RECEIVED
Sep 23 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Consolidate Case Nos. 2023-CP-42-01221, 2023-CP-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' Associations, 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,

APPELLANT SOUTH CAROLINA NATIVE PLANT SOCIETY FINAL BRIEF

Frank S. Holleman III
Emily Wyche

Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
(843) 720-5270

Attorneys for Appellant

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

1. Spartanburg County Unified Land Management Ordinance 4
2. Blue Sky's Application 5
3. The Commission's Conditional Approval and Decision Not to Reconsider 9
4. The Circuit Court Proceedings and Opinions 11

STANDARD OF REVIEW 12

ARGUMENT 13

1. South Carolina Native Plant Society's Appeal is Proper 13
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 15

A. The RV Park Does Not Protect Ecologically Sensitive Areas or Preserve Natural Features and Landscapes 16

i. Ecologically sensitive areas and natural features on the RV Park site. 17

ii. Blue Sky's site plan did not preserve these ecologically sensitive areas and natural features, and the Commission unlawfully approved it. 18

B. The RV Park is Not Serviced by a Septic System "approved by DHEC" 21

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 24
4. The Circuit Court Erred in Concluding That the Commission's Failure to Offer Any Explanation for its Decisions was not Unlawful, Arbitrary, Capricious, or an Abuse of Discretion 25
5. The Circuit Court Erred in Concluding That Remand, Rather Than Vacatur, Was the Appropriate Remedy 26

CONCLUSION 29

TABLE OF AUTHORITIES

Page(s)

Cases

Cheap-O's Truck Stop, Inc. v. Cloyd,
350 S.C. 596 (2002) 14

Citizens for Quality Rural Living v. Greenville County Planning Commission,
426 S.C. 97 (Ct. App. 2019) ..... *passim*

Grays Hill Baptist Church v. Beaufort Cnty.,
431 S.C. 630 (2020) 12

Hodge v. Pollock,
223 S.C. 342 (S.C. 1953) 18, 27

Johnson v. Johnson,
296 S.C. 289 (S.C. Ct. App. 1988) 26

Kurschner v. City of Camden Planning Commission,
376 S.C. 165 (2008) 12, 21, 23

Mikell v. Cnty of Charleston,
386 S.C. 153 (2009) 12

T. Tree Farms RV Park v. S.C. Dep't of Health and Envtl. Ctrl.,
Dkt. No. 22-ALJ-07-0010-CC (S.C. ALC Nov. 29, 2022) 9, 22

Statutes

16 U.S.C. § 1531 6

S.C. Code § 6-29-310 16

S.C. Code § 6-29-1150(B) 25

S.C. Code § 14-3-330 13

S.C. Code § 44-1-20 (2012) 22

Other Authorities

Ordinance § 3.13 ..... *passim*

Ordinance Preamble ..... *passim*

DHEC Board, Final Agency Decision on Docket No. 21-RFR-81 ..... 7, 8

South Carolina Appellate Court Rules Rule 201 13

South Carolina Appellate Court Rules Rule 203 15

Ordinance Article 6 16

Ordinance § 1.01 19

Ordinance § 2.02-1 20

Ordinance Article I 27

STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err in concluding that the Spartanburg County Planning Commission ("Commission") did not violate the Preamble and Section 3.13 (2) of the Unified Land Management Ordinance ("Ordinance") when the Commission conditionally approved the T. Tree Farms RV Park ("RV Park") without considering and obeying the mandatory provision of the Ordinance which requires that the RV Park "be developed in a manner that preserves natural features and landscape" of the site, specifically by not considering at all the impacts to rare native plants and important streams and forested habitats on and near the RV Park site?
2. Did the Circuit Court err in concluding that the Commission did not violate Section 3.13 (8) of the Ordinance which requires "sewer or other systems approved by DHEC" when it conditionally approved the RV Park with a septic system that was rejected as inadequate by the Department of Health and Environmental Control ("DHEC") Board?
3. Did the Circuit Court err in concluding that the Commission did not act unlawfully, arbitrarily, or capriciously or abuse its discretion when it failed to reconsider its conditional approval of the RV Park?
4. Did the Circuit Court err in concluding that the Commission did not act unlawfully, arbitrarily, or capriciously or abuse its discretion when it failed to offer any explanation for its conditional approval despite these provisions or decision not to reconsider?
5. Did the Circuit Court err in concluding that remand, rather than vacatur, was the appropriate remedy after finding that the Commission's conditional approval violated the Ordinance?

STATEMENT OF THE CASE

Respondent Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park ("Blue Sky") proposes to construct an RV park in Campobello, South Carolina. On March 7, 2023, the Spartanburg County Planning Commission (the "Commission") issued a conditional approval for the RV Park. The South Carolina Native Plant Society, as well as local homeowners' associations and landowners (the "Homeowners"), requested that the Commission reconsider its conditional approval at its next meeting on April 4, 2023 and detailed the numerous Ordinance violations. The Commission declined to reconsider its approval. Subsequently, the Native Plant Society and the Homeowners filed four separate appeals of both the Commission's conditional approval and the Commission's decision not to reconsider its conditional approval. The appeals challenged the Commission's decisions on various grounds, including failure to comply with requirements of the Ordinance related to natural resources, public health, and public safety. The appeals were consolidated on July 3, 2023.

The Circuit Court held a hearing on November 28, 2023. On April 22, 2024, Judge Hayes entered an order granting the appeal on certain grounds and reversing and vacating the Commission's conditional approval. On May 1, 2024, the Respondents moved to alter or amend the Circuit Court's order. On September 24, 2024, the Circuit Court held a hearing on the motion to alter or amend and, by order dated September 26, 2024, Judge Hayes granted in part the motion to alter or amend by "clarifying" that the term "vacate" meant "that the matter is remanded to the commission." The Native Plant Society and the Homeowners timely filed Notices of Appeal on October 28, 2024. On November 20, 2024, Blue Sky moved to dismiss the appeal as premature. On January 13, 2025, this Court denied the motion "without prejudice to the parties addressing appealability in their briefs."

