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

---

**APPEAL FROM RICHLAND COUNTY**
Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2013-CP-400-1643

RECEIVED
DEC 1 9 2014
SC Court of Appeals

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**Appellate Case No. 2014-000583**

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Samuel T. Brick, Appellant,

v.

Richland County Planning Commission and Fairways Development, LLC, Intervenor, Respondents

---

**AMENDED RECORD ON APPEAL**

---

Samuel T. Brick
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
Appellant, Pro Se

Andrew F. Lindemann
Michael B. Wren
Davidson & Lindelmann, P.A.
P.O. Box 8568
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803 806 8222
Attorneys for Respondent

Tobias G. Ward, Jr.
J. Derrick Jackson
P.O. Box 6138
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803 708 4200
Attorneys for Intervenor Respondent

**THE STATE OF SOUTH CAROLINA**
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**AMENDED RECORD ON APPEAL**

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**Certificate of Counsel**

The undersigned hereby certifies in accordance with Rule 210, SCACR, the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Samuel T. Brick, Appellant, Pro se

December ___, 2014.

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **COURT OF COMMON PLEAS** |
| | ) | **FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Case Number: 2013-CP-400-1643 |
| SAMUEL T. BRICK, | ) | |
| | ) | |
| PLAINTIFF, | ) | |
| | ) | |
| vs. | ) | **ORDER** |
| | ) | |
| RICHLAND COUNTY PLANNING COMMISSION | ) | |
| | ) | |
| DEFENDANT. | ) | |
| | ) | |

RICHLAND COUNTY
FILED
2013 DEC 17 PM 2:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on August 30, 2013 at a hearing on Fairways Development, LLC's ("Fairways") Motion to Dismiss. Present at the hearing were Samuel T. Brick ("Appellant"), pro *se*, and Toby Ward, Esquire, counsel for Fairways. After considering the law, the memoranda submitted by the parties, the arguments of counsel, and all matters submitted, Intervenor Fairways' Motion to Dismiss is **GRANTED**.

## BACKGROUND

On November 7, 2012, Fairways submitted an application and sketch concept plan for a project, known as "The Villages at LongCreek," to the Richland County Planning and Development Services Department for review and approval. After its submission, the application was approved by the Richland County Development Review Team ("DRT") at its meeting, which was held on November 29, 2012. In accordance with Richland County Ordinance Section 26-54(c)(3)d.1.[b][3], the Appellant and Monika Iskersky appealed the decision of the DRT to the Richland County Planning Commission on December 20, 2012.



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Upon the Planning Commission's affirmance of the DRT's decision on February 4, 2013, the Appellant filed an Appeal and Notice of Appeal with the Richland County Clerk of Court on March 18, 2013. Thereafter, on June 17, 2013, Fairways filed a motion to dismiss based the Appellant's alleged lack of standing and failure to join Fairways, the development permittee, in the appeal. The Richland County Planning Commission also filed a motion to dismiss on June 5, 2013. Moreover, on June 17, 2013, Fairways filed a motion to intervene in the action because it was not a named party to the appeal. At the hearing held on August 30, 2013, this Court granted Fairways' motion to intervene as a party.

## ISSUES

1.) Should Fairways' motion to be dismiss be granted due to the Appellant's alleged lack of standing to appeal the decision of the Richland County Planning Commission to the Richland County Circuit Court?

2.) Should Fairway's motion to be dismiss be granted because the Appellant failed to join Fairways, the development permittee, in his appeal?

## DISCUSSION

I. Standing

Sections 26-54(c)(3)(d)(5) and 26-58(f) of the Richland County Code of Ordinances permit a person with a" substantial interest" in the decision of the planning commission to appeal to the circuit court. These appeals are taken in accordance with applicable laws of the State of South Carolina. By permitting the Appellant to appeal the decision of the DRT to the Planning Commission and ruling on the merits of his appeal, the Planning Commission implicitly determined that the Appellant had a sufficient interest in the development project at issue, as appeals from the DRT could only be made by the applicant, a contiguous landowner, or adjacent

landowner. See Richland County Ordinance § 26-54(c)(3)(d)(1)(b)(3). Consequently, this Court finds that any arguments refuting the Appellant's interest in the decision of the Planning Commission have been waived, and the Court declines to address any arguments challenging the Appellant's interest in the Planning Commission's decision.

II. Failure to Join Fairways in the Appeal

In Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, 295 S.C. 67, 69, 367 S.E.2d 160, 161 (1988), the South Carolina Supreme Court held that a development permittee is a necessary party to an appeal of its permit. Further, in Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610, 615, 658 S.E.2d 544, 546 (Ct. App. 2008) vacated due to an agreement mooting the case, 384 S.C. 438, 682 S.E.2d 488 (2009), the Court held that failure to file and serve notice on a necessary party within the statutory period to appeal was fatal to an appeal from a zoning board decision.

In this case, the Appellant failed to join Fairways in the appeal and challenges Fairways designation as the development permittee. Specifically, the Appellant points to the Subdivision Review Application and the Sketch Plan submitted to the Richland County Planning and Development Services Department, which names "Fairways Development Group (John Bakhaus)" as the applicant. Each of these documents is signed by "Fairways Development, LLC By: John T. Bakhaus." The Appellant noted that Fairways Development Group is an "entirely separate entity unincorporated in the State of South Carolina." Further, according to the Appellant's assertions, Fairways Development, LLC was not an active participant in the proceedings before the DRT or the Planning Commission. However, this Court finds that argument unavailing. Although the Subdivision Review Application and Sketch Plan were submitted in the name of "Fairways Development Group (John Bakhaus)," they were each signed

by the registered agent for Fairways Development, LLC on behalf of Fairway Development, LLC. Thus, the Court finds that Fairways is the development permittee in this matter.

S.C. Code 6-29-1150(D)(1) requires that an appeal from the decision of the planning commission be taken to the circuit court within thirty days after actual notice of the decision. According to the Appellant, he received actual notice of the Planning Commission's decision on March 11, 2013. Subsequently, the Appellant filed a Notice of Appeal and Appeal on March 18, 2013, which was filed within thirty days of the Appellant receiving actual notice of the decision, as required by S.C. Code §6-29-1150(D)(1). Although the Appellant timely filed his appeal and sent a copy of his appeal to Fairways within thirty days of his receipt of the Planning Commission's Order, he failed to join Fairways to appeal within the time prescribed by statute. This failure was fatal to his appeal.

In Friends of McLeod Inc., the parties, by consent order, joined the necessary party to the appeal. Friends of McLeod, Inc., 376 S.C. at 612, 658 S.E.2d at 545. However, in that case, the Court still found the appeal to be untimely because the appellant failed to join the necessary party within the statutorily required time to appeal. Id. at 613-15, 658 S.E.2d at 545-46. In this matter, Fairways moved to intervene as a party, and that motion was granted on August 30, 2013. However, this intervention does not save the Appellant's defective appeal. In order for the Appellant to have perfected his appeal to the circuit court, he would have had to join Fairways in the appeal by April 9, 2013. For this reason, the Court finds that Fairways' motion dismiss should be granted.



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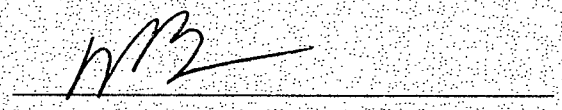
## ORDER

For the foregoing reasons, Intervenor Fairways LLC's Motion to Dismiss is **GRANTED**.

**AND IT IS SO ORDERED.**



DeAndrea Gist Benjamin
Presiding Judge

December 17, 2013
Columbia, South Carolina



8-1

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **COURT OF COMMON PLEAS** |
| | ) | **FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Case Number: 2013-CP-400-1643 |
| SAMUEL T. BRICK, | ) | |
| | ) | |
| PLAINTIFF, | ) | |
| | ) | |
| vs. | ) | |
| | ) | **ORDER** |
| RICHLAND COUNTY PLANNING COMMISSION | ) | |
| | ) | |
| DEFENDANT. | ) | |

RICHLAND COUNTY
FILED
2013 DEC 17 PM 2:26
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on August 30, 2013 at a hearing on Richland County Planning Commission's ("Planning Commission") Motion to Dismiss. Present at the hearing were Samuel T. Brick ("Appellant"), pro *se*, and Michael Wren, Esquire, counsel for the Richland County Planning Commission. After considering the law, the memoranda submitted by the parties, the arguments of counsel, and all matters submitted, Defendant Richland County Planning Commission's Motion to Dismiss is **GRANTED**.

## BACKGROUND

On November 7, 2012, Fairways submitted an application and sketch concept plan for a project, known as "The Villages at LongCreek," to the Richland County Planning and Development Services Department for review and approval. After its submission, the application was approved by the Richland County Development Review Team ("DRT") at its meeting, which was held on November 29, 2012. In accordance with Richland County Ordinance Section 26-54(c)(3)d.1.[b][3], the Appellant and Monika Iskersky appealed the decision of the DRT to the Richland County Planning Commission on December 20, 2012.

Upon the Planning Commission's affirmance of the DRT's decision on February 4, 2013, the Appellant filed an Appeal and Notice of Appeal with the Richland County Clerk of Court on March 18, 2013. Thereafter, on June 17, 2013, Fairways filed a motion to dismiss based the Appellant's alleged lack of standing and failure to join Fairways, the development permittee, in the appeal. The Richland County Planning Commission also filed a motion to dismiss on June 5, 2013. Moreover, on June 17, 2013, Fairways filed a motion to intervene in the action because it was not a named party to the appeal. At the hearing held on August 30, 2013, this Court granted Fairways' motion to intervene as a party.

## ISSUES

1.) Should Fairways' motion to be dismiss be granted due to the Appellant's alleged lack of standing to appeal the decision of the Richland County Planning Commission to the Richland County Circuit Court?

## DISCUSSION

I. Standing

Sections 26-54(c)(3)(d)(5) and 26-58(f) of the Richland County Code of Ordinances permit a person with a" substantial interest" in the decision of the planning commission to appeal to the circuit court. These appeals are taken in accordance with applicable laws of the State of South Carolina, specifically S.C. Code § 6-29-1150(D)(1), which does not limit standing to appeal a property owner, S.C. Code § 6-29-1150(D)(2), and S.C. Code § 6-29-1155(A). The last two code sections provide standing specifically to appeal to property owners and individuals with a substantial interest in the decision of the planning commission. By permitting the Appellant to appeal the decision of the DRT to the Planning Commission and ruling on the merits of his appeal, the Planning Commission implicitly determined that the Appellant had a sufficient



10. 10 10.

interest in the development project at issue, as appeals from the DRT could only be made by the applicant, a contiguous landowner, or adjacent landowner. See Richland County Ordinance § 26-54(c)(3)(d)(1)(b)(3). Consequently, this Court finds that any arguments refuting the Appellant's interest in the decision of the Planning Commission have been waived, and the Court declines to address any arguments challenging the Appellant's interest in the Planning Commission's decision.

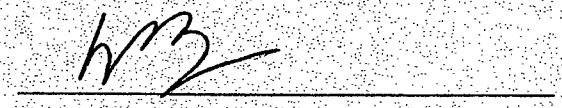
II. Failure to Join Fairways in the Appeal

This issue was not raised by the Richland County Planning Commission in its motion to dismiss; however, it was raised in a companion motion to dismiss made by Fairways Development, LLC. For reasons set forth in that order, this Court has dismissed the Appellant's appeal.

**ORDER**

For the foregoing reasons, Defendant Richland County Planning Commission's Motion to Dismiss is **GRANTED**.

**AND IT IS SO ORDERED.**



DeAndrea Gist Benjamin
Presiding Judge

December 17, 2013
Columbia, South Carolina

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **COURT OF COMMON PLEAS** |
| | ) | **FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Case Number: 2013-CP-400-1643 |
| SAMUEL T. BRICK, | ) | |
| | ) | |
| PLAINTIFF, | ) | |
| | ) | |
| vs. | ) | |
| | ) | **ORDER** |
| RICHLAND COUNTY PLANNING COMMISSION | ) | |
| | ) | |
| DEFENDANT. | ) | |

RICHLAND COUNTY
FILED
2013 DEC 17 PM 2:26
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on August 30, 2013 at a hearing on Fairways Development, LLC's motion to intervene. Present at the hearing were Samuel T. Brick ("Appellant"), *pro se*, and Toby Ward, Esquire, counsel for Fairways. After considering the law, the memoranda submitted by the parties, the arguments of counsel, and all matters submitted, Intervenor Fairway's Motion to Intervene is **GRANTED**.

## BACKGROUND

On November 7, 2012, Fairways submitted an application and sketch concept plan for a project, known as "The Villages at LongCreek," to the Richland County Planning and Development Services Department for review and approval. After its submission, the application was approved by the Richland County Development Review Team ("DRT") at its meeting, which was held on November 29, 2012. In accordance with Richland County Ordinance Section 26-54(c)(3)d.1.[b][3], the Appellant and Monika Iskersky appealed the decision of the DRT to the Richland County Planning Commission on December 20, 2012.

Upon the Planning Commission's affirmance of the DRT's decision on February 4, 2013, the Appellant filed an Appeal and Notice of Appeal with the Richland County Clerk of Court on March 18, 2013. Thereafter, on June 17, 2013, Fairways filed a motion to dismiss based the Appellant's alleged lack of standing and failure to join Fairways, the development permittee, in the appeal. The Richland County Planning Commission also filed a motion to dismiss on June 5, 2013. Moreover, on June 17, 2013, Fairways filed a motion to intervene in the action because it was not a named party to the appeal. At the hearing held on August 30, 2013, this Court granted Fairways' motion to intervene as a party.

## DISCUSSION

Rule 24(a), SCRCP governs intervention as a matter of right. Following the submission of a timely application, "any person shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest." Rule 24(a)(2), SCRCP. However, a person will not be permitted to intervene if their interest would be adequately protected by existing parties. Id. In In re Horry Cnty. State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004), the Court stated that an intervenor must: " (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties."

In this matter, the Appellant consented to Fairways' motion to intervene. However, the Appellant objected to Fairways' designation as a "necessary party." During oral argument, this



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Court declined to make a ruling regarding whether Fairways was a necessary party; the Court simply granted Fairways motion to intervene.

Although the Appellant consented to the Fairways' intervention, this has Court nonetheless applied the factors set forth in In re Horry Cnty. State Bank. The Court will address each factor in turn.

As to the first factor, Appellant filed his appeal and notice of appeal on March 18, 2013, and Fairways filed its motion to intervene on June 17, 2013. This motion to intervene was made before any action was taken on the appeal; thus, this Court finds that the motion to intervene was timely. As to the second factor, Fairways submitted the application and sketch concept plan for the development at issue. As the owner of the property at issue, Fairways has an interest in the property. The Court also finds that the third element was satisfied; as the applicant for the major subdivision and owner of the property, Fairways ability to proceed with the development may be impaired or impeded if it were not permitted to intervene in the action. And finally, this Court also finds that Fairways' interest would not be adequately protected by the Richland County Planning Commission, the only remaining party to the suit.

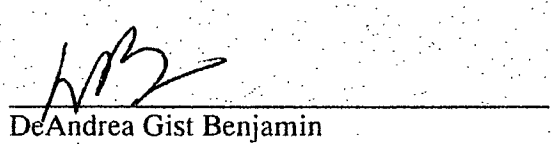
In order to determine whether another party will adequately protect the interest of an intervenor, the Court should consider three factors: (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent. Id. at S.C. 508-09, 604 S.E.2d at 726 (Ct. App. 2004). The Richland County Planning Commission would not undoubtedly make all of the Fairway's arguments; in fact, the Richland County Planning Commission asserted different arguments in its motion to dismiss than were asserted by

Fairways in its own motion to dismiss. Finally, as the landowner and developer of the property, Fairways' has a different perspective than the Richland County Planning Commission serving as the interpreter of its ordinances.

**ORDER**

For the foregoing reasons, Fairways LLC's Motion to Intervene is **GRANTED**.

**AND IT IS SO ORDERED.**



DeAndrea Gist Benjamin
Presiding Judge

December 17, 2013
Columbia, South Carolina

#3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001643

Samuel T. Brick
PLAINTIFF(S)

Richland County Planning Commission
DEFENDANT(S)

**Submitted by:** _____ **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Plaintiff's motion to amend notice of appeal and appeal is denied.

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---|---|
| | | $ |
| | | $ |
| | | $ |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**Circuit Court Judge** _____ **Judge Code** 2161 **Date** 08/30/2013

**For Clerk of Court Office Use Only**

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel T. Brick
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Michael Brian Wren Tobias Gavin Ward Jr.
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** Debbie McCurdy

**Clerk of Court** Jeanette W. McBride

16

16

16

SCRCP Form 4C (10/2011)

SCANNED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-400-1643

Samuel T. Brick — PLAINTIFF(S)

Richland County Planning Commission — DEFENDANT(S)

**Submitted by:** _____ **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: The Appellant's motion to alter or amend the Court's previous order under Rule 59(e), SCRCP is denied with oral argument. The Court's previous order ordering dismissal of the appeal still stands.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

2014 FEB -5 PM 4:09
RICHLAND COUNTY
FILED
JEANETTE W. McBRIDE
CLERK OF COURT & C.C.C.P.

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---|---|
| | | $ |
| | | $ |
| | | $ |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**Circuit Court Judge** _____ **Judge Code** 2161 **Date** 2-5-14

**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Feb 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

**Samuel T. Brick** — **ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Toby Ward and Michael Wren** — **ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** Debbie McCurdy

**Clerk of Court** Jeanette W. McBride

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|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Samuel T. Brick, individual, and on Behalf of all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>Richland County; Tracy Hegler, in her official capacity while serving as Richland County Planning Director, and individually; Sparty Hammett, in his official capacity, while serving as Assistant Administrator, Richland County, and individually; Patrick Palmer, in his official capacity while serving as Chairman, Richland County Planning Commission, and individually; and Fairways Development, LLC,<br><br>Defendants. | ) | Civil Action No.: 2012-CP-40-7337<br><br>**ORDER** |

2013 APR 17 AM 9:55
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court at a hearing on January 28, 2013 on the separate Motions to Dismiss filed by Defendant Fairways Development, LLC ("Fairways") and collectively by Defendants Richland County; Tracy Hegler ("Hegler"), in her official capacity while serving as Richland County Planning Director, and individually; Sparty Hammett ("Hammett"), in his official capacity, while serving as Assistant Administrator, Richland County, and individually; and Patrick Palmer ("Palmer"), in his official capacity while serving as Chairman, Richland County Planning Commission, and individually ("the Richland County Defendants"). The Court also heard Fairways' Motion for Sanctions pursuant to Rule 11, SCRCP. Present at the hearing were Plaintiff Samuel Brick ("Plaintiff"), who appeared *pro se*; Michael Wrenn, Esquire, and David DeMasters, Esquire, counsel for the Richland County Defendants; and Tobias Ward, Esquire, counsel for Fairways. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, the Richland County Defendants' Motion to Dismiss is **DENIED**; Fairways' Motion for Sanctions is **DENIED**; and Fairways' Motion to Dismiss is **GRANTED**.



SCANNED

**At a hearing on February 20, 2013, the Honorable J. Cordell Maddox, Jr. granted Plaintiff's Motion to Amend the Complaint. On February 26, 2013, Plaintiff filed an Amended Complaint, removing allegations against Defendants Hegler, Hammett, and Palmer in their individual capacity. The Amended Complaint makes allegations against these Defendants in their official capacity only. The Richland County Defendants and Fairways again filed motions to dismiss and Fairways filed a motion for sanctions. This Order addresses the motions to dismiss and motion for sanctions filed as to the original Complaint only.**

## FACTS

In July 2012, Fairways submitted an application to the Richland County Planning and Development Services Department to develop approximately 100.7 acres of land. This development implicates the "Green Code" or Section 26-186 of the Richland County Code of Ordinances. The Development Review Team was to review sketch plans for Fairways' proposed development on August 9, 2012. Plaintiff alleges that Richland County, through its agents Defendant Hegler and Defendant Hammett, held a private meeting of the Development Review Team on August 8, 2012 to discuss and approve the sketch plans. The sketch plans were approved at the August 9, 2012 meeting.

On August 24, 2012, Plaintiff appealed the decision of the Development Review Team to the Richland County Planning Commission. The Planning Commission held a public hearing on October 1, 2012 in order to review the decision of the Development Review Team. During the proceedings, Plaintiff alleges that Defendant Palmer, acting as Planning Commission Chairman, asked the other members of the Planning Commission to join him in a private executive session. A motion was adopted to allow an executive session to obtain legal advice. Defendant Hegler was invited to join the Planning Commission in this session. Plaintiff alleges that this executive session was unauthorized, as it did not meet the criteria to hold a meeting closed to the public pursuant to S.C. Code Ann. Section 30-4-70 (Rev. 2007).

Plaintiff filed the present action on October 31, 2012, requesting injunctive or equitable relief and asserting various violations of the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et. seq.*, against the Richland County Defendants. The basis of Plaintiff's Complaint is that he is entitled to injunctive relief or a declaratory judgment because the Richland County Defendants failed to comply with the FOIA. There are no causes of action

alleged against Fairways in the original Complaint. The Richland County Defendants and Fairways filed motions to dismiss the original Complaint.

1. **Fairways' Motion for Sanctions**

In its Motion for Sanctions, Fairways claims that Plaintiff has no basis to believe that the FOIA applies to Fairways; therefore, Plaintiff commenced the present action to delay the development project. Pursuant to Rule 11, SCRCP, Fairways requests sanctions in the form of attorneys' fees and costs it incurred in defending against Plaintiff's claims.

Plaintiff is an attorney but is not licensed in South Carolina. Rule 11, SCRCP provides that "[a] party who is not represented by an attorney shall sign his pleading . . . ." "The signature of . . . [a] party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay." Rule 11(a), SCRCP.

There are no allegations in the original Complaint that Fairways violated the FOIA. At the hearing, Plaintiff explained that Fairways was named as a party pursuant to Rule 19, SCRCP or Rule 20, SCRCP, and the Declaratory Judgment Act. It is clear that Plaintiff's purpose in naming Fairways in this action was not to delay the project but was instead based upon Fairways as a party in interest. Plaintiff brought Fairways into the action on a good faith basis. Therefore, Fairways' Motion for Sanctions is **DENIED.**

2. **Fairways' Motion to Dismiss**

Fairways' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP is based on three grounds: (1) the FOIA applies only to a public body, not a person such as Fairways; (2) there is no private cause of action against Fairways under the FOIA; and (3) Plaintiff has not alleged any violation of the FOIA by Fairways.

When deciding a motion to dismiss, the question to be considered is whether, in a light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); *Overcash v. South Carolina Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). "A motion to dismiss should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case." *Slack v. James*, 356 S.C. 479, 483 589 S.E.2d 772, 773-774 (Ct. App. 2003).

There are no allegations in the original Complaint that Fairways violated the FOIA. At the hearing on the motions to dismiss the original Complaint, Plaintiff clarified that no FOIA violation is alleged against Fairways. Therefore, to the extent that any FOIA violation is alleged against Fairways in the original Complaint, Fairways' Motion to Dismiss based upon the original Complaint is **GRANTED**.

3. **Richland County Defendants' Motion to Dismiss**

The Richland County Defendants move to dismiss Plaintiff's original Complaint pursuant to Rules 12(b)(2) and (6), SCRCP, on the basis that Defendants Hegler, Hammett, and Palmer are improper parties to this action because the FOIA applies only to civil, injunctive relief as to a "public body" and not individual defendants.

The FOIA "contains a civil enforcement provision granting standing to a South Carolina citizen to seek injunctive relief against a violation of any FOIA provision." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327-28, 701 S.E.2d 39, 47-48 (Ct. App. 2010). S.C. Code Ann. Section 30-4-100(a)(2007) provides that "[a]ny citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases . . . ." "The FOIA was created to allow citizens to be advised of the performance of *public officials* and of the decisions that are reached in public activity and in the formulation of public policy." *Id.* at 328, 701 S.E.2d at 48 (emphasis added).

Defendants Hegler, Hammett, and Palmer are not public officials pursuant to the FOIA. The South Carolina Court of Appeals has determined that sheriffs are subject to the FOIA because the office is created by the South Carolina Constitution, which "authorizes the election of a sheriff as a county officer." *See Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004)(citing *Botchie v. O'Dowd*, 299 S.C. 329, 332 n. 3, 384 S.E.2d 727, 729 n. 3 (1989)). Similarly, county council members are public officials and may be sued in their official capacities under the FOIA. *See Cricket Cove Ventures*, 390 S.C. at 328, 701 S.E.2d at 48.

Defendants Hegler, Hammett, and Palmer do not hold elected public offices. Members of the Planning Commission are appointed by the Richland County Council and members of the Development Review Team are appointed by the Planning Director. Therefore, any action against Defendants Hegler, Hammett, and Palmer in their individual or official capacities under the FOIA is improper and their Motion to Dismiss the original Complaint is **GRANTED**.

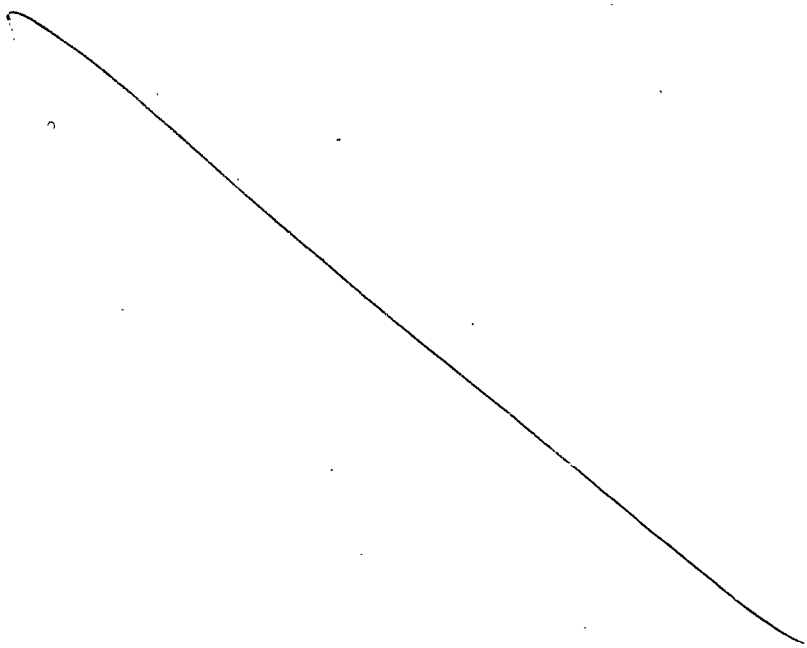
## ORDER

For the reasons set forth above, it is **ORDERED** that: (1) Defendant Fairways' Motion for Sanctions is **DENIED**; (2) Defendant Fairways' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP is **GRANTED**; and (3) the Motion to Dismiss filed by Defendants Richland County, Hegler, Hammett, and Palmer pursuant to Rule 12(b)(2) and (6), SCRCP is **GRANTED**.

**AND IT IS SO ORDERED.**

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 16, 2013



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| **STATE OF SOUTH CAROLINA** | ) | |
| | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | |
| | ) | Civil Action No. 12-CP-40-7337 |
| Samuel T. Brick, individually, and on behalf of all others similarly situated, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | **ORDER** |
| v. | ) | |
| | ) | |
| Richland County, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

RICHLAND COUNTY
FILED
2013 OCT 16 AM 9: 14
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER CAME BEFORE THE COURT pursuant to an Amended Complaint asserting various violations of the South Carolina Freedom of Information Act, South Carolina Code § 30-4-10, *et. seq.* A non-jury trial was held in this matter the week of August 26, 2013, in the Richland Court of Common Pleas. The Plaintiff appeared *pro se*, and the Defendant was represented by Michael B. Wren, Esquire, and David A. DeMasters, Esquire. At the conclusion of the Plaintiff's case-in-chief, counsel for the Defendant moved for an Involuntary Dismissal of the Plaintiff's Amended Complaint pursuant to Rule 41(b), SCRCP, however, this Court requested proposed orders from each of the litigants in lieu of oral arguments. After carefully considering the record before this Court, including the pleadings, exhibits and testimony set forth in this trial, as well as the applicable statutory and case law, this Court hereby finds for the Defendant Richland County.

The Court enters this Order with regard to the causes of action for various violations of the South Carolina Freedom of Information Act ("FOIA"), South Carolina Code § 30-4-10, *et seq.* as asserted by Plaintiff in his Amended and Supplemented Complaint. This Order contains the Court's findings of fact and conclusions of law pursuant to Rule 52, SCRCP. After hearing

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SCANNED

the evidence in this matter, considering the arguments by counsel, and thoroughly reviewing the applicable law, the Court finds as follows:

Plaintiff Samuel T. Brick has pled causes of action against the Defendant Richland County for various violations of FOIA. Within the Plaintiff's Amended Complaint, filed February 26, 2013, there are set forth four distinct alleged violations of FOIA, as well as two supplemental pleadings related to two of the aforementioned areas of alleged violations. The four topics of alleged FOIA violations are: 1) Development Roundtable; 2) Development Review Team, August 9, 2012; 3) Improper Executive Session in Appeal to Planning Commission; and 4) Failure to Respond Within 15 Working Days to Request for Public Documents. Supplemental Pleadings A and B pertain to subsequent events with the Development Review Team and Executive Session of the Planning Commission, respectively, in November 2012. As to each alleged violation of FOIA, the Plaintiff has requested distinct injunctive relief, including claims for attorney fees and costs. Additionally, each of the alleged violations of FOIA asserted by the Plaintiff pertain to a development application submitted by Fairways Development, LLC ("Fairways"), regarding the proposed development of a parcel of land in Richland County.

The Defendant Richland County is a political subdivision located within the State of South Carolina. As part of its executive functions, the Defendant has a branch of county government that guides development within the geographical area of Richland County named the Richland County Planning and Development Services Department. The Planning and Development Services Department of Richland County is administered by the Planning Director pursuant to Richland County Code Section 26-35(b)(1). Tracy Hegler ("Hegler") currently serves as the Planning Director and was the Planning Director at all times complained of in

Plaintiff's Amended Complaint. As part of her job duties, Hegler serves on the Richland County Development Review Team ("DRT") as established in Richland County Code Section 26-34.

As explained by Ms. Hegler, the DRT exists pursuant to the enabling legislation found in South Carolina Code Ann. § 6-29-1150 and the aforementioned Richland County ordinance. It is comprised of County employees from various departments who are appointed by the Planning Director. Pursuant to Richland County Code Section 26-53, the function of the DRT is to review certain development applications and either approve or deny them based upon various development criteria outlined elsewhere within County ordinances. The DRT maintains a file with the development application and the requisite form approving or denying the subject application, which is considered a public record. As to the subject application submitted by Fairways, the DRT reviewed and approved the application in both August and November 2012.

The Development Roundtable ("Roundtable") was a group comprised of various members of the development, conservation and local government communities which first met in February or March 2009 and developed a list of development principles in October 2009, subsequent to the enactment of the Richland County "Green Code" ordinance (Section 26-186) in October 2008. Ms. Hegler testified that the Roundtable did not serve to advise her, and that only she or her Planning Department staff draft amendments to County ordinances for submission to the Richland County Planning Commission or Richland County Council. It is uncontested by the parties that both Richland County Council and the Richland County Planning Commission are public bodies. Further, Ms. Hegler testified that the Roundtable no longer meets and ceased to exist earlier this year.

The Richland County Planning Commission ("Planning Commission") exists pursuant to South Carolina statutory law and local ordinance, and for the purposes of the Plaintiff's

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Amended Complaint in this action, hears appeals from the DRT pursuant to Richland County Code Section 26-54. On October 1, 2012, and November 5, 2012, at regularly scheduled meetings of the Planning Commission, the Plaintiff's appeals from the decision of the DRT regarding the Fairways application were heard. At both meetings, the Planning Commission went into executive session pursuant to South Carolina Code Ann. § 30-4-70 prior to hearing the aforementioned appeals.

Amelia Linder ("Linder"), an attorney for the Planning Commission who was in attendance for these meetings, testified that on both occasions the Planning Commission voted to go into executive session for the express purpose of obtaining legal advice as to the Plaintiff's appeal. Ms. Linder testified that on both occasions the legal advice was procedural in nature and had nothing to do with the substance of the subject appeals, and further that no action was taken in either instance during executive session. The Plaintiff's appeal was upheld during the November 5, 2012, Planning Commission and the Fairways application was ultimately sent back to the DRT for subsequent review.

The Plaintiff submitted various written FOIA requests to Richland County in 2012 as outlined in his Amended Complaint. Pursuant to South Carolina Code Ann. § 30-4-30, Richland County responded to each of the Plaintiff's requests for information and notified him of their determination as to any responsive documents which existed.

Based upon the facts and evidence presented at trial, the Court makes the following conclusions of law:

As to the Roundtable, this Court finds that this group did not exist as a public body, and did not serve as an advisory body to Ms. Hegler or the Richland County Planning Department staff who were the individuals who drafted any ordinances or amendments which are the subject

of the Plaintiff's claims. *See, Quality Towing, Inc. v. City of Myrtle Beach*, 547 S.E.2d 862 (2001). As such, the Plaintiff has failed to set forth any evidence that the Roundtable violated any provision of FOIA as alleged in the Amended Complaint.

Further, the injunctive relief sought by the Plaintiff in his Amended Complaint is moot as the Roundtable no longer exists. The South Carolina Supreme Court has established that "[a] justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." *Sloan v. Friends of Hunley, Inc.*, 630 S.E.2d 474 (S.C. 2006). The Court further found that "[a] moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Id.* In *Sloan*, the plaintiff was provided with the documents that he was requesting as relief to the action, so the judgment would have no practical legal effect. *Id.* at 476.

The Court did point out that there are two exceptions in which a court may address an otherwise moot issue. *Id.* at 478. The first is "when the issue raised is capable of repetition, yet evading review." *Id.* In *Sloan*, the issue, though capable of repetition, did not evade review because if another person later brought a FOIA violation action against the defendant, and the defendant failed to produce the requested documents, the court would have the opportunity to review the issue. *Id.* The second is "when the question considers matters of important public interest." *Id.* "In order to meet the public importance exception, the issue must be of imperative and manifest urgency". *Id.* In *Sloan*, the production of the requested documents afforded the plaintiff the intended benefit of FOIA, and destroyed the possibility of any imperative or

manifest urgency. *Id.* The Court then found that there was no exception to the doctrine of mootness.

In the trial of this matter, the uncontroverted evidence was that the Roundtable ceased to exist. The Court therefore finds that the alleged violations of FOIA by the Roundtable are moot, and likewise finds that neither of the two exceptions to the doctrine of mootness apply in this situation. As such, the Plaintiff has shown no right to relief as to the alleged FOIA violations regarding the Roundtable.

As to the Plaintiff's claims relative to the DRT, the Court finds that the DRT was not a public body and did not violate any provision of FOIA. The evidence in this case established that the DRT, pursuant to both South Carolina statute and County ordinance, had the authority to approve or disapprove development applications submitted for its review. As such, it was not required to adhere to the provisions of FOIA with respect to the creation of written minutes or public notice. Notwithstanding, the DRT did maintain public records consisting of the development application and the requisite form approving or denying the subject application, however, there was no evidence in the record other than that this documentation was provided to the Plaintiff pursuant to his FOIA requests for information.

In addition to this finding as to the DRT, during trial the Plaintiff withdrew the second cause of action in the Amended Complaint relative to the DRT. In so doing, the Plaintiff likewise withdrew his claim for relief as set forth in the Amended Complaint.

As to the Plaintiff's alleged FOIA violations relative to executive sessions of the Planning Commission, the Court finds that the executive sessions invoked on both October 1, 2012, and November 5, 2012, were done pursuant to South Carolina Code Ann. § 30-4-70. The evidence at trial established that the Planning Commission voted to go into executive session for

the express purpose of obtaining legal advice as to the Plaintiff's appeal, that the legal advice was procedural in nature and had nothing to do with the substance of the subject appeal, and further that no action was taken in either instance during executive session.

The exemption to the open meeting requirement as established in South Carolina Code Ann. § 30-4-70(a)(2) provides that:

> "the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim."

*Id.* The South Carolina Court of Appeals further elaborated on this exemption in *Herald*, where they found that the City of York did not violate the Freedom of Information Act when their attorneys presented information concerning problems with a waste water treatment plant. *Herald Publishing Company v. Barnwell*, 351 S.E.2d 878 (Ct. App. 1986). Specifically, the Court found that the exemption does not require that a public body actually be engaged in litigation, only that legal advice is rendered. *Id.* at 882.

In this case, the actions of the Planning Commission with regard to the Plaintiff's appeal and executive sessions held on October 1, 2012, and November 5, 2012, were done pursuant to FOIA and in an effort to obtain legal advice from its attorney. As such, the Plaintiff has failed to show any right to relief relative to the executive sessions held by the Planning Commission and his claims necessarily fail.

Finally, with respect to the Plaintiff's claim for a violation of FOIA as to the alleged failure of the Defendant to respond within fifteen working days to his requests for public documents, the Court finds that the Plaintiff has failed to set forth evidence that Richland County



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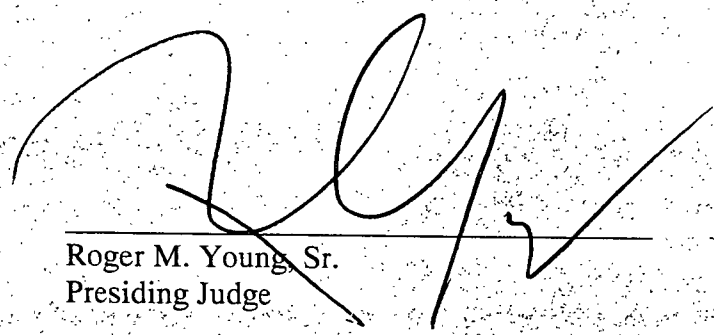
did not timely respond to the Plaintiff's requests. Pursuant to South Carolina Code Ann. § 30-4-30, Richland County responded to each of the Plaintiff's requests for information and notified him of their determination as to any responsive documents which existed. Further, the Plaintiff failed to establish evidence that any document or information requested by him and which existed was not provided to him. In addition, the Plaintiff included in his Amended Complaint a Note which withdrew his request for relief under this claim as being moot and no longer relevant as the requested information had been provided. Therefore, the Plaintiff has failed to set forth any evidence that he is entitled to relief relative to his requests for public documents from Richland County pursuant to FOIA.

