinance is not void; it is valid as far as it goes, but by lacking all that is required by the Planning Act, it does not go far enough. The Ordinance does state that a fundamental purpose is to protect "ecologically sensitive areas." Ordinance, PREAMBLE. ROA 01022. Also, it requires that all RV Parks "preserve natural areas and landscape." Ordinance. ROA 01047. Those words, however, meant nothing to the Commission, which ignored them, the same as it ignored the fire protection and traffic safety mandates of the Planning Act.

Fire Danger

If wildfire was underestimated before now, the burning of Maui and its port city of Lahaina, Southern California, and our own Table Rock area in northern Greenville and Pickens Counties has corrected the nation's view of that danger. Lahaina and the Southern California cities and towns had 24/7 professional fire departments and city water. The area where the Homeowners live and the RV Park is to be located has neither. Lahaina's and Los Angeles's public water systems ran dry fighting the fire. The RV Park will not have any water. It is not connected to the ICW system and Judge Hayes ruled that its proposed well is not "public water", as required by the Ordinance. What the RV Park will have are dozens of large RVs, filled with gasoline, propane, lithium batteries and other combustibles. It will have grills and campfires, with sparks and embers flying from them, often unattended and not properly extinguished, sometimes while people are asleep. It will be in an area that is formally protected as a conservation preserve under the law, densely wooded with mature trees, and filled with underbrush. The RV Park will be a tinderbox within a treasure of nature.

Traffic Danger

Another danger posed by the RV Park is the onslaught, on steep, narrow, winding roads, of enormous RVs driven, for the most part, by people from outside South Carolina, who are completely unfamiliar with the nature of the roads or where they lead. The shoulders alongside the roads are narrow and the ditches are several feet deep, thereby making the roads even more treacherous. Some intersections are at acute angles, far too tight for large vehicles. ROA 00526-528. Brief of Appellants of Homeowners, Exhibit C. The roads into and around the proposed RV Park have historically been used by residents of the land there for agriculture or recreation: walking, running, horseback riding, and cycling. The local high school cross country team trains on the roads. They cannot safely accommodate and are incompatible with the size and number of RVs that the RV Park will bring. A road safety engineer opined that siting the RV Park on these roads adds danger to already dangerous roads. ROA 00052, 00071-00076; 00524-00525; 00738-00751. Appeal and Request for Declaratory Relief, pp. 20-25, Rock Affidavit and Teague Road Safety Audit.

The RV Park is to be located on Landrum Mill Road, just off I-26 near the North Carolina border. Virtually all the traffic for the RV Park will be coming from I-26. However, there is no exit from I-26 to Landrum Mill Road. North of Landrum Mill Road, the nearest exit from I-26 to the proposed RV Park location is Highway 14, also known as Landrum Road. South of Landrum Mill Road, the nearest exit from I-26 to the proposed RV Park location is at Highway 11, also known as Foothills Highway. From either exit, traffic must then navigate their way along roads that were interior roads of the several large farms that formerly comprised the Homeowners' land. They were short winding roads used by the owners of the farms on their own lands for

their own purposes. They were not thoroughfares. That is still the case today. A significant part of Fairview Farms Road is even still dirt. ROA 00529-00530. Brief of Appellant of Homeowners, Exhibit D.

Because the Ordinance does not contain all the requirements mandated by the Planning Act, the Commission's approval of the RV Park was deficient and must be reversed. The Planning Act established policy and what is required to fulfill it. "Where, as here, the General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity." *Wilson Ex Rel State v. City of Columbia*, Op. No. 2021-000889, 2021 WL 3928992 (S.C. Sept. 2, 2021). There is no constitutional infirmity even alleged concerning the Planning Act. It must be upheld. "The government of a municipality is created by the laws of the State of South Carolina, and the creature cannot be greater than its creator, and the laws of a municipality to be good must not be inconsistent with the laws of the State." *Id.* "It is well settled that where there is a conflict between a State statute and a city ordinance, as where an ordinance permits that which a statute prohibits, the ordinance is void. "*Id.* citing *State v. Solomon*, 246 S.C. 550, 575, 141 S.E.2d 818, 831 (1965). This Court has never wavered in its adherence to this bedrock principle." *Id.*

"Resolving a conflict between state law and a city (or county) ordinance invokes the principle of preemption. Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose . . . Moreover, even in the absence of an express conflict, the ordinances cannot stand, for the ordinances frustrate the purpose of the proviso and are therefore preempted. 5 McQuillin *Municipal Corporations* § 15:19 (3d ed. Aug. 2020

Update) ("[E]ven when a local ordinance does not expressly conflict with a State statute, it will be preempted when it frustrates the statute's purpose."). *Id.*

The South Carolina Supreme Court then declared void the offending ordinance. It did not remand the matter to the City for further action. The same should happen here, except that the Ordinance should be declared deficient instead of void.

6. The Circuit Court Erred In Concluding That Remand, Rather Than Vacatur, Was the Appropriate Remedy.

Reversal is often absolute, without remand. E.g. *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1 (1986) (United States Supreme Court); *Ex parte Hearst-Argyle Television, Inc.*, 369 S.C. 69, 631 S.E.2d 86 (2006) (South Carolina Supreme Court). That is exactly what should happen here.

In addition to the reasons given by the Native Plant Society in its brief, which the Homeowners adopt, and by the South Carolina Supreme Court in *Wilson Ex Rel State v. City of Columbia*, reviewed previously, the Ordinance is deficient. If the matter is remanded, further action by the Commission upon that Ordinance would again be error.

CONCLUSION

The Order of the Hon. J. Mark Hayes, II dated April 22, 2024, was correct insofar as it denied Blue Sky the permit for the RV Park. ROA 00001-00014. It was incorrect insofar as it did not base denial on the matters raised by the Appellants on this appeal, including but not limited to environmental matters, lack of DHEC approval for a septic permit, and failure of the Ordinance to comply fully with the mandates of the Planning Act. The Order of Judge Hayes

dated September 26, 2024 was in error and should be reversed. ROA 00015-00017. The matter should not be remanded to the Commission. Its approval of the RV Park should be declared void and vacated.

September 17, 2025

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Consolidated Case Nos. 2023-CP-42-01221, 2023, CDP-42-01226, 2023-CP-42-01367
2023-CP-42-01545

Appellate Case No. 2024-001828

South Carolina Native Plant Society,

Appellant,

vs.

Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms, RV Park,

Respondents.

and

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles, D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms,

Appellants,

vs.

Spartanburg County SC, Spartanburg County Planning Commission, and Blue Sky. Associates, LLC, d/b/a T. Tree Farms RV Park,

Respondents.

PROOF OF SERVICE

The undersigned does hereby certify that on September 17, 2025, a copy of the Final Brief of Appellants The Enclave, et al., was served by email on all counsel of record by copy of this email and filed by electronic email with the Clerk of Court for the South Carolina Court of Appeals.

September 17, 2025

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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