STATEMENT OF FACTS

The proposed site for the RV Park is among properties in Campobello that are protected by their owners through conservation easements and covenants. The site itself and the surrounding land are home to a rare, native plant, and the site supports important, rare forested and stream habitat. Whitten Aff. ¶ 14–16 (R. pp. 01080-81); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶¶ 10–16 (R. pp. 01105–06); Huffman Aff. ¶ 11–12 (R. p. 01098). The RV Park will degrade these important natural features through construction and septic pollution, as well as increased human traffic. Whitten Aff. ¶ 14–16 (R. pp. 01080-81); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶¶ 10–16 (R. pp. 01105–06); Huffman Aff. ¶ 11–12 (R. p. 01098). Despite mandatory protections for natural features and septic standards detailed in the Spartanburg County Unified Land Management Ordinance, *see* Ordinance § 3.13 (R. p. 01047); Ordinance Preamble (R. p. 01022), the Commission disregarded, without explanation, these provisions and unlawfully issued a conditional approval for the RV Park and its associated harms. Then, after being notified of these numerous Ordinance violations, the Commission decided, again without explanation, not to reconsider its decision. *See* Southern Environmental Law Center, Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky LLC (Mar. 31, 2023) (alerting Commission to violations of ordinance) (R. pp. 01003–12); *see generally* Commission Meeting Minutes (Apr. 4, 2023) (no mention of issues during meeting) (R. pp. 00687–95). On appeal to the Circuit Court, the Circuit Court granted the Native Plant Society's appeal in part, concluding that the Commission had violated other provisions of the Ordinance by approving a park without the required public water and public bathrooms, but also denied the appeal in part, concluding that the Commission had not violated the provisions requiring protection of natural features of the site and a septic system "approved by DHEC." Opinion & Order, *S.C. Native Plant Society v. Spartanburg Cnty. Planning Comm'n*,

Case No. 2023-cp-42-01221 (S.C. Cir. Ct. Apr. 22, 2024) (hereinafter "April 2024 Opinion & Order") (R. pp. 00001–14).

The Circuit Court erred (1) when it concluded that the Commission's conditional approval did not violate the Ordinance's requirements related to natural features and septic standards, (2) when it concluded that the Commission's decision not to reconsider was not arbitrary and capricious and an abuse of discretion, (3) when it concluded that the Commission's failure to offer an explanation for either of its decisions was not arbitrary and capricious and an abuse of discretion, and (4) when it concluded that remand, rather than vacatur, was the appropriate remedy.

1. Spartanburg County Unified Land Management Ordinance

The Spartanburg County Unified Land Management Ordinance governs land use and development in Spartanburg County, including development of RV parks. *See* Ordinance § 3.13 (R. p. 01047). The Ordinance begins by stating a fundamental purpose for the Commission's work: protecting, among other things, "ecologically sensitive areas." Ordinance Preamble (R. p. 01022). The Ordinance contains a section dedicated to "Camps and Recreational Vehicle Parks," Ordinance § 3.13, which sets out requirements for Blue Sky's application and the Commission's consideration of RV park applications. Relevant to this appeal, the Ordinance sets forth RV park requirements related to natural features and landscapes, as well as septic systems serving RV parks. Specifically, Section 3.13 (2) requires that all RV parks preserve "natural features and landscape," and Section 3.13 (8) requires that RV parks be serviced by "sewer or other systems approved by DHEC." R. p. 01047. These provisions further the Ordinance's purpose of protecting ecologically sensitive areas. Blue Sky's application failed to comply with either requirement.

2. Blue Sky's Application

Blue Sky first applied for approval of its RV Park site plan with the Commission on January 29, 2021. Blue Sky, Major Land Development Application (Jan. 29, 2021) (R. 00701). The Commission conditionally approved Blue Sky's 2021 application; however, one of the conditions required that the RV Park be supplied by a public water system, Inman Campobello Water. Commission Conditional Approval (Mar. 3, 2021) (R. 01074). Because Blue Sky could not obtain water from Inman Campobello Water, it submitted a new application in February 2023. Blue Sky, Application at 2 (Feb. 2023) (R. 00707–08). Aside from changing the water supply from public water to well, the 2023 and 2021 applications were in substance the same. Although the Ordinance requires preservation of natural features, Blue Sky made no efforts to comply with that provision.

First, as noted above, the proposed RV Park site is in habitat for one of the nation's rarest plants, *Hexastylis naniflora* (Dwarf-flower Heartleaf). Newberry Aff. ¶ 14 (R. 01089); Gaddy Aff. ¶ 10 (R. 01105); Whitten Aff. ¶ 14 (R. 01080); Huffman Aff. ¶ 11 (R. 01098). This species has been designated a Highest Priority Species for South Carolina by the South Carolina Department of Natural Resources ("SC DNR") and is a "species of greatest conservation need." S.C. DNR, South Carolina's State Wildlife Action Plan (SWAP) at 2–9 (Oct. 14, 2014), https://www.dnr.sc.gov/swap/index.html (hereinafter "SC DNR Wildlife Action Plan"). In Spartanburg County, SC DNR has established the Peters Creek Heritage Preserve to protect one population of this plant. Mountains-to-Sea Ecological, Goldmine Creek Water Quality Assessment at 19, 22 (July 2021) (R. pp. 00934–67); terra incognita, Report on Proposed RV Park, *Hexastylis naniflora* (Dec. 17, 2021) (R. pp. 01119–21); Newberry Aff. ¶ 8 (R. p. 01087);

Gaddy Aff. ¶ 9 (R. p. 01105); Huffman Aff. ¶¶ 8–9 (R. p. 01097). This rare plant is thus an important feature of South Carolina's natural history.

But the plant is at risk of disappearing. It is found in only limited areas within just three South Carolina counties—Greenville, Spartanburg, and Cherokee—and in nearby North Carolina Piedmont counties. Whitten Aff. ¶ 6 (R. pp. 01078–79); Newberry Aff. ¶ 10 (R. p. 01088). Within that restricted geography, the species is found only in areas with special soil types and moist, rich forests near streams, rivers, and lakes. Newberry Aff. ¶ 10 (R. p. 01088); Whitten Aff. ¶ 6 (R. pp. 01078–79). One such unique, rare area is on the proposed RV Park site. Newberry Aff. ¶ 14 (R. p. 01089); Whitten Aff. ¶ 14 (R. p. 01080). Because of its rarity nationwide, the species has for more than 35 years been designated a Threatened Species under the national Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* Newberry Aff. ¶ 11 (R. p. 01088).

On at least two other occasions, agencies have required portions of residential developments in Greenville and Spartanburg Counties to be set aside to protect populations of the plant and its habitat; and on another occasion, the Greenville County Planning Commission denied the development plan for a subdivision because it did not take into account the presence of the species and its habitat on the site. *See* Greenville County Planning Comm'n, Meeting Minutes at 1–4 (July 22, 2020) (R. pp. 00972–75); Raintree Subdivision Conservation Easement (Aug. 14, 1992) (R. pp. 01110–18); Documents related to Boulder Creek Subdivision at 1–3 (R. pp. 00992–95) (requiring permittee to abide by measures to protect Dwarf-flower Heartleaf identified on site).