For purposes of this Order and findings of the Court following the trial in this matter, the *pro se* Plaintiff is not found to be a prevailing party pursuant to FOIA, South Carolina Code Ann. § 30-4-100. Notwithstanding, the Plaintiff would not be entitled to attorney fees in this action regardless of whether he was determined to be a prevailing party. The South Carolina Supreme Court has not only held that "[a] *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney," but has also acknowledged that South Carolina accepts the minority viewpoint of not allowing attorney's fees for *pro se* attorney litigants. *Calhoun v. Calhoun*, 529 S.E.2d 14 (2000). Further, in *Hopkins*, the South Carolina Supreme Court reemphasized their stance that *pro se* attorney's fees are not recoverable. *Hopkins v. Hopkins*, 540 S.E. 2d 454 (2000). In *Hopkins*, a litigant was represented by his wife and sought attorney's fees. *Id.* at 457. The court reiterated the reasoning from their decision in *Calhoun*, that when a party is not liable to an attorney for payment of attorney's fees, no financial obligation is incurred, and attorney's fees are not recoverable. *Id.* Accordingly, the

Plaintiff is not entitled to attorney fees or any other relief as requested in the Amended Complaint.

In conclusion, the Plaintiff has set forth no evidence that the Defendant Richland County has violated any provision of FOIA as asserted in his Amended Complaint and has therefore shown no right to relief. Therefore, based upon the applicable case law and statutory authority cited herein, the Court finds that the Plaintiff has failed to establish a claim for violation of FOIA, and as such, the Defendant is entitled to an involuntary dismissal pursuant to Rule 41(b), SCRCP, and this action is dismissed as a matter of law.

**AND IT IS SO ORDERED.**



Roger M. Young, Sr.
Presiding Judge

Charleston, South Carolina

October 4, 2013

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,**<br>124 Runneymede Drive<br>Blythewood, SC 29016<br>803 546 4895<br>sbrick2011@gmail.com,<br><br>Appellant, | ) | **Case No.:2013- -**<br><br>**Planning Commission TMC# 20401-01-03**<br><br>**NOTICE OF APPEAL AND APPEAL OF THE RICHLAND COUNTY PLANNING COMMISSION DENIAL OF APPELLANT'S APPEAL REGARDING ADMINISTRATION OF ZONING** |
| vs. | ) | |
| **THE RICHLAND COUNTY PLANNING COMMISSION,**<br><br>Ms. Michelle Onley, Acting Clerk;<br>20 Hampton Street 4th Floor<br>Columbia, SC 29202<br>803 576 2060<br>Appellee. | ) | |

## NOTICE OF APPEAL AND APPEAL

PLEASE TAKE NOTICE that Appellant, Samuel T. Brick, Pro se, hereby submits this Notice of Appeal of an Administrative Agency action and order on an administrative appeal by the Richland County Planning Commission of February 4, 2013, denying an appeal to that body which denial was finalized with the approval of the minutes representing same on March 4, 2013. Samuel T. Brick, your appellant, hereby appeals the denial to this Honorable Court.

This appeal is pursuant to Section 6-29-1150 of the South Carolina Code of Laws as implemented in Richland County by the appeal procedures of Sections 26-58(f) and 26-54 of the

well as an adjacent and contiguous property owner to the property that is the object of the subdivision project. Section 26-54(c)(3)f.2. (before December, 2012, known as Section 26-54(c)(3)d.5.) of the Richland County Code (Appendix C-3) specifically authorizes such an appeal and states "An appeal shall cease all staff review regarding the subject property."

A copy of the proposed project, the subject of the subdivision application that forms the basis of Appellant's appeal, is attached at Appendix A. This includes a Subdivision Submittal Checklist (A-1), the public notice of the Development Review Team's consideration of such project (A-2), a computer disc recording of the Development Review Team meeting on the project (A-3; there are no written minutes kept of this proceeding, a matter of a Freedom of Information complaint by your Appellant in a separate action in this Honorable Court (Case No:2012-CP-40-7337) ), and the Development Review Team's formal decision approving the plan (A-4).

Attached as Appendix B are a copy of Appellant's Appeal to Development Review Team action on the project (B-1); the Notice of the Planning Commission meeting scheduled to hear Appellant's appeal (B-2); the part of the Planning Commission verbatim record of its February 4, 2013, meeting posted on the Richland County web site that heard the appeal (B-3); a copy of Appellant's Legal Memorandum on statutory construction provided the Planning Commission both before and during the appeal (B-4); the cover and first page of an October 2009 study, Recommended Development Principles for Richland County, South Carolina Consensus of the Site Planning Roundtable (B-5); and the Planning Commission Order on an Administrative Appeal (B-6).

Attached at Appendix C are the Richland County Ordinances that are cited in the Appeal to this Honorable Court. A copy of Sections 26-21(d)(3)b, 26-22 (definition of Density only),

26-54 (c)(3)b4, 26-58 (f), 26-83, 26-89 (RS-LD Zoning District), 26-93, 26-94, 26-172(a)(2), 26-186 (hereinafter also referred to as the "Green Code"), 2-218, and 2-29 (h) of the Richland County Code are attached as Appendix C-1, C-2, C-3, and C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, and C-12, respectively.

Attached at Appendix D are pages of the Comprehensive Plan referenced in the Appeal. The entire 2009 Comprehensive Plan for Richland County is available at the Richland County Home Page

**PLANNING COMMISSION ERRORS**

1. Appellant submits that the Richland County Planning Commission erred in its action on your Appellant's appeal to that body:

A. By failing to enforce the zoning requirements of Title V of the Richland County Land Development Code.

B. By erroneously interpreting Section 26-186 of the Richland County Code, referred to hereinafter as the "Green Code" (Appendix C-9) as authorizing a new zoning district in which no density is applied, no minimum lot widths are enforced, and Conservation area set asides are rewarded with incorrect bonuses.

C. By failing to require an enforcement of various requirements of the Green Code, specifically that application of the development project must be made by the owner of the property being developed and that the developed area must have no more than 50% maximum impervious surface.

D. (i) By failing to provide fair notice of Appellant's hearing and its procedures.

(ii) By failing to make specific findings and determinations with regard to Appellant's appeal.

(iii) By failing to provide a fair hearing on the appeal.

(iv) In its Conclusions of law and the Order on an Administrative Appeal in such conclusions by failing to consider and to include Appellant's Memorandum of Law, Statutory Construction, (Appendix B-4) in its Decision to uphold the Development Review Team's Approval of the sketch plan and to Deny Appellant's request to overturn such decision.

## ZONING REQUIREMENTS

2. ***Applicability of Zoning Standards.*** Section 26-83 (Appendix C-5) of the Richland County Land Development Code sets forth the types of zoning districts in Richland County. It does not include the Green Code as a zoning district. Subsection 26-83(a) states that the zoning requirements "shall be complied with in addition to any other general or specific requirements of this chapter." The proposed project, the subject of the Development Review Team's review, is situated with a zoning district known as RS-LD Residential, Single-Family-Low Density District. The Green Code specifically includes such zoning district with several other zoning districts as eligible for application of the Green Code. Development standards for the RS-LD district are specified in Subsection 26-89(c) (Appendix C-6) of the Land Development Code. Minimum lot area is specified as 12,000 square feet and maximum density is one dwelling unit per lot area. Minimum lot width is specified as 75 feet. Section 26-172 (a)(2) of the Richland County Code (Appendix C-9) requires that in residential zoning districts there can be no more than one dwelling unit on an individual lot. This is considered a density

standard. Regulation of density in Article V of the Land Development Code (Chapter 26) is accomplished by the variation of its minimum lot areas.

The Planning Director's interpretation of Green Code density is that the no minimum lot size provision in the paragraph (h) requirements section read with the density of one dwelling unit per lot area results in an authorization of as many dwelling units as the developer desires. The Planning Director does not consider the Green Code density provision at its Subsection (i), as required or necessary. Density is defined in Section 26-22 (Appendix C-2) of the Land Development Code as, "The number of dwelling units per gross acre." That definition read with the various zoning districts that all have density listed as one dwelling unit per lot area means the minimum square footage for the zoning district lot area concerned is the operative factor in determining density. If an owner were to develop less than an acre, the zoning district language relating to the minimum lot area "but in no case less than" is the standard. A sub division would apply the density relating to lot area specifically with density determined on a per acre basis but no individual lot could be less than the minimum lot area unless there was an exception. It is noted that Section 26-89 (c) refers to subsection (i) of the Green Code as development standards. Subsection (h) is termed requirements which are necessary to obtain the lessened standards as referred to in both Sections 26-89 and 26-186. Requirements furthermore relate to general characteristics for all developments no matter what zoning district is applied while standards refer to specific zoning district limitations.

The Planning Director's interpretation, as stated above, would take away county regulation of density otherwise required by Chapter 26 of the Richland County Code and the state enabling legislation at Section 6-29-710 (A)(5) of the South Carolina Code of Laws. The Planning Director states that Section 6-29-720 (c)(1) of the State Code authorizes a reduction in

the otherwise applicable lot size while preserving substantial open space. This, however, is a State authority for a zoning ordinance and such an ordinance has not been adopted by the Richland County Council. Her view would undercut all the zoning districts and give developers a blank check to the number of houses he or she might want to build. Appellant considers this erroneous as an incorrect statutory interpretation and, accordingly considers it incorrect as a matter of law.

For Residential, Single-Family-Low Density District, the operative density is 3.63 dwelling units per acre (43,560, square footage in an acre, divided by 12,000, the minimum lot area for the district, equals 3.63). The Planning Director and the Planning Commission failed to implement the Green Code development standards and the bonus provisions as an exception to the zoning district standards as provided in Subsection 26-186 (i). The Planning Director suggests that language in the State enabling provision for the establishment of zoning districts at Section 6-29-720 (C)(1) of the South Carolina Code of Laws provides authority for her interpretation. Her error is that in the Richland County zoning ordinance the only cluster zoning that is authorized is in the bonus provisions of Section 26-186 (i) and that is specifically regulated. Subsection (i) states residential gross density is established in other sections of the code and density is one unit per designated lot area with density further defined as number of dwelling units per acre. The Real Estate definition of "gross acre," is "an actual acre (43,560 square feet)". Gross acre is not defined in the Land Development Code but read together with the manner of arriving at authorized lot sizes for a zoning district, gross density is the number of lots that fit in an acre.

***Zoning Density as Applied to Proposed Project.*** The project examined and approved by the Development Review Team proposes 332 units of varying lot sizes on 100.7 acres. The

project sets aside 31 acres of Conservation areas, parks, trails, and buffers. These are mostly unbuildable areas and otherwise required by market or code requirements. The project includes infrastructure with sidewalks, streets and easements. The normal estimate of the size of infrastructure is 30% of the developed area which with the 30 acre conservation set asides would be approximately 21 acres (30% of 69= 21) of other unbuildable land. Accordingly, under controlling density standards, 332 dwelling units would not fit in the remaining 49 acres. Under the RS-LD zoning with a density of one building unit per lot area and a lot area of no less than 12,000 square feet, only 178 dwelling units would fit. (49 acres times 43,560=2,134,440÷12,000=177.87). The Development Review Team and the Planning Commission erred in approving and upholding lot sizes that uniformly are less than 12,000 square feet. They approved and upheld a density of 6.64 (332 divided by 50) dwelling units per acre, substantially more than the relevant zoning standard of 3.63 dwelling units per acre (43560÷12,000=3.63).

Section 26-89, the RS-LD zoning provision, includes an exception to the standards found in its section so that if a developer can meet the requirements of the Green Code the "development standards of 26-186(i) may be substituted for the standards required in this subsection." This provision was added to the zoning provision in the same Ordinance that enacted the Green Code (Ord. 035-08HR; 6-17-08) and the two provisions work together. Section 26-186(i) is the density provision of the Green Code and it implements the density bonuses mentioned above as anticipated in Section 6-29-1110 of the South Carolina Code, its enabling provision for developments. A developer is rewarded by higher density in various proportions to various amounts of set asides. The proposed project that the Development Review Team approved and the Planning Department endorsed with its denial of Appellant's appeal did

not apply for or utilize the bonus provision of subsection (i) which otherwise was not enforced. Had the applicant applied for the density bonus, he would have obtained a 10% bonus in density for his 30% set aside. That would have resulted in a total of 197 dwelling units for the project. The bonus for an individual lot can be obtained by the authorized lot area and a 10% bonus in an RS-LD zoning district would be a lot area of no less than 10,800 square feet. (10% of 12000 equals 1,200 which subtracted from 12000 is 10,800). That would yield 197 dwelling units. (43460÷10,800=4.02 and that times 49=197). This is basically ten percent in addition to the otherwise authorized 178 dwelling units for the project under the normal zoning standard. Approval of 332 dwelling units for the 49 acre developable area, as approved by the Development Review Team and endorsed by the Planning Department, is erroneous and a major variation from what is authorized under the Richland County Land Development Code with Sections 26-89 and 26-186 applied together.

***Lot Width Standard.*** The sketch plans for the project as well as the plans themselves fail to meet the 75 foot minimum width standard for the RS-LD zoning district. The sketch plan at Sheet # SP-01 states detached single family minimum width of 60 feet. Minimum lot width is a reporting requirement for the Green Code concept plan (Paragraphs 26-186(f)(2) and (3)). This suggests minimum lot width for the zoning district applicable to the project is a relevant and applicable standard in the Green Code. There is no mention of lot width as a standard proposed by the Green Code so the provision in Section 26-186 (b) that would allow the standards found within the Green Code to be utilized in lieu of the development standards of the zoning district is not applicable. The Green Code relief is that the standards "found within" the Green Code may be used in lieu of the standards for the applicable zoning district. The Planning Director considers the stated requirement of no minimum lot area in the Green Code as first being a

standard rather than a reference to a requirement and as making any other standards inapplicable. Sections 26-93 (Appendix C-7) and 26-94 (Appendix C-8) of the Land Development Code have a no minimum lot area standard and a lot width requirement of 50 feet. Application of both those zoning standards continue in the two zoning districts with no minimum lot area. The Development Review Team's failure to enforce this standard and the Planning Commission's refusal to require enforcement of this zoning standard is in error. The Planning Commission Order fails to address this issue by finding only that the Development review Team meets all the standards found within Section 26-186. The width requirement is not a standard found within the Green Code for the Concept Plan to include what the minimum width standard might be for the applicable zoning district.

## GREEN CODE APPLICATION

3. ***Proper Applicant***. Fairways Development Group, an unknown corporate entity in South Carolina submitted the subject project, the "Villages at Longcreek," and stated it was being developed under the Richland County Green Code. The transmittal was executed by John T. Bakhaus as President of the Management Company for the Fairways Development, LLC, the registered owner of the property. The transmittal starts with the statement, "Fairways Development Group is pleased to submit" the submittals for consideration of the project. Fairways Development Group is not an incorporated body in South Carolina. During Appellant's appeal, an individual who ostensibly has no relationship with Fairways Development LLC ( Mr Ronald Johnson) and who is not an owner of the property made the statement in testimony before the Planning Commission (Page 31) that he was a partner in the application and development and basically that the application was his. Subsection (b) of the Green Code specifies that the "owner of a property" may apply the development standards of the Green Code.

Subsection (c) states that "A property owner desiring to use the development standards of this section must first submit an application to the Planning Department." The application clearly is by Fairways Development Group or Mr. Ronald Johnson using the owner as an agent. Other provisions of the Green Code apply to a developer but application and a few other matters relate specifically to the owner. The Planning Commission erred in not enforcing this part of your Appellant's appeal of the Development Review Teams actions.

***No Minimum Lot Area***. Section 26-186 (h) provides the requirements that a property owner must meet to obtain the density bonus as found in the development standards at Subsection 28-6-186 (i). One such requirement is that there is no minimum lot area. The Planning Department and the Planning Commission, as mentioned above, interpret this single provision as overriding all other development standards for the project. In this regard the Planning Director during the Development Review Team's consideration of the project stated that this Green Code provision supersedes the zoning districts. Subsection (i) of the Green Code, however recognizes varying lot sizes with the different density bonuses. It specifically refers to density being established in other sections of the code. A specific lot area minimum requirement would disenfranchise two zoning districts otherwise specified as available for the Green Code application, RM-MD and RM-HD, as set forth in Sections 26-93 and 26-94 of the Land Development Code. Both sections have no minimum lot size requirements. The requirement that there is no lot area minimum in a section that applies universally across all the zoning districts furthermore is an understandable explanation that lot area minimums can change under the density bonuses authorized in the Green Code. Should the no lot area minimum have been considered a standard, the legislators would have put the provision in Subsection (i), the development standards section as referred to in the various zoning districts. These provisions

were enacted at the same time in the same Ordinance and the legislative intent accordingly is very clear. Section 26-186(b) states that the development standards within the Green Code may apply in lieu of the development standards set forth for the applicable zoning district, subject to meeting the requirements of the Green Code. Reference to lot area minimums in the requirements section is not a standard but a recognition that lot area minimums vary with the various zoning districts and the bonuses provided. It does not mean that there is no density standard whatsoever and no other standards are applicable. The Planning Director's interpretation that the Green Code overcomes the various zoning district standards is erroneous and an interpretation to this effect is erroneous. The Land Development Code works together and it various parts must be considered rather than just focusing on one provision.

***Codified Statutory Construction***. The Land Development Code aids in situations when requirements and standards are at odds with regard to a specific application. Section 26-21(d)(3)b (Appendix C-1) provides a statutory method for dealing with conflict or inconsistency within the provisions of Chapter 26. It states that in the event of conflict the more restrictive provision shall apply. In the instant case, if Sections 26-89 and 26-186 are considered at odds with regard to the application of density standards, then the more restrictive provision, Section 26-89, must apply. The Planning Director's interpretation that the Green Code overcomes the zoning provisions is erroneous and the Planning Commission's adoption of that interpretation is in error. Again, that interpretation would remove any regulation of density whatsoever from Green Code developments. Section 26-83(a) (Appendix C-5) further reinforces that the zoning provisions shall be enforced even when faced with another provision of the code in its general statement that zoning districts shall be complied with in addition to any other specific or general provisions.

***Impervious Surface***. A specific Green Code requirement, and this is not a standard, is that the developed area is limited to no more than 50% impervious surface. The "Villages at Longcreek" project does not meet this requirement and the Planning Director admits the requirement is not enforced. Her statement before the Planning Commission is at page 29 of Appendix B-3. The Planning Director's comments as portrayed in the Findings of Fact in the Planning Commission Order (Appendix B-6) are not a verbatim record of her statement and do not include the following, which verbatim record was posted on the County's web page. "The, the requirement for pervious material, I would argue that if it were to be a requirement they would be separated, they would state, you may use pervious material and if you do then, then here's the 50% requirement." In other words, the Planning Director in replying to Appellant's allegation that she did not enforce this requirement (page 25 of Appendix B-3) is that her interpretation of Paragraph (11) is that it only is a requirement if the developer uses pervious surfaces on sidewalks and driveways (the first sentence of the paragraph). The second sentence is the mandatory requirement that there can only be 50% impervious surfaces in the developed area.

Greater use of pervious surfaces is the object of three goals in the County Comprehensive Plan (Goal 5 in the Natural Resources Element (page 59 Appendix D-7) and Goals 4 and 5 of the Land Use Element (page 168 Appendix D-8). The issue of impervious cover also was the first object of a joint study by the U.S. Army Corps of Engineers, Charleston District and the Richland County Roundtable. The object was, "1.Reduce Overall site impervious cover." (Appendix B-5) The Planning Director stated only that she was working through her Conservation Department to enforce Section 26-186 (g)(3) b, a provision relating to the crediting of recreation areas as conservation areas. See Comment #3 by the Conservation

Department Director in the December 7, 2012, letter of approval by the Development Review Team of the project concept and sketch plans (Appendix A-4). The Planning Commission failed to address this specific appeal by Appellant (Appendix B-1) which also was addressed in his statement to the Commission (page 25 of Appendix (B-3)). The Planning Commission erred in not requiring the Development Review Team to examine and enforce this provision prior to approving the project. A clear reading of the provision shows specific legislative intent which is that no more than 50% of impervious surface areas may be applied in the developed area.

**COMPREHENSIVE PLAN**

4. ***Adherence or Guiding Principle.*** The Planning Commission Order does not address whether the proposed project is compatible with the 2009 Richland County Comprehensive Plan. The Appellant's appeal to the commission addressed this issue and both the Appellant and the Planning Director addressed this during the Planning Commission hearing. See Section 6-29-540 for the requirement of such a review and determination. The Planning Director made a statement (page 26 of Appendix B-3) that the Comprehensive Plan is merely a guiding principle. The Planning Director's responsibility under Section 2-218 of the Richland County Code (Appendix C-11) is to ensure submitted projects adhere to the county's comprehensive plan. Adherence is a far step from just being a guiding principle. Section 6-29-720 (B) of the South Carolina Code of Laws further states that the county's zoning ordinances "must be made in accordance with the comprehensive plan for the jurisdiction," .

***Zoning and the Comprehensive Plan.*** The Planning Director states the proposed project is in accord with the Comprehensive Plan because it fits within the Future Land Use guide for growth that suburban lands shall contain 4-8 dwelling units per acre. This statement regarding 4-8 units however is nothing more than what is stated in its preceding paragraph; that it is to "guide

decision making and assist in determining whether the proposed rezoning is in accordance with goals for future growth." It does not give authority to change the zoning regulations. The Comprehensive Plan specifies in bold letters (the only place such emphasis is used throughout the plan) that the future land use map does not change the current zoning of any area (Page 154-Appendix D-5). Moreover the Planning Director is not applying the guidance correctly. Page 145 (Appendix D-4) of the Plan defines current suburban and rural land uses with suburban areas being of medium to high density residential land uses and rural being low density residential uses. Section 26-89 is a low density zoning residential district. The Future Land Use section does not change the current description of land uses. In fact in describing the future land use, it speaks to medium densities of 4-8 dwelling units per acre (Page 156 Appendix D-6). The proposed density is 6.64 dwelling units per acre and that is not compatible with the zoning district density of 3.63 units per acre. The Planning Director not only misapplies the guidance but the standards of the zoning district involved, RS-LD, are not compatible with the proposed project. The Planning Commission failed to address this matter and to live up to its requirements under the state enabling laws to review and comment on the project.

***Other Parts of the Plan.*** As mentioned above, pervious surfaces are the subjects of several goals in the Comprehensive Plan. See Appendices D-7 and D-8. The subject Green Code project does not include pervious surfaces in its sketch or concept plans. The proposed project furthermore is not in a Priority Investment Area. Goal 1 at the beginning of the Comprehensive Plan states that an implementation strategy is to support higher densities in priority development areas. (See Page 31 at Appendix D-1) Such areas are focused for market-based incentives and for reducing unnecessary housing regulatory requirements. The instant proposal is in an established area of low density and the resources the Comprehensive Plan suggests for focusing

on the Priority Investment Areas will not be available. The Community Facilities Element of the Plan is designed to provide adequate public facilities and services throughout the County's growth. It developed a computer software methodology (page 117 at Appendix D-2) that considered development with the county's future land use map with competing impacts on service and facility infrastructure. The results are described in a table (page 126 at Appendix D-3) that states the ideal density to support appropriate infrastructure in residential suburban areas. The result for future use for suburban areas is a density of 2.75 dwelling units per acre.

As mentioned above in this appeal, the Planning Director's interpretation that the no minimum lot size requirement provision supersedes the more specific and referenced provision for zoning relaxation would not only authorize total disregard for any zoning in Green Code projects but also is an erroneous reading of an otherwise clear provision. It further fails to follow the 2009 Richland County Comprehensive Plan that continues the requirement for current zoning ordinances and that describes the areas for targeted development as priority investment areas which do not include area the subject of the Development Review Team consideration and this appeal.

**PROCEDURAL ERRORS**

**5.** Appellant attempted to object to the Planning Commission's executive session at the beginning of the hearing on the appeal. A commission member called him out of order. Appellant attempted at the beginning of his statement to further object to the attorney for the Planning Department meeting with the commission and was met by an "all right" by the Commission Chair and when Appellant waited and gestured for an answer a member of the Commission called out, "noted."

***Fair Notice*** (i) The Planning Commission has no published procedures for appeals. The Appellant received written notice of the hearing that was to be heard on February 4, 2013, on Thursday, January 31st. The hearing was scheduled for Monday, February 4, 2013. The notice (Appendix B-2) stated that Appellant or a representative should be present to answer questions. There was no indication as to whether an opportunity would be available to present a case, time for the presentation, format, or otherwise. Because of confusion from the published agenda as to whether the hearing would be public or private, Appellant called the Planning Department Boards and Committees Coordinator who assured that he could present a statement in support of his appeal. The Chairman of the Planning Commission stated immediately before the presentation was to begin that each side would have 15 minutes to present its case. Without an opportunity to prepare a presentation in such a limiting period the last minute limitation is an unfair administrative practice. Section 2-29 (h) of the Richland County Code (Appendix C-12) provides procedures for comments during county council meetings. They include rebuttal periods and an hour for presentation by each side of a case. Fifteen minutes is an insufficient period for Appellant to address fully the various issues raised by the Development Review Team's seminal decision to disregard any density zoning standards in a Green Code project.

***Commission's Lack of Findings and Determinations***. (ii) The Planning Commission's Order on Administrative Appeal is characterized as "Conclusions of law." The finding is that the decision to approve the sketch plan for the project meets all the standards found under Section 26-186 of the Richland County Code. The appeal included and the hearing addressed other matters. The requirements provision regarding pervious surfaces was not addressed in the Order (it is a requirement, not a standard). The width standard, as set forth in Section 26-89 and only referenced in Section 26-186 also is not addressed. The matter as to whether the sketch plan is

compatible with the County's Comprehensive Plan is not addressed. The issue of the improper applicant for a Green Code project is not addressed. The failures to address these matters require that they be returned to the Planning Commission for further presentation and specific findings and decisions.

***Lack of a Fair Hearing.*** (iii) At the outset of Appellant's case one of the members of the commission, an attorney, recused herself because of a possible conflict since her legal firm represented the applicant. She left the room to a room behind the Council chambers. After she left a member of the commission requested to go into executive session to seek legal advice. The motion was seconded and all voted in favor and the commission started to depart. Appellant objected because the lawyer who was going to give advice was the lawyer for the Planning Department and furthermore there was inadequate reason under South Carolina Freedom of Information laws stated for the session. Appellant was called out of order for his objection and the commission members accompanied by the Planning Department's attorney exited the Council Chambers to meet in secret. The member who had recused herself returned and sat at the dais while the rest of the members were in executive session with the Planning Department's attorney. Upon return to the Council chambers after almost a half hour in secret session, the recused member again left the chambers and the Chairman advised that both sides to the appeal had 15 minutes to speak. The attorney for the Planning Department then questioned whether the Applicant had signed up to speak. She did not ask whether her client, the Planning Director, had signed up and clearly was acting on behalf of her client and the Planning Department. The fifteen minute limitation for the Planning Department's presentation obviously was not followed with the representative of the Planning Department meeting in secret with the commission for almost a half hour in addition to the Director of the Planning Department then having fifteen

more minutes for her presentation. Appellant had insufficient notice of the limited period to present his case within such a concentrated period. Attempting to concentrate such a case at the last minute is an unfair violation of administrative procedures for such a hearing.

***Failure to Consider Appellant's Memorandum on Statutory Construction.*** (iv) Appellant at the beginning of his presentation (pages 18-19 of Appendix B-3) offered a Memorandum of Law on Statutory Construction for the record and the appeal. Appellant provided each member a copy and placed a copy at the clerk's desk. The Chairman agreed with the request and stated, "And for the record as well, Ms. Linder" etc. The Conclusions of law in the final Administrative Order state that they heard testimony and reviewed the appellant's request to overturn the DRT's decision and based on that find that the sketch plan meets the standards of Section 26-186. It makes no reference to the Appellant's Memorandum of Law and the various rules of statutory construction. This failure is a further error of administrative review of the entire appeal.

THEREFORE, for the above stated reasons and for the facts mentioned in this Notice of Appeal and as may be presented to this Honorable Court at any hearing on this appeal, the Order on Administrative Appeal should be reversed and returned to the Planning Commission for an Order returning the proposed project, the Villages at Longcreek, to the Development Review Team for its application of the Green Code utilizing the RS-LD zoning standards to include its appropriate minimum lot sizes and minimum lot widths in such standards, to obtain a proper application by the landowner in accord with zoning and Green Code provisions, to require enforcement of the pervious surface requirements of Subsection 26-186(h) of the Green Code, and to obtain a review and determination that the project is compatible with the 2009

Comprehensive Plan of Richland County and that the zoning requirements for the subdivision involved comport with the project as required under the Comprehensive Plan.

Respectfully submitted,

_____

Samuel T. Brick
124 Runneymede Drive
Blythewood, South Carolina 29016
803-546-4895
sbrick2011@gmail.com

Appellant

March____, 2013

Sustainable Design Consultants, Inc.
P.O.Box 1865
Bluffton, SC 29910-1865

# Transmittal

| | | | |
|---|---|---|---|
| **To:** | Tracy Hegler | **From:** | John Champoux |
| **Address:** | Richland County Planning | **Pages:** | |
| | | **Date:** | 11.7.2012 |
| **Re:** | The Villages at Longcreek Sketch Plan Submittal | **CC:** | File |

☐ Urgent ☒ For Review ☒ Please Comment ☐ Please Reply ☐ Please Recycle

**Comments:**
**Includes:**

- **The Villages at Longcreek submittal digital copy (CD)**
- **Subdivision Review Application**
- ***application fee waived***
- **Ten 24x36 copies of sketch plan**
- **Two 11x17 copies of sketch plan**
- **Signed and dated Restricted Covenants Form**
- **Four hard copies of TIA**
- **Ten copies of coverletter**
- **Ten copies of timber letter**
- **Ten copies of Narrative**
- **Sketch Plan Checklist**

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RICHLAND COUNTY
PLANNING AND DEVELOPMENT
SERVICES

A-1 43

11.7.2012

Phone 803-786-2305

November 7, 2012

Tracy Hegler, Planning Director
Richland County Planning and Development Services
2020 Hampton Street
Columbia, SC 29202

Ref: The Villages at LongCreek, Richland County, SC

Dear Mrs. Hegler:

Fairways Development Group is pleased to submit the required submittals for consideration of the above LID residential project being developed under the Richland County Green Code. The land is currently zoned RS-LD and we are seeking approval for 332 units of varying lot sizes. We are also preserving over 31 acres of Conservation areas, parks, green spaces, trails and buffers throughout the site.

If you have any questions or need any clarifications please do not hesitate to contact me personally.

Respectfully Submitted,

Fairways Development, LLC
By United Financial Corporation, Managing Member
John T. Bakhaus, President

Planning & Development Services
2020 Hampton Street, 1st Floor • Columbia, SC 29204
Phone: 803-576-2180 • Fax: 803-576-2182

# SUBDIVISION REVIEW APPLICATION

(Please type or write clearly – illegible applications will be returned)

Date Submitted: November 7, 2012 RC Project #: _____

Property Owner Name: Fairways Development Group (John Bakhaus)

Address: 2004 Longtown Road East Blythewood, SC 29016-9488 Email: johnb@longcreekplantation.com

Engineer Name: Sustainable Design Consultants, Inc.

Address: 125 Blythewood Road Blythewood, SC 29016 Email: jchampoux@susdescon.com

Applicant Name: Fairways Development Group (John Bakhaus)

Applicant Mailing Address: 2004 Longtown Road East

City, State Blythewood, SC Zip Code: 29016-9488

Email Address: johnb@longcreekplantation.com Phone Number: Fax Number: (803) 787-9696

Tax Map Sheet (TMS) Number(s): 20401-01-03 Total Number of Lots: 1

Site Location: Longcreek Plantation, Longtown Road East, Blythewood, SC

Current Zoning: RS-LD Size in Acres: 100.7

Source of Water Service: City of Columbia, SC Source of Sewer Service: Palmetto Utilities

Variance #: N/A Special Exception #: N/A Map Amendment #: N/A

- ☐ **Minor Subdivision Plan**
  - ☐ Sketch Plan
  - ☐ Preliminary Plan
  - ☐ Final/Bonded Plat
- ☑ **Major Subdivision Plan**
  - ☑ Sketch Plan
  - ☐ Preliminary Plan
  - ☐ Final/Bonded Plat

If the applicant is someone other than the property owner of record in the Assessor's Office, the applicant must include a copy of the "Owner Authorization Form" which authorizes the applicant to apply for review on his/her behalf.

**Certification**

I hereby certify that I have read this application and the information supplied herein is true and correct to the best of my knowledge. I agree to comply with all applicable County Ordinances and State Laws related to land development. I am the property owner, or have received the owner's written authorization to act as his agent regarding this matter. I understand that falsifying any information herein may result in nullification of this request and/or appropriate legal remedies.

Fairways Development, LLC 45

Signature by: John T. Bakhaus Date: 11/07/2012

# Major Subdivision Submittal Checklist
# SKETCH PLAN

***This checklist must be completed, signed, and submitted with application. ALL ITEMS ON CHECKLIST MUST BE ADDRESSED. PLEASE PROVIDE SUPPORTING DOCUMENTS OR NOTATIONS JUSTIFYING ITEMS THAT ARE NOT APPLICABLE.***

**Project Name:** The Villages at Longcreek **Applicant:** Fairways Development Group (John Bakhaus)

***Make all checks payable to "RICHLAND COUNTY"***

**APPLICANT CHECKLIST**

- ☑ Subdivision Review Application
- N/A ☑ $500.00 application fee
- ☑ Ten (10) 24"x 36" copies of the sketch plan
- ☑ Two (2) 11" x 17" reduced copies of the sketch plan
- ☑ Restricted Covenants Form, signed and dated
- N/A ☑ Copies of any and all paperwork regarding Special Exception, Variances, or Map Amendments must be included (if applicable)
- ☑ Four (4) hard copies of Traffic Management Plan (if applicable)
- ☑ One (1) digital copy (.pdf) of Traffic Management Plan (if applicable)

**DESIGNER CHECKLIST**

- ☑ Title block with subdivision name and designer information
- ☑ Required map elements to include scale, north arrow, location map and tax map sheet (TMS) number
- ☑ Property zoning
- ☑ Project road names, adjacent roads with road name and right-of-way width
- ☑ Adjacent owners and parcel numbers (TMS numbers)
- ☑ Lot numbers
- ☑ Lot sizes
- ☑ Current flood statement identifying the Flood Insurance Rate Map (FIRM) panel, flood zones and boundaries
- ☑ Fire hydrant distribution (addressed by municipal water provider)
- ☑ Access drives (IFC 503.1.1: Minimum of two remote access points for emergency ingress/egress)

Applicant: Fairways Development, LLC By: John Bakhaus Date: 11/7/12

## Development Review Committee Use Only Below

☐ Application is **COMPLETE** and is **ACCEPTED** for Plan Review.

☐ Application is **NOT** complete and is **DENIED** for Plan Review for the following reasons:

1. _____
2. _____
3. _____

**Designer Contacted By:** _____ **Date:** _____

**Staff:** _____ **Date:** _____

**DISCLAIMER:** This is not to be construed as containing all items, documents, or written information to be addressed or required by the Richland County Land Development Code (Chapter 26 of the Richland County Code of Ordinances) and/or other Richland County ordinances and laws. Project submittals that are mailed to Richland County are subject to the same review process and requirements as projects that are hand-delivered. Richland County does not assume responsibility for projects that are considered incomplete and not picked up as required.

# Richland County
# Development Review Team
# November 29, 2012 Agenda

2020 Hampton Street
4th floor Administration Conference Room
1:00 pm

I. Meeting Call To Order—Geonard Price, Deputy Zoning Administrator

II. Old Business—None

III. New Business—Proposed Project Review

| Project # | Development | Location | Council District | Lots/Units/ Square Feet | Acres |
|---|---|---|---|---|---|
| SD-12-05 | Langford Road Tract (Sketch Plans) TMS # 17800-01-71 | Langford Road | 2 | 101 lots | 60.32 |
| SD-12-04 | The Villages @ Longcreek (Sketch Plans) TMS # 20401-01-03 | Off of Longtown Road | 9 | 332 units | 100.7 |

IV. Other Business—Next scheduled DRT meeting is Thursday, December 27, 2012 @ 1:00 pm

Development Review Team Members

Tracy Hegler, Planning Director
Geonard Price, Deputy Planning Director/Zoning Administrator
William Simon, Engineer II—Development
Andrea Bolling, Floodplain Administrator
Hope Hasty, Land Development Administrator
Holland Leger, Planning Services Manager
Miranda Spivey, Fire Marshal

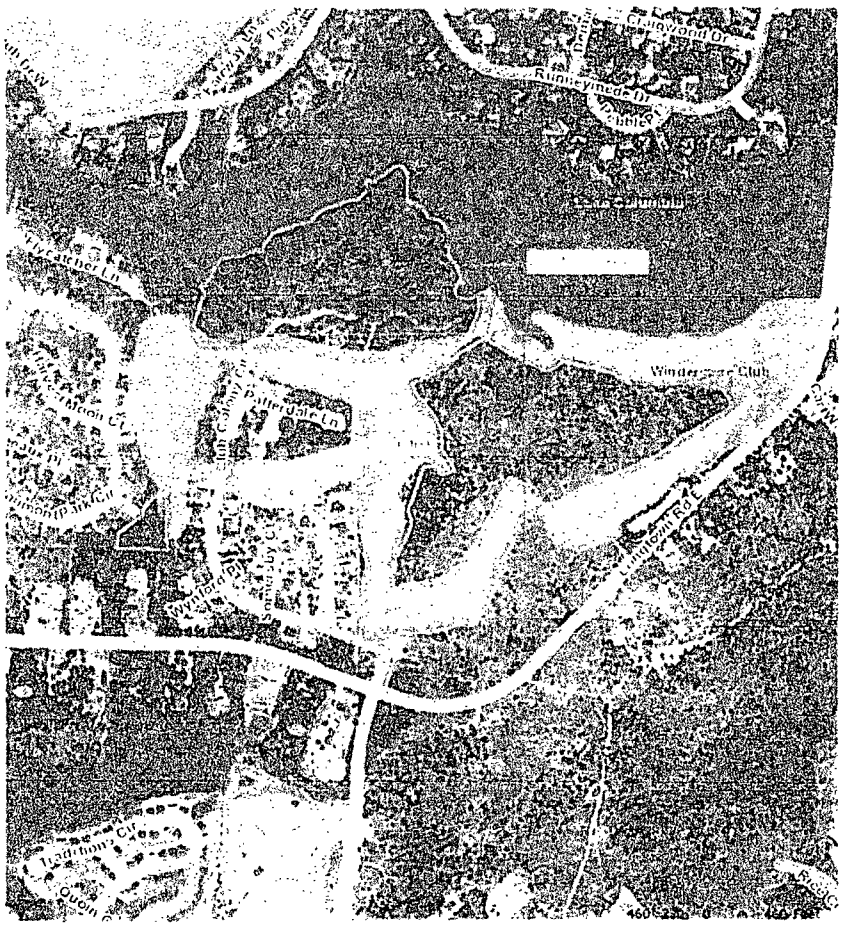
47

# Development Review Team Meeting
# November 29, 2012

**The Villages at LongCreek—Sketch Plans**

**Project Number**: SD-12-04
**Applicant**: Fairways Development Group, c/o John Bakhaus
**Location**: Longtown Road in Northeast Columbia
**TMS#:** 20401-01-03
**Zoning**: RS-LD

**Description of project**: The applicant is proposing a series of separate residential villages on approximately 100 acres of the existing LongCreek Plantation development in northeast Richland County. A 40-acre golf course already exists in the development and is not included in the project. The property is currently zoned RS-LD. Several types of housing are proposed, including detached single-family, zero lot line, and Charleston style, to total 332 units. The layout will follow a cluster housing design with approximately 31 acres of open space provided.



**DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES**
Post Office Box 192 • 2020 Hampton Street • Columbia, S.C. 29202
Zoning & Land Development: (803) 576-2180 • Zoning Fax: (803) 576-2182

December 7, 2012

John D. Champoux
125 Blythewood Road
Blythewood, SC 29016

**RE: The Villages at LongCreek – Sketch Plan**
**RCF # SD-12-04**
**TMS # 20401-01-03**

Dear Mr. Champoux:

Please be advised the Sketch/Concept Plan entitled **"The Villages at LongCreek", dated November 7, 2012,** was **approved** at the Development Review Team meeting on November 29, 2012.

**Note: This approval does not indicate certification or acceptance of the conservation areas per Richland County Land Development Code Sec 26-186 (d).**

The following items must be addressed at the time preliminary plans are submitted for review:

***Hope Hasty, Land Development Administrator, Planning (803-576-2188):***

1. No comments, approved.

***Andrea Bolling, Flood Coordinator, Public Works (803-576-2150):***

1. The 100-year floodplain should be delineated on the plan sheets based on the FEMA designated elevation, not a "scaled" elevation from the FIRM maps. The site appears to be within an AE Zone with a 100-year elevation of 348 feet, NAVD '88 at the project location.
2. Please provide the 100-year floodplain delineation of the wetlands within the proposed project area.
3. Delineate and quantify any areas of proposed floodplain encroachment within the floodplain of the on-site wetlands and the required compensation.
4. Provide match lines on the plans.
5. It is not clear if there is floodplain encroachment due to the proposed trail. If the trail is within the 100-year floodplain, be sure to provide details of the trail that clearly show there are no impacts due to the construction of the trail or provide encroachment and compensation information.
6. The proposed trail appears to impact Wetlands A and B. Please provide evidence (approved permit or exemption letter) that this impact has been approved by the Army Corp of Engineering (ACE).
7. It is not clear from the plans whether the "Waterfront Park" and associated structure extending into Lake Columbia is included in the proposed project. If these areas are included, please provide additional details as it appears the park may be within the 100-year floodplain and there may be impacts associated with the structure within the limits of the lake.
8. Please provide the datum (NAVD or NGVD) on the plans.
9. A wetland survey, approved by the Army Corp of Engineers, needs to be submitted.

***William Simon, Engineer II Development, Public Works (803-576-2413):***

1. No comments, approved.

***Miranda Spivey, Fire Marshal, Emergency Services (803-576-3405):***

1. No comments, approved.

*Geonard Price, Zoning Administrator, Planning (803-576-2174):*

1. The reference that the project will have attached dwellings needs to be removed. Neither the current zoning district, nor the application of the Green Code to the project will allow for attached dwellings.

*James B. Atkins, Director, Conservation Department (803-576-2082):*

Additional information is required before the Conservation Department can issue certification of the conservation areas. As mentioned during the Design Review Team (DRT) meeting of November 29, 2012, these include:

1. A listing of each individual conservation area by type (primary or secondary) and the surface area of each. Each area listed should be clearly labeled on a site map. Consistent with Sec 26-186, (g), each individual conservation area should also be identified by subtype and listed in a table. For example:

   > 10 acres of primary conservation areas are comprised of three acres of 100 year flood floodplains, two acres of stream buffers, two acres of slopes greater than 40% and three acres of wetlands. Fifteen acres of secondary conservation areas are comprised of 10 acres of healthy, native forests, two acres of trails and three acres of neighborhood greens.
2. Consistent with Sec 26-186, (g), (2), (b), the location, type and surface area of any proposed stormwater BMPs (bioswales, etc.) and outlets constructed in or impacting the proposed conservation areas.
3. The final detail of trail construction materials, for each section of trail, to determine the area of impervious trail surface. In addition, list all other impervious surfaces in recreation areas (gazebos, impervious sidewalks in neighborhood greens, community center, waterfront park, parking spaces at the community garden, etc.). Per Sec 26-186, (g), (3), impervious surfaces in recreation areas shall not be credited as conservation area. Also, please note, constructed facilities shall not exceed 15% of the conservation area [Sec 26-186, (g), (4) (a)].
4. Consistent with Sec 26-186, (g), (4) (a) and (b), quantification of the existing trees in the proposed conservation areas through a tree survey and/or photo documentation to provide a baseline reference for permanent protection of the conservation areas to be conveyed to the POA.
5. A plan detailing how the POA will permanently protect the conservation areas conveyed to the POA consistent with Sec 26-186, (g), (4), (b). Implicit in the plan is the requirement to physically delineate and mark the conservation areas and boundaries prior to any earth-moving, clearing, home construction, or similar activities which could potentially damage or encroach upon the future certified and accepted conservation areas.

The following is noted for informational purposes:

1. Upon written notice of sketch plan approval for a phase, the applicant shall have a two (2) year vested right to proceed with the development of the approved subdivision phase under the regulations that are in place at the time of subdivision approval. Failure to submit an application for preliminary plan approval within this two (2) year period shall render the sketch plan approval void. **Approval of the above-referenced sketch plan will expire on December 6, 2014**. However, the applicant may apply to the planning department for a one (1) year extension of this time period no later than 30 days and no earlier than 120 days prior to the expiration of the sketch plan approval.

2. Preliminary plans may now be submitted. Please use the Preliminary Plan submittal checklist included in the Major Subdivision Development application packet. This packet is available online at: http://www.richlandonline.com/departments/Planning/forms.asp.

If you have any further questions or concerns, please feel free to contact Hope Hasty at (803) 576-2188 or hastyh@rcgov.us.

Sincerely,

Hope Hasty
Land Development Administrator

Cc: John Bakhaus, c/o Fairways Development Group, Applicant
Miranda Spivey, Fire Marshal
William Simon, Engineer II – Development
Tracy Hegler, Planning Director
Geonard Price, Deputy Planning Director
Andrea Bolling, Flood Coordinator
Holland Leger, Planning Services Manager
Mike Bagley, SCDOT

DEC #7

# PLANNING COMMISSION

## APPEAL OF

## DEVELOPMENT REVIEW TEAM

12/20/2012

1. Project: VILLAGES AT LONG CREEK
2. Location: FLYCATCHER LANE; LONG CREEK PLANTATION

   TMS Page: 20401 Block: 01 Lot: 03 Zoning: RS-LD

3. The applicant requests an appeal on the decision of the Development Review Team's approval/~~denial~~ of the above referenced project.

4. The standards of review for the referenced project, according to section 26-54 (c)(3)(d)(3)(b) of the Richland County Land Development Code, are/are not met by the following facts:

   a) The proposed project complies with the policies and objectives of the county comprehensive plan:

   b) The proposed project complies with the purpose, scope, and provisions of this chapter:

   c) The county address coordinator has approved the subdivision name and addresses, and the planning commission has approved the subdivision road names. (See Section 26-183 of this chapter):

   d) The proposed project complies with the subdivision sketch plan checklist of the planning department:

   e) The following documents are submitted in support of this application:

      1.
      2.
      3.

      (Attach additional pages if necessary)

ATTACHED

RECEIVED 2012 DEC 20 PM 1:58 RICHLAND COUNTY PLANNING AND DEVELOPMENT SERVICES

SEE ATTACHED

APP B-1

Appellant's Signature | Address | Telephone Number

# RICHLAND COUNTY PLANNING COMMISSION

## APPEAL FROM

## DECISIONS OF NOVEMBER 29, 2012 DEVELOPMENT REVIEW TEAM ACTION ON THE VILLAGES AT LONGCREEK

**Project:** The Villages at LongCreek

**Location:** Longcreek Plantation; Flycatcher Lane

**RCF # SD-12-04**

**TMS** # 20401-01-03

**Zoning**: Residential, Single Family-Low Density District (hereinafter, RS-LD)

This is an appeal of the Development Review Team's approval of the sketch plan submitted in support of the above-referenced project. This appeal is to the Planning Commission under its authority pursuant to Section 26-54(c)(3)d.3.

The appeal relates to the standards of review for the referenced project.

**COMPREHENSIVE PLAN:**

The first standard of review is to the policies and objectives of the County's Comprehensive Plan. The Comprehensive Plan consists of a number of various factors that must be considered in any development. Section 6-29-540 provides the standard of the Planning Commission review.

The 2009 County Comprehensive Plan General Development Characteristics Matrix & Service Delivery Standards Chart for a Suburban area density is 2.75 dwelling units per acre. This is the strategy of the Community Facilities Element of the Comprehensive Facilities Element that is found at page 126 of the Plan. This matrix ensures the equitable distribution of community services and resources among all areas of the county and is in compliance with the zoning of Residential, Single Family, Low Density as required in the area but not enforced in the Villages at LongCreek project. This is a planning function to continue quality of life for resident of a projected subdivision as well as to continue the quality of life for current residents. It is an important factor in consideration of any new plan but particularly so in one where no minimum lot standards are enforced. The Priority Investment Element is designed to provide adequate public facilities for specified areas of the County. The planned project is not in a priority investment area and this reinforces the need for planning in an area which would be

overburdened by higher densities than the Comprehensive Plan considers appropriate. Priority Investment Areas also are a part of the Land Use Element which focuses development in an area that has sufficient infrastructure. The Comprehensive Plan specifies that even in these areas with neighborhood master plans such as LongCreek, which "density recommendations should refer to the proposed density outlined in the respective neighborhood master plan." This language is clarifying the language picked out of the Comprehensive Plan by the Planning Director that in some areas development should be a focus in residential, commercial, and industrial areas and varied at 4-8 units per acre. The current density is almost four units per available acre which is in line with the current low density zoning but not in line with proposed project. In this regard, the current project in not in accord with the Comprehensive Plan.

The Transportation Element of the Comprehensive Plan further is not in accord with the proposed development. This element wants to strengthen transportation planning with improved bus service. There is no bus service near the proposed project or planned for this area. This plan element suggests major developments be close to employment centers and placed where commuting is not required. The plan specifically addresses the growing traffic times, decreased air quality and other associates risks with developments that are overcrowded and distance from employment centers. The proposed plan would contain 332 units. That is a substantial amount to burden an already burdened infrastructure and transportation system and is not in accord with the Comprehensive Plan. Under current zoning which says with regard to lot area, "in no case shall it be less than 12,000 square feet," and that density is no more than one dwelling unit on a lot, so with 100 acres if every acre had a buildable lot then the area could be developed and obtain 363 lots. The actuality, however, is that there is considerable land within the area to be developed that is wet lands and other areas that would be used for infrastructure which generally are considered conservatively about 25% of the developed area so then there are only about 65 acres available for building. That would result in a total of 236 buildable lots under current zoning [65 times 43560.1 is 2,831,406.5 which divided by 12000 is 236].

On Land Use Element Goal Four, which the Planning Director mentioned previously as promoting compact developments with high density mixed use to reduce the amount of infrastructure and impervious surfaces, note that implementation strategy is to locate abandoned or vacant land with adequate infrastructure for potential use. This land has no infrastructure and the Planning Department did not enforce the requirement for the Green Code at Section (h)(11) which states the maximum impervious surface allowed is fifty (50%) of the developed area. The Planning Department director's position is that when the first sentence states that pervious material may be used for sidewalks and driveways the second sentence has no applicability unless the developer first uses pervious surfaces for sidewalks and driveways. This interpretation and application is directly in contravention to the cited goal four of the Land Use Element that is to reduce impervious surfaces. The same issue applies around goal five of the Land Use Element which is to limit impervious surfaces around waterways.

The strategy for Goal 8 of the Transportation Element of the Comprehensive Plan is to require right of way dedication for land development projects that affect major thoroughfares. Although the strategy is to amend the Land development Code to require this, the Transportation Element suggests the Planning Department encourage major developers to provide easements for future rights of way. Longtown Road East is an overburdened roadway that will provide egress and ingress to the project and which should be widened in the future. The developer who thinks strategically would easily agree to such an easement for a road project that would benefit their development. The lack of regard for this simple Comprehensive Plan strategy shows the Planning Department's overall misunderstanding and disregard of that plan.

**PURPOSES, SCOPE AND PROVISIONS OF CHAPTER 26**:

The purposes of Chapter 26 are, among other things, to prevent overcrowding of land, to avoid undue concentration of population and to lessen congestion in the roads. Article V, Zoning Districts and District Standards, is the primary method Chapter 26 regulates this function. Article V also facilitates a convenient, attractive, and harmonious community by providing an ordered zoning map and regulates density and the uses of buildings. It encourages the development of an economically sound and stable county by providing confidence to current and future residences that what they bought into continues in the same character and manner.

This project, as implemented by the Planning Department, would undercut the current Chapter 26 is to assure the timely provision of infrastructure to new developments. There are no new projected roads, or improvements to already overburdened roads in the immediate area of the project. The development is not in harmony with the current development that was undertaken over 20 years ago and that is mostly filled. The project would not be harmonious with currently developed land within LongCreek and the smaller lots and zero lot line areas on very small lots are not compatible with the neighboring properties and adjacent zoning districts.

Among the specified purposes of Chapter 26 is to regulate density and distributions of populations and the uses of buildings, structures, and lands with regard to water supply, sanitation, schools, and, among other things, disaster evacuation and other public services. This project is a development of property within an established community with fragile infrastructure and the barest public services. The sheriff is unable to provide sufficient patrols for the safety of the community. The community has contracted for private off-duty sheriff's deputies to supplement the meager patrols the sheriff is able to provide. Disaster evacuation is nil. The ingress and egress to the community is on unsatisfactory roads that can barely handle the normal commute loads. There is no evacuation plan. There are no road improvements planned or pending.

Current zoning is residential low density which by itself would burden an already overburdened and disregarded infrastructure. The dam at the middle of the lake side community is improperly

weakened with heavy weeds and small trees, the removal of which would loosen the earthen structure in such a manner as to exacerbate its already questionable ability to contain the lake.

The project would not protect the community from flood with the project disregarding the Green Code requirements for pervious surfaces on lots that slope down to a lake and with the removal of the vegetation and trees that currently provide protection from erosion of the dense impenetrable soils. The project description speaks to a minimal removal of trees but the plans indicate otherwise. The plans show the developable areas filled with dwelling units on lots not in conformity with current zoning or with what the bonus densities could afford as provided subsection (i) of the Green Code as a reward for setting aside certain lands for conservation.

The area is a scenic vista and ecologically sensitive. The project is not in conformity with many of the other purposes set forth in Section 26-2 of the Code and the Development Review Team did not examine these purposes with regard to this project other than the Conservation Director, who was not at the Development Review Team meeting, did note that there was insufficient quantification of existing trees in the conservation set-asides. He did not examine the preservation of trees in the areas to be developed which is a primary purpose of the Green Code, preserving tree cover which is a separate provision from tree cover in the conservation areas.

The project also does not comply with the purposes of the Green Code as stated in 26-186(a). The protection of scenic vistas noted in the proposed plans is removal of tress to protect views of the golf course. There would be major land disturbance with the project as planned, the disregard of impervious surfaces has already been mentioned above with the Planning Director's opinion that it is inapplicable unless the developer uses pervious surfaces for sidewalks and driveways. There are no wildlife corridors within the residential communities. There is no evidence of efficient community design in the project. In this regard, the portion of the project representing a specific village alongside Longtown Road East of 20.28 acres proposes 59 dwelling units none of which meet the standards for the Residential, Single Family, Low Density District set forth in Section 26-189 of the Land Development Code and which are applicable in for the project area.

Furthermore, there are no evident Green Code characteristics for this 20.28 acre village. There is no conservation set aside. There are two small secondary set asides and a street buffer representing secondary set asides of an insufficient basis to obtain a bonus for this village by itself. There are no wildlife corridors, no specified plans for impervious surfaces, and no indication of preservation of tree cover. This is a community like any other medium density district. The Planning Director and her Development Review Team include this area in the Green Code total package with credit for the set asides for the other villages because the plan is viewed as a whole. The Development Review Team position is that clusters are encouraged in the Green Code to maximize conservation and open space. The problem with that is the clusters already are provided and rewarded for set-asides in the other villages. In fact the bonus provisions of subsection (i) are utilized in those other village areas. There is no primary

conservation set aside in this really non-green village and the secondary set asides are insufficient to provide a bonus under subsection (i) of the Green Code. The only manner that would provide bonuses to this village would be if the conservation set asides are rewarded more than once which is not the plain reading of the Green Code. The treatment of the project as a whole by the Development Review Team is inconsistent with the project plans which present three distinct villages for this project. Two of those villages appear as Green Code projects, the third does not.

Finally, the sketch plan's designation of wetland areas is incorrect in that the depicted wet lands are not as large as the actual wet lands in the projected area for the development.

**INCORRECT APPLICATION OF SECTION 26-89 WITH SECTION 26-186 OF THE LAND DEVELOPMENT CODE.**

Section 26-89 is the applicable zoning district for this project. The listing of zoning districts does not contain a zoning district or zoning area known as Green Code Zoning. Article V of the Code is relates to zoning districts and zoning standards. The use of the term "standards" is important to understanding the applicability of the zoning provisions. Zoning District is defined in the code as a zone on the zoning map for which there are uniform regulations governing the placement, size, and spacing, etc of buildings or uses.

Density is defined as the number of dwelling units per *acre* of land. Emphasis added.

Section 26-89 provides at subsection (c) development standards. The provision refers to Table of Area, Yard, and Height Requirements in Section 26-131 and continues:

> "Provided, however, if a developer can meet the requirements found within Section 26-186, the development standards of 26-186 (i) may be substituted for the standards required in this section."

Subsection (i) is a bonus provision that refers back to Article V and that provides bonuses based on a developer meeting open space requirements. Bonuses are in density which in Article V is termed standards. Reading the Code as a whole, with the use of the term standards consistently referring throughout to zoning standards with the specific referral in Section 26-89 to subsection (i) of Section 26-186, the inference is clear that the standards of Section 26-89 apply to the Green Code with exception to the bonus provision. The bonus provision would be in a percentage of what is otherwise required so that the lot area of 12,000 square feet could be lessened to obtain a higher density as represented by square footage. This is more fully understood by looking to the manner of arriving at density by the plain language of Section 26-89 (c)(1) which is similar to several other zoning provisions in Article V. It reads:

> "(1) *Minimum lot area/density:* Minimum lot area: 12,000 square feet or as determined by DHEC, but in no case shall

> it be less than 12,000 square feet. Maximum density standard: no more than one (1) principal dwelling unit may be placed on a lot except for permitted dwellings. However, see the special requirement provisions for single-family zero lot line dwellings at Section 26-151(c) of this chapter."

DHEC is not involved and the Section 26-151 relate to Supplemental Use Standards.

The plain reading of this provision is that density is configured and determined by square footage. Read with the per acre determination is that for a general planning purpose, a developer could figure one acre of buildable land could obtain 3.63 building lots which with the "in no case shall it be less than" language would mean three dwelling units. On the other hand, two acres would hold seven (7) lots and so on. The plain reading of this provision is that the number of dwelling units is not determined by the total number of acres in any event; not by the definition of density and very specifically, not by the provision in Section 26-89 relating to the lot area. The density provisions and minimum lot area standards have not been met throughout the project.

Section 26-89(c)(2) provides a minimum lot width of 75 feet. The Development Review Team did not enforce this provision throughout the project.

The Development Review Team looks to a provision in the Section 26-186, the Green Code, that states an owner in the RS-LD zoning district may apply the development standards found within the Green Code in lieu of the development standards set forth for the applicable zoning district. The provision states that to obtain the substitute standards the developer must meet the requirements of the Green Code. Reading the Land Development Code as a whole, Section 26-186 must be read in conjunction with Section 26-98. Again, section 26-89 makes specific reference to subsection (i) of the Green Code, which relates to density standards. There is no other provision within the Green Code relating to zoning standards.

Subsection (h) of the Green Code specifies the requirements necessary to be eligible for the bonus available in subsection (i). This is specified in the provisions that authorize such bonuses. There is no width provision specified. The underlying zoning provision provides the width requirement, as mentioned above and as required to be reported in the concept plan required by Subsection (f). Subsection (f) begs the question as to why a minimum lot width is required or what it means other than it is a reference to the Section 26-89 minimum width requirement of 75 feet for the RS-LD district. Requirements in Subsection (h) relate to street frontages, underground utilities, stabilization of yards, street buffers, park roads, street lighting, sidewalks, storm management, maximum pervious surface allowed, etc. It also provides that the minimum subdivision size is 2 contiguous acres and it provides for minimum yard areas.

Subsection (h) states with regard to lot area that there is no required minimum yard area. Reading the provision as a whole, the no minimum requirement refers to those zoning areas

authorized for use of the Green Code that have no minimum lot area requirements, specifically, Sections 26-93 and 26-94, the RM-MD and RM-HD provisions that within their standards have no minimum lot area. If a minimum lot area were otherwise provided, it would undercut the zoning standards of those provisions. Again reading the entire Land Development Chapter 26 as a whole with the sections interacting, the reference is obvious. It also relates to the workability of the bonus provision in Subsection (i). The bonus is taken in a percentage of density. If density does not apply because of a no minimum lot area standard, the bonus of zero in Subsection (i) would be zero and would have no meaning. Both Sections 26-93 and 26-94 have stated densities for numbers of dwelling units authorized per acre yet are no minimum lot area districts. All zoning districts relate to density in some fashion. There is no zoning district with a wide open density as the Development Review Team would interpret this project. During the Development Review Team examination of this matter, your Appellant pointed out the two provisions relating to no minimum lot areas and their interpretation with regard to the Green Code but members of the staff were unable to answer and the Planning Director terminated the examination and closed the meeting. There was no formal motion or second for approval or disapproval of the project.

The Development review Team erred by failing to uphold and enforce the width and minimum lot area standards for Section 26-89 along with other standards dependant on the applicable zoning district.

Section 26-173 states standards for off-street parking. Off-street parking is required to be addressed in the concept plan pursuant to Section 26-186(f)(2). Table VII-1 of section 26-173 requires a minimum of two off street parking spaces for every single family dwelling unit. This is not something that can be delayed until the submission of construction plans because it is a specific requirement for the Concept Plan. The Development review Team failed to uphold this requirement for the concept plan.

**SUBDIVISION SKETCH PLAN AND SUBDIVISION ROAD NAMES:**

The Major Subdivision Submittal Checklist does not conform to the requirements of the Green Code submissions so the check plan is of little value. It is noted that the application fee is noted "N/A" which fails to consider that this is a new application and treated as such by the Planning Department. There are no project road names listed on the sketch plan although there is a statement previously that you authorized the names for the proposed names. The property zoning of RS-LD is not correctly applied.

**CONFLICTING PROVISIONS:**

Section 26-21(d)(3)b of the Land Development Code provides that in the event requirements or standards contained in different provisions of the chapter conflict as to their application to a use the more restrictive provision shall apply. If the Planning Commission finds that the standards of

Section 26-89 and the requirements in Section 26-186 conflict, then this provision requires that the more restrictive provision shall apply.

**APPLICANT FOR THE GREEN CODE:**

The Applicant for the project is not readily clear with the treatment of the project by the Development Review Team. The decision of the Development Review Team was not provided to the landowner who is required under the Green Code to be the applicant. The land owner is Fairways Development, LLC. The DRT decision was sent to John D. Champoux. A copy was sent to Fairways Development Group, again, not the owner of the land upon which the project is to be completed. The Applicant is stated to be John Bakhaus of Fairways Development Group, not Fairways Development, LLC, a different corporate entity. The letter of transmittal for the project is that it is being submitted by Fairways Development Group yet it is signed by Fairways Development LLC. The treatment by the Development Review Team and the Planning Department is that the application is of someone other than the owner. This comports with the submitting correspondence. The application and its acceptance as such by the Development Review Team are defective in this regard as it is not an application for the owner of the property.

***Requested Relief***: That the project be rejected as not properly submitted and, in the event you consider it properly submitted, that it be returned to the Development review Team to enforce the zoning standards for the project as indicated above.

Your Appellants are adjacent landowners to the proposed project and your applicant Samuel T. Brick also is a contiguous landowner. The Applicant is not making any claim for damages, attorney fees, or the return of application fees. This is an appeal only.

Respectfully submitted, Your Appellants,

Monika Iskersky 803735 8465
305 Club Colony Circle
Blythewood, S.C. 29016
Adjacent Property Owner

Samuel T. Brick, Jr. 803 546 4895
124 Runneymede Drive
Blythewood, SC 29016
Adjacent and Contiguous Property Owner

**RICHLAND COUNTY PLANNING COMMISSION**
**February 4, 2013**

*[Members Present: Heather Cairns (in @ 1:13pm), Olin Westbrook, Kathleen McDaniel, David Tuttle, Patrick Palmer, Stephen Gilchrist, Bill Theus, Wallace Brown, Sr. (in at 1:08pm); Absent: Howard Van Dine]*

Called to order: 1:01 pm

CHAIRMAN PALMER: Alright, we'll call the February meeting of the Richland County Planning Commission to order. Allow me to read this into the Record. In accordance with the Freedom of Information Act, a copy of the Agenda was sent to radio and TV stations, newspapers, persons requesting notification and posted on the bulletin board located in the lobby of the County Administration building. Has everybody received the January Minutes? Any motions?

MR. TUTTLE: Mr. Chairman, if I could I'd like to make a motion that we approve the January Minutes as received.

MR. GILCHRIST: Second, Mr. Chairman.

CHAIRMAN PALMER: We have a motion and a second. All those in favor say aye?

*[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist; Absent for vote: Cairns, Brown; Absent: Van Dine]*

CHAIRMAN PALMER: None opposed. And did everybody just receive the, the new Agenda? Yes? Do we have any amendments to the Agenda? Do we have a motion to approve the Agenda?

MR. TUTTLE: So moved.

MR. GILCHRIST: Second, Mr. Chairman.

MS. CAIRNS: Okay.

CHAIRMAN PALMER: Okay, would someone like to, after further discussion, remake the motion or make one for the first time?

MS. MCDANIEL: Well, I'll remake my motion that we send Case No. 13-03 MA forward to County Council with a recommendation of denial.

MR. TUTTLE: Second.

CHAIRMAN PALMER: We have a motion and a second. Any other discussions? All those in favor of the motion please say aye? Any opposed?

*[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown; Abstained: Cairns; Absent: Van Dine]*

CHAIRMAN PALMER: Okay. And we are a recommending Body to County Council. They meet back here in these same Chambers on February the 26th, and there are options moving forward as well if you'd like to get together with Mr. Price and see what will happen at the County Council meeting. Thank you.

MS. MCDANIEL: Ms. Linder? Can I get a recusal form from you?

CHAIRMAN PALMER: Okay, please allow me to read this into the Record. Mr. Palmer, I must request to be excused from participating in discussion or voting on Agenda Item No. 1 AR regarding Longcreek Plantation which is scheduled for review and/or discussion at today's Planning Commission meeting. It is my understanding of the Rules of Conduct, Provisions of the Ethics, government accountability and campaign reform laws that since my law firm represents the seller of the subject property, Case No. 13-04AR, I will be able to participate in this matter through discussion or voting. I would therefore respectfully request that you indicate for the

1 Record that I did not participate in any discussion or vote relating to this item,
2 representing a potential conflict of interest. I would further request that you allow and
3 direct this letter to be printed as a part of the official Minutes and excuse me from such
4 votes or deliberations and note such in the Minutes. Thank you for your consideration in
5 this matter. Sincerely, Kathleen McDaniel. Okay.
6 MR. TUTTLE: Mr. Chairman, I'd like to make a motion that we go into Executive
7 Session to seek legal advice from our counsel.
8 CHAIRMAN PALMER: We have a motion, do we have a second?
9 MR. GILCHRIST: Second.
10 CHAIRMAN PALMER: All those in favor say aye? Any opposed?
11 *[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown;*
12 *Absent: Van Dine]*
13 MR. BRICK: [Inaudible] Also I would object to the [inaudible] this attorney
14 because this attorney is [inaudible] and you're acting as a judicial body and as a judicial
15 body she's the, she represents the person who would be [inaudible] to the appeal. So I
16 would object to this attorney going into [inaudible]. And first of all I don't know
17 [inaudible]. [Inaudible]
18 MR. TUTTLE: I, I'm confused, Mr. Brick. We're, right now we're not currently in a
19 public discussion mode, so you're out of order.
20 MR. BRICK: I understand [inaudible].
21 MR. TUTTLE: Excuse, you're, Mr. Brick, you're out of order.
22 MR. BRICK: [Inaudible]
23 *[Executive Session]*

1 MR. TUTTLE: Let the Record show this is a Pepsi. [Laughter]

2 CHAIRMAN PALMER: Okay, Ms. Linder, would you like to report us out of
3 Executive Session?

4 MS. LINDER: Mr. Chairman, the Executive, the Planning Commission went into
5 Executive Session to receive legal advice and no action was taken.

6 CHAIRMAN PALMER: Okay, thank you. Alright next up on the Agenda is Case
7 No. 13-04 AR.

8 **CASE NO. 13-04 AR:**

9 CHAIRMAN PALMER: What we're gonna do here is we're going to allow 15
10 minutes per side to present their case, their arguments per the case. So I think in this
11 instance we'll start with Mr. Brick since he's the one challenging the ruling of the DRT.
12 So Mr. Brick, the floor is yours.

13 MS. LINDER: Mr. Chairman, do you have a copy of the signup sheet?

14 CHAIRMAN PALMER: We do, and there's, Mr. Brick is the only one signed up to
15 speak.

16 MS. LINDER: Thank you.

17 **TESTIMONY OF SAMUEL T. BRICK:**

18 MR. BRICK: I do object to the – I have a legal memorandum I'd like to present
19 and –

20 MS. CAIRNS: This is, I believe this, is this the same – is there one, only one?

21 MR. BRICK: It's similar. It's, this is similar to the one that I sent out earlier. That's
22 not the application, that is –

MS. CAIRNS: No, I understand. We have the application and then the – but you're saying this is different than the one –

MR. BRICK: It's a little bit different, yes. I cleaned it up a little bit. I'd like to make it for the Record too, please.

CHAIRMAN PALMER: And just for the Record as well, Ms. Linder, I think we had Ronald Johnson, did you want to speak on this case?

MR. JOHNSON: Yes, sir.

CHAIRMAN PALMER: Okay, so we do have one person signed up to speak on the case as well.

MS. LINDER: Thank you.

MR. BRICK: I also for the Record would like to object to Ms. Linder being the attorney. She is not the, part of the legal office for the county, she works specifically for the Planning Department and she is the attorney for the Planning Department as she has noted previously to you, and I would object to her participating. And I also object to her being in the Executive Session that you all just held. So that's, that is an objection.

CHAIRMAN PALMER: Okay.

MR. TUTTLE: Duly noted.

MR. BRICK: Okay, thank you. Alright. There are four things – first of all I think you all are familiar, matter of fact I know most of you are familiar with the project. The project is 100 acres to be developed under the Green Code. And it is to be in an area in Longcreek Plantation which is hilly and has got a lot of wetlands in it and there's a fairly steep slope involved in it. The, the, the project has an application with approximately 30% set aside. This set aside includes a number of things, some conservation areas

Planning Commission )
) ORDER ON AN ADMINISTRATIVE APPEAL
County of Richland )

Date Heard: February 4, 2013

Appellant: Sam Brick, 124 Runneymede Drive, Blythewood, SC 29016

Other persons: Ronald Johnson, 2004 Longtown Road East, Blythewood, SC 29016

Project: Villages of Longcreek
TMS#: 20401-01-03

Case No.: 13-04 AR

The Richland County Planning Commission held a public hearing on February 4, 2013 to consider the Administrative Appeal of Mr. Sam Brick, Appellant, pursuant to Section 26-58 and Section 26-54 (c) (3) d. of the Richland County Code of Ordinances.

After consideration of the evidence and arguments presented, the Planning Commission decides as follows:

**Findings of fact:**

Notice of the public hearing for this case was published in a newspaper of general circulation within the county no less than fifteen (15) days prior to this public hearing.

Mr. Sam Brick, Appellant: The project is 100 acres to be developed under the Green Code. It is to be in an area in Longcreek Plantation that is hilly and has a lot of wetlands in it, and there is a fairly steep slope involved in it. The project has approximately 30% set aside, which includes a number of things, such as some conservation areas that are wetlands and some very steep slopes, and some other secondary conservation districts under the Green Code. There are some problems with the Comprehensive Plan that I want to note. There are four things that you have to look at: First of all with regard to the land use element, one of the things about the Comprehensive Plan is to minimize impervious surfaces and there is no utilization or implementation of impervious surfaces being limited in this application. It is not a priority investment area; they do not get any monies and there are no special things. A little bit more liberal changes would happen in a priority investment area than in the other areas. The community facilities element says 2.75 dwelling units per acre are recommended, and this project has a whole lot more than that. It is also not in sync with the transportation element, as there is no bus service, it is not close to employment centers, there are no walkways throughout the general area, and there is a long commute into town, 16 or 17 miles. The land use element talks about how suburban areas should be developed at four to eight dwelling units per acre. In this particular area, it is zoned at low density, single-family residential, low density. Sections 26-89 and 26-86 work together - the density provision under Section 26-89 provides a gross, you get the maximum houses, and it is all done by the number of acres total. The density is one dwelling unit per lot area. And the lot area is no more than 12,000 square feet per lot area. That is what the language says in Section 26-89. However, there are two exceptions, one is if DHEC determines otherwise and the other is Section 26(i). Section 26(i) is the development standards of the

Green Code according to Section 26-89. Both of these provisions – the provision with regard to 26(i) and the Green Code – were enacted within the same ordinance. That means a lot when we get to how many houses and all that sort of thing. The project calls for 332 dwelling units, and that's with no density. All the residential districts have zoning densities in them, but there are none being applied to this particular project. Density works with only the buildable land, not the total land in the property. The statute says 12,000 square feet is the minimum – you can not have less than 12,000 square feet unless you get the bonus density under Section 26-186(i), so the number of houses is considerable. You could never get 332 dwelling units on 100 acres under this particular provision with the 12,000 as the minimum lot size because you have to have infrastructure. So once you have the infrastructure of the roads, you can not get density on that. So if you take 30% as the set aside, another 15% for infrastructure, you get about 55 building acres and that gives you 199 dwelling units. The Planning Department takes away the density requirements because they say that although the zoning districts have development standards, Section 26-186(b) says the standards found within this section may be applied in lieu of the applicable zoning district. Now the only ones that are found within this section are in subsection (i), and subsection (i) is density, and that's the only place where you have zoning standards. The difference between standards and requirement is that standards are something that are set up or established by authority as a rule for measuring quantity and requirements are things applicable and a condition precedent to any one who wants to obtain the benefit. Requirements apply to everybody, but standards will apply to the people in the area that is concerned. The requirements provision in 26-186(h) has development requirements; they do not call it standards. These are the things that you have to get to get into the bonus sections. To get into the bonus sections you have to meet the minimum requirements, and this applies to every applicant. The reason staff says there is no minimum lot size in Section 26-186(h) is because there are two provisions that are eligible for this – Sections 26-93 and 26-94, the multi-family housing, both have no minimum lot size. If you had anything else in there besides those, you would disenfranchise both of those two groups and the statute would not make sense for those two. They also have minimum width requirements in there; they both have a 50' minimum width requirement even though there's no minimum lot size, and there are standards that they have in there. So there is just no reason not to have a density. The statute itself provides density, both in Section 26-80 and Section 26-89. The Planning Department and the Development Review Team did not apply the density standards in this particular matter, which is an error in the application of the Green Code and the administration of residential low density zoning district applicable to the project. The only development standard found in this section is the density provision, and its bonus feature. The intent is if there is a conservation set aside, a bonus is given. And that is the purpose behind the Green Code. Minimum lot widths are not being applied, and they are not being enforced. In Section 26-186(f)(3), it says that minimum lot widths have to be reported, but they are not reported. So I think this project needs to be sent back for no other reason than for minimum lot widths to be reported. I would like to put a study that was done in 2009 about pervious material into the Record. In conservation districts, in Green Code areas, pervious surfaces are vitally important and it is a major part of conservation. You do not want to have pervious material overwhelming the development because of the water flow. The first sentence in this subsection 26-186(h)(11), which is a permissive sentence – you can use pervious material on driveways and sidewalks. The second sentence is a requirement – you can not have more than 50% impervious material in your developed areas. It does not say the entire area, but rather, it specifically says developed areas, so that is another violation. You are supposed to look at the sketch plan, but it is the wrong sketch plan. They do not have a sketch plan for the Green Code so you would see that all the Green Code requirements were met. Also, roads are not included in the sketch plan at all.