Despite the important rare natural features and landscapes on this site and the express requirement in Section 3.13 (2) to preserve them, nowhere in Blue Sky's application or materials

did Blue Sky even mention the plant or its habitat. Despite being made aware of its presence as early as 2021, it did not provide a plant survey for the site, nor did it include any measures to preserve or protect these important natural features. *See*, *e.g.*, Blue Sky, Overall Site Plan (Mar. 1, 2023) (R. p. 01000–02); *see also* Southern Environmental Law Center, Letter in Support of Request for Final Review (Oct. 28, 2021) (letter submitted as part of administrative challenge to Blue Sky's septic permit detailing presence of rare plant on RV Park site) (R. pp. 00704–06). Even worse, Blue Sky has done just the opposite of preserving these natural features. It has proposed to construct the RV Park *within the plant's habitat*, including RV spaces, stormwater infrastructure with a detention pond, and a septic field. Blue Sky, Overall Site Plan (Mar. 1, 2023) (R. 01000–02); Newberry Aff. ¶¶ 15–16 (R. pp. 01089–90); Whitten Aff. ¶¶ 16–18 (R. p. 01081); Huffman Aff. ¶ 12 (R. p. 01098); Gaddy Aff. ¶ 13–16 (R. p. 01106). Not only is Blue Sky failing to preserve the natural features of the site, but it is proposing to destroy rare plants and their habitat.

Second, Blue Sky is proposing to serve the RV Park with a septic system that the Board of South Carolina's Department of Health and Environmental Control ("DHEC")[1] concluded was inadequate to manage the Park's septic treatment. As noted above, Section 3.13 (8) requires that RV parks be serviced by "sewer or other systems approved by DHEC." R. p. 01047. This provision is intended to protect the environment and public health in Spartanburg County by ensuring that septic systems satisfy the quality and capacity standards put in place by the state. In 2021, Blue Sky applied to DHEC for a septic system permit to service the RV Park. Blue Sky, Major Land Development Application (Jan. 29, 2021) (R. p. 00701); *see also* DHEC Board,

[1] DHEC has since been split into two agencies and the environmental agency has been renamed the Department of Environmental Services. This brief will refer to the agency as DHEC throughout because that was the name in use during most of the events of this case.

Final Agency Decision on Docket No. 21-RFR-81 at 1–2 (Jan. 13, 2022) ("DHEC Board Decision") (R. pp. 00697–98). The governing DHEC regulation requires Blue Sky to design a septic system for a peak sewage flow per unit per day of 120 gallons. *See* S.C. Code Reg. 61-56.501. Blue Sky sought a permit for a system that would treat half the regulatorily-required capacity, only 60 gallons per day, by arguing that a KOA campground in Travelers Rest with a 50 gallon capacity system was a "similar establishment" in a "similar location" to the RV Park and that the much smaller sewage volume of this campground should be used as a measure of what this approximately 50-unit RV Park would generate. DHEC Board Decision at 2; *see* S.C. Code Reg. 61-56.501.

Initially, DHEC staff issued a permit for the septic system based on the Travelers Rest campground's flow. DHEC Board Decision at 2–3 (R. pp. 00698–99). Thereafter, local residents and homeowners' associations (collectively, the "HOAs") sought review of the permit by the DHEC Board. *Id.* at 1–2 (R. pp. 00697–98). The DHEC Board granted the HOA's request. *Id.* at 2–3 (R. pp. 00698–99).

The DHEC Board held a hearing and reviewed the adequacy of the proposed septic system for this RV Park. *Id.* at 1 (R. p. 00697). The DHEC Board concluded that, although the regulation allowed for a reduced flow where data was provided from a "similar establishment in a similar location," the KOA campground was not a "similar establishment" and thus could not justify a system based on a sewage flow of half the regulatory standard. DHEC Board Decision at 2–3 (R. pp. 00698–99). Accordingly, the Board ruled that the permit violated the regulatory requirement and that the system was inadequate to service the RV Park, and therefore the Board rejected Blue Sky's septic permit. *Id.* (R. pp. 00698–99).

Upon review, the Administrative Law Court ("ALC") overturned the Board's decision, but the ALC did not overturn the *substance* of the Board's decision. The ALC did not address the Board's determination that the septic system was inadequate to service the RV Park and that the much-reduced flow of a campground did not justify reducing the required sewage treatment capacity of this RV Park by half. Rather, the ALC overturned the decision on procedural grounds—finding that the groups who challenged the permit filed their request for DHEC Board review too late. *See* Order on Motions to Dismiss, *T. Tree Farms RV Park v. S.C. Dep't of Health and Envtl. Ctrl.*, Dkt. No. 22-ALJ-07-0010-CC at 1, 10, 20–21 (S.C. ALC Nov. 29, 2022) ("SC ALC Decision") (R. p. 00022).

Thus, the highest DHEC authority—its governing Board appointed by the Governor and approved by the Senate—ruled that the RV Park's proposed septic system was inadequate to service the Park's sewage flow, and that substantive determination has not been overturned. Yet, Blue Sky contended in its application to the Commission that its proposed septic system had been "approved by DHEC" despite the express disapproval of the system by DHEC's governing Board because of the purely procedural timing ruling of the ALC. Blue Sky, Application (Feb. 2023) (R. pp. 00714); *see also* Commission Meeting Minutes at 20, 28–29 (Mar. 7, 2023) (R. pp. 00676, 00684–85).

3. The Commission's Conditional Approval and Decision Not to Reconsider

Numerous individuals and groups submitted materials to the Commission objecting to the proposed RV Park site plan, including, among other things, materials concerning rare plants, environmental impacts, and the inadequate septic system. *See, e.g.*, Concerned Citizens, Request for Public Hearing at 1–4 (Feb. 28, 2023) (R. pp. 00759–62). The Commission considered Blue Sky's application at its March 7, 2023, meeting. Commission Agenda at 3 (Mar. 7, 2023) (R. p.