Ms. Tracy Hegler, Planning Director: The Comprehensive Plan does certainly set the guiding principles for growth in the county. It's a very important document for us, but it's not a regulatory

item. It simply is a guiding principle. We certainly look to those things when we make decisions on these development applications and reported those during the last appeal. Mr. Brick is correct, this project is not in a priority investment area; it is in what is called a suburban area and the Comprehensive Plan does outline recommendations for what suburban areas should look like, which as Mr. Brick mentioned is four to eight dwelling units per acre. That is reported several times in the land use element of the Comprehensive Plan, so we use that as our guiding principles. The community facilities element which Mr. Brick mentioned, states 2.75 units per acre. That chart is a modeling document of numbers that went into a program. It is a program that looks at how much of the land would be developed at a future build out scenario. That's what the Comprehensive Plan looks at in the future; for example, in 2035, if population is X and we have designated this much acreage as suburban, what would the density be if we filled up every single acre? So 2.75 is the number it came to, but the Comprehensive Plan also states right after that, that that is not the most efficient use of land and it highly recommends that we develop at a higher density. So the 2.75 is merely a modeling number to interpret what kind of developable acreage we would obtain. It is very clear in the Comprehensive Plan that four to eight units is what the county is prescribed for their suburban densities. The Appellant mentioned that the project is not in sync with the transportation element, but there are suggestions in the housing element that development be located near large employment centers and on bus lines. It also suggests in the transportation element that we do urban infill and that we provide a variety of housing types. So you can see that there are different pieces of the Comprehensive Plan, and you can not meet every single strategic goal within the Comprehensive Plan, as those things would contradict. We believe that this project does fit within the Comprehensive Plan's goals. We certainly use the Green Code, which is Section 26-186, and it very clearly states that it is a Code that you can use in lieu of the standards of the underlying densities. The underlying zoning for this site is RS-LD, which is found in Section 26-89. There, density is one dwelling unit per lot area, and that is still true for the Villages at Longcreek. But Section 26-186 specifically states that the standards of this Section that can be used in lieu of the underlying zoning district standards; that sets it apart. And it specifically states that there are no minimum lot areas if the Green Code (Section 26-186) standards are being used. Also, State enabling legislation speaks to the ability to create clustering neighborhoods. In fact, it encourages it, and it says that in clustered neighborhoods you may vary your lot sizes from your otherwise applicable lot sizes. This concept is enforced all throughout this project, this idea of clustering and getting away from minimum lot sizes, even in your underlying zoning. The project calls for 332 units. There is certainly density, if you take that, divide it by 100 acres roughly, that's 3.32 units per acre. The underlying zoning allows 3.63 units as a gross density, that is common practice everywhere, in planning practice anyway. Mr. Brick mentioned you can not have lots less than 12,000 square feet, but I completely disagree by the intent of the Land Development Code, by the Green Code language, and by State enabling legislation that allows us to do clustering development. RM-MD and RM-HD are two of the underlying zoning districts in which you can apply the Green Code, and it very clearly states in Section 26-186 that there is no minimum lot size required. As Mr. Brick mentioned, conservation set aside gets a bonus, that is the intent of this Code as well. The property has set aside more than what is required to enact this density bonus. They are building less than what they are allowed to with the underlying zoning. There is no minimum set aside required to relax a lot size, only a minimum to enact a density bonus. Regarding pervious material, I would argue that if it were to be a requirement, the language they would be separated. It would not state, you may use pervious material and if you do then, then here's the 50% requirement. We have been working with the developer on much of the low impact development design techniques they are proposing for the site. The plan is three stages – the bottom three, the north and the south in the middle, are actually Lakeland soils. They are very sandy and actually have enormous infiltration rates, so very little runoff is expected at that site. And the northern most piece, which is adjacent to the lake, has a 100' buffer, and that is 50% more than is required by our Code. It

also has more clay like soil, so its infiltration rate is a little less stable; but the developers are designing specific Low Impact Development (LID) drainage principles and given the soil itself, I think we are going to find that it meets the requirements of the Green Code. They also must meet the requirements for storm water runoff, as they cannot have more runoff post-production than they did in pre-production. Those standards and those numbers will be calculated during the preliminary planning phase, but at this time, we are only reviewing a concept plan. Again, it is the Development Review Team's interpretation of Section 26-186, the Green Code, that those standards are in lieu of the underlying zoning standards. The underlying zoning district does set a starting point for us, as it establishes the basis for what we would consider the density to be, and if we were to enact a density bonus, where would we go from there. But otherwise, we take the Green Code at its word of having specific stand-alone standards.

Mr. Ronald Johnson: As a responsible developer, we have worked with Staff and we also held seven (7) open forum meetings in and around the Longcreek area and invited participation both from residents, as well as people outside of the area, to come in and voice their concerns or questions about what it is to operate and develop under the Green Code, what is involved in low impact development. Those of us in the business would suggest that the type of development that we are proposing is much more responsible, and it preserves far more of the developable area by the set asides that have been talked about. We believe very strongly in the conservation aspects of what we are doing. We have engaged outside services to have a tree study done and we have had wetlands surveyed and delineated; so we have gone above and beyond what is required to try to make sure that the areas that we are proposing will be developed in a way that would have the least damaging impact on the land in question. I do hope that the Commission understands what we have tried to do and hope to endeavor to do, will be done in the best professional manner.

**Conclusions of law:**

Pursuant to Section 26-58(e) of the Richland County Code of Ordinances, we, the Planning Commission, have held a public hearing on this appeal and we have heard testimony and reviewed the appellant's request to overturn the DRT's decision to approve the sketch plan for the "Villages of Longcreek". Thus said, and based on all of the foregoing, we find that said sketch plan meets all of the standards found under Section 26-186 of the Richland County Code of Ordinances and therefore uphold the Development Review Team's **APPROVAL** of the sketch plan and **DENY** the Appellant's request to overturn such decision.

**AND IT IS SO ORDERED!**

Patrick Palmer, Chair
Richland County Planning Commission

Date Mailed to Appellant and
to Other Parties in Interest: SEH 3/4/13

**NOTICE OF APPEAL TO CIRCUIT COURT MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED.**

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Civil Action No. 13-CP-40-1643 |
| Samuel T. Brick, | ) | |
| Petitioner, | ) | |
| v. | ) | **NOTICE OF MOTION AND MOTION TO DISMISS ON BEHALF OF RESPONDENT RICHLAND COUNTY PLANNING COMMISSION** |
| Richland County Planning Commission, | ) | |
| Respondent. | ) | |

TO: SAMUEL T. BRICK, *PRO SE* PETITIONER:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Respondent Richland County Planning Commission will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, at such time and place as may be set by the Court, for an Order granting Respondent Richland County Planning Commission's Motion to Dismiss as to Petitioner's Appeal based upon the following grounds:

1) The Petitioner does not have standing to appeal the Respondent's Order because he is not a property owner whose land is the subject of a planning commission decision pursuant to S.C. Code Ann. § 6-29-1150(D)(2).

2) In the alternative, if the Petitioner is found to be a property owner whose land is the subject of a decision of the planning commission, then his appeal must be dismissed because Petitioner failed to request pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-1150(D)(2) and 6-29-1155.

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Said Motion is based upon the pleadings filed in this case, rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: _____

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MICHAEL B. WREN
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ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY PLANNING
COMMISSION

Columbia, South Carolina
May 31, 2013

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Civil Action No. 13-CP-40-1643 |
| Samuel T. Brick, | ) | |
| Petitioner, | ) | |
| v. | ) | **RETURN TO APPEAL ON BEHALF OF RESPONDENT RICHLAND COUNTY PLANNING COMMISSION** |
| Richland County Planning Commission, | ) | |
| Respondent. | ) | |

Respondent, Richland County Planning Commission, by way of Return to the Petitioner's Appeal, alleges as follows:

1. The Respondent denies that the Petitioner has stated any proper basis or ground for reversal of the decision of the Richland County Planning Commission which is on appeal.

2. The Court's standard of review in South Carolina is the abuse of discretion standard. Under that standard of review, the findings of fact by the Planning Commission must be affirmed if they are supported by some evidence. In this matter, the findings of fact by the Planning Commission are clearly supported by some evidence, and the Planning Commission has not acted arbitrarily or in excess of its lawfully delegated authority.

3. The Petitioner may not rely on legal arguments or positions different than what was raised to and ruled upon by the Planning Commission. This Court lacks subject matter jurisdiction to entertain any legal grounds not raised to nor ruled upon by the Planning Commission.

4. The Petitioner does not have standing to appeal the Respondent's Order because he is not a property owner whose land is the subject of a planning commission decision pursuant to S.C. Code Ann. § 6-29-1150(D)(2).

5. In the alternative, if the Petitioner is found to be a property owner whose land is the subject of a decision of the planning commission, then his appeal must be dismissed because Petitioner failed to request pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-1150(D)(2) and 6-29-1155.

DAVIDSON & LINDEMANN, P.A.

BY: _____

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ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY PLANNING
COMMISSION

Columbia, South Carolina
May 31, 2013

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, Pro Se | ) | **MEMORANDUM OF LAW** |
| vs. | ) | **IN RESPONSE TO** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **RICHLAND COUNTY PLANNING COMMISSION** |
| Appellee. | ) | **MOTION TO DISMISS APPEAL** |

## RESPONSE TO APPELLEE'S MOTION TO DISMISS APPEAL

Appellant, Samuel T. Brick, in response to the motion by the Appellee contends the following:

1. *Appellant's standing*. The Richland County Code and the South Carolina provisions enabling such ordinance provide specific authority for an appeal of staff action on a land development plan by any party in interest (Section 6-29-1150(C) of the South Carolina Code provides the any party in interest authority). County regulations (Section 26-58(b)(1)) provide authority for an appeal by any person who may have a substantial interest in the decision (although referring to the state requirement that states any party in interest). The county provision specifically references appeals by an applicant (it does not limit this to land owners), a contiguous landowner, or an adjacent landowner. Appellant paid his appeal fee, filed such an appeal, and the appeal was processed by the Planning Department and the Planning Commission. There was no objection made to Appellant's authority to file or to make such an appeal. Appellant is an adjacent and contiguous landowner although the state provisions do not limit



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appeals accordingly. See below Appellant's discussion in this regard, copied from his Response to the Intervener Fairways Development, LLC Motion to Dismiss.

This appeal was filed with this Honorable Court under authority of Section 26-54 (c)(3) d.1. of the Richland County Code, that states "Appeals shall only be filed by the applicant, a contiguous landowner, or an adjacent landowner,...". The cited Richland County Code provision at paragraph (c)(3) d.5. states any person with a substantial interest in the decision may appeal the planning commission decision to the circuit court. It further relates that in the alternative (presumably if the Planning Commission's decision is against the property owner's interests) a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of the appeal and request for pre-litigation mediation in accordance with Sections 6-29-1150 and 6-29-1155 of the South Carolina Code. Paragraph 6-29-1150(D) provides two different appeal procedures for appeals from a planning commission decision. The first relates to an appeal by a party in interest from the final administrative decision by the commission. The time within which to file an appeal commences from the date the commission provides the appellant actual notice of its decision. Paragraph (D)(2) states if the appeal is by a property owner whose land is the subject of a decision of the planning commission, the period starts from the date the decision of the board is mailed. Pre-litigation mediation is only required for appeals by such property owners. That the limitation is silent as to other appealing parties does not incorporate other such parties under its umbrella. The state provision for mediation (Section 6-29-1155), referenced in the county regulation, authorizes a party with substantial interest (presumably the party that prevailed at the Planning Commission stage) to intervene as a party in the pre-litigation mediation. Reference to this intervention clarifies that the pre-litigation mediation specifically refers to property owners whose land is subject of a decision of the

planning commission, not just to any person who is a property owner. Paragraph 6-29-1155(A) clearly relates to the property owner referenced in Section 6-29-1150(D)(2). Appellant's authority to appeal is under 6-29-1150(D)(1)of the South Carolina Code.

2. *Adjacent and contiguous landowner*. The Richland County Land Development Code at Section 26-54(c)(3)d 1 provides procedures for appeals from Development Review Team decisions. It states appeals may only be made by the applicant, a contiguous landowner, or an adjacent landowner. In this regard the County Code unnecessarily and improperly limits the "interested party" language of the State enabling provision (Section 6-29-1150(C)). The issue was not raised by the Planning Department and Appellant's filing fee and Appeal were accepted and acted on by the Planning Commission. The matter, however, is moot because your Appellant is a party of substantial interest and is an adjacent and contiguous landowner to the property that is proposed for Green Code development. Appellant is adjacent as that term is defined in the Land Development Code, Section 26-22 "*Lot,adjacent*. A lot that is contiguous to another lot." Section 26-21(b), *General Rules of Construction*, (9) states the term "contiguous", as applied to lots or districts, shall be interpreted as meaning having a common boundary of ten (10) or more feet in length. Appellant and the project known as Villages at Long Creek share a common boundary of the waterway, known as Lake Columbia or by some persons as Lake Windermere. The Attorney General of South Carolina has opined that contiguity should be liberally construed and that water does not destroy contiguity between properties (Opinion of April 11, 2012, to The Honorable Rick Quinn). The Attorney General notes that the S.C. Supreme Court case of Eldridge v. S.C. Dept. of Transportation, 384 S.C. 548, 683 S.E. 2d 483 (2009) is particularly instructive. The Eldridge case explains the South Carolina Supreme Court's broad interpretation of the term "contiguous," and that contiguity is not destroyed by an

intervening connector such as water. Appellant's property is less than one-tenth of a mile across the waterway from the proposed project.

3. *Improper Record.* Of significance to this matter that touches on Appellant's right to a fair hearing is recently learned information that the Planning Department provided an incorrect file to the Planning Commission for its action on Appellant's appeal. Appellant requested clarification of this matter a number of times with counsel for the Appellee, Richland County Planning Commission, but Counsel has not responded. Richland County certified what was presented to the Planning Commission for the appeal and it is not the appeal Appellant filed with the Planning Department. The agenda packet that was provided the Planning Commission for its action on Appellant's appeal is incorrect.

Appellant's appeal to the Planning Commission was made on December 20, 2012. The appeal forwarded as part of the agenda packet and this record indicates what was sent to the Planning Commission was the appeal dated September 5, 2012. The Development Review Team action in the formal Record on Appeal is that of August 14, 2012 not the December 7, 1912 Development Review Team action that formed the basis of Appellant's appeal. Other papers in the agenda packet and the formal Record provided this Honorable Court are not part of this appeal and are misleading and prejudicial to Appellant's action.

Correct documents that should have been included in the agenda packet for the Planning Commission's action are those documents presented in Appellant's Notice of Appeal and Appeal in the instant proceedings. The formal Record of Appeal submitted by Counsel for Appellee Richland County Planning Commission is inaccurate and prejudicial. Basically the staff action (the Development Review Team action) that Appellant appealed to the Planning Commission

must be presented to the Planning Commission as the matter they must consider. The Planning Commission is required to conduct a public hearing on the appeal. They must have the appeal to conduct such a hearing. See the required procedures for such appeals in Section 26-54(c)(3)d.3. Appellant's amended appeal will request this Honorable Court to return the matter to the Richland County Planning Commission for approval of the former appeal in accordance with Section 26-54(c)(3)d.3[a] and Appellant will move for such a return when this Motion is heard.

Dismissal of this matter at this time would be unjust and a violation of Appellant's rights to a fair disposition of the matter.

WHEREFORE Appellant requests this Honorable Court to deny Appellee Richland County Planning Commission's Motion to Dismiss the Appeal.

Respectfully submitted,

Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

July , 2013
Blythewood, SC

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Memorandum of Law and Response to Appellee's Motion to Dismiss, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on July ____, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, Pro Se | ) | **AFFIDAVIT** |
| vs. | ) | **IN RESPONSE TO** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **RICHLAND COUNTY PLANNING COMMISSION** |
| Appellee. | ) | **MOTION TO DISMISS APPEAL** |

**AFFIDAVIT AND**

**RESPONSE TO APPELLEE'S MOTION TO DISMISS APPEAL**

Appellant, Samuel T. Brick, in response to the motion by the Appellee by Affidavit and under oath avers the following:

1. *Appellant's standing*. The Richland County Code and the South Carolina provisions enabling such ordinance provide specific authority for an appeal of staff action on a land development plan by any party in interest (Section 6-29-1150(C) of the South Carolina Code provides the any party in interest authority). County regulations (Section 26-58(b)(1)) provide authority for an appeal by any person who may have a substantial interest in the decision (although referring to the state requirement that states any party in interest). The county provision specifically references appeals by an applicant (it does not limit this to land owners), a contiguous landowner, or an adjacent landowner. Appellant paid his appeal fee, filed such an appeal, and the appeal was processed by the Planning Department and the Planning Commission. There was no objection made to Appellant's authority to file or to make such an appeal. Appellant is an adjacent and contiguous landowner although the state provisions do not limit

appeals accordingly. See below Appellant's discussion in this regard, copied from his Response to the Intervener Fairways Development, LLC Motion to Dismiss.

This appeal was filed with this Honorable Court under authority of Section 26-54 (c)(3) d.1. of the Richland County Code, that states "Appeals shall only be filed by the applicant, a contiguous landowner, or an adjacent landowner,...". The cited Richland County Code provision at paragraph (c)(3) d.5. states any person with a substantial interest in the decision may appeal the planning commission decision to the circuit court. It further relates that in the alternative (presumably if the Planning Commission's decision is against the property owner's interests) a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of the appeal and request for pre-litigation mediation in accordance with Sections 6-29-1150 and 6-29-1155 of the South Carolina Code. Paragraph 6-29-1150(D) provides two different appeal procedures for appeals from a planning commission decision. The first relates to an appeal by a party in interest from the final administrative decision by the commission. The time within which to file an appeal commences from the date the commission provides the appellant actual notice of its decision. Paragraph (D)(2) states if the appeal is by a property owner whose land is the subject of a decision of the planning commission, the period starts from the date the decision of the board is mailed. Pre-litigation mediation is only required for appeals by such property owners. That the limitation is silent as to other appealing parties does not incorporate other such parties under its umbrella. The state provision for mediation (Section 6-29-1155), referenced in the county regulation, authorizes a party with substantial interest (presumably the party that prevailed at the Planning Commission stage) to intervene as a party in the pre-litigation mediation. Reference to this intervention clarifies that the pre-litigation mediation specifically refers to property owners whose land is subject of a decision of the

planning commission, not just to any person who is a property owner. Paragraph 6-29-1155(A) clearly relates to the property owner referenced in Section 6-29-1150(D)(2). Appellant's authority to appeal is under 6-29-1150(D)(1)of the South Carolina Code.

2. *Adjacent and contiguous landowner*. The Richland County Land Development Code at Section 26-54(c)(3)d 1 provides procedures for appeals from Development Review Team decisions. It states appeals may only be made by the applicant, a contiguous landowner, or an adjacent landowner. In this regard the County Code unnecessarily and improperly limits the "interested party" language of the State enabling provision (Section 6-29-1150(C)). The issue was not raised by the Planning Department and Appellant's filing fee and Appeal were accepted and acted on by the Planning Commission. The matter, however, is moot because your Appellant is a party of substantial interest and is an adjacent and contiguous landowner to the property that is proposed for Green Code development. Appellant is adjacent as that term is defined in the Land Development Code, Section 26-22 "*Lot,adjacent*. A lot that is contiguous to another lot." Section 26-21(b), *General Rules of Construction*, (9) states the term "contiguous", as applied to lots or districts, shall be interpreted as meaning having a common boundary of ten (10) or more feet in length. Appellant and the project known as Villages at Long Creek share a common boundary of the waterway, known as Lake Columbia or by some persons as Lake Windermere. The Attorney General of South Carolina has opined that contiguity should be liberally construed and that water does not destroy contiguity between properties (Opinion of April 11, 2012, to The Honorable Rick Quinn). The Attorney General notes that the S.C. Supreme Court case of Eldridge v. S.C. Dept. of Transportation, 384 S.C. 548, 683 S.E. 2d 483 (2009) is particularly instructive. The Eldridge case explains the South Carolina Supreme Court's broad interpretation of the term "contiguous," and that contiguity is not destroyed by an

intervening connector such as water. Appellant's property is less than one-tenth of a mile across the waterway from the proposed project.

3. *Improper Record.* Of significance to this matter that touches on Appellant's right to a fair hearing is that the Planning Department provided an incorrect file to the Planning Commission for its action on Appellant's appeal. Richland County certified what was presented to the Planning Commission for the appeal and Appellant avers it is not the appeal Appellant filed with the Planning Department. The agenda packet as initially provided as the appeal file provided the Planning Commission for its action on Appellant's appeal is incorrect. Counsel for the Appellee recently supplemented the appeal file by adding to it the relevant Development Review Team permit that formed the basis for Appellant's appeal to the Planning Commission along with Appellant's appeal of that permit. The appeal file now appears to hold two Development Review Team actions and two differing appeals. That is an improper and misleading packet which substantially undercuts Appellant's right to a proper appeal.

Appellant's appeal to the Planning Commission was made on December 20, 2012. The appeal initially forwarded as part of the agenda packet and this record indicates what was sent to the Planning Commission was the appeal dated September 5, 2012. The Development Review Team action in the formal Record on Appeal is that of August 14, 2012 not the December 7, 1912, Development Review Team action that formed the basis of Appellant's appeal which is included in Appellee's Supplemental packet. Other papers in the agenda packet and the formal Record provided this Honorable Court are not part of this appeal and are misleading and prejudicial to Appellant's action.

Basically the staff action (the Development Review Team action) that Appellant appealed to the Planning Commission must be presented to the Planning Commission as the matter they must consider, not another appeal packet that the Planning Commission already had decided. The Planning Commission is required to conduct a public hearing on the appeal. They must have the proper appeal to conduct such a hearing. See the required procedures for such appeals in Section 26-54(c)(3)d.3. Appellant's amended appeal will request this Honorable Court to return the matter to the Richland County Planning Commission for approval of the former appeal in accordance with Section 26-54(c)(3)d.3[a] and Appellant will move for such a return when this Motion is heard.

Dismissal of this matter at this time would be unjust and a violation of Appellant's rights to a fair disposition of the matter.

WHEREFORE Appellant requests this Honorable Court to deny Appellee Richland County Planning Commission's Motion to Dismiss the Appeal.

**AFFIDAVIT AND NOTARY PUBLIC**

I, Samuel T. Brick, Appellant in the captioned case above, do hereby state that the matters averred in the foregoing Affidavit and Response to Fairways Development LLC's Motion to Intervene are true and correct to the best of his knowledge, information, and belief. Signed and sworn to before me this ___ day of August, 2013

_____
Notary Public

My Commission Expires _____

Respectfully submitted,

Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

August 21, 2013
Blythewood, SC

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Affidavit and Response to Appellee's Motion to Dismiss, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on August 21, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County Planning Commission, and in the same manner on the same date to Tobias G. Ward Jr., attorney for the intervenor Fairways Development LLC addressed as follows:

William H. Davidson, II, Esquire
Michael H. Wren, Esquire
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, SC 29202

Tobias G. Ward, Jr, Esquire
P.O. Box 6138
Columbia, S.C. 29260

Date 8/21/13

Samuel T. Brick, Pro se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF RICHLAND | ) | |
| Samuel T. Brick, | ) | Civil Action No. 2013-CP-40-001643 |
| | ) | |
| Plaintiff, Appellant, | ) | |
| | ) | **Motion To Intervene** |
| -vs- | ) | |
| | ) | |
| Richland County Planning Commission, | ) | |
| | ) | |
| Defendant/Respondent | ) | |
| | ) | |

**TO: THE PARTIES AND THE COURT:**

Fairways Development, LLC ("Fairways") hereby moves this court for an order pursuant to Rule 24 SCRCP allowing it to intervene in the above captioned appeal. The grounds for this motion are as follows:

On or about November 7, 2012, Fairways submitted an application for review and approval to Richland County Planning and Development Services of a sketch concept plan known as "The Villages at Longcreek" in Blythewood, South Carolina. The project was reviewed and approved by the Richland County Development Review Team ("DRT") at is meeting on November 29, 2012[1]. Brick filed an administrative appeal from the decision of the DRT to the Richland County Planning Commission ("PC") which was heard and denied on February 4, 2013 and the PC mailed its written decision to Brick on March 4, 2013. Brick then filed the present appeal to this court.

Intervention is a procedural device whereby a third party who is not a named party in an existing civil action, but who has an interest in its outcome, may become a

[1] This is actually the second time that the project was reviewed and approved by both the DRT and Planning Commission, but the applicant refiled because the application was signed by an authorized agent and not the actual owner.

#1 2 85

party to the action. *See Black's Law Dictionary* 826 (7th ed.1999). Intervention may be of right or permissive; intervention of right is governed by Rule 24(a), SCRCP, which is modeled after the federal rule. Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected. *See Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990).*

Rule 24(a), SCRCP provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In this case, Fairways owns the property which is the subject of Brick's appeal and the outcome of the appeal may affect Fairways ability to develop and use the property. While Richland County has an interest in defending its interpretation of its own ordinances, that interest is not the same as a landowner who wants to develop its property. Moreover, given the County has limited resources, it may not have the time to adequately raise issues which Fairways believes should be considered by this court on appeal. Under the liberal standard of Rule 24, this court should allow Fairways to intervene as a Respondent to Bricks' appeal.

June 14, 2013

**TOBIAS G.WARD, JR., PA**

Tobias G. Ward, Jr. SC Bar No.: 5826
6 Calendar Court, Suite 3
Columbia, SC 29206
803-708-4200
Fax 803-403-8754
tw@tobywardlaw.com

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, *Pro Se* | ) | **MEMORANDUM OF LAW** |
| vs. | ) | **IN RESPONSE TO** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **FAIRWAYS DEVELOPMENT LLC** |
| Appellee. | ) | **MOTION TO INTERVENE** |

**MEMORANDUM OF LAW AND ANSWER TO MOTION TO INTERVENE**

Samuel T. Brick, Appellant, *Pro se*, does not object to Fairways Development LLC's (Fairways) Motion to Intervene and has applied by pending Motion before this Honorable Court to Amend his Notice of Appeal and Appeal to, among other things, add such corporate body to this matter. Appellant, however, provides the following comments and considerations with regard to Fairways interests in this matter. Appellant further refers to Rule 15 (c) and the relation back of the amendments and that Fairways is not prejudiced in any participation in the proceedings because there have been none and that Fairways knew that Appellant would have included it in the suit if Fairways had not protested in Appellant's inclusion of it in a similar matter and that Fairways' interest in the matter is unclear in any event.

Fairways Development LLC is managed by a foreign corporation, United Financial Corporation. United Financial Corporation is a for profit corporation in good standing in South Carolina. The Applicant in the Subdivision Review Application, and the specified property owner in such application is designated Fairways Development Group (John Bakhaus) not Fairways Development LLC. A search of the corporate records as maintained by the South

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Carolina Secretary of State results in no such entity as Fairways Development Group being a registered corporation in the State of South Carolina (see Appendix 1, A and B). The first sentence of the application for the project, the Villages at LongCreek, is as follows:

> "Fairways Development Group is pleased to submit the required submittals for consideration of the above LID residential project being developed under the Richland County Code. "

The application recites the property owner as "Fairways Development Group (John Bakhaus)." The applicant name for the project is stated as "Fairways Development Group (John Bakhaus)." The Sketch Plan Checklist has the Applicant as "Fairways Development Group (John Bakhaus)," with the applicant in handwriting signed as Fairways Development, LLC, the only place the project is signed in this manner. The Development Review Team meeting conducted by the Richland County Planning Department refers to the Applicant as "Fairways Development Group, c/o John Bakhaus." The specific action that formed the basis for the appeal to the Richland County Planning Commission, is addressed to John D. Champoux, at an address different from that of the Fairways Development Group as contained in the application. A copy of the permit approval was provided to "John Bakhaus, c/o Fairways Development Group, Applicant." The Sketch Plan itself was prepared on behalf of Longcreek Associates, LLC, a South Carolina corporation. The registered agent for that corporation is Ronald E. Johnson. Mr. Ron Johnson testified at the Administrative Appeal of the Development Review Team's approval of the project. He stated the following (page 31 of Appendix B-3 to Appellant's Notice of Appeal and Appeal, the Minutes of the Planning Commission for February 4, 2013, and also as filed as part of the Record by the Appellee):

> "...., I want to thank you for allowing us to come here today. First of all I want to apologize that everyone is having to once again review something that had previously

been approved. I am reminded, however, that we failed to prepare our application properly and thus we find ourselves here today."

He further states:

> "Staff knows full well that we have engaged outside services to have a tree study done, we've had wetlands surveyed and delineated so we have gone above and beyond to try to make sure the areas that we are proposing, that you have seen in the plan, will be developed in the areas that will have the least impact on the, on the land in question."

Fairways Development LLC did not participate in the Development Review Team proceedings or the Planning Commission's hearing on the appeal.

Fairways contends it has interest in this action. The County does not consider Fairways the permittee in the action being appealed. Appellant contended before the Planning Commission that this is improper. Appellant complains in this action that the Planning Commission's failure to address this contention is an abuse of its discretion. Section 26-186(c) specifies that the property owner be the party "desiring to use the development standards of this section." Subsection (b) of that provision states the owner of property "may apply the development standards found within this section."

In another suit by your Appellant that might affect Fairways' ownership interests in development of the Villages project, your Appellant attempted to join Fairways as a respondent to that suit but Fairways objected and exhibited lack of interest in whether that case might involve a declaratory judgment affecting Fairways' interests. Fairways' moved to dismiss it from that action and sought sanctions. This Honorable Court granted the motion to remove but denied sanctions.

Appellant provided a copy of the Notice of Appeal and Appeal to counsel for Fairways by electronic means on April 8, 2013 (Appendix 2). Appellant accordingly has had a copy of the action since at least that time.

Respectfully submitted,

Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

July , 2013
Blythewood, SC

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Memorandum Of Law And Answer To Motion To Intervene on Appellee Richland County, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on July ____, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County, and in the same manner on the same date to Tobias G. Ward Jr., attorney for the intervenor Fairways Development LLC addressed as follows:

William H. Davidson, II, Esquire
Michael H. Wren, Esquire
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, SC 29202

Tobias G. Ward, Jr, Esquire
P.O. Box 6138
Columbia, S.C. 29260

Samuel T. Brick, Pro se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

Blythewood, SC 29016
July ____, 2013

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, *Pro Se* | ) | **AFFIDAVIT IN RESPONSE TO** |
| vs. | ) | **FAIRWAYS DEVELOPMENT LLC** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **MOTION TO INTERVENE** |
| Appellee. | ) | |

**AFFIDAVIT IN RESPONSE TO MOTION TO INTERVENE**

Samuel T. Brick, Appellant, *Pro se*, does not object to Fairways Development LLC's (Fairways) Motion to Intervene and has applied by pending Motion before this Honorable Court to Amend his Notice of Appeal and Appeal to, among other things, add such corporate body to this matter.

Appellant, Samuel T. Brick, under oath and with this Affidavit avers the following with regard to Fairways interests in this matter. Appellant notes SC Rules of Civil Procedure, Rule 15 (c), and the relation back of amendments. Appellant contends Fairways is not prejudiced in any participation in the proceedings because there have been no proceedings other than Appellant's filing and the Appellee's response to the Appeal along with the provision of a Certified file and later a supplemental file with papers previously available to Fairways, should they have previously shown any interest. Appellant avers Fairways knew that Appellant would have included it in the suit if Fairways had not protested in Appellant's inclusion of it in a similar matter currently before this Honorable Court. Appellant further notes that Fairways' interest in the matter is unclear.

The Richland County Planning Department designated Fairways Development Group the Applicant in the Subdivision Review for the project; not Fairways Development LLC. A search of the corporate records as maintained by the South Carolina Secretary of State results in no such entity as Fairways Development Group being a registered corporation in the State of South Carolina (see Appendix 1, A and B). The first sentence of the application for the project, the Villages at LongCreek, is as follows:

> "Fairways Development Group is pleased to submit the required submittals for consideration of the above LID residential project being developed under the Richland County Code. "

The applicant name for the project is stated as "Fairways Development Group (John Bakhaus)." The Sketch Plan Checklist has the Applicant as "Fairways Development Group (John Bakhaus)," with the applicant in handwriting signed as Fairways Development, LLC, the only place the project is signed in this manner. The Development Review Team meeting conducted by the Richland County Planning Department refers to the Applicant as "Fairways Development Group, c/o John Bakhaus." The specific action that formed the basis for the appeal to the Richland County Planning Commission, is addressed to John D. Champoux, with no copy to Fairways Development LLC. The Sketch Plan states that it is prepared for Longcreek Associates, LLC, a South Carolina corporation. The registered agent for that corporation is Ronald E. Johnson. Mr. Ron Johnson testified at the Administrative Appeal of the Development Review Team's approval of the project. He stated the following (page 31 of Appendix B-3 to Appellant's Notice of Appeal and Appeal, the Minutes of the Planning Commission for February 4, 2013, and also as filed as part of the Record by the Appellee):

> "...., I want to thank you for allowing us to come here today. First of all I want to apologize that everyone is having to once again review something that had previously

been approved. I am reminded, however, that we failed to prepare our application properly and thus we find ourselves here today."

He further states:

> "Staff knows full well that we have engaged outside services to have a tree study done, we've had wetlands surveyed and delineated so we have gone above and beyond to try to make sure the areas that we are proposing, that you have seen in the plan, will be developed in the areas that will have the least impact on the, on the land in question."

Fairways Development LLC on the other hand did not participate in the Development Review Team proceedings or the Planning Commission's hearing on the appeal.

Fairways contends it has interest in this action. The Richland County Planning Department does not treat Fairways as the permittee in the matter being appealed. Appellant contended before the Planning Commission that the project was not being developed by the owner of the property and accordingly, the Green Code application is deficient. Appellant avers that the Planning Commission's failure to address this contention is an abuse of its discretion. Section 26-186(c) specifies that the property owner be the party "desiring to use the development standards of this section." Subsection (b) of that provision states the owner of property desiring to use the Green Code "may apply the development standards found within this section."

In another suit by your Appellant before this Honorable Court (Case No. 2012 CP 400 7337) that Appellant considered might affect Fairways' ownership interests in development of the Villages project, your affiant attempted to join Fairways as a respondent but Fairways objected and exhibited lack of interest in whether that case might involve a declaratory judgment affecting Fairways' interests. In that action Fairways' moved for dismissal of it as a party to that action and sought sanctions against your affiant for joining it. This Honorable Court granted the motion to dismiss it as a party but denied sanctions.

Appellant provided a copy of the Notice of Appeal and Appeal to counsel for Fairways by electronic means on April 8, 2013. Counsel responded by an email with a "Thx." (Appendix 2). Appellant accordingly has had a copy of the action since at least April 8, 2014, within the jurisdictional period (Appellant received a copy of the Decision on his appeal to the Planning Commission on March 11, 2013) as stated in Rule 74 of the South Carolina Rules of Civil Procedure for notice of appeal to be served.

**AFFIDAVIT AND NOTARY PUBLIC**

I, Samuel T. Brick, Appellant in the captioned case above, do hereby state that the matters averred in the foregoing Affidavit and Response to Fairways Development LLC's Motion to Intervene are true and correct to the best of his knowledge, information, and belief.

Signed and sworn to before me this ___ day of August, 2013

_____
Notary Public

My Commission Expires _____

Respectfully submitted,

_____
Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

August , 2013
Blythewood, SC

COPIES ATTACHED:
Appendix 1. A and B, South Carolina Secretary of State Corporate Search Results, Fairways Development Group and Fairways Development Group (John Bakhaus).

Appendix 2., Email with Response between Counsel for Fairways and Appellant, entitled Brick v. Richland County Planning Commission Appeal. .