00639). The Commission refused to hold a public hearing on the proposal and at first denied anyone permission to speak concerning Blue Sky's application. *See* Commission Meeting Minutes at 20 (Mar. 7, 2023) (R. p. 00676). The Commission deferred action on Blue Sky's application until the end of its meeting and ultimately allowed a single representative of the Homeowners to speak five minutes only. *Id.* at 22, 28 (R. pp. 00678, 00684). The Commission refused his request to allow others to speak, and the Native Plant Society's representative was not given an opportunity to speak at the meeting. *Id.* (R. pp. 00678, 00684).

In a split vote, the Commission voted 6-2 to approve Blue Sky's site plan. *Id.* at 30. (R. p. 00686). The approval contained no conditions relating to the ecological features of the site or the site's natural features and landscape and contained no conditions to protect the rare Dwarf-flower Heartleaf or its habitat on the site. The approval also did not recognize the DHEC Board's disapproval of the proposed septic system and its reduced capacity. The Commission's conditional approval also did not include any explanation for the decision despite these provisions.

On March 31, 2023, the Native Plant Society asked the Commission to reconsider its decision and set out the violations of the Ordinance's provisions, including those related to "ecologically sensitive areas," "natural features and landscape," and "sewer or other systems approved by DHEC." Southern Environmental Law Center, Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC (Mar. 31, 2023) (R. pp. 01003–12). At its next meeting on April 4, 2023, the Commission decided not to reconsider its conditional approval of the RV Park site plan. *See* Commission Meeting Minutes (Apr. 4, 2023) (R. pp. 00687–95). As with its conditional approval, the Commission offered no explanation for its decision not to reconsider, despite these violations, nor did it mention anything about the

site's natural features, ecologically sensitive conditions, landscape, or lack of DHEC-approved septic system. *See generally id.* (R. pp. 00687–95).

In its decision to grant conditional approval and its decision not to reconsider, the Commission made no mention whatsoever of the provisions of Section 3.13 containing the mandate to preserve natural features and landscape or have a septic system approved by DHEC and made no effort to explain how its decisions complied with the Ordinance.

4. The Circuit Court Proceedings and Opinions

On April 4, 2023, the Native Plant Society filed its appeal of the Commission's March 7, 2023, decision conditionally approving the RV Park site plan. On April 17, 2023, the Society filed its appeal of the Commission's April 4, 2023, decision not to reconsider its March 7 decision. The Native Plant Society's two appeals were consolidated with two appeals filed by HOAs challenging the same Commission decisions.

After briefing and a hearing on the issues, the Circuit Court issued an order and opinion granting the appeal in part and vacating the conditional approval. April 2024 Opinion & Order (R. pp. 00001–14). Relevant to this appeal, the Circuit Court rejected the Society's argument that the Commission acted unlawfully, arbitrarily, capriciously, and abused its discretion when it (1) conditionally approved the RV Park without regard to preserving the site's natural features; (2) conditionally approved the RV Park without a DHEC-approved septic system; (3) decided not to reconsider its conditional approval; and (4) failed to offer an explanation for either of its decisions. *Id.* at 8–11 (R. pp. 00029–32).[2]

[2] In granting the appeal in part, the Circuit Court concluded that the Commission violated the Ordinance in conditionally approving a site plan for an RV Park not served by public water and with no public restrooms. April 2024 Opinion & Order at 5–8 (R. pp. 00026–29).

On May 1, 2024, Respondents filed a Rule 59(e) motion to alter or amend, asking the Circuit Court to alter its decision to vacate, rather than remand, the conditional approval and alter its decision related to the RV Park's failure to include public water and public restrooms, issues not before this Court. Respondents' Motion to Alter or Amend, *S.C. Native Plant Society* Case No. 2023-cp-42-01221 (May 1, 2024) (R. pp. 00581–84). Following a hearing on these issues, the Circuit Court issued a Form 4 Order, which it explained was a "Statement of Judgment by the Court," and seemingly altered the remedy from vacatur to remand and otherwise denied the motion to alter or amend. Order, *S.C. Native Plant*, Case No. 2023-cp-42-01221 (Sept. 26, 2024) ("September 2024 Order") (R. pp. 00015–17). Appellant then served and filed its notice of appeal on Respondents and with the Court on October 28, 2024. Respondents have not appealed the Circuit Court's decisions that the Commission violated the Ordinance by approving a site plan for an RV Park that is not served by public water and that did not have public restrooms.

STANDARD OF REVIEW

A decision of a county planning commission will be overturned on appeal when "it is based on errors of law," when the Commission "has committed an error of law," where the commission "has abused its discretion," or when the decision is "arbitrary" or "capricious." *Grays Hill Baptist Church v. Beaufort Cnty.*, 431 S.C. 630, 637 (2020) (reversing decision of county planning commission because of violations of county ordinance); *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173–174 (2008). Further, "[a]n abuse of discretion occurs" when a decision is based upon "an error of law[,]" or lacks evidentiary support. *See Citizens for Quality Rural Living v. Greenville County Planning Commission*, 426 S.C. 97, 103 (Ct. App. 2019); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173 (2008). "Issues involving the construction of an ordinance are reviewed as a matter of law." *Mikell v.*

Cnty of Charleston, 386 S.C. 153, 158 (2009). The standard of review for questions of law is de novo. *Citizens for Quality Rural Living*, 426 S.C. at 102.

ARGUMENT

1. South Carolina Native Plant Society's Appeal is Proper

On November 20, 2024, Blue Sky filed a motion to dismiss this appeal as premature. The Court of Appeals denied the motion to dismiss "without prejudice to the parties addressing appealability in their briefs." Order, *S.C. Native Plant Society v. Spartanburg Cnty. Planning Comm'n*, Case No. 2024-001828 (Jan. 13, 2025) (R. pp. 00018–21). Before proceeding to the merits of the appeal, the Native Plant Society will address whether this appeal is premature. It is not.

Blue Sky argued in its motion to dismiss that the Circuit Court's September 26, 2024 Order on Blue Sky's Rule 59(e) motion to alter or amend was not appealable because it was not a final order and thus did not fall within any of the situations listed under S.C. Code § 14-3-330 or Rule 201 of the South Carolina Appellate Court Rules. This argument fails.

Section § 14-3-330 and Rule 201 provide for appeal of "final judgment[s]." The Circuit Court's September 2024 Order is a final judgment, and this appeal is thus not premature. The September 2024 Order clearly indicates that it is the "Statement of Judgment by the Court" and that there is no formal order to follow. R. pp. 00015–17. The Circuit Court's Order is reproduced below:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

These consolidated appeals came before this court on Sptbg County's, Sptbg County Planning Commission's, and Blue Sky's Motion for Reconsideration of an Order electronically issued on April 22, 2024. After receiving briefing and arguments from all parties, the motion is granted to the extent that the court needs to clarify the term "vacate". The term vacates means that the matter is remanded to the commission. This court declined the invitation to give further direction to the commission.