## CERTIFICATE OF SERVICE

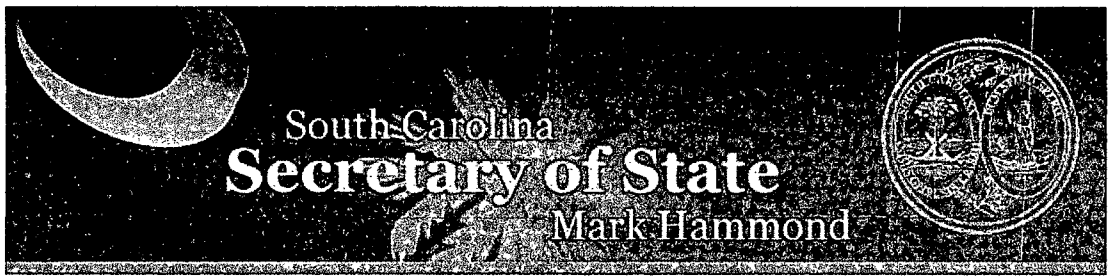
I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Memorandum Of Law And Answer To Motion To Intervene on Appellee Richland County, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on August ____, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County, and in the same manner on the same date to Tobias G. Ward Jr., attorney for the intervenor Fairways Development LLC addressed as follows:

William H. Davidson, II, Esquire
Michael H. Wren, Esquire
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, SC 29202

Tobias G. Ward, Jr, Esquire
P.O. Box 6138
Columbia, S.C. 29260

_____
Samuel T. Brick, Pro se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

Blythewood, SC 29016
August ____, 2013




**Corporate Search Results** as of 7/30/2013 6:02:00 PM

No Results Found.

**Corporation Name:** Fairways Development Group
**Options:** Begins With

**Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.**

APPENDIX 1A

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201

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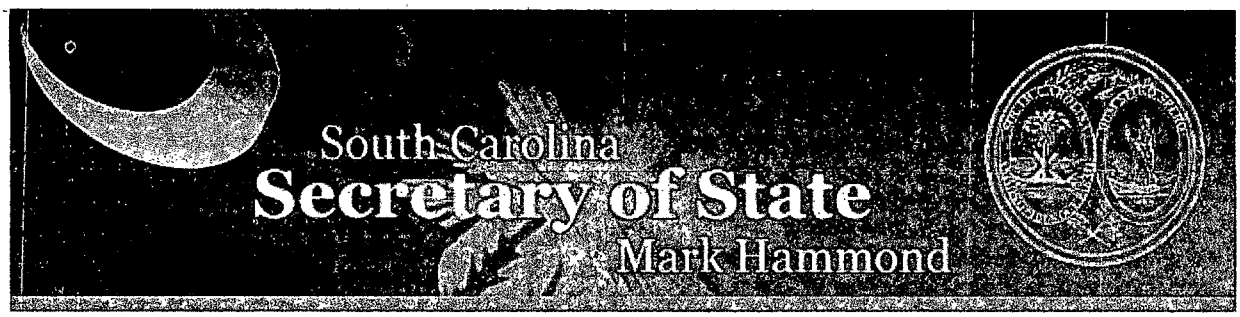


**Corporate Search Results** as of 8/4/2013 6:01:28 PM

No Results Found.

**Corporation Name:** Fairways Development Group (John Bakhaus)
**Options:** Begins With

**Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.**

## Sam Brick

**From:** Tobias G. Ward, Jr. [tw@tobywardlaw.com]
**Sent:** Monday, April 08, 2013 11:09 AM
**To:** 'Sam Brick'
**Subject:** RE: Brick v Richland County Planning Commission Appeal

Thx

Toby Ward
(803) 708 4200
tw@tobywardlaw.com

*The information contained in this communication is confidential, may be attorney-client privileged, may constitute proprietary information, and is intended only for the use of the addressee. If you have received this communication in error, please notify us immediately either by return e-mail or by telephone at (803) 708-4200, and destroy this communication and all copies thereof, including all attachments.*

---

**From:** Sam Brick [mailto:sbrick2011@gmail.com]
**Sent:** Monday, April 08, 2013 10:35 AM
**To:** tw@tobywardlaw.com
**Subject:** Brick v Richland County Planning Commission Appeal

Toby—A copy of the Planning Commission appeal without attachments is enclosed per your request. I will have the Response and Legal Memo for the Motions to you or mailed Wednesday. Regards, Sam Brick



APPENDIX 2

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| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,**<br>124 Runneymede Drive<br>Blythewood, SC 29016<br>803 546 4895<br>sbrick2011@gmail.com,<br><br>Appellant, Pro Se | ) | **Case No.:2013-CP -400-1643**<br><br>**Planning Commission TMC# 20401-01-03**<br><br>**MOTION TO AMEND** |
| vs. | ) | **NOTICE OF APPEAL AND APPEAL** |
| **RICHLAND COUNTY PLANNING COMMISSION,**<br><br>Ms. Michelle Onley, Acting Clerk;<br>20 Hampton Street 4th Floor<br>Columbia, SC 29202<br>803 576 2060<br>Appellee. | ) | **OF THE**<br>**RICHLAND COUNTY PLANNING**<br>**COMMISSION DENIAL OF**<br>**APPELLANT'S APPEAL REGARDING**<br>**ADMINISTRATION OF ZONING**<br>**AND**<br>**NOTICE OF DEFECTIVE FILE** |

## MOTION TO AMEND

Appellant, Samuel T. Brick, Pro se, hereby moves under the provisions of Rule 15(a) of the South Carolina Rules of Civil Procedure to amend the above captioned appeal. The Appellee, Richland County Planning Commission, by its attorney, filed a responsive pleading to the subject appeal on May 31st, 2013. Furthermore, the action has not been placed on the trial roster and this appeal does not prejudice any parties.

The proposed amendment, other than making several typographical and grammatical corrections, would, in addition to several other matters, add the owner of the property in question, Fairways Development, LLC, as a respondent to the appeal. Fairways Development

LLC is not a necessary party as contemplated by Rule 74 of the South Carolina Rules of Civil Procedure because it is not the Applicant for the project, the subject of the Appeal, nor does Fairways Development LLC propose or intend actually to develop the property. Fairways Development LLC has moved before this Honorable Court to be included as a respondent. Appellant Samuel T. Brick does not object to his inclusion but notes it is not an inclusion as a necessary party.

The application for Subdivision Review to be administered by Richland County actually is by a legal nonentity in South Carolina. Fairways Development Group is listed as the Property Owner in the application. The Property Owner however transmitted the application on behalf of Fairways Development Group. Fairways Development Group is not incorporated within the State of South Carolina nor does it own property to Appellant's knowledge within South Carolina. The Development Review Team action, the specific action the subject of the appeal, is addressed to an unknown party, "John D. Champoux," with a copy to, among others, John Bakhaus, c/o Fairways Development Group. Whereas John Bakhaus is the resident agent for Fairways Development LLC as well as for several other corporate entities in South Carolina and in other states, the application clearly is on behalf of Fairways Development Group. Richland County treated the application as that of Fairways Development Group and treated Fairways Development LLC merely as that group's agent. Fairways Development Group did not participate in the Development Review Team consideration of the project. Fairways Development LLC did not appear or participate in the Richland County Planning Commission action on the appeal even though that action was advertised and posted in accordance with appropriate procedures for public bodies. Instead, an unknown party, Mr. Ronald Johnson, did appear and state that he worked with staff on the development and his group was the developer and managed the project. His statement made no mention of Fairways Development LLC nor

was Fairways Development LLC or its resident agent or any other identified representative present at the Planning Commission hearing on the appeal.

Notwithstanding the above, Appellant provided notice of the appeal in accordance with Rule 74 of the South Carolina Rules of Civil Procedure to Fairways Development LLC. Such notice was provided within thirty (30) days of the date of receipt of the decision of the Richland County Planning Commission, the action being appealed. Appellant received written notice of the Planning Commission action on March 11, 2013. On April 8, 2013, Appellant sent the Attorney of Record for Fairways Development LLC, Tobias Ward, Esquire, a copy of the Notice of Appeal and Appeal in this case. Mr. Ward at the time was attorney of record for Fairways Development LLC in a related case and was corresponding with Plaintiff by transmitting official documents by the way of electronic transmissions (email.)

Fairways Development LLC in the mentioned case expressed disinterest in an almost identical request for relief as the relief requested in the instant case. Appellant had joined Fairways Development LLC as a party to a matter currently still pending before this Court, Samuel T. Brick v. Richland County et. al., Case No.: 2012-CP-400-7337. That case alleges various unlawful actions by Richland County. The relief sought is to return the development project to the Development Review Team for further action. The relief sought in the instant proceeding is to reverse the Planning Commission action and send it back to the Development Review Team for further action. In both cases there is no improper action alleged by Fairways Development LLC. In the case mentioned above, equitable and declaratory relief are provided as statutory remedies to the alleged unlawful actions. Under Declaratory relief, an affected party is a proper respondent. Fairways Development LLC stated its disinterest in the matter and sought sanctions against Samuel T. Brick, the plaintiff, for including it as a party. This Court discharged Fairways Development LLC as a party in that case and did not approve sanctions.

Fairways Development LLC in seeking relief from being involved in actions that might affect development on its property furthermore is an indication that it is not involved in the manner of development on its property.

The appeal in the instant case alleges as one of the grounds for its appeal that the owner of the property (Fairways Development LLC) *is* the proper party under the Green Code to apply to use its development standards but that the developer is another entity. The Planning Commission did not address this matter. The file clearly shows along with the testimony by Mr. Ron Johnson during the appeal and part of the record of the appeal that the development is being done by someone other than Fairways Development LLC. The alleged failure of the Planning Commission to address this issue is a fatal error and is before this Honorable Court as one of the errors of the Planning Commission.

The proposed amendment also will address more fully the Appellant's rights to appeal and that he is an owner of property adjacent to and in near vicinity of the property proposed for development. It, among other things, will further allege the arbitrary and capricious nature of the Planning Commission action on the appeal. It will adjust a stated number as to the number of dwelling units that might be authorized with regard to the zoning authorized in the property being developed.

WHEREFORE, Appellant Samuel T. Brick moves to amend the Appeal as in the attached proposed Amended Appeal.

**NOTICE OF DEFECTIVE FILE**

Appellant Samuel T. Brick has contacted Michael Wren, Attorney of Record for Richland County in this appeal, and noted several discrepancies in the official file forwarded to this Honorable Court. Appellant's appeal to the Planning Commission was not included in the file.

It is at Exhibit B-1 to Appellant's Appeal and is the appeal that was made on December 20, 2012. If that was not the appeal presented to the Planning Commission, then the Commission's action was defective *ab initio* and this is the first notice that such might be the case. Since Mr. Wren is checking on this matter, it is premature to raise this issue. The Development Review Team action included in the file, dated August 14, 2012, is not the action appealed from by Appellant. The appeal is to the Development Review Team action of November 29, 2012, and its formal action dated December 7, 2012. The inclusion of Appellant's handout to the Planning Commission for its action on an appeal by Appellant on October 1, 2012, which the Planning Commission approved on November 5, 2012, is improper for consideration in the instant appeal. The Planning Commission heard the appeal, the subject of this action, on February 4, 2013. Mr. Wren mentioned he has contacted his client to determine whether the errors are in fact clerical or whether the file as submitted is accurate. This notice is to preserve any rights the Appellant may have with regard to further amendments or actions regarding the Official File as presented to this Honorable Court.

Respectfully submitted,

Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

June 27, 2013
Blythewood, SC

Copy of Proposed Amended Appeal attached

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing proposed Motion for Amended Pleading and Notice of Defective File with the proposed

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|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF RICHLAND | ) | |
| Samuel T. Brick, | ) | Civil Action No. 2013-CP-40-001643 |
| | ) | |
| Plaintiff, Appellant, | ) | |
| | ) | **MOTION TO DISMISS APPEAL** |
| -vs- | ) | |
| | ) | |
| Richland County Planning Commission, | ) | |
| | ) | |
| Defendant/Respondent | ) | |
| | ) | |

**TO: THE PARTIES AND THE COURT:**

Fairways Development, LLC ("Fairways"[1]) hereby moves this court for an order dismissing this appeal. The grounds for this motion are as follows:

On or about November 7, 2012, Fairways submitted to the Richland County Planning and Development Services department an application for review and approval of a sketch concept plan known as "The Villages at Longcreek" in Blythewood, South Carolina. The project was reviewed and approved by the Richland County Development Review Team ("DRT") at its meeting on November 29, 2012[2]. This action precedes consideration by the Planning Commission, and serves as a 'clearinghouse' of County staff level review. Samuel T. Brick ("Brick") filed an administrative appeal of the decision of the DRT to the Richland County Planning Commission ("PC") which was heard and denied on February 4, 2013 and the PC

[1] By separate motion, Fairways has filed a motion to intervene in this appeal.

[2] This is actually the second time that the project was reviewed and approved by both the DRT and Planning Commission, but the applicant refiled because the application was signed by an authorized agent and not the actual owner.

mailed its written decision to Brick on March 4, 2013. Brick then filed the present appeal to this court.

## 1. THE APPEAL SHOULD BE DISMISSED BECAUSE BRICK FAILED TO JOIN A NECESSARY PARTY.

To perfect his appeal, Brick must timely join the necessary parties to the appeal. Our supreme court has announced that development permittees such as Fairways are necessary parties to appeals of their respective permits. Spanish Wells Property Owners Ass'n v. Bd. of Adjustment of the Town of Hilton Head Island, 295 S.C. 67, 69, 367 S.E.2d 160, 161 (1988). Brick has failed to name the development permittee, Fairways, as a party. This court should find that Fairways is a necessary party. The failure to timely join a necessary party is fatal to an appeal, and Brick's appeal should be dismissed.

## 2. THE APPEAL SHOULD BE DISMISSED BECAUSE BRICK LACKS STANDING TO PURSUE THE APPEAL.

To proceed with his appeal, Brick must establish that he has proper standing. S.C. Code Ann. §6-29-1150(d)(1) provides the procedure for an appeal, but does not state who may appeal. §6-29-1155( a) somewhat clarifies this by noting that a non-owner may intervene in an appeal if the person has a *substantial interest* in the decision of the planning commission. This is consistent with Richland County Ordinances §26-54(c)(3)(b)(4)(b) which provides for an appeal by a person with a *substantial interest* and §26-58(f) *Appeals of Administrative decisions* which also provides for an appeal by a person with a *substantial interest* in the decision.

Brick is not the landowner, and does not have a *substantial interest in* the decision of the PC so his appeal should be dismissed. Brick states in his appeal, "Your Appellant, a citizen of Richland County, is a party in interest as well as an adjacent and

contiguous property owner to the property that is the object of the subdivision project. (Brick Appeal, p.2) Standing *to intervene* exists for any person with a "substantial interest", defined as "owners of property adjacent to and in near vicinity" of "The Villages at Longcreek". *Spanish Wells Property Owners Ass'n v. Board of Adjustment of Town of Hilton Head Island*, 292 S.C. 542, 357 S.E.2nd 487 (Ct.App. 1987) However, Brick's property is not adjacent or contiguous to the property being developed. His property is located over a ½ mile away, across a golf course and a 150 acre lake from the property being developed, so it is not near "The Villages at Longcreek". (See Exhibits A and B). Furthermore, Brick's property is not subject to the Longcreek Covenants, Conditions and Restrictions, does not participate in the Longcreek Property Owners Association, Brick is not a member of the Longcreek Property Owners Association, and he and his property are subject to different Covenants, Conditions and Restrictions. This court should find that Brick does not have a substantial interest in approval of the sketch concept plan for "The Villages at Longcreek".

**3. BRICK'S APPEAL SHOULD BE DISMISSED BECAUSE UNDER THE APPLICABLE STANDARD OF REVIEW IT IS MANIFESTLY WITHOUT MERIT.**

Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances. ( "[T]his construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefore."). "The circuit court should not disturb the findings of the board unless the board has acted arbitrarily or in an obvious abuse of discretion, or unless the board has acted illegally or in excess of its lawfully delegated authority." . As a consequence, a court must "refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." . To this end, a court will uphold the decisions of a reviewing body if there is any evidence in the record to support its decision. *See* (stating an appellate court should

not reverse the circuit court's affirmance of a Board unless the Board's findings of fact have no evidentiary support or the Board commits an error of law).

Brick's Appeal can be broken down to essentially three (3) somewhat overlapping complaints: (1) Compliance with the Comprehensive Plan, (2) Density and Lot Size and Width, and (3) Impervious Surface levels. None of these complaints have merit and certainly not enough for a court to substitute its judgment for a county interpreting its own ordinance.

*Compliance with the Comprehensive Plan*

Brick makes the common mistake of elevating the "Comprehensive Plan" to the status of a binding ordinance, it is not. As noted by Tracy Hegler, Planning Director, in the PC Order, "The Comprehensive Plan does certainly set the guiding principles for growth in the county. It's a very important document for us, but it's not a regulatory item. It simply is a guiding principle. Therefore, to the extent Brick's appeal is grounded in alleged compliance issues with the Comprehensive Plan, it should be summarily dismissed.

*Density, Lot Size and Width*

This is the essence of Mr. Brick's appeal and demonstrates the absurdity of allowing a homeowner who lives a ½ mile away across a lake to try and dictate what can be built in a distant subdivision.

Brick contends, contrary to the specific language of the Green Code that the subdivision plan must meet the underlying lot width requirements of the existing district zoning. (RS-LD) Thus, he contends that lots must be at least 12,000 square feet and this would restrict the maximum possible of units that could be built. However, the more recent and specific ordinance, Section 26-186(b) Green Code Standards, provides as follows:

The owner of property within an RU, RR, RS-E, RS-LD, RS-MD, RS-HD, MH, RM-MD, RM-HD, or CC zoning district may apply the development standards found within this section, **in lieu of the development standards set forth for the applicable zoning district**, subject to meeting the requirements of this section.

Furthermore, Section 26-186(h)(2) of the Green Code Standards, "Development Requirements" specifically provides that there is no minimum lot area. The rules of statutory construction clearly require that the more recent and specific duly enacted legislative provision must control the earlier and more general provision.

The court should further note as set forth by Tracy Hegler, Planning Director in the PC Order, "The project calls for 332 units. There is certainly density, if you take that, divide it by 100 acres roughly, that's 3.32 units per acre. The underlying zoning allows 3.63 units as a gross density that is common practice everywhere, in planning practice anyway. ... **They are building less than what they are allowed to with the underlying zoning."** *Emphasis added.* This calculation is without considering the 10% density bonus for setting aside at least 30% open space of the site area.

This court should dismiss the appeal as Brick's argument is manifestly without merit.

*Maximum Impervious Surface*

This argument lacks any basis in fact. Section 26-186(h)(11) of the Green Code Standards provides, "Pervious material may be used for sidewalks and driveways. The maximum impervious surface allowed is fifty percent (50%) of the developed area." According to our expert, the impervious surface including homes, driveways, roads, walks, etc are approximately 29%, which is far less than the 50% referenced. Brick's estimate of total area set aside for infrastructure (30%) is not correct; the actual figure is 17%.

Furthermore, as noted by the PC in its order, at this stage, they are only approving a "Concept Plan" and the developer must still comply with all applicable requirements amount storm water runoff.

This court should find this argument manifestly without merit.

**CONCLUSION**

Brick does not have standing to bring this appeal, he lives in a separate subdivision from Longcreek Plantation over ½ mile away across a 150 acre lake. He does not have a substantial interest sufficient to create standing. Even if he did have standing, Brick's arguments are manifestly without merit, especially considering the deferential standard of review given to the county in interpreting its own ordinance. For all these reasons the court should dismiss Brick's appeal.

Respectfully Submitted,

**TOBIAS G.WARD, JR., PA**

June 14, 2013

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TGW,Jr.: wrc

SP-01

THE VILLAGES AT LONGCREEK
PHASE ONE

Richland County, South Carolina



EXHIBIT A

2013-CP-40-001643

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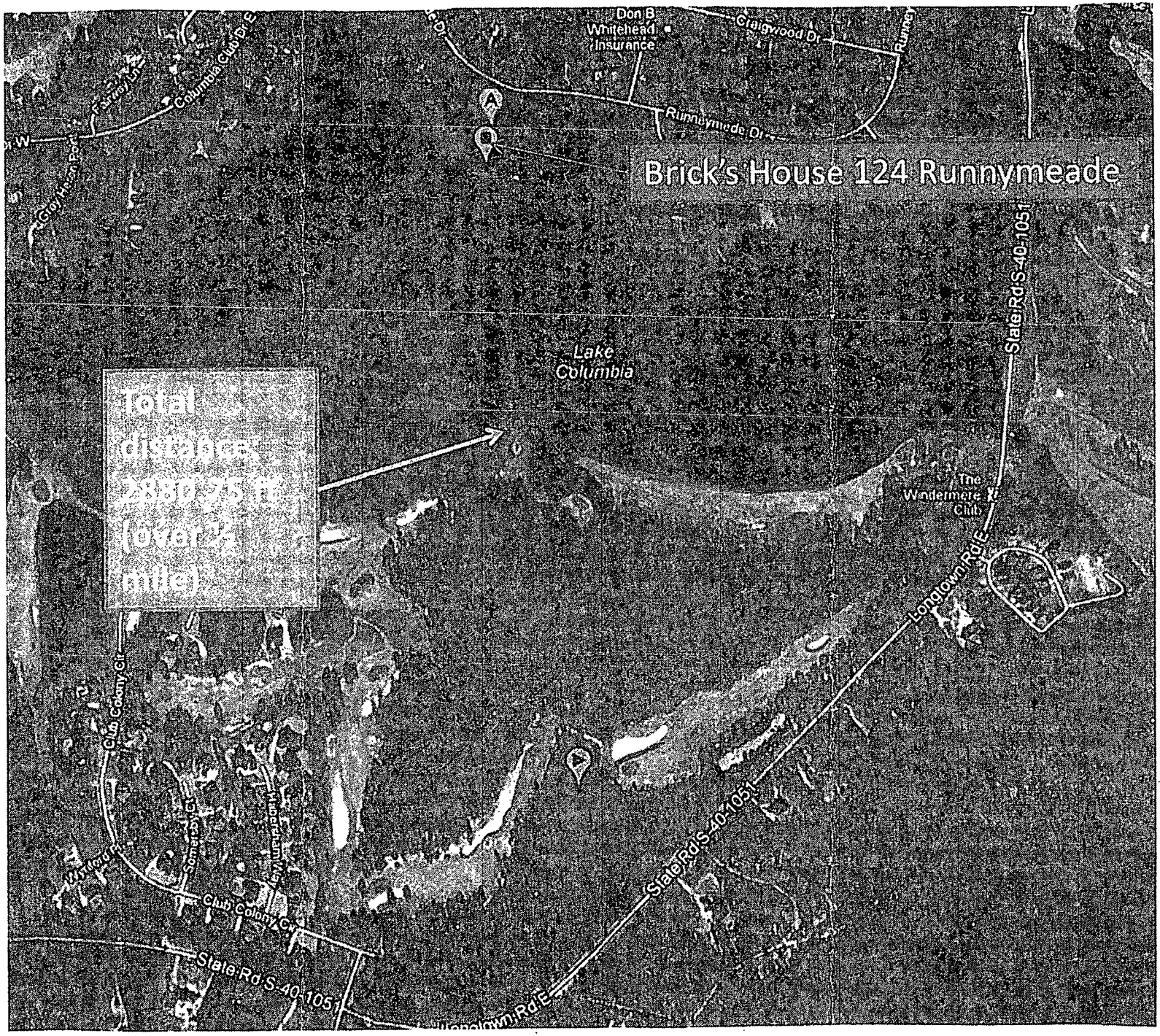


EXHIBIT B

2013-CP-40-001643

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, Pro Se | ) | **MEMORANDUM OF LAW** |
| vs. | ) | **IN RESPONSE TO** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **FAIRWAYS DEVELOPMENT LLC** |
| Appellee. | ) | **MOTION TO DISMISS** |

## RESPONSE TO FAIRWAYS'MOTION TO DISMISS

Appellant, Samuel T. Brick, in response to the contentions by Intervener Fairways Development, LLC (Fairways) contends the following:

## RESPONSE TO ALLEGATION OF FAILURE TO JOIN

1. *Fairways is not the Development Permittee.* Fairways Development LLC is not the development permittee of the project, the object of the Development Review Team action that forms the basis for Appellant's appeal to the Planning Commission and the Appeal to this court. Fairways contends that it is the development permittee for the project, known as the Villages at Longcreek but the Richland County Planning Department and Richland County treat a unincorporated, different, entity, Fairways Development Group as the development permittee, not Fairways. Deference should be given to the county as to whom they consider the development permittee in this regard. The first sentence of the application for the project, the Villages at LongCreek, is as follows:



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"Fairways Development Group is pleased to submit the required submittals for consideration of the above LID residential project being developed under the Richland County Code. "

2. *Fairways Development Group.* The application recites the property owner as "Fairways Development Group (John Bakhaus)." The applicant name for the project is stated as "Fairways Development Group (John Bakhaus)." The Sketch Plan Checklist denotes the Applicant as "Fairways Development Group (John Bakhaus)," with the applicant in handwriting signed as Fairways Development, LLC, the only place the project is signed in this manner. The Development Review Team meeting conducted by the Richland County Planning Department refers to the Applicant as "Fairways Development Group, c/o John Bakhaus." The specific action that formed the basis for the appeal to the Richland County Planning Commission, is addressed to John D. Champoux, with no indication of his connection to Fairways Development LLC. A copy of the permit approval was provided to "John Bakhaus, c/o Fairways Development Group, Applicant," not to Fairways. The Sketch Plan was prepared on behalf of Longcreek Associates, LLC, a South Carolina corporation, with Ronald Johnson listed in the Secretary of State records as resident agent. There is no evidence Fairways participated in the preparation of the sketch plan or had anything to do with it.

Fairways Development Group is not an entity of Fairways Development, LLC or a "doing business as" function of Fairways. It is an entirely separate entity unincorporated in the State of South Carolina. Ronald E. Johnson, resident agent of Longcreek Associates LLC testified at the administrative appeal of the Development Review Team's approval of the project. He stated the following during the Planning Commission's hearing (at page 31 of Appendix B-3 to Appellant's Notice of Appeal and Appeal, the Minutes of the Planning Commission for February 4, 2013, and also as filed as part of the Record by the Appellee):

"...., I want to thank you for allowing us to come here today. First of all I want to apologize that everyone is having to once again review something that had previously been approved. I am reminded, however, that we failed to prepare our application properly and thus we find ourselves here today."

He further states:

"Staff knows full well that we have engaged outside services to have a tree study done, we've had wetlands surveyed and delineated so we have gone above and beyond to try to make sure the areas that we are proposing, that you have seen in the plan, will be developed in the areas that will have the least impact on the, on the land in question."

Mr. Johnson never stated he was part of, agent for, or connected to Fairways Development LLC and there is no indication his participation is other than as a member of the unincorporated Fairways Development Group and used his affiliation with Longcreek Associates LLC, for whom the sketch plan was prepared, to further the Groups project. This would follow his statement of engaging outside services and his reference in his statement to the sketch plan.

3. *Fairways Conduct in the Application and Reviews*. Fairways Development LLC did not participate in the proceedings by the Development Review Team or the Planning Commission's hearing on the appeal. During the meetings with the community to which Mr. Johnson refers in his Planning Commission statement Mr. Johnson and his partner made it clear that the proposed development is by his group and not by the land owner, Fairways. The community knows Fairways and Mr. Johnson wanted to clarify that Fairways was not the developer. Fairways did not attend, show interest in, or participate in the Planning Commission's hearing on Appellant's appeal and was not present during meetings Mr Johnson's Group had with the community. In an early meeting with the community Mr. Johnson and his partner clearly disassociated themselves from Fairways.

Fairways has developed property throughout the Long Creek Plantation community for many years. It has followed traditional zoning standards and there is nothing stopping its

development of the subject project in accordance with those rules. The Villages project does not apply applicable zoning standards. Part of Appellant's appeal is that the Villages project is not being developed by the owner, a required factor by the special provision known as the Green Code (Section 26-186 of the Richland County Land Development Code) under which it is being filed. Section 26-186(c) specifies that the property owner be the party "desiring to use the development standards of this section." Subsection (b) of that provision states that the owner of property "may apply the development standards found within this section."

Under Spanish Wells Property Owners Ass'n v. Board of Adjustment of the Town of Hilton Head Island, 296 S.C. 67, 367 S.E. 2d 160 (1988), upon which Fairways bases part of its Motion, the question is whether a permittee is a necessary party to an action to revoke a development permit. Appellant's contention and a part of his appeal before the Richland County Planning Commission, is that Fairways was *not* the permittee in the project. Spanish Wells consistently refers to the permittee being a necessary party and only mentions owner/permittee once when referencing a Washington State case in which the land owner in that case was the permittee. The Spanish Wells holding is that "a development permittee is a necessary party to an appeal of its permit." Id. Page 69. Richland County treated Fairways Development Group, an unincorporated entity, as the development permittee. Appellant researched the Fairways Development Group's corporate status and there is no resident agent or manner of gaining jurisdiction over such an entity. Appellant suspects Mr. Johnson as being a part of the group but has no definitive information as to whether he is, what agreements bind the group, and who else is a participant in the group.

Fairways' lack of involvement in the process and its lack of knowledge of the project (Fairways' Appendices to this Motion fail to capture a third part and major portion of the project

while attempting to characterize Appellant's proximity) further demonstrate that Fairways is not the permittee and is not the party desiring to develop the property under the Green Code. The Exhibits to Fairway's Motion to Dismiss indicate that Appellant's property is over one half mile from the project, and across a golf course. Fairways does not understand that a major portion of the project suggesting 130 dwelling units and a waterfront park are directly across water from Appellant's property and less than one-tenth of a mile (175 yards) away. It fails to appreciate that some of the proposed dwelling units appear on the sketch plan as attached dwelling units, not authorized under the applicable residential single-family residential district, which was a major consideration of the Planning Commission in Appellant's successful appeal. See in this regard the sketch plans provided by Appellant in his Notice of Appeal and Appeal and as provided by the Appellee in its forwarded file. These sketch plans continue to include the attached units in the face of the most recent Development Review Team approval that states they are not authorized.

The action by the Development Review Team on the project, the sketch plan permit, is not addressed to Fairways and Fairways is not even copied on the action. See Appendix A-4 to Appellant's Notice of Appeal and Appeal.

4. *Appellant's Attempted Joinder of Fairways.* Appellant attempted to join Fairways as a party to a case currently before this Honorable Court (Samuel T. Brick v. Richland County, et al, Case Number 2012-CP-400-7337) in which Appellant, Plaintiff in that case, requested declaratory relief in the nature of declaring the Development Review Team's action on the sketch plan null and void for alleged violations of the South Carolina Freedom of Information Act (FOIA) and returning it for further action, a request very similar to that being made in the instant appeal. Declaratory relief is a statutory remedy for violations of the FOIA provisions.

Fairways expressing disinterest in any requested declaratory relief filed a motion to dismiss it from that complaint as being an improper party. It sought sanctions against Appellant for considering it a party. This Honorable Court granted the motion to dismiss but denied sanctions.

5. *Notice of Appeal Provided Fairways Within Statutory Period*. During the proceedings in the FOIA case, Appellant/Plaintiff in that case informed the Attorney for Fairways, the same attorney in the instant case, of his Notice of Appeal and Appeal in this action. Specifically, on Monday, April 8, 2013, your Appellant, within the time authorized for him to appeal, forwarded by electronic means a copy of the Notice of Appeal and Appeal in this case to the attorney for Fairways. Appellant received Notice of the Planning Commission findings on March 11, 2013. This appeal was filed on March 18, 2013. Appellant had until April 10, 2013, to file this appeal. Fairways has had notice of these proceedings since at least the April 8 date. Furthermore, Fairways has not experienced prejudice as a consequence of not being joined as a party. These motions are the first actions on this matter.

Your Appellant demonstrated his willingness to join any necessary party and has no objection to Fairways' request for joinder. The treatise, 3A James W. Moore et al., Moore's Federal Practice P 19.01 [5.-9](2d ed. 1990), recognizes that, in addition to jurisdictional questions, the concept of indispensability also concerns the ability of a court to make an equitable adjudication. **See** 3A James W. Moore et al., **Moore's Federal Practice** P 19.05[2] (2d ed. 1991).

6. *Motion to Amend and Relation Back.* Appellant requested within the period within which a pleading may be amended as a matter of course under Rule 15(a) of the South Carolina Rules of Civil procedure to amend his appeal and, among other things, to join Fairways as a party

pursuant to its request and, in the event Appellant is mistaken as to the identity of the proper party development permittee, to perfect his appeal. Rule 15(c) provides that an amendment changing the party against whom a claim is asserted relates back if the claim arose out of the conduct set forth or attempted to be set forth in the original proceeding. It further states an amendment changing a party relates back to be within the period provided by law for commencing the action against him provided the party to be brought in by amendment (1) received such notice of the institution of the action so that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. Fairways knew of the action. Appellant provided an actual copy of the Appeal and Notice of Appeal by sending it to Fairways' attorney of record. Such transmission was by electronic means with such attorney responding in a similar manner that he received it. This notice was within the period provided by law for the institution of the appeal by Appellant. Fairways knew, or should have known, that Appellant would have brought the action against it but for a mistake concerning the identity of the proper party because Appellant had already attempted a joinder of it in the above-mentioned related case. The actual proper permittee is still a matter of contention but Appellant has no objection to the joinder. If the Appellant is mistaken about Fairways status in the matter, it is obvious he would have joined Fairways. Appellant already did join Fairways to a similar case only to have Fairways object with disinterest and seek sanctions for Appellant's (Plaintiff's in the other case) attempted joinder. Appellant has no objection in any event to Fairways participation in the matter. Appellant, with Fairways instant action that it will be precluded from sanctions for Appellant's joining it as a respondent. Appellant notes that Fairways has never stated any interest or shown any participation in the application of the Green

Code as suggested in the Villages at Long Creek project either within the community or before the Planning Commission and the Planning Department. The only exception to the previous sentence is Fairways letter acting as an agent on behalf of Fairways Development Group.

## RESPONSE TO ALLEGATION OF LACK OF STANDING

7. *Appellant's Standing in the Instant Proceeding.* (a) *Interested party*. The Richland County Code and the South Carolina provisions enabling such ordinance provide specific authority for an appeal of staff action on a land development plan by any party in interest (Section 6-29-1150(C) provides the any party in interest authority). County regulations (Section 26-58(b)(1)) provide authority for an appeal by any person who may have a substantial interest in the decision (although referring to the state requirement that states any party in interest). The county provision specifically references appeals by an applicant (it does not limit this to land owners), a contiguous landowner, or an adjacent landowner. Appellant paid his appeal fee, filed such an appeal, and the appeal was processed by the Planning Department and the Planning Commission. There was no objection made to Appellant's authority to file or to make such an appeal and Fairways' lack of participation in the process should estop it from make such a claim now. Appellant is an adjacent and contiguous landowner although the state provisions do not limit appeals accordingly.

This appeal was filed with this Honorable Court under authority of Section 26-54 (c)(3) d.1. of the Richland County Code, that states "Appeals shall only be filed by the applicant, a contiguous landowner, or an adjacent landowner,...". The cited Richland County Code provision at paragraph (c)(3) d.5. states any person with a substantial interest in the decision may appeal the planning commission decision to the circuit court. It further relates that in the

alternative (presumably if the Planning Commission's decision is against the property owner's interests) a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of the appeal and request for pre-litigation mediation. That paragraphs (1) and (2) relate to two different appeal procedures is shown by the variation in the period within which appeals must be made. Paragraph (D)(1), relating to an appeal by any party in interest, states that the appeal time commences from the date the commission provides the appellant actual notice of its decision. Paragraph (D)(2) states if the appeal is by a property owner whose land is the subject of a decision of the planning commission, the period starts from the date the decision of the board is mailed. This provision provides a land owner who may be affected by a party in interest prevailing before the planning commission to have an appeal process. Pre-litigation mediation is only required for appeals by such property owners. That the limitation is silent as to other appealing parties does not incorporate other such parties under its umbrella. The state provision for mediation (Section 6-29-1155), referenced in the county regulation, authorizes a party with substantial interest (presumably the party that prevailed at the Planning Commission stage) to intervene as a party in the pre-litigation mediation. Reference to this intervention clarifies that the pre-litigation mediation specifically refers to property owners whose land is subject of a decision of the planning commission, not to any person who is just a property owner. Paragraph 6-29-1155(A) clearly relates to the property owner referenced in Section 6-29-1150(D)(2).

(b) *Adjacent and contiguous landowner*. The Richland County Land Development Code at Section 26-54(c)(3)d 1 provides procedures for appeals from Development Review Team decisions. It states appeals may only be made by the applicant (it does not state property-owner), a contiguous landowner, or an adjacent landowner. In this regard the County Code, while

referencing the state enabling provision, unnecessarily and improperly limits the "interested party" language of that provision (Section 6-29-1150(C)). The issue was not raised by the Planning Department in its administration of this appeal. Appellant's filing fee and Appeal were accepted and acted on by the Planning Commission. The matter, however, is moot because your Appellant is a party of substantial interest and is an adjacent and contiguous landowner to the property that is proposed for Green Code development. There is no definition of substantial interest in the state or county provisions. Appellant is adjacent as that term is defined in the Land Development Code, Section 26-22 "*Lot,adjacent*. A lot that is contiguous to another lot." Section 26-21(b), *General Rules of Construction*, (9) states the term "contiguous", as applied to lots or districts, shall be interpreted as meaning having a common boundary of ten (10) or more feet in length. Appellant and the project known as Villages at Long Creek share a common boundary of the waterway, known as Lake Columbia or by some persons as Lake Windermere or Indian Lake. The Attorney General of South Carolina has opined that contiguity should be liberally construed and that water does not destroy contiguity between properties (Opinion of April 11, 2012, to The Honorable Rick Quinn). The Attorney General notes that the S.C. Supreme Court case of Eldridge v. S.C. Dept. of Transportation, 384 S.C. 548, 683 S.E. 2d 483 (2009) is particularly instructive. The Eldridge case explains the South Carolina Supreme Court's broad interpretation of the term "contiguous," and that contiguity is not destroyed by an intervening connector such as water. Appellant shares the current Residential, Single Family Low-Density zoning district with the property directly across the water that but for the waterway would be touching his property by approximately 175 feet in length.