R. p. 00015.

The Supreme Court has made clear that "[a]s a matter of practice and convenience, a Form 4 order is used on a plethora of occasions as a ***FINAL ORDER***" and that when it is *not* meant to be a final order, "the circuit court will specifically and with certitude signify" that a more formal order or action will follow. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605 (2002). Here, the Circuit Court's September 2024 Form 4 Order was the statement of the Circuit Court and did not signify "with certitude" (i.e. absolute certainty or conviction) that a more formal order would follow. Moreover, the Circuit Court's Order was final as a matter of fact because it remanded the case to the Commission and there was thus nothing left for the Circuit Court to do. In any event, the Circuit Court never issued any other Order. Accordingly, the September 2024 Order is a final order and this appeal is proper.

To the extent Blue Sky again relies, as it did in its motion to dismiss, on a scrivener's error in an administrative section of the Form 4 Order to contend the order is not final, this argument is unavailing. Blue Sky previously pointed to a marked box indicating that the Order "does not end the case" and a sentence noting there is a formal order to follow and to "[s]ee page 2 for additional information." Motion to Dismiss at 2 (R. p. 00594); *see also* September 2024 Order (R. p. 00015). But this administrative section is not consistent with the Circuit Court's actual Order, reproduced above, which indicates there is ***not*** a formal order to follow. Further

highlighting that the administrative section upon which Blue Sky relies was incorrectly filled out, that section states "[s]ee page 2 for additional information," yet page 2 is blank. *See* September 2024 Order (R. pp. 00015–17). Indeed, under "Disposition Type," the Circuit Court made clear that the Form 4 Order reflected a "Decision By The Court" and ***did not*** check the box indicating additional information would be included on the second page. *Id*. (R. p. 00015). Further, in fact, the Court never issued any subsequent Order beyond the Form 4 Order.

Moreover, even if Blue Sky were correct that a formal order is to follow Judge Hayes' Form 4 Order, this fact would not bar Appellants' appeal. Rule 203 of the South Carolina Appellate Court Rules governs appeals. Rule 203 states that "[w]hen a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party ***need not*** appeal until receipt of . . . the more complete order or judgment." S.C.A.C.R. Rule 203 (emphasis added). Rule 203 does not say a party *shall not* or *must not* appeal until receipt of the more complete order, only that a party *need not* appeal until that time. Thus, Rule 203 makes clear that even where a more formal order is to follow, it is within the appellant's discretion whether to appeal the Form 4 Order or await the formal order. *Cf. Richland Cty. S.C. Dep't of Rev.*, 422 S.C. 292, 309 (2018) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement.") (quoting *Collins v. Doe*, 352 S.C. 462, 470 (2002)).

For these reasons, the Native Plant Society's appeal is proper.

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

In denying the Native Plant Society's appeal based on the Commission's violations of Section 3.13 (2) and (8) of the Ordinance, the Circuit Court concluded that the Society had not

met the burden of showing that the Commission had acted unlawfully, arbitrarily or capriciously, or abused its discretion when it approved the RV Park without regard for the site's natural features and that the Society had not established that Blue Sky did not have a DHEC-approved septic permit. April 2024 Opinion & Order 8–11 (R. pp. 00009–11). But, as detailed below, the Commission entirely disregarded, without explanation, sections 3.13 (2) and (8) of the Ordinance when it conditionally approved the RV Park and approved an RV park plan that violates those provisions. The Commission's approval was thus unlawful, arbitrary, capricious, and an abuse of discretion and the Circuit Court erred in concluding otherwise.

A. The RV Park Does Not Protect Ecologically Sensitive Areas or Preserve Natural Features and Landscapes

Spartanburg County's Land Management Ordinance is the governing code that sets out requirements for RV park developments like this one. It was adopted pursuant to South Carolina's Comprehensive Planning Act, which mandates an extensive process for its adoption, including public participation and hearings. S.C. Code § 6-29-310 *et seq*. The Ordinance is the law that sets out the rules to be followed and enforced by the Commission and that govern Blue Sky's application. Relevant here, the Ordinance contains two very clear and straightforward requirements. In its preamble, the Ordinance underscores a fundamental purpose of the Ordinance to protect **"ecologically sensitive areas."** R. p. 01022. The Ordinance carries out that purpose by requiring, in direct and clear language, that RV parks take specific action to protect natural features on their sites:

> **"The site shall be developed in a manner that preserves natural features and landscape."**

Section 3.13 (2) (emphasis added) (R. p. 01047). The Ordinance makes clear that "[t]he word 'shall' is always mandatory." Ordinance, Article 6 (definitions) (R. 0p. 1055).

i. Ecologically sensitive areas and natural features on the RV Park site.

There is no dispute in the record that Blue Sky's RV Park site is part of one of the most "ecologically sensitive areas" in Spartanburg County and, for that matter, South Carolina, and that the site contains extremely important "natural features" and "landscape." The site is surrounded by land that has been placed under conservation easements and covenants; hosts a population of one of the state's highest priority species and the nation's rarest plants; contains rare forested habitat; and is adjacent to an ecologically important Piedmont stream—Goldmine Creek.

The rare plant on the site is *Hexastylis naniflora,* or the Dwarf-flower Heartleaf. Whitten Aff. ¶ 14–16 (R. pp. 01080–81); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶¶ 10–16 (R. p. 01105–06); Huffman Aff. ¶¶ 11–12 (R. p. 01098). It is designated a Highest Priority Species by SC DNR, SC DNR has established a Heritage Preserve to protect another population of the plant in Spartanburg County, and this species has long been protected under the national Endangered Species Act. SC DNR Wildlife Action Plan at 2–9; Newberry Aff. ¶¶ 7, 11 (R. p. 01087, 01088). Individual plants of this rare species live for decades and can be as much as 100 years old. Newberry Aff. ¶ 10 (R. p. 01088). Habitat for the plant in South Carolina can be found in very limited areas in only three counties. *Id.* ¶ 12 (R. p. 01088–89). The plant can exist only within very particular habitat. *Id.* ¶ 10 (R. p. 01088); *see also* Whitten Aff. ¶¶ 6, 13 (R. p. 01078–80); Gaddy Aff. ¶ 11 (R. p. 01105); Huffman Aff. ¶ 13 (R. p. 01098). This particular and rare habitat exists on the proposed RV Park site. Whitten Aff. ¶ 14 (R. p. 01080); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶¶ 10–16 (R. p. 01105–06); Huffman Aff. ¶¶ 11–13 (R. p. 01098). The destruction of plants and their habitat is permanent: the plant populations spread very slowly through the movement of seeds by ants, and scientists believe that the species has

probably occupied all the acceptable habitat that exists. Newberry Aff. ¶ 18 (R. p. 01091). So, when the plants and habitat are destroyed, that loss is irreplaceable. *Id.* (R. p. 01091).

In addition to habitat for this rare species, the forest on the RV Park site is itself a rare natural feature—a moist forest in the right location and geography and with the soils and hydrology to support this rare plant's very demanding habitat requirements. Whitten Aff. ¶ 14 (R. p. 01080); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶¶ 10–12 (R. p. 01105); Huffman Aff. ¶ 11 (R. p. 01098). The forest is part of a larger forest along Goldmine Creek, which is habitat for and contains populations of Dwarf-flower Heartleaf, as well. Whitten Aff. ¶ 14 (R. p. 01080); Newberry Aff. ¶¶ 13–14 (R. p. 01089); Gaddy Aff. ¶ 12 (R. p. 01105); Huffman Aff. ¶ 11 (R. p. 01098). And Goldmine Creek itself is a Piedmont stream of unusual quality and ecological value. Mountains-to-Sea Ecological, Goldmine Creek Water Quality Assessment at 5 (July 2021) (R. p. 00939).

Despite these unique and important ecologically sensitive natural features, Blue Sky's application and its site plan contain *nothing* designed to protect the plant and its habitat. Worse, Blue Sky is actively proposing to destroy plants and the species' habitat on site.

ii. Blue Sky's site plan did not preserve these ecologically sensitive areas and natural features, and the Commission unlawfully approved it.

"In exercising its discretion, [a local agency] . . . must abide by and comply with the standard prescribed by the local ordinance and . . . statutes." *Hodge v. Pollock*, 223 S.C. 342, 348 (S.C. 1953). The Ordinance—specifically this mandatory provision—is meaningless if the Commission and applicants like Blue Sky can ignore it, not even recognize its existence, and do nothing to comply with it. By definition, county commissions act arbitrarily and abuse their discretion when they fail to comply with the governing law, and commissions and applicants act

unlawfully when they do not comply with the governing Ordinance. The Comprehensive Land Development Act, the participation of members of the public, and the Ordinance itself are meaningless if Commissions and applicants can simply ignore the mandatory Ordinance provisions and if the courts fail to enforce them. Yet this is precisely what the Commission and Blue Sky have done here.

Blue Sky's site plan does nothing to preserve these natural features of the site. Blue Sky's application contains no plant surveys, no delineation or studies of the plant's habitat on the site, no areas set aside for the plant, and no barriers to protect the plants and their habitat from disturbance, runoff, siltation, construction activities, or RV Park users. *See* Ordinance § 1.01 ("It shall be the responsibility of an applicant to provide the required information to process a permit application . . . .") (R. p. 01023). Not only has the site plan entirely failed to identify the plant and its habitat and preserve these natural features, it has proposed to construct stormwater infrastructure in the plant's habitat, including a detention pond that discharges into Goldmine Creek, and places a septic system in the forest (a septic system that the DHEC Board has determined is inadequate). Blue Sky, Overall Site Plan (Feb. 23, 2023) (R. pp. 01018–20); Whitten Aff. ¶ 14–16 (R. pp. 01080–81); Newberry Aff. ¶¶ 13–15 (R. pp. 01089–90); Gaddy Aff. ¶¶ 10–16 (R. pp. 01105–06); Huffman Aff. ¶ 11–12 (R. p. 01098). The septic tank will also discharge sewage effluent into the groundwater on which the rare plant and its habitat depend. Whitten Aff. ¶ 17 (R. p. 01081). Thus, Blue Sky's site plan in no way protects ecologically sensitive areas or preserves natural features and actually destroys them.

Despite the fact that Blue Sky's site plan was in direct violation of the straightforward mandatory requirement of the Ordinance to preserve natural features and landscape, the Commission accepted this site plan as presented—a site plan that not only disregards, but

destroys, the natural features and landscape of the property—and conditionally approved the RV Park. In reaching its decision, the Commission made no mention of the natural features on the site or the ecologically sensitive areas and did not even recognize this requirement for RV parks in the Ordinance. *See generally* Commission Meeting Minutes (Mar. 7, 2023) (R. pp. 00657–86). In conditionally approving this site plan, the Commission acted in complete disregard of and in violation of this requirement of the Ordinance; likewise, there is no evidence in the record supporting the Commission's decision.

Blue Sky may argue that the Commission found that Blue Sky had "preserved" natural features because it did not develop the entire site, as it argued in its briefs to the Circuit Court. Not so. First, there is nothing in the record or the Commission's decision to support the claim that this after-the-fact rationale was a basis for the Commission's decision. Moreover, as detailed in the uncontradicted affidavits of leading scientists and naturalists, the rare species and its habitat are in the area where the RV Park will be built. *See* Whitten Aff. ¶¶ 14–18 (R. pp. 01080–81); Newberry Aff. ¶¶ 13–17 (R. pp. 01089–91); Gaddy Aff. ¶¶ 10–17 (R. pp. 01105–07); Huffman Aff. ¶¶ 10–15 (R. pp. 01097–99). The portions of the site containing its most important natural features and landscape are the ones that are slated for destruction.

Nor did the Commission and Blue Sky comply with this provision because the plan includes the minimal required setbacks. These setbacks are required by other provisions of the Ordinance. *See, e.g.*, Ordinance §§ 2.02-1 (table detailing setback requirements for land development) (R. p. 01031). The mandate in Section 3.13 to preserve natural features and landscape is separate from and in addition to a setback requirement. Further, there is nothing in the record to indicate that the Commission considered the setbacks a way to comply with Section

3.13, nor is there anything in the record to indicate that the setbacks protect the rare species or its habitat.

Accordingly, by approving Blue Sky's site plan in complete disregard for the Ordinance Preamble and the express mandatory requirements of Section 3.13 (2), the Commission squarely violated and disregarded the Ordinance, acted unlawfully, arbitrarily and capriciously, and abused its discretion. *See Citizens for Quality Rural Living*, 426 S.C. at 103 (explaining that an abuse of discretion occurs when a decision is based upon "an error of law[,]" or lack of evidentiary support); *Kurschner*, 376 S.C. at 173 (same). The Circuit Court erred in concluding otherwise.