(c) *Covenants and property owners association.* Fairways states that Appellant is not subject to Longcreek covenants, conditions, and restrictions and is not a member of the

Longcreek Property Owners Association. Appellant is not alone in being subject to differing covenants, conditions, and restrictions. Many inhabitants of the Long Creek Plantation community have differing deed restrictions. Fairways developed the community by instituting many various covenants for property owners in various parts of the development and at various times. The property being developed actually is subject to no current deed covenants or restrictions. Green Code developments are required to initiate a property owners' association to preserve and maintain project set aside conservation districts. The Longcreek Property Owners Association currently does not cover the project area and Fairways does not pay dues for the property in question. Whether the current Longcreek community will accept the added expense and responsibility of a Green Code project is a matter of conjecture and separate legal interpretations as to its requirement under its Association charter and its legal responsibility to adopt a Green Code community with a substantially different character and with substantially different requirements than the rest of the community.

(d) *Appellants interest in the proceeding.* Appellant in interested in the development of his adjacent properties. He is interested in quiet enjoyment of his ownership and expects harmony in accordance with his zoning district. Zoning is the foundation upon which the Richland County Land Development Code is based. Expectations of zoning and consistent land development with peaceful harmony fuel a substantial interest in an adjacent development project that ignores applicable zoning standards. Appellant does not object to peaceful use as anticipated in a residential, single-family, low-density zoning district. The placement of a community waterfront park directly across and close to his property is a matter of substantial interest. Water parks are not an authorized use under Section 26-151(b)(2) of the Richland County Land Development Code for the Residential, Single Family Low-Density zoning district.

Sound travels well across water and an attractive nuisance across from Appellant's property on the shore of Fairways' property makes some noise which is not unacceptable but indicative of what could occur to the harmony currently existent in the community. What the water part will be is of substantial interest. Denuding of the top of the hill across the waterway and replacing the natural vegetation with impervious surfaces will cause substantial erosion into the shallow stream fed waterway and cause serious harm to the current environment. These are matters of substantial interest and concern. Overloading community infrastructure further is a matter of concern. Certain communities in the Longcreek community already lack adequate water pressure in their upstairs facilities during the summer high water use periods. The community currently suffers from inadequate police and fire protection. It actually pays for increased police protection. The area is not in a priority investment zone and the comprehensive plan for the county accordingly has no responsibility to consider enhanced budgets. Current deficient roads are not being repaired. Response time for emergency medical care is over thirty minutes. All these matters fuel a substantial interest in a major development adjacent to Appellant's property. Appellant also is concerned about the application of the law in accordance with its stated provisions. This nation is founded on laws and its integrity depends on their proper enforcement and application. The Applicant has no objection to the development of the Villages project in accordance with stated laws. He is appealing what appears to be an improper application of a very clear zoning regulation. The instant interpretation by the Planning Department would remove any Green Code project from applicable zoning regulations. Furthermore, the Richland County Planning Department and Planning Commission never questioned Appellant's interest in this matter. For Fairways to now question this matter when the project has been advertised and after several proceedings have been held is untimely and subject to laches.

## STANDARD OF REVIEW AND MERIT

8. (a) *Zoning standards*. The standard of review in the matter is deference to the administrative officials with the exception of the administrative officials' interpretations of the law. "The determination of legislative intent is a matter of law." Charleston County Parks and Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E. 2d 841, 843 (1995). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." Id. (citing Sea Island Scenic Parkway Coalition v. Beaufort County Bd. Of Adjustments and Appeals, 316 S.C. 231, 235, 449 S.E. 2d 254, 256 (Ct. App. 1994)). In the instant case the appeal focuses on the interpretation of the applicable zoning standards for the project and their application in the Green Code. It also focuses on the interpretation of two specific conditions precedent to the application of the standards available in a section of the Green Code not applied by the Planning Department. The Residential, Single Family Low-Density zoning standard provides a minimum lot area that is "12,000 square feet or as determined by DHEC, but in no case shall it be less than 12,000 square feet." The Green Code provides an exception to this in its Subsection 26-186(i) with a bonus density for conservation area set asides. That exception is provided for in the Residential, Single Family Low-Density zoning district development standards when it states "...if a developer can meet the requirements found within Section 26-186, the development standards of 26-186(i) may be substituted for the standards required by this subsection." See Subsection 26-89(c). This exception was enacted by the County Council at the same time and in the same legislative provision as it enacted the Green Code (Ord. 035-08HR; 6-17-08). This appeal relates to the Planning Department's interpretation of Subsection 26-186 (h), the requirements section

provision relating to no minimum lot area. The Planning Department considers that requirements language as controlling over all others. The Green Code speaks to requirements as a condition precedent to the application of its development standards. The Planning Director has stated this single requirements provision institutes a zoning district of its own that, in effect, would eliminate all zoning minimum lot area standards in Green Code projects. The Planning Director rejects as unnecessary the Green Code development standards of Subsection 26-186 (i), the provision specifically referenced in zoning provisions as an exception to the zoning standard minimum lot sizes (Subsection (i) provides graduated bonus lot areas in accordance with the amount of set-asides; 10% bonus for 30% set aside, etc.). The Planning Department interpretation is of a seminal use of the Green Code in a major development in Richland County and it necessitates a proper legal review. The no minimum lot area requirement is understandable because if a minimum lot area were required, it would disenfranchise many of the eligible zoning districts from the Green Code. Only two zoning districts eligible to use the Green Code have no minimum lot area standards. Most of the eligible zoning districts have specific lot area minimums.

Fairways allegation is that since the project area is roughly 100 acres, the applicable zoning that authorizes 3.63 dwelling units per acre (total square footage per acre of 43,560.1 divided by 12,000) is met by its 332 unit project. A zoning lot area is defined, as mentioned above, in the manner that "in no case shall it be less than 12,000 square feet," the lot area authorized for the RS-LD district. In accordance with this, one acre could only fit three units but two acres could obtain seven units and so on. With infrastructure, conservation set asides, easements, streets and sidewalks, and areas used for other than dwelling units, a development of 100 acres is not available for 363 dwelling units. With the roads, set asides, buffers, etc. they

would not fit. The Villages project would set aside approximately 30 acres for conservation purposes. Even with the 17% area considered for infrastructure as alleged by Fairways, and such an estimate is very low according to most planning schedules, that would leave only 53 acres available for actual dwelling units. At 43,560.1 square feet per acre, the project would have 2,308,685.3 square feet on which to configure the dwelling units. With a minimum of 12,000 per lot area that would result in no more than 192 dwelling units, a far cry from the 332 dwelling units proposed. If some other legal interpretation would authorize another minimum lot area than the ordinary meaning of the zoning ordinance that would be a legal matter for interpretation by this Honorable Court. The "in no case shall it be less than 12,000 square feet" language in the zoning district ordinances is plain and its intent clear. This is language people depend on when adopting an area of a specific character in which to dwell.

(b) *Lot width*. The Green Code recognizes a lot width requirement by requiring it to be reported in the sketch/concept plan. It does not state a specific lot width standard; lot widths are established standards in the zoning standards for the relevant zoning districts. All residential zoning districts have a minimum lot width. Sections 26-93 and 26-94 of the Richland County Land Development Code are multi-family residential zoning districts that have a "no minimum lot area" standard with a specified limited number of units per acre. These two multi-family districts with no minimum lot area standards have a limit to the number of dwelling units authorized something the Planning Director's interpretation of the no minimum lot size for Green Code projects rejects. Both provisions have a minimum lot width of 50 feet. The Planning Director's interpretation that a no minimum lot area standard means no minimum lot width is relevant in Green Code developments is an interpretation of the Green Code not substantiated by other provisions of the code, by reading the Land Development Code in context, or by any

legislative intent. Subsection 26-186 (f) clearly recognizes that a minimum lot width requirement is apposite. Why else would the legislators use the term "minimum" in that provision. Minimum lot width is a development standard in all residential zoning districts. The determination not to apply minimum lot width standards is an interpretation of the Green Code authority that necessitates a legal review.

(c) *Impervious surface*. Section 26-186 (h)(11) is a requirement that in the developed areas the "maximum impervious surface allowed is fifty percent (50%) of the developed area". The Planning Director refuses to consider or enforce this provision because she states it is only applicable if the developer voluntarily uses pervious materials for sidewalks and driveways. The first sentence of Paragraph (11) states, "Pervious material may be used for sidewalks and driveways." The mandatory requirement is found in the second sentence of the provision as referenced above. This issue is a major concern of green developments, is recognized as a major issue in the Comprehensive Plan, and was recognized as a major issue by a joint study by the U.S. Army Corps of Engineers and Richland County in 2008 and 2009. The Development Review Team commented on pervious materials in one minor area, a community recreation parking area, but not elsewhere. Fairways allegations that the developer meets the impervious requirement fails to consider that the requirement is to the developed area and does not include the set asides and other conservation areas upon which a bonus is conditioned. A brief glance at the developed area immediately across the waterway from Appellant's property shows a developed area of houses on small lots, with streets and sidewalks throughout. There is no indication that any of the surfaces in the developed area are to be constructed of pervious surfaces. The interpretation of this specific requirement is an interpretation of the inapplicability of a specific condition to development by the Green Code and is a matter of law. That the

approval is of a concept/sketch plan and accordingly is an unnecessary matter for consideration belies the specific statutory requirement of this important feature in a green code development. It is a major factor of a green code development that makes it different from any other development. The provision requires its enforcement. The Planning Director has no authority to disregard it.

(d) *Comprehensive plan.* The Richland County Comprehensive Plan contains an emphasized statement that the Future Plan Use Map does not change any zoning districts. The Planning Director uses a statement out of context in the Comprehensive Plan to justify a higher density than that authorized by the relevant zoning district. She states the development accordingly comports with the Comprehensive Plan. Her statutory duties (Section 26-218 of the County Code) state the director shall adhere to the county's comprehensive plan. Adherence is a substantial variation from being a guiding principle. The Comprehensive Plan has provisions for relaxed zoning and bonuses but these are designed for use in priority investment areas. This is so the County Council can budget for additional needs required by changes to the applicable standards in the priority investment zone. The proposed project is not in such a Comprehensive Plan zone.

(e) *Appellant's Appeal.* Fairways does not mention the other matters of appeal, one of which is the Planning Commission's failure to address that Fairways is not the applicant for the Green Code project and is not the entity that may apply the standards of the Green Code. It further does not mention the other matters that undercut Appellant's rights to a fair hearing and decision by the Planning Commission.

**IMPROPER RECORD**

9. Of significance to this matter that touches on Appellant's right to a fair hearing is recently learned information that the Planning Department provided an incorrect file to the Planning Commission for its action on Appellant's appeal. Appellant requested clarification of this matter a number of times with counsel for the Appellee, Richland County Planning Commission, but Counsel has not responded. Richland County certified what was presented to the Planning Commission for the appeal and it is not the appeal Appellant filed with the Planning Department. The agenda packet that was provided the Planning Commission for its action on Appellant's appeal is incorrect.

Appellant's appeal to the Planning Commission was made on December 20, 2012. The appeal forwarded as part of the agenda packet and this record indicates what was sent to the Planning Commission was the appeal dated September 5, 2012. The Development Review Team action in the formal Record on Appeal is that of August 14, 2012 not the December 7, 1912 Development Review Team action that formed the basis of Appellant's appeal. Other papers in the agenda packet and the formal Record provided this Honorable Court are not part of this appeal and are misleading and prejudicial to Appellant's action.

Correct documents that should have been included in the agenda packet for the Planning Commission's action are those documents presented in Appellant's Notice of Appeal and Appeal in the instant proceedings. The formal Record of Appeal submitted by Counsel for Appellee Richland County Planning Commission is inaccurate and prejudicial. Basically the staff action (the Development Review Team action) that Appellant appealed to the Planning Commission must be presented to the Planning Commission as the matter they must consider. The Planning Commission is required to conduct a public hearing on the appeal. They must have the appeal to conduct such a hearing. See the required procedures for such appeals in Section 26-54(c)(3)d.3.

Appellant's amended appeal will request this Honorable Court to return the matter to the Richland County Planning Commission for approval of the former appeal in accordance with Section 26-54(c)(3)d.3[a] and Appellant will move for such a return when this Motion is heard.

Dismissal of this matter at this time would be unjust and a violation of Appellant's rights to a fair disposition of the matter.

WHEREFORE Appellant requests this Honorable Court to deny intervener Fairways Development LLC's Motion to Dismiss the Appeal.

Respectfully submitted,

Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

July , 2013
Blythewood, SC

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Memorandum Of Law And Response To Fairways' Motion To Dismiss on Appellee Richland County, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on July ____, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County, and in the same manner on the same

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No.:2013-CP -400-1643 |
| Appellant, Pro Se | ) | **AFFIDAVIT IN RESPONSE TO** |
| vs. | ) | **FAIRWAYS DEVELOPMENT LLC** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **MOTION TO DISMISS** |
| Appellee. | ) | |

**AFFIDAVIT IN RESPONSE TO FAIRWAYS'MOTION TO DISMISS**

Appellant, Samuel T. Brick, in response to the contentions by Intervener Fairways Development, LLC (Fairways) under oath and by this Affidavit avers the following:

**RESPONSE TO ALLEGATION OF FAILURE TO JOIN**

1. *Fairways is not the Development Permittee.* Fairways Development LLC is not the development permittee of the project, the object of the Development Review Team action that forms the basis for Appellant's appeal to the Planning Commission and the Appeal to this court. Fairways contends that it is the development permittee for the project, known as the Villages at Longcreek but the Richland County Planning Department and Richland County treat an unincorporated and different entity, Fairways Development Group as the development permittee, not Fairways. Deference should be given to the county as to whom they consider the development permittee. The first sentence of the application for the project, the Villages at LongCreek, is as follows:

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"Fairways Development Group is pleased to submit the required submittals for consideration of the above LID residential project being developed under the Richland County Code. "

2. *Fairways Development Group.* The application recites the property owner as "Fairways Development Group (John Bakhaus)." The applicant name for the project is stated as "Fairways Development Group (John Bakhaus)." The Sketch Plan Checklist denotes the Applicant as "Fairways Development Group (John Bakhaus)," with the applicant in handwriting signed as Fairways Development, LLC, the only place the project is signed in this manner. The Development Review Team meeting conducted by the Richland County Planning Department refers to the Applicant as "Fairways Development Group, c/o John Bakhaus." The specific action that formed the basis for the appeal to the Richland County Planning Commission, is addressed to the permittee in the case as John D. Champoux, a registered landscape architect in the employee of Sustainable Design Consultants that prepared the sketch plan on behalf of Longcreek Associates, LLC. A copy of the permit approval addressed to Mr. Champoux was provided to "John Bakhaus, c/o Fairways Development Group, Applicant," not to Fairways. The Sketch Plan was prepared on behalf of Longcreek Associates, LLC, a South Carolina corporation, with Ronald Johnson listed in the Secretary of State records as resident agent. There is no evidence Fairways participated in the preparation of the sketch plan or had anything to do with it. Appellant conducted a search of South Carolina corporate records and there are no such corporate entities as Fairways Development Group or Fairways Development group (John Bakhaus).

Fairways Development Group is not an entity of Fairways Development, LLC or a "doing business as" function of Fairways. It is an entirely separate entity unincorporated in the State of South Carolina. Ronald E. Johnson, resident agent of Longcreek Associates LLC,

testified at the administrative appeal of the Development Review Team's approval of the project. He stated the following during the Planning Commission's hearing (at page 31 of Appendix B-3 to Appellant's Notice of Appeal and Appeal, the Minutes of the Planning Commission for February 4, 2013, and also as filed as part of the Record by the Appellee):

> "...., I want to thank you for allowing us to come here today. First of all I want to apologize that everyone is having to once again review something that had previously been approved. I am reminded, however, that we failed to prepare our application properly and thus we find ourselves here today."

He further states:

> "Staff knows full well that we have engaged outside services to have a tree study done, we've had wetlands surveyed and delineated so we have gone above and beyond to try to make sure the areas that we are proposing, that you have seen in the plan, will be developed in the areas that will have the least impact on the, on the land in question."

Mr. Johnson never stated he was part of, agent for, or connected to Fairways Development LLC and there is no indication his participation is other than as a member of the unincorporated Fairways Development Group and used his affiliation with Longcreek Associates LLC, for whom the sketch plan was prepared, to further the Group's project. This would follow his statement and appearance before the Planning Commission of engaging outside services and his reference in his statement to the sketch plan.

3. *Fairways Conduct in the Application and Reviews*. Fairways Development LLC did not participate in the proceedings by the Development Review Team or the Planning Commission's hearing on the appeal. During the meetings with the community to which Mr. Johnson refers in his Planning Commission statement, Mr. Johnson and his partner stated in a community forum in answer to Appellant's question that the proposed development is by his group and not by the land owner, Fairways. The community knows Fairways and Mr. Johnson's partner, Mr. Steve McNair, clarified that Fairways was not the developer. Fairways did not attend, show interest in,

or participate in the neighborhood meetings or the Planning Commission's hearing on Appellant's appeal. In early meetings with the community Mr. Johnson and his partner clearly disassociated themselves from Fairways.

Fairways has developed property throughout the Long Creek Plantation community for many years. It has followed traditional zoning standards and there is nothing stopping its development of the subject project in accordance with those rules. The Villages project does not apply applicable zoning standards. Part of Appellant's appeal that was addressed to the Planning Commission but not addressed in its action on the appeal is that the Villages project is not being developed by the owner, a required factor by the special provision known as the Green Code (Section 26-186 of the Richland County Land Development Code) under which the project is filed.

Under Spanish Wells Property Owners Ass'n v. Board of Adjustment of the Town of Hilton Head Island, 296 S.C. 67, 367 S.E. 2d 160 (1988), upon which Fairways bases part of its Motion, the question is whether a permittee is a necessary party to an action to revoke a development permit. Appellant's contention and a part of his appeal before the Richland County Planning Commission, is that Fairways was *not* the permittee in the project. Spanish Wells consistently refers to the permittee being a necessary party and only mentions owner/permittee once when referencing a Washington State case in which the land owner in that case was the permittee. The Spanish Wells holding is that "a development permittee is a necessary party to an appeal of its permit." Id. Page 69. Richland County treated Fairways Development Group, an unincorporated entity, as the development permittee. Appellant researched the Fairways Development Group's corporate status and, as averred to above, there is no resident agent or manner of gaining jurisdiction over Fairways Development Group. Appellant suspects Mr.

Johnson and Mr. McNair as being a part of the development group requesting permit approval but has no definitive information as to whether he is, what agreements bind the group, and who else is a participant in the group.

Fairways' lack of involvement in the process and its lack of knowledge of the project (Fairways' Appendices to this Motion fail to capture a third part and major portion of the project while attempting to characterize Appellant's proximity) further demonstrates Fairways lack of involvement with the project. The Exhibits to Fairway's Motion to Dismiss indicate that Appellant's property is over one half mile from the project, and across a golf course. Fairways does not understand that a major portion of the project suggests 130 dwelling units and a waterfront park directly across water from Appellant's property and less than one-tenth of a mile (175 yards) away (see Appellant Appendix 1, a distance measuring device of Richland County GEO mapping program that shows the distance from Appellant's address to the proposed project, the object of the Development Review Team project, is .094 miles or approximately 175 yards).

4. *Appellant's Attempted Joinder of Fairways.* Appellant attempted to join Fairways as a party to a case currently before this Honorable Court (Samuel T. Brick v. Richland County, et al, Case Number 2012-CP-400-7337) in which Appellant, Plaintiff in that case, requested declaratory relief in the nature of declaring the Development Review Team's action on the sketch plan null and void for alleged violations of the South Carolina Freedom of Information Act (FOIA) and returning it for further action, a request very similar to that being made in the instant appeal. Declaratory relief is a specific statutory remedy for violations of the FOIA provisions. Fairways expressed disinterest in any requested declaratory relief filed through a motion to dismiss it from that complaint. It sought sanctions against Appellant for including it as a party respondent. This Honorable Court granted the motion to dismiss but denied sanctions.

5. *Notice of Appeal Provided Fairways Within Statutory Period.* During the proceedings in the FOIA case, Appellant/Plaintiff in that case informed the Attorney for Fairways, the same attorney in the instant case, of his Notice of Appeal and Appeal in this action. Specifically, on Monday, April 8, 2013, your Appellant, within the time authorized for him to appeal, forwarded a copy of the Notice of Appeal and Appeal in this case to the attorney for Fairways by electronic means. Appellant received Notice of the Planning Commission findings on March 11, 2013. This appeal was filed on March 18, 2013. Appellant had until April 10, 2013, to file this appeal. Fairways has had notice of these proceedings since at least the April 8 date. Fairways has not experienced prejudice as a consequence of not being joined as a party. These motions are the first actions on this matter.

Your Appellant demonstrated his willingness to join a necessary party and has not objection to Fairways' request for joinder. The treatise, 3A James W. Moore et al., Moore's Federal Practice P 19.01 [5.-9](2d ed. 1990), recognizes that, in addition to jurisdictional questions, the concept of indispensability also concerns the ability of a court to make an equitable adjudication. **See** 3A James W. Moore et al., **Moore's Federal Practice** P 19.05[2] (2d ed. 1991).

6. *Motion to Amend and Relation Back.* Appellant requested within the period within which a pleading may be amended as a matter of course under Rule 15(a) of the South Carolina Rules of Civil procedure to amend his appeal and, among other things, to join Fairways as a party pursuant to its request and, in the event Appellant is mistaken as to the identity of the proper party development permittee, to perfect his appeal. Rule 15(c) provides that an amendment changing the party against whom a claim is asserted relates back if the claim arose out of the conduct set forth or attempted to be set forth in the original proceeding. It further states an

amendment changing a party relates back to be within the period provided by law for commencing the action against him provided the party to be brought in by amendment (1) received such notice of the institution of the action so that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. Fairways knew of the action. Appellant provided an actual copy of the Appeal and Notice of Appeal by sending it to Fairways' attorney of record. Such transmission was by electronic means with such attorney responding in a similar manner that he received it. This notice was within the period provided by law for the institution of the appeal by Appellant. Fairways knew, or should have known, that Appellant would have brought the action against it but for a mistake concerning the identity of the proper party because Appellant had already attempted a joinder of it in the above-mentioned related case. Fairways has not expended funds in the pursuit of the project. Mr. Johnson states he or his group paid for a tree survey and a wetlands survey. The sketch plan, the major part of the application was prepared on behalf of and paid for by Mr. Johnson's, corporate entity, Longcreek Associates, LLC. If the Appellant is mistaken about Fairways status in the matter and Fairways were the permittee, it is obvious he would have joined Fairways. As mentioned above, Appellant already did join Fairways to a similar case only to have Fairways object with disinterest and seek sanctions against Appellant. Appellant avers that Fairways has never stated any interest or shown any participation in the application of the Green Code as suggested in the Villages at Long Creek project either within the community or before the Planning Commission and the Planning Department. The only exception to the previous sentence is Fairways letter acting as an agent on behalf of Fairways Development Group.

## RESPONSE TO ALLEGATION OF LACK OF STANDING

7. *Appellant's Standing in the Instant Proceeding.* (a) *Interested party.* The Richland County Code and the South Carolina provisions enabling such ordinance provide specific authority for an appeal of staff action on a land development plan by any party in interest (Section 6-29-1150(C) provides the any party in interest authority). County regulations (Section 26-58(b)(1)) provide authority for an appeal by any person who may have a substantial interest in the decision (although referring to the state requirement that states any party in interest). The county provision specifically references appeals by an applicant (it does not limit this to land owners), a contiguous landowner, or an adjacent landowner. Appellant paid his appeal fee, filed such an appeal, and the appeal was processed by the Planning Department and the Planning Commission. Appellant is a property owner at an address contiguous to the proposed project. See Appendix 2, a copy of the Richland County Assessor's Office owner information for the property known as 124 Runneymede Drive and Appellant's interest in the property. A view of Appellant's property as it relates to the proposed project is at Appendix 3. There was no objection made to Appellant's authority to file or make an appeal of the Development Review Team's approval of the project.

This appeal was filed with this Honorable Court under authority of Section 26-54 (c)(3) d.1. of the Richland County Code, that states "Appeals shall only be filed by the applicant, a contiguous landowner, or an adjacent landowner,...". The cited Richland County Code provision at paragraph (c)(3) d.5. states any person with a substantial interest in the decision may appeal the planning commission decision to the circuit court. It further relates that in the alternative (presumably if the Planning Commission's decision is against the property owner's interests) a property owner whose land is the subject of a decision by the planning commission

may appeal by filing a notice of the appeal and request for pre-litigation mediation. That paragraphs (1) and (2) relate to two different appeal procedures is shown by the variation in the period within which appeals must be made. Paragraph (D)(1), relating to an appeal by any party in interest, states that the appeal time commences from the date the commission provides the appellant actual notice of its decision. Paragraph (D)(2) states if the appeal is by a property owner whose land is the subject of a decision of the planning commission, the period starts from the date the decision of the board is mailed. This provision provides a land owner who may be affected by a party in interest prevailing before the planning commission to have an appeal process. Pre-litigation mediation is only required for appeals by such property owners. That the limitation is silent as to other appealing parties does not incorporate other such parties under its umbrella. The state provision for mediation (Section 6-29-1155), referenced in the county regulation, authorizes a party with substantial interest (presumably the party that prevailed at the Planning Commission stage) to intervene as a party in the pre-litigation mediation. Reference to this intervention clarifies that the pre-litigation mediation specifically refers to property owners whose land is subject of a decision of the planning commission, not to any person who is just a property owner. Paragraph 6-29-1155(A) clearly relates to the property owner referenced in Section 6-29-1150(D)(2).

(b) *Adjacent and contiguous landowner*. The Richland County Land Development Code at Section 26-54(c)(3)d 1 provides procedures for appeals from Development Review Team decisions. It states appeals may only be made by the applicant (it does not state property-owner), a contiguous landowner, or an adjacent landowner. In this regard the County Code, while referencing the state enabling provision, unnecessarily and improperly limits the "interested party" language of that provision (Section 6-29-1150(C)). The issue was not raised by the

Planning Department in its administration of this appeal. Appellant's filing fee and Appeal were accepted and acted on by the Planning Commission. The matter, however, is moot because your Appellant is a party of substantial interest and is an adjacent and contiguous landowner to the property that is proposed for Green Code development. There is no definition of substantial interest in the state or county provisions. Appellant is adjacent as that term is defined in the Land Development Code, Section 26-22 "*Lot,adjacent.* A lot that is contiguous to another lot." Section 26-21(b), *General Rules of Construction*, (9) states the term "contiguous", as applied to lots or districts, shall be interpreted as meaning having a common boundary of ten (10) or more feet in length. Appellant and the project known as Villages at Long Creek share a common boundary of the waterway, known as Lake Columbia or by some persons as Lake Windermere or Indian Lake. The Attorney General of South Carolina has opined that contiguity should be liberally construed and that water does not destroy contiguity between properties (Opinion of April 11, 2012, to The Honorable Rick Quinn). The Attorney General notes that the S.C. Supreme Court case of Eldridge v. S.C. Dept. of Transportation, 384 S.C. 548, 683 S.E. 2d 483 (2009) is particularly instructive. The Eldridge case explains the South Carolina Supreme Court's broad interpretation of the term "contiguous," and that contiguity is not destroyed by an intervening connector such as water. Appellant shares the current Residential, Single Family Low-Density zoning district with the property directly across the water that but for the waterway would be touching his property by approximately 175 feet in length (See Appendix 4 showing 174.63 feet alongside Lake Columbia with 124 Runneymede Drive).

(c) *Covenants and property owners association.* Fairways states that Appellant is not subject to Longcreek covenants, conditions, and restrictions and is not a member of the Longcreek Property Owners Association. Appellant is not alone in being subject to differing

covenants, conditions, and restrictions. Many inhabitants of the Long Creek Plantation community have differing deed restrictions. Fairways developed the community by instituting differing covenants for property owners in various parts of the development and at various times. The property being developed is subject to no current deed covenants or restrictions so Fairways statement in this regard is inapplicable in any event. Green Code developments are required to initiate a property owners' association to preserve and maintain project set aside conservation districts. The Longcreek Property Owners Association currently does not cover the project area and Fairways does not pay dues for the property in question. Whether the current Longcreek community will accept the added expense and responsibility of a Green Code project is a matter of conjecture and separate legal interpretations as to its requirement under its Association charter and its legal responsibility to adopt a Green Code community with a substantially different character and with substantially different requirements than the rest of the community.

(d) *Appellants interest in the proceeding.* Appellant is interested in the development of his adjacent properties. He is interested in quiet enjoyment of his ownership and expects harmony in accordance with his zoning district. Zoning is the foundation upon which the Richland County Land Development Code is based. Expectations of zoning and consistent land development with peaceful harmony fuel a substantial interest in an adjacent development project that ignores applicable zoning standards. Appellant does not object to peaceful use as anticipated in a residential, single-family, low-density zoning district. The placement of a community waterfront park of undetermined character directly across and in close proximity to his property is a matter of substantial concern. Water parks are not an authorized use under Section 26-151(b)(2) of the Richland County Land Development Code for the Residential, Single Family Low-Density zoning district. Denuding of the top of the hill across the waterway

and replacing the natural vegetation with impervious surfaces will cause substantial erosion into the shallow stream fed waterway that makes up Lake Columbia and cause serious harm to the current environment. Overloading community infrastructure further is a matter of concern. Certain communities in the Longcreek community already lack adequate water pressure in their upstairs facilities during the summer peak use periods. The community currently suffers from inadequate police and fire protection. It actually pays for off duty sheriff's deputies to provide police protection. The area is not in a priority investment zone. The comprehensive plan for the county accordingly has no responsibility to consider enhanced budgets for the relaxed zoning anticipated in priority zones. Current deficient roads are not being repaired. Response time for emergency medical care is over thirty minutes. Appellant also is concerned about the application of the zoning laws in accordance with their stated provisions. This nation is founded on laws and its integrity depends on their proper enforcement and application. The Applicant has no objection to the development of the Villages project in accordance with current zoning. He is appealing what appears to be an improper application of a very clear zoning regulation that would result in lots of small size and a different character than that established with current zoning districts. The interpretation by the Planning Department on the project, the subject of this appeal would remove any Green Code project from applicable zoning regulations. Plaintiff has attended many community meetings on this project, he has testified before the Planning Commission and the County Council numerous times on matters related to this project and he has made the formal appeals with regard to the project.

**STANDARD OF REVIEW AND MERIT**

8. (a) *Zoning standards*. The standard of review in the matter is deference to the administrative officials with the exception of the administrative officials' interpretations of the

law. "The determination of legislative intent is a matter of law." Charleston County Parks and Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E. 2d 841, 843 (1995). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." Id. (citing Sea Island Scenic Parkway Coalition v. Beaufort County Bd. Of Adjustments and Appeals, 316 S.C. 231, 235, 449 S.E. 2d 254, 256 (Ct. App. 1994)). In the instant case the appeal focuses on the interpretation of the applicable zoning standards for the project and their application in the Green Code. It also focuses on the interpretation of two specific conditions precedent to the application of the standards available in a section of the Green Code not applied by the Planning Department. The Residential, Single Family Low-Density zoning standard provides a minimum lot area that is "12,000 square feet or as determined by DHEC, but in no case shall it be less than 12,000 square feet." The Green Code provides an exception to this in its Subsection 26-186(i) with a bonus density for conservation area set asides. That exception is provided for in the Residential, Single Family Low-Density zoning district development standards when it states "...if a developer can meet the requirements found within Section 26-186, the development standards of 26-186(i) may be substituted for the standards required by this subsection." See Subsection 26-89(c). This exception was enacted by the County Council at the same time and in the same legislative provision as it enacted the Green Code (Ord. 035-08HR; 6-17-08). This appeal relates to the Planning Department's interpretation of Subsection 26-186 (h), the requirements section provision relating to no minimum lot area. The Planning Department considers that requirements language as controlling over all others. The Green Code speaks to requirements as a condition precedent to the application of its development standards. The Planning Director has stated this

single requirements provision institutes a zoning district of its own that, in effect, would eliminate all zoning minimum lot area standards in Green Code projects. The Planning Director rejects as unnecessary the Green Code development standards of Subsection 26-186 (i), the provision specifically referenced in zoning provisions as an exception to the zoning standard minimum lot sizes (Subsection (i) provides graduated bonus lot areas in accordance with the amount of set-asides; 10% bonus for 30% set aside, etc.). The Planning Department interpretation is of a seminal use of the Green Code in a major development in Richland County and it necessitates a proper legal review. The no minimum lot area requirement is understandable because if a minimum lot area were required, it would disenfranchise many of the eligible zoning districts from the Green Code. Only two zoning districts eligible to use the Green Code have no minimum lot area standards. Most of the eligible zoning districts have specific lot area minimums.

Fairways allegation is that since the project area is roughly 100 acres, the applicable zoning that authorizes 3.63 dwelling units per acre (total square footage per acre of 43,560.1 divided by 12,000) is met by its 332 unit project. A zoning lot area is defined, as mentioned above, in the manner that "in no case shall it be less than 12,000 square feet," the lot area authorized for the RS-LD district. In accordance with this, one acre could only fit three units but two acres could obtain seven units and so on. With infrastructure, conservation set asides, easements, streets and sidewalks, and areas used for other than dwelling units, a development of 100 acres is not available for 363 dwelling units. With the roads, set asides, buffers, etc. they would not fit. The Villages project would set aside approximately 30 acres for conservation purposes. Even with the 17% area considered for infrastructure as alleged by Fairways, and such an estimate is very low according to most planning schedules, that would leave only 53 acres

available for actual dwelling units. At 43,560.1 square feet per acre, the project would have 2,308,685.3 square feet on which to configure the dwelling units. With a minimum of 12,000 per lot area that would result in no more than 192 dwelling units, a far cry from the 332 dwelling units proposed. If some other legal interpretation would authorize another minimum lot area than the ordinary meaning of the zoning ordinance that would be a legal matter for interpretation by this Honorable Court. The "in no case shall it be less than 12,000 square feet" language in the zoning district ordinances is plain and its intent clear. This is language people depend on when adopting an area of a specific character in which to dwell.

(b) *Lot width.* The Green Code recognizes a lot width requirement by requiring it to be reported in the sketch/concept plan. It does not state a specific lot width standard; lot widths are established standards in the zoning standards for the relevant zoning districts. All residential zoning districts have a minimum lot width. Sections 26-93 and 26-94 of the Richland County Land Development Code are multi-family residential zoning districts that have a "no minimum lot area" standard with a specified limited number of units per acre. These two multi-family districts with no minimum lot area standards have a limit to the number of dwelling units authorized something the Planning Director's interpretation of the no minimum lot size for Green Code projects rejects. Both provisions have a minimum lot width of 50 feet. The Planning Director's interpretation that a no minimum lot area standard means no minimum lot width is relevant in Green Code developments is an interpretation of the Green Code not substantiated by other provisions of the code, by reading the Land Development Code in context, or by any legislative intent. Subsection 26-186 (f) clearly recognizes that a minimum lot width requirement is apposite. Why else would the legislators use the term "minimum" in that provision. Minimum lot width is a development standard in all residential zoning districts. The

determination not to apply minimum lot width standards is an interpretation of the Green Code authority that necessitates a legal review.

(c) *Impervious surface*. Section 26-186 (h)(11) is a requirement that in the developed areas the "maximum impervious surface allowed is fifty percent (50%) of the developed area". The Planning Director refuses to consider or enforce this provision because she states it is only applicable if the developer voluntarily uses pervious materials for sidewalks and driveways. The first sentence of Paragraph (11) states, "Pervious material may be used for sidewalks and driveways." The mandatory requirement is found in the second sentence of the provision as referenced above. This issue is a major concern of green developments, is recognized as a major issue in the Comprehensive Plan, and was recognized as a major issue by a joint study by the U.S. Army Corps of Engineers and Richland County in 2008 and 2009. The Development Review Team commented on pervious materials in one minor area, a community recreation parking area, but not elsewhere. Fairways allegations that the developer meets the impervious requirement fails to consider that the requirement is to the developed area and does not include the set asides and other conservation areas upon which a bonus is conditioned. A brief glance at the developed area immediately across the waterway from Appellant's property shows a developed area of houses on small lots, with streets and sidewalks throughout. There is no indication that any of the surfaces in the developed area are to be constructed of pervious surfaces. The interpretation of this specific requirement is an interpretation of the inapplicability of a specific condition to development by the Green Code and is a matter of law. That the approval is of a concept/sketch plan and accordingly is an unnecessary matter for consideration belies the specific statutory requirement of this important feature in a green code development. It is a major factor of a green code development that makes it different from any other

development. The provision requires its enforcement. The Planning Director has no authority to disregard it.

(d) *Comprehensive plan.* The Richland County Comprehensive Plan contains an emphasized statement that the Future Plan Use Map does not change any zoning districts. The Planning Director uses a statement out of context in the Comprehensive Plan to justify a higher density than that authorized by the relevant zoning district. She states the development accordingly comports with the Comprehensive Plan. Her statutory duties (Section 26-218 of the County Code) state the director shall adhere to the county's comprehensive plan. Adherence is a substantial variation from being a guiding principle. The Comprehensive Plan has provisions for relaxed zoning and bonuses but these are designed for use in priority investment areas. This is so the County Council can budget for additional needs required by changes to the applicable standards in the priority investment zone. The proposed project is not in such a Comprehensive Plan zone.

(e) *Appellant's Appeal.* Fairways does not mention the other matters of appeal, one of which is the Planning Commission's failure to address that Fairways is not the applicant for the Green Code project and is not the entity that may apply the standards of the Green Code. It further does not mention the other matters that undercut Appellant's rights to a fair hearing and decision by the Planning Commission.

(f) *Standard of Review.* If the facts and inferences drawn from the facts alleged in the appeal, viewed in the light most favorable to the appellant, would entitle the appellant to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). In deciding whether the trial court

properly granted the motion to dismiss, an appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff or appellant to relief under any theory. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The foregoing was enunciated primarily in Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

**IMPROPER RECORD**

9. Of significance to this matter that touches on Appellant's right to a fair hearing is recently learned information that the Planning Department provided an incorrect file to the Planning Commission for its action on Appellant's appeal. Appellant requested clarification of this matter a number of times with counsel for the Appellee, Richland County Planning Commission, and Counsel recently responded with a supplemented file. Richland County certified what was presented to the Planning Commission for the appeal and it is not the appeal Appellant filed with the Planning Department. The agenda packet that was provided the Planning Commission for its action on Appellant's appeal is incorrect. Richland County now states other materials were provided as well. Even if the Planning Department, the parent body of the Development Review Team, provided Appellant's second appeal and the correct Development Review Team action with the incorrect files, the provision of the improper files is improper and of such as to undercut Appellant's ability to receive a fair hearing.

Appellant's appeal to the Planning Commission was made on December 20, 2012. The appeal forwarded as part of the agenda packet and this record indicates what was sent to the Planning Commission was the appeal dated September 5, 2012. The Development Review Team action in the formal Record on Appeal is that of August 14, 2012 not the December 7, 1912 Development Review Team action that formed the basis of Appellant's appeal. Other papers in the agenda packet and the formal Record provided this Honorable Court are not part of this appeal and are misleading and prejudicial to Appellant's action. The supplemented packet includes additional correct information but the Appellee states the first file presented in early June was correct.

Appellant's amended appeal will request this Honorable Court to return the matter to the Richland County Planning Commission for approval of the former appeal in accordance with Section 26-54(c)(3)d.3[a]. Appellant will move for such a return when this Motion is heard.

Dismissal of this matter at this time would be unjust and a violation of Appellant's rights to a fair disposition of the matter.

WHEREFORE Appellant requests this Honorable Court to deny intervener Fairways Development LLC's Motion to Dismiss the Appeal.

**AFFIDAVIT AND NOTARY PUBLIC**

I, Samuel T. Brick, Appellant in the captioned case above, do hereby state that the matters averred in the foregoing Affidavit and Response to Fairways Development LLC's Motion to Dismiss are true and correct to the best of his knowledge, information, and belief.

Signed and sworn to before me this ___ day of August, 2013.

_____
Notary Public

My Commission Expires _____

Respectfully submitted,

_____
Samuel T. Brick, Appellant, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

August , 2013
Blythewood, SC

DOCUMENTS ATTACHED:
Appendix 1, Richland County GEO Mapping of Distance between 124 Runneymede Drive and Project known as Villages at Longcreek.
Appendix 2, Richland County Assessor's Information on Ownership of Samuel T. Brick and 124 Runneymede Drive.
Appendix 3, Sky View of Appellant's Property in relation to Villages at Longcreek Project.
Appendix 4, Sketch of Appellant's Lot of 124 Runneymede Drive and the distance of said Lot on Lake Columbia.

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Affidavit in Response to Fairway's Motion to Dismiss on Appellee Richland County, by mailing a copy of same, by United States Mail, First Class, postage prepaid, on August ____, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County, and in the same manner on the same date to Tobias G. Ward Jr., attorney for the intervenor Fairways Development LLC addressed as follows:

William H. Davidson, II, Esquire
Michael H. Wren, Esquire

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, SC 29202

Tobias G. Ward, Jr, Esquire
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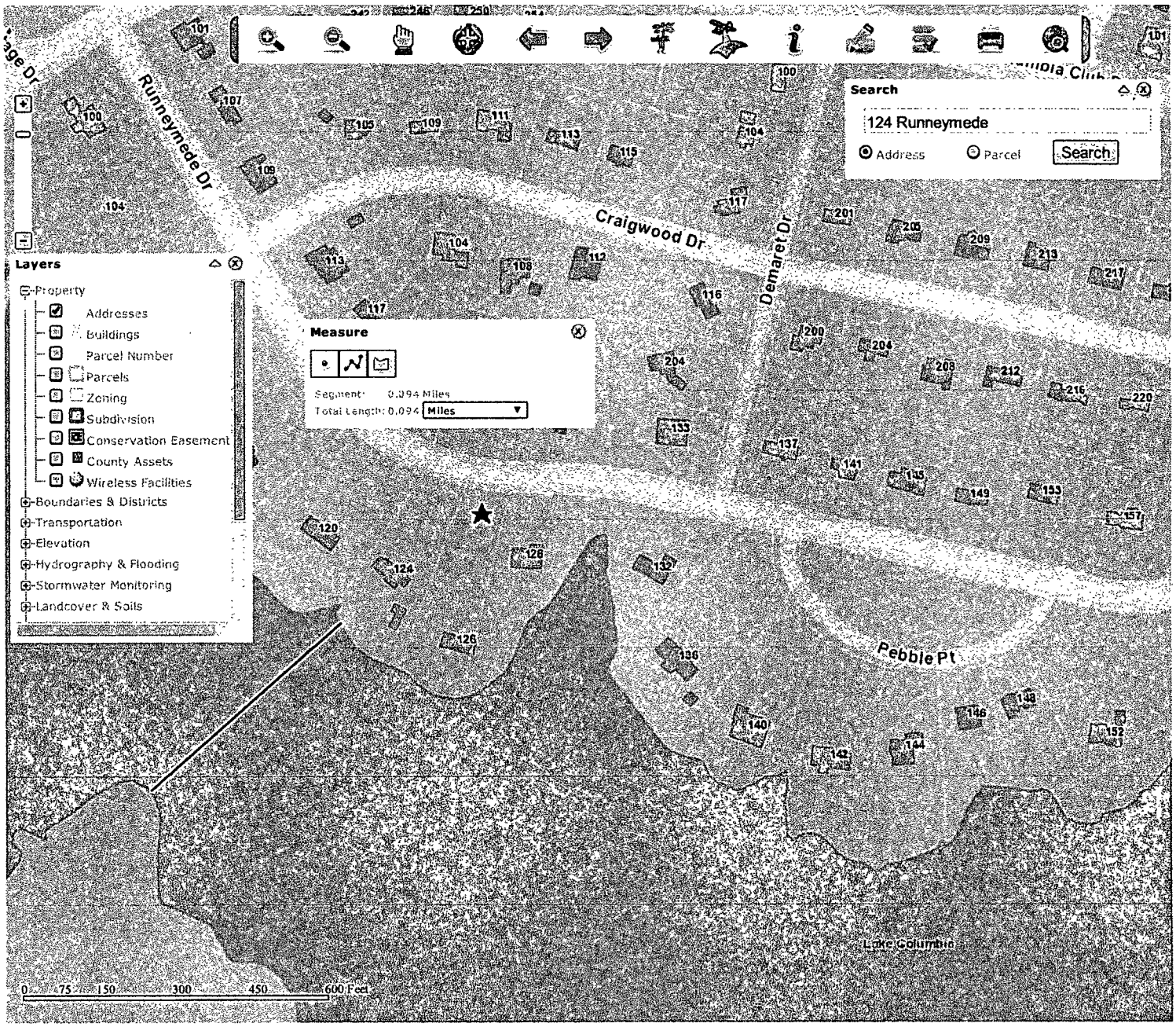
Blythewood, SC 29016
August ____, 2013




175 YARDS

.094 MILES



APPENDIX 1

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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | **FIFTH JUDICIAL CIRCUIT** |
| **SAMUEL T. BRICK,** | ) | Case No. 2013-CP-400-1643 |
| Appellant, *Pro Se* | ) | |
| vs. | ) | **NOTICE AND MOTION** |
| **RICHLAND COUNTY PLANNING COMMISSION,** | ) | **FOR** |
| Appellee. | ) | **RECONSIDERATION** |

## NOTICE AND MOTION FOR RECONSIDERATION

TO: DEFENDANT RICHLAND COUNTY, INTERVENOR FAIRWAYS DEVELOPMENT, LLC, THE HONORABLE DEANDRIA GIST BENJAMIN, AND THIS HONORABLE COURT:

PLEASE TAKE NOTICE That ten (10) days hereafter or as soon thereafter as Plaintiff may be heard, plaintiff moves pursuant to Rule 59, SCRCP, for reconsideration of the Orders of December 17, 2013 (each attached hereto and incorporated herein) regarding a Motion to Dismiss filed by Intervener Fairways Development, LLC and a Motion to Dismiss by Appellee Richland Planning Commission both such Orders dismissing the Appeal.

This Motion for Reconsideration is based on a number of uncontroverted facts not considered in the Orders, the provisions of the Green Code, Section 26-186 of the Richland County Land Development Code, the pleadings in the matter to include appendices thereto, the submitted files, Appellant's affidavit, and other provisions of State and County laws.

The Appeal to this Honorable Court is from an Order of the Richland County Planning Commission that denied an appeal to it regarding an approval issued by the Richland County Development Review Team approving, with comments, a land development project in Richland County. The Development Review Team, the Richland County administrative designated staff agency empowered to approve land development applications in the county, approved a sketch/concept plan, suggested as the Villages at LongCreek, under its authority to do so as prescribed by Section 26-54 (c)(3)d of the Richland County Land Development Code. Section 6-29-1150 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the Enabling Act) requires a specific procedure for the submission and approval of sketch plans and authorizes designated staff as an approval authority. Appeals from such designated staff action are authorized by the Enabling Act and by county ordinances. The Appellant in this matter finalized all his administrative requirements as set forth in state and county laws for appeals of such an approval prior to appealing to this Honorable Court. The Honorable Judge Benjamin presiding found he had standing for the appeal.

Appellant's appeal to the Planning Commission (Appendix B-1 to his Notice of Appeal and Appeal in this case) requests that the submitted concept/sketch plan be rejected or returned to the Development Review Team to enforce the zoning standards and Green Code requirements as he alleges are applicable in his appeal. The Planning Commission made findings of fact and conclusions of law. The conclusions of law state that "...we, the Planning Commission, have held a public hearing on this appeal and we have heard testimony and reviewed the appellant's request to overturn the DRT's decision to approve the sketch plan for the 'Villages of Longcreek.' " It upheld the Development Review Team's approval of the sketch plan and denied

the request to overturn the DRT decision. See the Order at Appendix B-6 to Appellant's Notice of Appeal and Appeal.

The Planning Commission's Order of March 4, 2013, denying Appellant's appeal, made Findings of Fact with regard to the denial. Although Section 6-29-800 (F) of the Enabling Act, relating to appeals from zoning decisions, requires findings of fact and conclusions of law to be separately stated in final orders, the appeal procedures in land development matters contain no similar requirement. The findings of fact in the instant matter included an uncontroverted statement by Mr. Ronald Johnson that he was the developer of the project, that he had engaged tree and wetlands surveys, and that he had held open forum meetings in and around the Longcreek area. The actual sketch plan was prepared for Longcreek Associates, LLC, a South Carolina corporation for whom Ronald Johnson is the registered agent. Your Appellant herein states under affidavit and his oath in this Request for Reconsideration that he attended the first of the open forum meetings referred to in the Findings of Fact and that he asked Mr. Johnson and his partner Mr. Steven McNair in that open forum meeting who were together in the group discussion if they owned the property. Mr. McNair responded that they were not the owners but that they were in the process of developing the property. Mr. McNair stated the group engaged Mr. John Thomas from Sustainable Design Consultants, as project designer. The sketch plan, approved by the Development Review Team, was prepared by Sustainable with LongCreek Associates, LLC noted thereon as its client. Mr. John Champoux is represented as the compliant certifying registered architect of the submitted sketch plan (see Sheet # SP-02 of the Sketch Plan reviewed by the Development Review Team that further shows the client and the consultant that prepared the plan).

The Planning Commission's adoption of Mr. Johnson's uncontroverted statement is a clear indication that the Appellee Planning Commission determined Mr. Ronald Johnson, as a partner in the Fairways Development Group, as developer of the project. See Vulcan Materials Co. v. Greenville County Bd. Of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) referring to the South Carolina Administrative Act that recognizes both written documents and records of proceedings as appropriate formats for final decisions in contested cases. The records of proceedings in the Villages at LongCreek project clearly demonstrate that the project was forwarded by the engineer for the firm that prepared the sketch/concept plan for Longcreek Associates, LLC, of which Ronald Johnson is the Resident Agent and that the fee was waived. The record also shows that Fairways Development, LLC is in the process of selling the property which would affect any role it might have as developer for the project. It also would have an effect on an approval or permit should the property be sold. See the recusal statement of the Planning Commission Member indicating that her firm represented the seller of the project property (Line 21, Page 16 of the Planning Commission Record of Proceedings as found in its minutes of February 4, 2013, at Appendix B-3 to Appellant's Notice of Appeal and Appeal). The records in the proceedings further state that the Planning Department and the Development Review Team treated Fairways Development Group as applicant for its approval as the developer of the concept/sketch plan. The application for the concept/sketch plan states that the Development Review Group was pleased to submit the required submittals for consideration of the Green Code project. The submittals are the required Green Code developer submittals pursuant to Sections 26-186 (e) and (f). These sections specify Green Code developer submissions and are the basis of this appeal.

The Planning Department that administers a proposed project is in the best position to determine who the developer is. Whereas Intervener Fairways Development LLC may be the party that executed the Green Code application, it did so to meet the requirements of Section 26-186 (c) relating specifically to an owner. Whether it fulfilled the intent of the Green Code is a matter of appeal. The Development Review Team did not make its permit or project approval to the property owner but to the developer group whose concept/sketch plan was submitted to it from the owner of the property.

The project was a "Green Code" development that allowed a developer density bonuses for conservation set asides. A copy of the notification to Mr. Champoux is at Appendix A-4 to Appellant's Notice of Appeal and Appeal. There is no other permit or approval notification to any other person or corporate body as a developer in the public record of this project. Section 6-29-1150 (B) requires that local ordinances regarding land development include provisions that all actions must be maintained as a public record and that, "In addition, the developer must be notified in writing of the actions taken." Note, the statutory requirement is not to an owner. The Green Code requires an owner to make an application (Section 26-186 (c)) and an applicant or developer to submit a development site plan sealed by a registered architect (Section 26-186 (e)). It further requires a developer to submit a Concept Plan (Section 26-186 (f)). In its approval of the project, the Richland County Development Review Team notified John D. Champoux, the Registered Architect (see Sheet # SP-02 of the Sketch Plan) for Sustainable Design Consultants, Inc., the firm that prepared the sketch plan for its client, Longcreek Associates, LLC, of its action. Its approval of the plans submitted in accordance with Subsections 26-186 (e) and (f) clearly were to the developer. The appeal to the Appellee Planning Commission was to that project approval.

The owner's application, as noted in the Order, was submitted for Fairways Development Group. Fairways Development Group is an unincorporated group of businessmen. Whereas Fairways Development LLC signed the Green Code application under the submittal requirement of Section 26-186 (c), Richland County did not involve Fairways Development, LLC as the developer in this public record system throughout the administration of the project or of the approval action. Instead, it followed Green Code procedures. Fairways Development Group was named the Applicant in the formal public notice of the November, 2012, Development Review Team Meeting. That meeting was to examine and approve or disapprove the project concept/sketch plans (see the third page of Appendix A-2 to Appellant's Notice of Appeal and Appeal). Your Appellant appealed the DRT approval that was sent to the registered architect for the project's developers. There is no public document with regard to this project maintained by Richland County under the State Enabling Act's Section 6-29-1150 (B) regarding approval of a development plan with Fairways Development LLC as the developer. The right to proper notice is a hallmark of our legal systems and is included in the South Carolina Constitution (Article 1, Sections 3 and 22). In this case the General Assembly in its Enabling Act set forth notice requirements and procedures for appeals of land development approvals. It requires specified public notice in order that proper appeals of land development actions may be made. The only public notice of the Development Review Team's action is that regarding its approval to the Fairways Development Group. The notice of its hearing on the Development Review Team hearing for the project (the third page of Appendix A-2 to Appellant's Notice of Appeal and Appeal) and the public record of the approval along with the required notification to the developer required under Section 6-29-1150(B) of the Enabling Act identify the Fairways Development Group, the unincorporated group of businessmen, as the project developer.

Appellant filed a Freedom of Information request as to the action taken and Richland County provided him a record of the approval action listing the Fairways Development Group. Exhibit A-4 of Appellant's Notice of Appeal and Appeal is what Richland County provided as its formal approval of the matter.

The Court's Order makes no finding that the Planning Commission finding is arbitrary or capricious. The general rule is that agencies charged with enforcing or applying ordinances receive deference from reviewing courts as to the application of the laws. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008). See also Savannah Riverkeeper v. S.C. Department of Health and Environmental Control, 400 S.C. 196, 733 S.E.2d 903 (2012) in which the Court said that agencies charged with enforcing statutes receive deference from the courts as to their interpretation of those laws and that a reviewing body will defer to the administrative agency's interpretation unless there is a compelling reason not to. This applies especially in administrative cases when a final adjudicator for the permitting process makes a factual finding and on appeal of that finding if substantial evidence exists in the record. Substantial evidence in this regard is not a mere scintilla of evidence but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008). The Planning Commission found in reviewing the sketch plan that the developer was an individual named Ronald Johnson. There is no indication in such findings or the record that Fairways Development LLC proposed the concept/sketch plan that was examined by the DRT and is the crux of this appeal.

The Order this Motion requests be reconsidered overturns the Planning Commission and Development Review Team's factual findings and their administrative treatment of the unincorporated group as the development permittee stating that since the application was signed

by Fairways Development LLC, Fairways then is the developer. As stated above, the Green Code concept and sketch plans apply to a developer but the application and a few other matters in the Green Code relate specifically to the owner. The application in a Green Code development is but one part of the development. The concept/sketch plan approval provides the developer authority to initiate development of the property.

Spanish Wells Property Owners Association v. Board of Adjustment of the Town of Hilton Head, 295 S.C. 67, 367 S.E.2d 160 (1988) involves a property development matter. A preliminary development permit was granted to a developer and a property owners association objected. The matter was appealed to a local board of adjustment that denied the appeal. The case then was appealed to the Circuit Court. Upon a motion to dismiss under Rule 19, SCRCP, the circuit court granted a motion to dismiss but allowed fifteen days leave for the property owners to join the developer. The Supreme Court did not rule that the leave to join was improper or illegal. Instead it looked at whether a permittee is a necessary party to an action that would revoke a development permit. The Supreme Court ruled just that a development permittee is such a necessary party. It refers to a permittee or successful applicant in its ruling and limits its question as to whether a permittee is a necessary party. The Court in limiting its ruling to a permittee understood an applicant and a development permittee under land development regulations might have different interests and investments in a planned development.

The permittee in the instant case is not capable of being sued or joined to a legal action. Spanish Wells did not address the leave to join but in dicta noted that the implied joinder was as a necessary party under the SCRCP. It affirmed the circuit court order with its fifteen day leave to amend. In the instant case Fairways may be a necessary party but it has been joined which moots any issue of judicial economy.

The Court, in making its decision that the failure to join a necessary party within the prescribed period is fatal, relies on Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610, 367 S.E.2d 544 (Ct. App. 2008) . It states that Fairways Development LLC is the development permittee because it executed an application. Friends, as the Order acknowledges was vacated by the Supreme Court. It says Friends was vacated "due to an agreement mooting the case." The Friends Supreme Court decision (384 S.C. 438 (2008)) however dismissed the matter in the Supreme Court docket to which it had granted certiorary based on an agreement by the parties. After that it denied a motion to substitute parties in the case before it. Only then did it vacate the Court of Appeals decision. The Court in granting the motion to dismiss did not need to vacate the lower court decision. But, with the grant of certiorari before it and the appeals decision recorded it took the extra step of vacating the Court of Appeals decision that possibly could provide stare decisis for South Carolina courts. Vacation of the Court of Appeals decision removes any value the Court of Appeals decision might have in guiding legal determinations in such matters. The probative value of Friends for this case further is diminished because Friends involves a zoning matter, under Article 5 of the Comprehensive Enabling Act, while this case involves a land development matter, under the Act's Article 7. The provisions are not mirror provisions but rather reflect the different characteristics of the two land use matters and the different laws affecting both Articles. Zoning matters relate primarily to elected officials enacting ordinances or interpreting ordinances regarding land use. Zoning appeal procedures are specific with determinations specified due to involvement of local governing bodies.

Land development projects may be modified, revised, resubmitted, etc. after revisions. Zoning changes need the enactment of new provisions by the local governing bodies. The first application of the Villages project reflects this flexibility with the application being returned and

revised with a new application fee waived. In a zoning case, the owner of the property is a matter of public record and a party that judicial economy would be served best with its participation. The approvals in land development cases are public records and such approvals authorize development often by business persons who are not land owners. As in the Green Code land development bonus program, the developer and the land owner have different roles.

The Enabling Act does not state a property owner must be joined in an appeal. It does state that any party in interest may appeal staff action to approve a land development plan so long as it does so within thirty days. Staff action is authorized for approval procedures of sketch plans. The Richland County's Green Code required concept/sketch plans to be submitted by the developer (Section 26-186(f)) which is what the Fairways Development Group did. The Spanish Wells holding applies specifically to joining a development permittee to a land development appeal. The Appellee, the Richland County Planning Commission limited its findings and conclusions of law to the sketch plan and found Ronald Johnson as part of the development permittee group. The Development Review Team specified Fairways Development Group as the applicant for approval of the sketch plan. Richland County noticed that Fairways Development group was the permittee. Accordingly, your Appellant requests this Honorable Court reconsider its dismissal of the appeal based on not formally serving and joining the owner of the property in its appeal.

Appellant further notes that such dismissal is a drastic measure akin to the granting of a Motion for Summary Judgment. In this regard, Appellant states that not until well after he filed his appeal was it brought to his attention that the file provided the administrative tribunal in its action on the appeal contained matters of which he had no notice. Appellant alleged violations South Carolina Constitutional provisions with regard to the planning commission's

administration of its hearing, specifically that Article 1, Section 22 of the Constitution specifies that no person shall be subject to the same individual for both prosecution and adjudication of his case. It also requires due notice and a fair hearing. He cited Ross v. Medical University of South Carolina, 328 S.C. 51, 492 S.E.2d62 (1997) with regard to an attorney acting as counsel for both the adjudicators and the appellee in such a matter. These matters involve the Appellee's actions and did not involve the intervener or did they affect the intervener.

Appellant finally, notes that the hearing on this matter was truncated due to a heavy motions schedule that involved three motions before the same court on this matter following an appeal of another contested hearing. The instant matter further was followed by several other cases which pressed the sitting judge to cut off hearing this matter with a statement that her decision would be made on submitted papers. Appellant contends a full and meaningful hearing was not conducted on this motion to dismiss. That the true nature of a Green Code development was not argued before the court, with its varied requirements for submittals by different parties and that the actions of the administrative parties was not permitted to be developed in argument makes the drastic step of dismissal not only unfair but a violation of the South Carolina Constitution (Article 22) which provides South Carolina citizens an opportunity to be heard before being bound by an administrative agency decision affecting private rights.

Appellant requests this Honorable Court reconsider its findings on both Motions in which it granted the movers request to dismiss, such dismissal being based on the same findings by the Court and allow this case to proceed.

(signature and affidavit follows next page)

SAMUEL T. BRICK, PLAINTIFF, PRO SE

124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

Richland County, South Carolina
December 27, 2013

**AFFIDAVIT AND NOTARY PUBLIC**

I, Samuel T. Brick, Appellant in the captioned case above, do hereby state that the matters averred in the foregoing Affidavit and Request for Reconsideration are true and correct to the best of his knowledge, information, and belief.

Signed and sworn to before me this 27th day of December, 2013.

_____
Notary Public

My Commission Expires _____

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing proposed Motion by mailing a copy of same, with attachment, by United States Mail, First Class, postage prepaid, on December 27, 2013 , to William H. Davidson, II, Esquire, and Michael B. Wren, Esquire, of Davidson & Lindemann, P.A., attorneys for Appellee Richland County, and to Tobias G. Ward, Jr., Esquire, Attorney for Intervenor Fairways Development LLC, in the same manner and on the same date addressed as follows:

William H. Davidson, II, Esquire
Michael H. Wren, Esquire

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, SC 29202

Tobias G. Ward, Jr., Esquire
P.O. Box 6138
Columbia, SC 29260

AND

By mailing a copy of same with attachment to the Honorable DeAndrea Gist Benjamin, the judge of the matter, in the same manner, also on December 27, 2013, addressed as follows:

The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 216
Columbia, SC 29201

_____
Samuel T. Brick
Plaintiff, Pro Se

Blythewood, SC 29016
December 27, 2013

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1 (Pause.)
2 THE COURT: Brick versus Planning Commission.
3 There are before me today appears to be five
4 motions. Mr. Ward has filed one, is that correct?
5 MR. WARD: No, ma'am. In fact, I think I'm
6 the largest offender today because I actually filed
7 three motions.
8 THE COURT: Which ones are yours?
9 MR. WARD: Mine are the motion to intervene,
10 the motion to dismiss the appeal after I
11 intervened, and the motion to require the appellant
12 to post a bond.
13 All three of those were filed on June 17th.
14 And so that I am not the biggest offender, I am
15 withdrawing the motion to require the appellant to
16 post a bond at this time, because I don't have any
17 evidence to support the amount of the bond for the
18 Court.
19 So that would just leave my motion to
20 intervene and my motion to dismiss.
21 THE COURT: And then, Mr. Brick, you have a
22 motion to amend?
23 MR. BRICK: Correct, Your Honor.
24 THE COURT: All right. And then someone else
25 has another motion to dismiss?

1 MR. WREN: I think I kicked it all off, Judge.
2 Michael Wren, again, for the record. I represent
3 the Richland County Planning Commission, who is the
4 party that adjudicated the underlying matter. So
5 we initially filed a motion to dismiss I believe
6 back in June.
7 THE COURT: All right.
8 MR. BRICK: Your Honor, Mr. Wren's motion to
9 dismiss and Mr. Ward's motion to dismiss have
10 partly the same vein, some of the same reasons for
11 requiring to dismiss.
12 So I just want to bring that to your attention
13 too so we don't have to argue the same thing over
14 and over again, unless -- do you agree with that?
15 Do you both agree with me?
16 MR. WREN: I think Mr. Ward actually even
17 raised additional issues in support of a dismissal
18 beyond what I raised, Your Honor.
19 MR. BRICK: Correct.
20 THE COURT: But I guess we have got to have
21 Mr. Ward's motion to intervene first, I would
22 think. But if someone can give me some background
23 on the case.
24 MR. WARD: I'll be glad to do that, Your
25 Honor.

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1 THE COURT: Okay.

2 MR. WREN: And if I may, Judge, not at all to
3 step on Toby's toes, by having filed the motion to
4 dismiss first as to the body that heard it, who has
5 the appeal underlying, obviously the decision of
6 whether or not Mr. Ward intervenes on behalf of
7 Fairways will be of critical interest to those
8 proceedings.

9 I would submit, with Mr. Ward's input on this,
10 that the grounds for our motion to dismiss, which
11 was the first motion filed in this matter, should
12 be dispositive of these higher matters, i.e., the
13 case -- the appeal was dismissed as improperly
14 brought before this Court for lacking jurisdiction.
15 There is no need to get into intervention. There
16 is no need to worry about bonds. And there is no
17 need to worry about amending anything.

18 MR. WARD: But to give you the view from
19 30,000 feet, despite the warning against that that
20 you heard a little while ago, this is what is going
21 on in this case.

22 This is a land use zoning case. And it arises
23 from the request to rezone a piece of property that
24 was before Richland County. In particular, since
25 it was a rezoning, it comes in front of the

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1 Planning Commission.
2 My client, who wants to intervene --
3 THE COURT: Who is your client?
4 MR. WARD: Fairways.
5 THE COURT: Okay.
6 MR. WARD: Their property was the property
7 that sought the rezoning. And Mr. Brick is the
8 person who doesn't want the property to be rezoned.
9 And Mr. Wren represents the body that acted on the
10 rezoning request.
11 That is the context in which this appeal comes
12 before you now.
13 THE COURT: And Mr. Brick, his relationship to
14 the property is?
15 MR. WARD: He lives in -- across the lake in
16 an adjacent subdivision. And that was what he and
17 I mostly are engaged about, is whether or not he
18 has got enough of a substantial interest to even be
19 a party.
20 And what Mr. Wren is suggesting is that, Your
21 Honor, you don't even need to get to my dispute
22 with Mr. Brick because the Planning Commission
23 believes that the appeal was defective when it was
24 filed, and therefore you could dismiss it, which
25 would render us moot.

1 And so, procedurally, I probably agree with
2 Mr. Wren, subject to Mr. Brick's input, that you
3 should hear Mr. Wren first, because if you dismiss
4 the appeal, then I am rendered moot on my motion to
5 intervene and dismiss, if that makes sense.
6 And I don't know what Mr. Brick has to say.
7 MR. BRICK: Well, yes, Your Honor. That is
8 not accurate. The description of what is going on
9 is inaccurate. It is not a rezoning action
10 whatsoever, Your Honor. It doesn't have anything
11 to do with rezoning.
12 It is a land development plan using a seminal
13 application of an ordinance called the Green Code,
14 26-186 of the Land Development Code of Richland
15 County. It is not rezoning. And that is correct.
16 Now, the other thing that is important for you
17 to know, with regard to the appeal, the way it
18 developed was through a Development Review Team
19 action by Richland County and its Planning
20 Department.
21 And the Development Review Team action
22 provided a seminal application of the Green Code.
23 And there were some issues with regard to that that
24 I appealed to the Planning Commission of Richland
25 County.

The Planning Commission at that particular time took the case. And this is -- it is the second time they took it, because I appealed twice, winning the first time. The second time they took it they denied my appeal. And then I appealed that under a particular provision of the code which authorizes me to appeal.

And I don't want to argue, I am just giving you the background of basically where it is. But I appealed that to the Circuit Court, and that is how we're here now with regard to the appeal.

But, so, just so you understand the background of it, it is not under the rezoning provisions under the rezoning statutes or the rezoning ordinances, it is all under the land development portions of both the Richland County Land Development Code and the state statutes that authorize it.

THE COURT: All right. Thank you.

MR. BRICK: Yes, Your Honor.

THE COURT: All right, Mr. Wren?

MR. WREN: Thank you, Your Honor. And may it please the Court? Here is the good news. This first motion that was filed in this matter, which you have now heard from -- kind of gotten a picture

1 from both sides of the dispute -- is indeed an
2 appeal from a decision of the Richland County
3 Planning Commission.
4 And to give a little more further perhaps
5 explanation of how that process works, I would say
6 both descriptions are correct in the general
7 context.
8 There is a partial property in Richland County
9 towards Blythewood which Mr. Ward's client is
10 developing.
11 Mr. Brick lives -- I won't make
12 representations as to exact distance, I'll let them
13 fuss about that -- lives across the lake near this
14 property, and has interest against this
15 development, let's say.
16 The way Richland County works, by statute and
17 by ordinance, is they have essentially staff
18 that -- it is called the Development Review Team --
19 gets an application. They review it. They check
20 to see if it complies with the codes, and so forth.
21 And if it does, it is approved.
22 Now, there is a lot to how this went back and
23 forth. And Mr. Brick was involved along the way,
24 intervening, if you will, to the matter.
25 Essentially, the Development Review Team did

1 indeed approve. In fact, they did initially. It
2 went to the Planning Commission on appeal by
3 Mr. Brick. All this is pursuant to county
4 ordinance. This is not a state law matter. It is
5 simply within county ordinance. It goes from
6 approval, up to the Planning Commission on an
7 appeal by Mr. Brick.
8 Actually the first time he said he prevailed
9 is correct. These are some of the same matters we
10 dealt with with Judge Young this week. He was --
11 actually he was a co-appellant. There actually was
12 a neighboring property owner that was part of that
13 appeal.
14 So the Planning Commission gets it. They
15 realize there is a procedural error. It was
16 signed -- Mr. Ward's client -- instead of the owner
17 signing it, the engineer signed it. The Planning
18 Commission agreed to Mr. Brick's good point, there
19 is a deficiency. It was sent back down.
20 So the developer at Fairways had to prepare
21 another application, went back to the Development
22 Review Team, they check off on it again, says it
23 does meet it again.
24 Mr. Brick filed a second appeal to the
25 Planning Commission.

1 No. We're still not even to this level yet.
2 On that appeal, the Planning Commission again
3 looked at it. And this time said, no, Mr. Brick,
4 they have done everything correctly. It is -- we
5 are going to uphold the decision of the DRT. That
6 is what gets us here.
7 Mr. Brick then, as he prefaced a moment ago,
8 and as I say within his pleadings and his response
9 to our motion, said: Pursuant to county ordinance,
10 I'm going to appeal it to Circuit Court.
11 And, Judge, that is what brings you to our
12 motion to dismiss. It is a simple motion, 12(b),
13 two grounds, really the first of which is the
14 dispositive one.
15 And I am going to reference you to some state
16 law that applies to this matter because, Judge,
17 over the last several months and years I did not by
18 choice -- I always swore I would never do any real
19 property work -- I have gotten into more and more
20 of these Zoning Boards, Planning Commission type
21 matters.
22 The one that is different than the others, the
23 Zoning Board appeals, Architectural Review Boards,
24 Code Section 6-29, that entire statutory scheme
25 covers all of these. They all have extremely

1 involved statutory schemes for how appeals work and
2 what happens.
3 The one that doesn't seem to fit is the
4 Planning Commission, the matter that is before Your
5 Honor.
6 What applies here is Code Section 6-29-1150.
7 It is the statute that we cite in our motion to
8 dismiss.
9 Particularly I draw the Court's attention to
10 6-29-1150, Subsection (d)(2). In fact, (d) is the
11 only provision here that deals with appeals from
12 the Planning Commission to this Court. The only
13 means of jurisdiction, Your Honor.
14 And what (d)(1) actually says is that, If you
15 file an appeal from the Planning Commission, it has
16 to come to Circuit Court in 30 days.
17 I'm not -- that is not what we are here to
18 fuss about today.
19 Under (d)(2), however, the statutory language
20 reads: A property owner -- again, I stress a
21 property owner -- whose land is the subject of a
22 decision of the Planning Commission, may appeal by
23 filing a notice of appeal with this Court. And it
24 goes on to say: Accompanied by a request for
25 pre-litigation mitigation under another statute

1 that was adopted a few years ago, 6-29-1155.
2 And you will note there is two grounds in our
3 motion to dismiss, Your Honor. That second ground
4 is really a kind of a supplemental ground that if
5 for some reason this Court found Mr. Brick to
6 somehow be the property owner -- which as you have
7 already heard the preface, there is no evidence in
8 this record that he is -- that even if so, he would
9 have then violated the statutory scheme and this
10 Court would not have jurisdiction because he failed
11 to adhere to the mediation requirements.
12 But, Judge, that's it. That is the issue
13 here. That is the crux.
14 Mr. Brick and his appeal, and as I heard him
15 preface a moment ago, is going to point to their
16 county ordinances.
17 And, you know, I think we're going to get into
18 the weeds with this, but I will be happy to go
19 through it.
20 County ordinances that address appeals from
21 the staff review to the Planning Commission, just
22 as 6-29-1150 does earlier, it says that: Staffers
23 use -- you know, parties substantially in interest
24 may appeal -- and they may -- up to the Planning
25 Commission, which, as 6-29-1150(c) says.

1 And it goes on to say: And the action of a
2 Planning Commission is final.
3 Just after that is the provision for appeal to
4 this Court where it says: It must be the property
5 owner.
6 And Mr. Brick again is going to argue to Your
7 Honor that it is a person with substantial
8 interest, language from county ordinance. Or also
9 where in the county ordinance it references
10 contiguous or adjacent property owners. Again, in
11 the context of all administrative appeals.
12 And that is an issue again I think we have
13 prefaced that Mr. Ward raised and Mr. Brick
14 disagrees with.
15 But, again, my job today is to keep us out of
16 the weeds and keep this simple and focused on what
17 our law prescribes.
18 And one other thing, Your Honor, if I could,
19 to reference, because I think this is extremely
20 telling and, you know, you never want to get into
21 that capacity of trying to understand the intent of
22 our legislature or what the General Assembly was or
23 wasn't trying to do, but this statute -- and this
24 is not addressed anywhere in the pleadings, there
25 is really no way to do this, but I want to share it

1 with you.

2 Under 6-29-1150, before it was amended several

3 years ago, the prior code had Subsections (a), (b),

4 and (c). And, again, I have referenced Your

5 Honor -- and I have copies of 6-29-1150 in its

6 current form if that would be helpful for Your

7 Honor, and I will provide one for counsel.

8 (Complies.)

9 And that is again the current version. And

10 you will see under -- it is (a),(b),(c), and then

11 (d)(1) and (2) are what I was drawing Your Honor's

12 attention to.

13 THE COURT: Yes, we have that.

14 MR. WREN: Okay. In the prior version, Your

15 Honor, 6-29-1150, before being amended -- I was

16 looking for the date -- in 2003, it had (a), (b),

17 and (c); (d)(1) and (2) was added. And what was

18 changed was taking out any -- to the degree

19 anything could be inferred under the old statute

20 about someone of substantial interest having a

21 right to appeal to this Court. It does not exist

22 in the statute anymore.