B. The RV Park is Not Serviced by a Septic System "approved by DHEC"

Another way the Ordinance ensures RV Parks will protect ecologically sensitive features, as well as public health, is the requirements that:

> "Each park site shall be serviced by public water and sewer or other systems **approved by DHEC**"

Section 3.13 (8) (emphasis added) (R. p. 01047).

Like the natural features provision, this subsection sets out a mandatory requirement. It ensures that sewage from RV parks is properly handled and treated. Despite this important requirement, the Commission entirely disregarded, without explanation, the fact that the DHEC Board had concluded that Blue Sky's proposed septic system was *inadequate* to handle the RV Park's waste. This was unlawful, arbitrary and capricious, and an abuse of discretion; yet the Circuit Court concluded that that the Commission had not abused its discretion in conditionally approving the RV Park in this respect.

To obtain a septic permit, Blue Sky filed an application with DHEC proposing a system with half the treatment capacity required by the state septic regulations. DHEC Board Decision at 2–3 (R. pp. 00698–99). Blue Sky sought this reduced sewage treatment for the RV Park by contending that the needs of this approximately 50-unit RV Park were comparable to the much smaller sewage treatment capacity of a KOA campground in Travelers Rest. *Id.* (R. pp. 00698–99); *see* S.C. Code Reg. 61-56.501 (allowing for reduced capacity upon a showing that a similar facility is sufficiently supported by such reduced capacity). Blue Sky proposed a septic system with a peak sewage flow per unit per day of 60 gallons, instead of the normal standard of a peak flow of 120 gallons per unit per day. DHEC Board Decision at 2–3 (R. pp. 00698–99). Accepting the concept that the sewage treatment needs of a KOA campground in Travelers Rest, with a 60-gallon capacity system, were similar to those of an approximately 50-unit RV Park just off I-26 in Spartanburg County, the DHEC staff approved the much smaller system and issued a permit. *Id.* (R. pp. 00698–99).

Landowners and HOAs appealed the staff's permitting decision to the DHEC Board. Under governing law, the DHEC Board was the highest and governing authority of DHEC; and it was the responsible agency authority, appointed by the Governor and confirmed by the Senate. S.C. Code § 44-1-20 (2012). When the DHEC Board reviewed the RV Park's septic permit, it rejected Blue Sky's attempt to evade the regulatory requirements and concluded that the KOA campground was not a "similar establishment" and that the RV Park could not adequately handle its sewage treatment needs by installing a system as small as the KOA campground's system. DHEC Board Decision at 2–3 (R. pp. 00698–99).

On appeal to the ALC, the ALC found that the request for Board review was untimely and therefore overturned the Board's decision on timeliness grounds. SC ALC Decision at 20–21

(R. pp. 00041–42). But the ALC did not address or question the DHEC Board's substantive determination that the RV Park's proposed septic system had half the capacity it needed to adequately treat the sewage generated by the RV Park. *See generally id.* (R. p. 00022–43).

Nevertheless, the Commission, without explanation or discussion, approved the RV Park site plan with the inadequate septic system that the DHEC Board, the agency's highest authority, had expressly disapproved on substantive grounds. Commission Meeting Minutes at 20, 28–29 (Mar. 7, 2023) (R. pp. 00676, 00684–85). To the extent the Commission concluded that the septic system was "approved by DHEC" simply because the DHEC Board's decision was overturned on a timing issue unrelated to the adequacy of the septic system, the Commission violated the plain language and the clear intent of the Ordinance.

The Ordinance requires a septic system "approved by DHEC." The highest authority of DHEC, its governing Board, rejected the RV Park's proposed septic system. Respondents would turn this substantive disapproval into an approval merely because on appeal it was determined that the request for review was filed late. But the plain purpose of the Ordinance, as it states in its Preamble, is to protect "public health" and "ecologically sensitive areas"—not to make decisions based on ALC filing deadlines. Here, the fact is that the DHEC Board held a hearing, carefully reviewed the matter, and determined that this proposed septic system did not meet the substantive design requirements intended to protect public health and the environment. *See* DHEC Board Decision. In the only sense that matters under the Ordinance, this septic system was disapproved, not "approved" by DHEC. *See Citizens for Quality Rural Living*, 426 S.C. at 103 (explaining that an abuse of discretion occurs when a decision is based upon "an error of law[,]" or lacks evidentiary support); *Kurschner*, 376 S.C. at 173 (stating "no evidence" standard).

The Commission's decision is all the more unlawful, arbitrary, and an abuse of discretion because the Commission did not recognize or discuss this issue or attempt to explain how it could ignore the substantive disapproval by the DHEC Board.

The Circuit Court's failure to invalidate the Commission's decision on this additional ground was in error.

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 denying the Native Plant Society's appeal on this ground, the Circuit Court concluded that the record did not support the conclusion that the Commission acted unlawfully, arbitrarily, or capriciously or abused its discretion when it decided not to reconsider its conditional approval. But as with the errors identified above, the Commission entirely disregarded the voluminous evidence placed before it detailing the ways in which the site plan, and the Commission's conditional approval, violated the Ordinance. This was an abuse of discretion.

The Commission's Rules provide that it can reconsider any decision that it has made. The Commission has adopted the rules of Spartanburg County Council, which provide that any action can be reconsidered at the next meeting upon the motion of any member who voted on the prevailing side. *See* Spartanburg County Planning Commission Rules & Procedures, Article II, § 5 (R. p. 01069); Spartanburg County Council Rules and Procedures, § 12-4 (R. p. 01067). Following the March 2023 meeting, the Native Plant Society sent a request for reconsideration to the Commission and detailed the numerous Ordinance violations. Southern Environmental Law Center, Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC (Mar. 31, 2023) (R. p. 01003–12). Yet, at the April 4 meeting the Commission did not reconsider its decision, acknowledge receipt of the request, or discuss or respond to the

Ordinance violations. *See generally* Commission Meeting Minutes (Apr. 4, 2023) (R. pp. 00687–95).

Respondents may contend that only a Commission member may move to reconsider and that only the Commission may reconsider its decision. To be sure, that is the procedure for reconsideration. The Native Plant Society does not contend that it had the ability to move for reconsideration. Instead, the Society points out that the Commission acted arbitrarily and capriciously and abused its discretion when it decided not to reconsider its illegal decision and its violations of the Ordinance after being informed of such violations. The Circuit Court erred in holding otherwise.

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

The Native Plant Society argued to the Circuit Court that, in addition to unlawfully approving the RV Park site plan, the Commission acted unlawfully and abused its discretion when it entirely failed to offer any explanation for its decision to conditionally approve the RV Park or its decision not to reconsider that conditional approval despite the violations of the "natural features and landscape" and septic requirements of the Ordinance. The Circuit Court concluded that the record did not support such a result. That conclusion was in error.

The South Carolina Local Government Enabling Act provides that local governments must "maintain[] as a public record" "all action on all land development plans . . . *with the grounds for approval or disapproval*." S.C. Code § 6-29-1150(B). Here, no such public record exists because the Commission never provided any grounds for its approval of the RV Park or decision not to reconsider that approval in the face of violations of these mandatory requirements

of the Ordinance. This failure alone warrants finding that the Commission's actions were unlawful.

Moreover, even without reference to the Local Government Enabling Act, South Carolina courts have made clear that an abuse of discretion occurs when there is no explanation or discernable reason for a decision, or where there is no exercise of discretion at all. *See Johnson v. Johnson*, 296 S.C. 289, 372 (S.C. Ct. App. 1988) ("A decision lacking a discernable reason is arbitrary and constitutes an abuse of discretion."); *see also Citizens for Quality Rural Living, Inc.*, 426 S.C. at 114 (a failure to exercise discretion or lack of a discernible reason for a decision constitutes an abuse of discretion and arbitrary and capricious decisionmaking). Such is the case here where the Commission offered no explanation for either of its decisions. Indeed, the Commission did not even recognize the governing Ordinance provisions or the violations that were brought to its attention.

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

In its initial opinion, the Circuit Court granted the Native Plant Society's appeal in part, finding that the Commission had violated certain Ordinance provisions, and thus vacated the Commission's conditional approval. Following a Rule 59(e) motion to alter or amend filed by Blue Sky and a hearing, the Circuit Court altered the remedy and explained that "vacate" means "remand." *See* September 2024 Order. R. pp. 00015–17. This ruling was an error.

First, the Circuit Court is incorrect that "vacate" means "remand." These are two different terms that result in different outcomes. "Vacate" means "[t]o nullify or cancel; make void; invalidate." Black's Law Dictionary (12th ed. 2024). By contrast, "remand" means "[t]he act or an instance of sending something (such as a case, claim, or person) back for further action." *Id.* Therefore, the two remedies are fundamentally different, and the Circuit Court made

an error in concluding that they were identical. The Circuit Court's September 2024 Order should be reversed on this basis. *See Citizens for Quality Rural Living, Inc.*, 426 S.C. at 114 (reversing circuit court ruling that was "based on an error of law[.]").

Second, to the extent the Circuit Court did intend to alter the remedy to remand, the Circuit Court erred. In granting the Society's appeal in part, the Circuit Court found that the Commission committed errors of law by violating provisions of the Ordinance. The appropriate remedy in this instance was vacatur because a remand for further proceedings would be contrary to South Carolina law and would violate the County's Ordinance.

Vacatur is the result of this case under South Carolina law. When the South Carolina Supreme Court has invalidated a decision of a local agency for failing to follow legal requirements in the governing ordinance and statutes, it has reversed and "set aside," or vacated, that decision, not remanded it. *See Hodge*, 223 S.C. at 350. The same must occur here.

In addition, a remand would violate the County's Ordinance; under the Ordinance, vacatur is the only available resolution of the case. The Ordinance does not contain procedures for amending major development plans like the RV Park plan. Article I of the Ordinance contains, among other things, the procedures for major development plans. *See* R. pp. 01023–30. It sets out procedures for amending the Ordinance but contains no procedures for amendments of planning commission approvals of major land development plans. The process established by the Ordinance is, instead, (1) an application, (2) Commission review and public participation, (3) Commission final decision, and (4) judicial review. R. p. 01025–26. There is no subsequent process for an amendment should judicial review find the Commission acted unlawfully or should circumstances alter the originally proposed plan.

Indeed, the Commission and Blue Sky followed exactly this process as set out in the Ordinance when Blue Sky changed its site plan after receiving conditional approval in 2021. As explained previously, Blue Sky first received Commission approval in 2021 for a site plan that included a public water supply. Blue Sky, Major Land Development Application (Jan. 29, 2021) (R. p. 00701). When Blue Sky was unable to obtain public water, it filed a *new* (not amended) application. Blue Sky Application (Feb. 17, 2023) (R. pp. 00707–31). The only change from its initial application was to note that the RV Park would be serviced by well, rather than public water. *See* Planning & Development Project Form (Feb. 8, 2023) (explaining change from public water to well) (R. pp. 00928–29). The Commission then considered this new application, provided a new public process for the new application with a changed term, and reached a new decision on the new site plan. That decision, like the 2021 conditional approval, was then subject to judicial review.

Thus, under the express terms of the Ordinance and following the process previously employed with respect to this RV Park, when a Commission approval is found to be unlawful and requires changes to the major land development site plan, the Commission must begin with a new process, with a new application resolving the errors identified by the court, provide for additional public participation, and then reach a new decision. That process follows precisely the process set out in the Ordinance. Vacatur, rather than remand, is consistent with this process. Indeed, the Circuit Court's initial opinion in this case, finding that the Commission was reversed on two grounds but not others, contemplated future Commission consideration of the other issues raised by the Society and noted that upon subsequent review, the Commission could consider the merits of other issues raised by the Society. *See, e.g.*, April 2024 Opinion & Order at 10–11 ("[T]he information presented by Appellants regarding rare plants and habitat on the RV park

site may prove to be material to the Commission when determining future specific site plans.") (R. pp. 00011–12).

Accordingly, the Circuit Court erred when it altered the remedy from vacatur to remand.

CONCLUSION

For the foregoing reasons, the South Carolina Native Plant Society respectfully requests that this Court reverse the appealed conclusions of the Circuit Court and vacate the Commission's conditional approval for Blue Sky's RV Park.

Respectfully submitted,

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
holl2759@bellsouth.net
Emily Wyche, Bar No. 105551
ewyche@selc.org

525 East Bay Street, Suite 200
Charleston, South Carolina 29403
Telephone: (843) 720-5270

Attorneys for South Carolina Native Plant Society