23 What currently exists in the statute -- and

24 there is no case law on this, you know, there is no

25 interpretation of it, this is what the General

1 Assembly says, period -- is that now under (d)(1)
2 and (2), that is the mechanism and the means by
3 which you may appeal to this Court.
4 And, Your Honor, again, not to beat the dead
5 horse, it says a property owner. It is that
6 simple.
7 And if we want to -- anticipating Mr. Brick's
8 response to be, Well, Your Honor, Code Section
9 26-54, other county ordinances say this or that, I
10 am happily prepared to argue preemption. I assure
11 you this is directly on par to the degree there is
12 even a question with what our courts have held to
13 be conflict between state and local ordinance.
14 Because to the degree of what Mr. Brick is
15 saying, Well, it gives some different right, that
16 is not what the state law says. And if that it is
17 not a conflict, I don't know what is. And there is
18 a great deal of law which would support preemption,
19 meaning state law trumps over county ordinance,
20 which is a basic tenet of our law.
21 So, Your Honor, for that, again, trying to
22 keep this as simple as possible, Mr. Brick's
23 appeal, this Court has no jurisdiction.
24 So under both 12(b)(1) and 12(b)(6), for just
25 lack of failing to state appropriate facts, not

1 being the property owner, this appeal is improper
2 and it should be dismissed.
3 THE COURT: All right. Thank you.
4 MR. WREN: Thank you, Judge.
5 MR. BRICK: Well, Your Honor, there are a few
6 things that he says I'm going to do, but I'm not
7 going to do, and one of which is to argue
8 substantial interest, Your Honor. Substantial
9 interest is totally inapplicable in this.
10 And if you read 1155, which talks -- which is
11 the only place that they use substantial interest
12 in the code, the only reason why you have to have
13 substantial interest is the mediator, if he sees
14 somebody with substantial interest, he must then
15 allow them to intervene. It doesn't say that other
16 people can't intervene. But that is for mediation,
17 in my -- that is not even applicable. I'm not even
18 going to get involved with that.
19 The answer is -- and Mr. Ward has -- I mean,
20 Mr. Wren has carefully not referenced (d)(1) of
21 1150. But, first of all, let's understand the
22 statutory scheme of Section 1150.
23 1150 is an enabling provision. It enables the
24 counties and local governments to set up various
25 land development code procedures. And it gives

1 them two options.
2 One option is to let a Planning Commission
3 handle the whole matter. And the other option is
4 to let a designated staff handle the whole option.
5 Richland County has used the second option,
6 the designated staff option. And they do this with
7 what they call the Development Review Team.
8 And Sections 26-53 and 26-54 -- this would be
9 under 26-54 -- give the various procedures for the
10 actions of the Development Review Team.
11 Now, remember, that is a different body than
12 the Planning Commission. Right now Richland County
13 does not consider that as a public body. We're in
14 court on that particular issue as we argued earlier
15 this week, and that is with Judge Young, whether it
16 in fact is a public body for purposes of the
17 Freedom of Information Act.
18 But the point I'm making is, is Richland
19 County does not consider it a public body.
20 Now, when the provision down in 1150, it
21 provides different revenues -- different avenues of
22 appeal for whether the Planning Commission takes
23 the action or whether it is a decision of staff
24 action.
25 If you look at 1150(c), it says: Staff

1 action, if authorized to approve or disapprove the
2 Land Development Plan, may be appealed to the
3 Planning Commission by any party in interest.
4 So, in other words, my only appeal of the DRT
5 is to the Planning Commission. So the Planning
6 Commission is acting as an appellate body. They
7 are not a fact-finding body in that regard. They
8 are purely an appellate body. As a matter of fact,
9 they call me an appellant.
10 And, also, the Richland County, the
11 administrators of Richland County -- and you are
12 supposed to give great deference to the way they
13 administer their actions -- they accepted my
14 application to the Planning Department. In other
15 words, they considered me an interested party and
16 heard my appeal. That is where it looked. They
17 made an administrative decision at that particular
18 time that I was an interested party.
19 Even under their rules, which include other
20 things that we are not -- don't have to look at --
21 but, anyway, so you go to the very next provision.
22 They have to actually been 60 days, and all that
23 sort of thing. They did that. And they came up
24 with a decision.
25 Then they say: An appeal from the decision of

1 that Planning Commission must be taken to the
2 Circuit Court within 30 days after the actual
3 notice of the decision.
4 That is what I did. I did it within 30 days,
5 and I took my appeal to the Circuit Court. That is
6 where I'm -- that is the hoop I had to go through.
7 Mr. -- the guy who was here before, Bob Wood,
8 talked about the hoops. That is the hoop I had to
9 go through, Your Honor. And I did, within 30 days.
10 Now, what they are talking about -- and also
11 note that the timing is different from that kind of
12 appeal than the appeal of a property owner. It is
13 within 30 days after an actual notice of the
14 decision.
15 Now, if you look at the time that a property
16 owner has -- and this is different -- it says:
17 After the decision of the Board is mailed. There
18 are important differences.
19 And all I have to do is take the appeal to the
20 Circuit Court within 30 days, which is -- and I
21 filed my appeal.
22 So my point is, is under those particular
23 provisions, I have authority to go to this
24 Honorable Court to hear my appeal.
25 Now, when he says it is final, well, it is


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1 final for administrative purposes. As you know,
2 under the new administrative law you have to have a
3 final decision before you can take it up to the
4 next level.
5 And that is the final decision. The decision
6 of the Planning Commission was the final decision
7 before I appeal it to this Honorable Court.
8 There is no other reason why you have 1, 2, or
9 3. The legislative history he is referring to I
10 looked at, Your Honor. And the reason they put
11 that -- they changed the thing 1, 2, and 3 back a
12 couple of years ago was because they wanted to
13 bring mediation in, and they wanted to bring
14 mediation in with the property owner.
15 Now, you can't go -- you can look back and see
16 why they would want to do that with the property
17 owner as opposed to a person like myself.
18 Well, I'm not exactly sure why the General
19 Assembly wanted to do it, but the fact is, it is a
20 different kind of situation when a property owner
21 is involved than, well, an interested party would
22 be.
23 For example, if the property owner loses in
24 the Planning Commission hearing, then they can
25 appeal, and then they have to go to mediation under


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1 those circumstances.
2 That is why in 1155 they say a person with
3 substantial interest, somebody who may have won at
4 the appeal level back with the Planning Commission,
5 that person must be allowed to intervene or to join
6 in the mediation. That is the must be --
7 substantial interest.
8 Other people can appeal -- can apply to come
9 in. You don't have to be substantial interest.
10 So there are a couple -- there are some of the
11 ideas.
12 Now, as far as the second grounds, we can get
13 into where we are, you know, my -- I had an
14 adjacent owner, a landowner, and there is other
15 reasons. I don't know whether you need to get into
16 that. I think he is talking about a jurisdictional
17 issue right now that the actual code provisions
18 control.
19 And as far as the zoning applications, appeals
20 under zoning is 8-20. And I can give you a copy of
21 that, Your Honor, if you want to see what that is.
22 It is a different level.
23 That is the provision to appeal in zoning
24 issues. This is not a zoning issue.
25 And it is very important, Your Honor, that you


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1 understand that Fairways, we don't consider them to
2 be the permittee. They are another party
3 altogether, Your Honor, but they are not a
4 permittee in this. They may be the owner of the
5 property, but they are not the permittee.
6 THE COURT: All right. Thank you.
7 MR. BRICK: Thank you, Your Honor.
8 THE COURT: Real quick, Mr. Wren, one
9 question.
10 MR. WREN: Yes, Your Honor.
11 THE COURT: In looking at (d)(1) and (2),
12 (d)(1), as Mr. Brick has said, refers to the appeal
13 from the decision. (2) seems to apply to the
14 property owner, the person that owns the property.
15 And I am wondering if you have any response to
16 his position that (2) doesn't apply to him, that
17 (d)(1) applies to him.
18 And why -- and, you know, in looking at
19 (d)(1), they don't say anything about
20 pre-litigation mediation.
21 MR. WREN: Your Honor, yes, and I think it is
22 some beneficial confusion on Mr. Brick's side.
23 Let me -- I'll actually do his exercise. Go
24 back. Just look right above. Look to (c) with me.
25 THE COURT: Okay.

1 MR. WREN: And, you see, that is where
2 Mr. Brick looked up, even though I think I heard --
3 I'm not going to say anything about party in
4 interest, but that is all I heard after that. (c)
5 says: Staff action, approve or disapprove, may be
6 appealed to the Planning Commission by any party in
7 interest.
8 Again, let me distinguish, we are not to the
9 state level. We are not to this level. This is
10 not Circuit Court jurisdiction yet. This is still
11 that review to the Planning Commission. Different
12 standard, but for my purposes irrelevant for
13 jurisdiction of this Court.
14 THE COURT: Uh-huh.
15 MR. WREN: So that is where you have that
16 language.
17 And then it says, you know, the Planning
18 Commission has time to act, and so forth.
19 Beginning in Subsection (d), that is where
20 this Court's jurisdiction begins. And (d)(1) again
21 states -- and it does not say party in interest, it
22 doesn't say anyone and their brother, it doesn't
23 say just people with the first name John, it just
24 says -- it just outlines the procedure -- it says:
25 An appeal from Planning Commission to this

1 Court must be done within 30 days.
2 It lays out that appellate mechanism.
3 (d)(2) says who that is. It says it is a
4 property owner whose land is the subject of the
5 decision may appeal by filing a notice of appeal.
6 And then it references 1155, which does
7 outline a pre-mediation requirement.
8 And, in fact, interestingly, if you go to
9 1155, there it has mechanisms for third parties
10 beyond the developer and beyond the property owner
11 who may wish to intervene.
12 What is ironic here, Your Honor, is this case
13 is backwards. Here we have a person who is not the
14 owner, is not the developer.
15 Remember, to own a parcel of property, you
16 have rights to that property. That is what this
17 process entails.
18 So here we have it backwards. We have someone
19 else that wants to intervene in it that has brought
20 the appeal improvidently, and then, of all things,
21 we actually have the owner who is here now having
22 to come knock on the door and say, Guess what, I'm
23 losing tens of thousands of dollars -- because,
24 Your Honor, what is not mentioned in any of this is
25 the fact that --

1 MR. BRICK: That is not part of the --
2 MR. WREN: Excuse me. We are not in trial
3 anymore, Mr. Brick.
4 THE COURT: Let him finish.
5 MR. WREN: That was for trial. Is the fact
6 that the developer has been completely safe,
7 because under county ordinance, which does apply in
8 that context, the county can't move forward with
9 anything on this development when a matter has been
10 appealed, because under the -- with the
11 understanding that when an owner is the one that is
12 appealing an adverse decision, it is irrelevant
13 because they have already been denied what they are
14 seeking.
15 So there is some real consequences here too,
16 Your Honor. And what is funny, I don't have an
17 interest. My client doesn't have an interest. But
18 this is a real concern from the standpoint of I --
19 I can be a party in interest or say I have an
20 interest in a matter, go down and start appealing
21 every single Planning Commission decision on the
22 grounds that I have some interest in it, or perhaps
23 it is environmental or goodwill, or I just want to
24 stop all development in Richland County. And under
25 county ordinance, each one of those projects is

1 indeed going to be entirely stopped until months
2 later it is adjudicated through the Circuit Court,
3 until counsel comes in and makes this argument.
4 That is the practical concern. The reality is
5 our statutory language that clearly provides that
6 this is an improvident appeal, and it should be
7 dismissed.
8 THE COURT: All right. Real quickly, because
9 I've got -- you all have two or three other
10 motions, and I have my 11:00 o'clock people here.
11 MR. BRICK: Yes, Your Honor. There are other
12 people who have interest in this as well. This was
13 a seminal decision by the Richland County Planning
14 Commission and the Richland County Department of
15 Planning Development. So it is not just like every
16 brother and sister can run down there and file an
17 appeal.
18 But the fact is, Your Honor, and something
19 that is very important and difference between these
20 two things that he continues to avoid, is their
21 difference.
22 They say after actual notice of the decision.
23 And that is because -- and it is the final
24 administrative decision.
25 And then the other thing is after the decision

1 of the Board is mailed.

2 So, I mean, they are obviously thinking about

3 two different aspects. One is a party wants to

4 appeal it, the party in interest, who has lost in

5 the Planning Commission; and the other one is the

6 property owner, who has lost in the Planning

7 Commission.

8 So there are two different things. It could

9 be either one. And that is what the General

10 Assembly has provided, authority for somebody like

11 myself to appeal a final administrative decision.

12 And that is where it comes to this Court.

13 It comes from this whole provision, not just

14 Subparagraph (d), it comes through (a), (b), (c),

15 (d), along with 1155. That is all involved with

16 the appeal. You are not limited by that one little

17 area, Your Honor.

18 THE COURT: All right. Mr. Ward?

19 MR. WREN: And I'm sorry, Judge, one other

20 thing I didn't mention because it was just handed

21 up. That code section that was provided is not

22 applicable. That is the Zoning Board of Appeals.

23 I don't think Mr. Brick is trying to represent it

24 did apply. I just wanted to clarify.

25 MR. BRICK: No, I didn't. And the reason I

1 brought it up, Your Honor, is because he was
2 talking about the procedural issues with regard to
3 that.
4 It is a different procedure altogether than
5 land development. There is a different appeal
6 group and a different quality of appeal that you
7 have to make with the zoning appeals and the Board
8 of Architectural Review appeals. Different quality
9 of appeal. That is the only reason I brought it to
10 your attention, Your Honor.
11 THE COURT: All right. Yes, sir, Mr. Ward?
12 MR. WARD: Your Honor, first of all, we'd like
13 to be allowed to intervene in this appeal, that is,
14 Fairways Development.
15 As you heard earlier, we are the permittee
16 whose permit is in effect being appealed by
17 Mr. Brick.
18 And we are the party who didn't sign the first
19 application, rather we had an authorized agent sign
20 that application, and the county correctly made us
21 sign the application. And that is the application
22 that Mr. Brick is opposed to.
23 And so we think we have, under Rule 24, an
24 interest in the outcome of this appeal of
25 Mr. Brick's, and we would ask you to let us

1 intervene.
2 THE COURT: All right. Yes, sir?
3 MR. BRICK: Yes, Your Honor. I don't have any
4 objection to them intervening, Your Honor. But I
5 do have an objection to their intervening as a
6 necessary party.
7 They are not the permittee, Your Honor. They
8 are not the permittee. They may be the owner of
9 the property, but the permittee is the Development
10 Review -- or Fairways Development Group, or
11 something of that nature. They are the permittee.
12 Richland County has administered the whole
13 application with this other group being the
14 permittee and not Fairways Development, LLC, an
15 incorporated body, Your Honor, that is a managed
16 corporation.
17 And I have got substantial evidence on that if
18 you want to hear it right now or if you want to go
19 into another aspect of it. We can go to that --
20 THE COURT: You don't have an objection to
21 them intervening?
22 MR. BRICK: I do object to them intervening as
23 a necessary party. If you just say that they are
24 intervening, that doesn't bother me. I don't have
25 any objection to them intervening. But not as a

1 necessary party, Your Honor.
2 And the reason for that is because if they
3 come in as a necessary party, it takes in, as
4 Mr. Ward said, there are some jurisdictional issues
5 that I might have with regard to having them in.
6 Now, I can also amend it and have a
7 relation-back aspect to that, but I would prefer it
8 to just be silent. But no objection to them coming
9 in, Your Honor.
10 And in that regard, Your Honor, in the Freedom
11 of Information Act case we just had, I did accept
12 them. I brought them in as a party initially. And
13 they made a motion to dismiss and went after
14 sanctions for me for bringing them in.
15 So immediately after this Court said, no, they
16 are not an interested party under that perspective,
17 they don't have to come in under FOIA -- and I have
18 got the Declaratory Judgment Act, I can make that
19 whole argument for you if you want me to. Under
20 declaratory judgment you have to have a party in
21 interest under the Declaratory Judgment Act.
22 FOIA provides declaratory judgment as a relief
23 under the Freedom of Information Act. I apply
24 then. They came after me with sanctions because I
25 did, Your Honor.

1 So now, right after that, I filed a case. And
2 they expect me now to bring them in and file
3 against them?
4 I mean, this Court would probably award the
5 sanctions under those circumstances, after they had
6 just said, no, I'm not going to give you sanctions,
7 but we're going to dismiss them. So, I mean, you
8 know, that puts me in a very bad position.
9 Not only that, Your Honor, under the
10 relation-back aspects of the motion to amend, I
11 gave Mr. Ward notice. I didn't serve him, and it
12 doesn't require a relation-back. I gave him notice
13 of the action, sent him a copy of the provision.
14 And he said, Thank you. He accepted it.
15 He, at that particular time, was the attorney
16 of a case in action, that Freedom of Information
17 Action, for Fairways Limited or Fairways
18 Development, LLC.
19 So I provided him that notice and he accepted
20 it. And that is in the files, Your Honor, that you
21 have.
22 So, I mean, you know, that is another part.
23 There is a relation aspect to that. And they
24 should have known that I would have incorporated
25 and put them in as a Defendant, but for the mistake

1 that either they or I made with regard to them
2 being an actual party, that is the way
3 relation-back works.
4 And there is a 1910 -- I mean, a 2010 Supreme
5 Court decision on relation-back that I have got
6 right here that deals with -- it is a federal rule.
7 And the federal rule on relation-back is identical
8 to the state rule.
9 And it says that it is up to the party to
10 know -- that the party being brought in, they
11 should have known, not necessarily I should have,
12 but, I mean, I would have brought them in in any
13 event, but they should have known that I would have
14 brought them in.
15 And they weren't prejudiced, Your Honor. And
16 nothing has happened in this case up until right
17 now, we're having these motions and they are here.
18 So all that is part of it.
19 And as far as me being a party in interest, I
20 have got other arguments I can make with regard to
21 that. I have evidence showing how I am a party in
22 interest. And I also have evidence to indicate
23 that they had not done any --
24 THE COURT: All right, let's deal with their
25 motion to intervene first.

1 MR. BRICK: Okay.
2 THE COURT: All right. Any response?
3 MR. WARD: No, ma'am. Just to say that we
4 think that since we were the permittee whose --
5 from which he is appealing, that it makes all the
6 sense in the world that we be allowed to intervene.
7 THE COURT: All right, I am going to grant the
8 motion to intervene under Rule 24(a)(2). That
9 Fairways Development, LLC, is, under the rules, an
10 appropriate party for purposes of intervening in
11 this action. 24(a)(2).
12 And they have asserted interest in relating to
13 the property transaction that is the subject of the
14 action and has demonstrated that it is in a
15 position such that without the intervention
16 disposition of the action may impair or impede his
17 ability to protect --
18 MR. BRICK: That may impair what, Your Honor?
19 THE COURT: That they have demonstrated that
20 it is in a position such that without intervention
21 disposition of the action may impair or impede its
22 ability to protect their interest and that the
23 party has demonstrated that its interest is
24 adequately represented by other parties, and
25 therefore intervention is appropriate under 24(a).

1 MR. BRICK: Okay, Your Honor. That is not --
2 they are not being entered -- as I understand, they
3 are not being allowed to intervene as a necessary
4 party, then?
5 THE COURT: And what section are you referring
6 to as a necessary party?
7 MR. BRICK: Well, it is -- it is the law, Your
8 Honor.
9 THE COURT: Which section of the statute? I
10 understand. If it is a law, tell me which section
11 of the statute. I just read 24(a), and I don't see
12 anything that differentiates necessary versus --
13 MR. BRICK: Fine. I'm good. Thank you, Your
14 Honor. That's fine, then.
15 THE COURT: I'm reading the rules, I should
16 say, as to 24, and it says -- are you aware of what
17 he is talking about, Mr. Ward?
18 MR. WARD: I'm not aware of any language in
19 Rule 24 that says whether a party is necessary or
20 not. I don't think it is a --
21 MR. BRICK: Your Honor, the only reason I
22 bring that up --
23 MR. WARD: Your Honor, can I finish?
24 MR. BRICK: Sure. I'm sorry.
25 MR. WARD: I don't think this necessary party

1 aspect was contemplated in a motion to intervene.
2 That is the next step. Okay? First a party has to
3 come in. Then you can decide whether or not they
4 are necessary.
5 Thank you, Your Honor.
6 THE COURT: All right. Thank you.
7 MR. BRICK: The only thing is, Your Honor, the
8 order he has provided has the word necessary in it.
9 And that is the only thing. But, I mean, you have
10 already ruled. Thank you, Your Honor. That's
11 fine.
12 THE COURT: All right. Next motion.
13 MR. WARD: Your Honor, I think that would be
14 my motion to dismiss the appeal. And so I have a
15 couple of grounds that I have asserted. I am just
16 going to argue the first two really to you, because
17 I think that disposes of it in the interest of
18 time.
19 The first argument is that under the case of
20 Spanish Wells, Fairways is a development permittee.
21 Development permittees are necessary parties to
22 appeals of their permits. And that is the Spanish
23 Wells case that is cited in my brief.
24 Since we're only now being joined today, the
25 appeal was not commenced timely because, as a

1 necessary party, we were not joined within the 30
2 days to file an appeal. And that is what the
3 Spanish Wells case is all about.
4 Second of all, we don't believe that Mr. Brick
5 has standing to lodge this appeal in any event.
6 And that is, that he doesn't have a substantial
7 interest. And that is the standard that you have
8 to apply on the second part of my argument.
9 And whether or not someone has a substantial
10 interest, you know, there has been a lot of
11 decisions written about that, but we say he does
12 not have a substantial interest really, quite
13 simply, for two reasons.
14 Number One, his property is not adjacent to
15 this property. In fact, it is across the lake from
16 this property.
17 Second of all, Mr. Brick lives in a different
18 subdivision. It would be like someone in Wildewood
19 trying to appeal a Spring Valley issue.
20 And so we don't think that he meets the
21 criteria of having a substantial interest.
22 THE COURT: What does the case law say about
23 substantial interest?
24 MR. WARD: That is also in the Spanish Wells
25 case. And it says:

1 Standing to intervene exists for any person
2 with a substantial interest defined as owners of
3 property adjacent to and in near vicinity of.
4 So that is the criteria.
5 THE COURT: But it doesn't say what *near*
6 *vicinity of* is?
7 MR. WARD: No. But it is clear that it is not
8 adjacent because it is separated by a lake and a
9 golf course.
10 And I will let Mr. Brick make his arguments.
11 And I know what they are going to be because he has
12 briefed them. And then I have a response to that,
13 and we'll be done.
14 THE COURT: Yes, sir?
15 MR. BRICK: Yes, Your Honor. First of all, I
16 am not in a different subdivision. It is all
17 LongCreek Plantation, Your Honor. I'm in LongCreek
18 Plantation. I'm directly across the lake from
19 areas in LongCreek Plantation. I come under a lot
20 of the LongCreek Plantation covenants, belong to
21 the Windemere Club, which is right across the lake
22 from where we are, which is part of the LongCreek
23 Plantation process. And I pay my dues there in the
24 LongCreek Plantation house. I'm part of the
25 LongCreek Plantation. It was a property developed

1 by the predecessor to -- actually it may have been
2 by Fairways Development, LLC.
3 The word adjacent is defined in the Land
4 Development Code as being a property that is
5 contiguous.
6 Contiguity is defined, and it is defined in
7 26-22 -- 26-21 has a -- of the Richland County
8 Code -- 26-21 has the -- it is for the application
9 of the -- not the definition section, but how you
10 apply various provisions. And it defines
11 contiguity.
12 Contiguity -- or adjacency is contiguity with
13 ten feet or more.
14 I provided in my affidavit, I think you can
15 see that my property has more than ten feet or more
16 of a property line. You have to have -- you have
17 to share a common border of ten feet or more to be
18 contiguous.
19 We share -- I share the same border as the
20 property that is being developed with 75 feet -- or
21 175 feet. And the only -- the variance is smaller,
22 less than a tenth of a mile away, Your Honor -- and
23 I can show you that on a map if you want to see
24 it -- from a major development that they are doing
25 where they are going to -- or they are going to put

1 a substantial amount right in here a tenth of a
2 mile away. They have a dock that is coming out
3 that they are putting in a waterfront park that is
4 not even authorized in my area straight across the
5 lake, Your Honor.
6 And that is -- this is where it is, Your
7 Honor(indicating). This is what they are putting
8 across there(indicating). That is the -- there is
9 the dock(indicating), and this is the substantial
10 development(indicating).
11 Now, the application that you saw earlier had
12 a map in there that didn't have that on there. And
13 my property is less than a tenth of a mile
14 that-a-way right across the lake.
15 And under the land -- not only that, Your
16 Honor, the Richland County -- Richland County
17 administered this as I was adjacent. They didn't
18 have any problem with me being an applicant in the
19 matter.
20 I kind of -- I know you have got an 11
21 o'clock, Your Honor, but this is really important.
22 This whole thing is important.
23 Let me argue -- and I'm a little confused as
24 to what we're arguing, but if we are arguing the
25 whole motion to dismiss, Your Honor, in my

1 affidavit I had copies of where the -- here it is.
2 (Pause.)
3 MR. BRICK: They have copies of this because I
4 gave it to them, Your Honor.
5 That shows the distance(indicating). I'm
6 sorry, I should have asked to approach. I
7 apologize.
8 THE COURT: All right.
9 MR. BRICK: This is my -- indicating that I am
10 a property owner(indicating). Here is another view
11 of it(indicating).
12 THE COURT: All right.
13 MR. BRICK: And then I have 175 feet of my
14 land.
15 THE COURT: All right.
16 MR. BRICK: As far as them being a permittee,
17 they are not -- Your Honor, they are not a
18 permittee in this issue. They didn't file it.
19 They don't have -- they haven't expended any money
20 for it, Your Honor. None. Fairways Development,
21 LLC, hasn't expended money on this issue.
22 This project was applied -- Fairways
23 Development, LLC, applied on behalf of an
24 unincorporated group.
25 Now, the unincorporated group paid for the

1 sketch plan -- or I don't know whether they did or
2 not. It is -- the sketch plan was not prepared
3 for -- by Fairways Development. It was prepared by
4 LongCreek Associates. It was prepared on behalf of
5 them. And it was prepared by the same individual
6 who -- LongCreek Associates did it.
7 THE COURT: All right. And I have your
8 responses. I can read over those.
9 MR. BRICK: Okay, good.
10 THE COURT: It is just that I have got people
11 here that are here scheduled for 11:00 o'clock.
12 They said these motions were going to take like 15
13 minutes each, and they are taking a lot longer.
14 So I will take a look at those. But I don't
15 want to make them wait any longer. I think there
16 is one more motion.
17 MR. BRICK: Well, I have a motion to amend,
18 Your Honor.
19 THE COURT: Yes, sir. Is that the last one?
20 MR. WARD: I have no further.
21 MR. WREN: We have no further.
22 THE COURT: Yes, sir, I will be glad to hear
23 from you.
24 MR. BRICK: Well, I would like to amend, Your
25 Honor, amend my complaint for a couple of reasons.

1 One, I want to add them on as a party. And I
2 wanted to relate-back, if need be. I don't
3 think -- I'm not sure whether it needs to be
4 related-back or not, Your Honor, the way you
5 brought them in, but I do want to bring them in as
6 a party.
7 And then also I want to, if there is another
8 issue ongoing, I'd like to amend it to take care of
9 that issue, and that is an issue of an
10 administrative problem with Richland County. They
11 provided the wrong file to its Planning Commission,
12 which I did not know about until later on. I had
13 no reason I could know about the file. They
14 supplemented the file, but with additional
15 information subsequently. And that would be very
16 prejudicial for the complaint that was heard by the
17 Planning Commission.
18 So if they are giving the wrong file to the
19 Planning Commission for my appeal, the appeal that
20 they heard, that should be a matter that I can
21 appeal to this Court and the prejudice about it. I
22 don't want to argue that right now because I don't
23 think it is appropriate, but the fact is, is I
24 would like to amend my appeal to bring that in as
25 an issue that the Court should look at.

1 So, and then I would also like to perfect my
2 appeal on other matters.
3 So that is the reason.
4 Now, the reason I showed you the zoning
5 ordinance is because the standard for my providing
6 an appeal under 1150 is a variance from the
7 standard under the zoning provision, so when I did
8 my appeal, I gave the notice of appeal and my
9 appeal within the 30-day period.
10 And then I found other issues that were
11 problematic, as you understood. So I wanted to
12 amend it.
13 Mr. Wren had a responsive pleading, and I
14 filed my request for amendment within 30 days of
15 the responsive pleading.
16 And this Court has authority to look at those
17 amendments. And the reason why is because Rule 75
18 says: Appeals under Rule 75 will be held under the
19 rules of this provision. Not just 75 of the Rules
20 of Civil Procedure.
21 So that is my argument on that.
22 THE COURT: All right. Any position?
23 MR. WREN: Very briefly, Your Honor. More
24 than once Mr. Brick used the term complaint. This
25 is an appeal.

1 As Your Honor is very aware, there is a
2 difference between our Rules of Civil Procedure.
3 In fact, I think he brought his motion pursuant to
4 Rule 15, amendments of pleadings and the appellate
5 rules.
6 Your Honor, this Court, as has been well
7 evidenced, sits as a court of appellate
8 jurisdiction. Rule 15 does not apply. Under the
9 rules he had 30 days to appeal. You don't get to
10 go amending. This is a waste of the Court's time,
11 Your Honor. He has filed his appeal. He has
12 raised the grounds.
13 The reason Rule 15 exists in courts of -- our
14 trial courts of course is because of discovery
15 ongoing, learning new evidence, et cetera.
16 In an appellate jurisdiction, Judge, the facts
17 and evidence are complete. The Court simply sits
18 as an appellate body to review them.
19 Your Honor, the motion should be denied.
20 THE COURT: All right.
21 MR. WARD: We agree, Your Honor. There is
22 no -- and he keeps referring to relation-back; that
23 is, Mr. Brick refers to relation-back in an effort
24 to correct the jurisdictional problem he has.
25 And as Mr. Wren suggests -- and we believe

1 also -- that this is an appellate criteria and the
2 appellate courts, the relation-back doctrine
3 doesn't apply unless they are trying to figure out
4 if the trial court did something right. But in the
5 appellate matter, the relation-back doctrine is
6 inapplicable.
7 Thank you, Your Honor.
8 THE COURT: All right. One minute.
9 MR. BRICK: Rule 75 does indicate that you can
10 have -- that the Rules of the Civil Procedure do
11 apply, Your Honor.
12 Okay. I think that is probably it. I hate
13 the one-minute-more, though, Your Honor. It puts a
14 lot of pressure on me, and it is difficult.
15 THE COURT: I understand. You all have
16 exceeded -- these folks in the back have --
17 MR. BRICK: Well, we were here at 9:30, Your
18 Honor.
19 THE COURT: Yes, but there were other cases
20 scheduled at 9:30. So y'all exceeded the time of
21 15 minutes each.
22 MR. BRICK: Okay, Your Honor.
23 THE COURT: In looking at Rule 75 and Rule 15,
24 it doesn't appear that you can amend the -- the
25 Court can allow you to amend the appeal. That is

1 for purposes of pleadings.
2 And looking at Rule 7 -- Rule 7, Rule 15, and
3 Rule 75. 15 applies to the amended and
4 supplemental pleadings and not to appeal.
5 For that reason, I am going to deny the motion
6 to amend the appeal and the notice of appeal.
7 As to the motion to dismiss, both Mr. Wren and
8 Mr. Ward, I am going to -- because there is quite a
9 few documents in here that I need to review -- I am
10 going take those under advisement, and I will get
11 something back to you all in due time.
12 MR. BRICK: And I would like for you to
13 reconsider that, Your Honor, with concern of --
14 THE COURT: You have to file a 59(e) if you
15 want me to reconsider.
16 All right, thank you.
17 MR. WARD: Thank you.
18 MR. WREN: Thank you, Judge.
19 THE COURT: Thank you.
20 (WHEREUPON, the proceedings were
21 concluded at 11:39 a.m.)
22
23
24
25 **(END OF TRANSCRIPT)**

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Civil Action No. 13-CP-40-1643 |
| Samuel T. Brick, | ) | |
| Petitioner, | ) | **RECORD ON APPEAL** |
| v. | ) | |
| Richland County Planning Commission, | ) | |
| Respondent. | ) | |

Respondent, Richland County Planning Commission, by and through its undersigned counsel, hereby submits the Record on Appeal in this matter. Included therein are the following:

1) Agenda packet presented to Richland County Planning Commission on February 4, 2013 (including Petitioner's request for appeal/administrative review), Case No. 13-04 AR;

2) Certified copy of Richland County Planning Commission Agenda (February 4, 2013);

3) Memorandum of Law submitted by Petitioner for February 4, 2013, Planning Commission Administrative Review hearing;

4) Certified transcript of Richland County Planning Commission meeting (February 4, 2013);

5) Certified transcript of Richland County Planning Commission meeting (March 4, 2013); and

6) Order on an Administrative Appeal, Case No. 13-04 AR.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II
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ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY PLANNING
COMMISSION

Columbia, South Carolina
May 31, 2013

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF RICHLAND** | ) | |
| | ) | Civil Action No. 13-CP-40-1643 |
| Samuel T. Brick, | ) | |
| Petitioner, | ) | |
| v. | ) | **SUPPLEMENTAL RECORD ON APPEAL** |
| Richland County Planning Commission, | ) | |
| Respondent. | ) | |

Respondent, Richland County Planning Commission, by and through its undersigned counsel, hereby submits a Supplemental Record on Appeal in this matter, in addition to the previous Record on Appeal filed on June 5, 2013. Included therein are the following:

1) Agenda packet materials presented to Richland County Planning Commission on February 4, 2013 (including Petitioner's appeal to the Planning Commission), Case No. 13-04 AR.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

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ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY PLANNING
COMMISSION

Columbia, South Carolina
August 15, 2013

**Sec. 26-186. Green Code standards.**

(a) *Purpose.* Green Code standards are intended to encourage the development of residential communities based upon the Comprehensive Plan for Richland County, and which are designed to:

(1) Preserve and protect environmental resources, scenic vistas, and natural and cultivated landscapes; and

(2) Enhance land, water, air and tree resources by minimizing the area of land disturbance, reducing impervious surface, optimizing stream buffers, preserving tree cover and encouraging retention and protection of Conservation Areas; and

(3) Reduce infrastructure maintenance costs as a result of efficient community design; and

(4) Provide a Conservation Area and pedestrian linkages and wildlife corridors among residential communities and to encourage recreation opportunities; and

(5) Preserve significant historical and archeological features; and to preserve and protect contiguous undeveloped areas within the development.

(b) *Applicability/Establishment.* The owner of property within an RU, RR, RS-E, RS-LD, RS-MD, RS-HD, MH, RM-MD, RM-HD, or CC zoning district may apply the development standards found within this section, in lieu of the development standards set forth for the applicable zoning district, subject to meeting the requirements of this section.

(c) *Application.* A property owner desiring to use the development standards of this section must first submit an application to the Planning department. The application shall be accompanied by an "Existing Features Site Analysis Plan" (see subsection (e), below), and a "Concept Plan" (see subsection (f), below). An application will not be accepted if the property has been clear-cut (i.e. marketable timber has been removed; provided, however, thinning of pine timber is permitted pursuant to a certified forest management plan, with such plan addressing reforestation) within the past twenty-four (24) months. In addition, property must utilize a public sanitary sewer, unless the owner obtains prior approval from DHEC to utilize a well and septic tank system.

(d) *Approval by the County's Soil and Water Department.* A Conservation Area that delineates the land that is to be set aside for conservation purposes must be certified and accepted by the Richland County Soil and Water department. The Planning department shall submit this information to the Soil and Water department for review.

(e) *Existing Features Site Analysis Plan.* At time of development, and prior to preparing the Concept Plan, an Existing Features Site Analysis Plan, sealed by a registered engineer or landscape architect, shall be prepared and submitted by the applicant or developer.

(1) The purposes of the Existing Features Site Analysis Plan are to:

a. Delineate areas that have been identified as worthy of permanent protection as a Conservation Area because of their environmental values.

b. Set forth the particulars of the site, including boundary, topographic data (minimum 2 foot contour intervals), existing structures and utility easements. County topographical data, current GIS data other published data will be acceptable.

c. Provide the starting point for design of the conservation subdivision with built areas being designed as separate from the areas delineated as worthy of permanent protection.

(2) The Existing Features Site Analysis Plan shall include, at a minimum, the following information:

a. Perennial and intermittent streams, wetlands, and FEMA designated 100-Year Flood Hazard Zones. The source of this information shall also be indicated. USACE approved delineation is not required. Delineation of stream buffers along intermittent streams and perennial streams. The required buffers are:

For an Intermittent stream - a 25 foot buffer on each side, and

For a Perennial stream - a 50 foot buffer on each side.

For a delineated wetland area - a 50 ft buffer.

b. Identification of tree lines, native woodlands, open fields or meadows, peaks or rock outcroppings, and prime agricultural land.

c. Delineation of tree resource areas by type, such as hardwoods, pines or mixed; and old or new growth, as determined by existing and published data.

d. Delineation of steep slope areas (25% or greater). The plan shall provide for protective vegetative cover on slopes greater than forty percent (40%).

e. Identification of historical, archeological or other significant features.

f. Identification of the Conservation Area, Open Space, or common areas contiguous to the project.

g. Identification of protected plant species as listed by the South Carolina Department of Natural Resources, to be certified by a registered landscape architect, forester, arborist, biologist, botanist or horticulturist.

h. The plan also shall include a notarized statement by the landowner that marketable timber has not been removed (provided, however, thinning of pine timber is permitted pursuant

to a certified forest management plan, with such plan addressing reforestation) within the past twenty-four (24) months within stream and/or wetland buffer areas in the previous twenty-four (24) months prior to the approval of a Concept Plan.

(f) *Concept Plan.* At time of development application, a Concept Plan shall be submitted by the developer for review and approval in accordance with the requirements and procedures of this chapter. A Concept Plan shall consist of either a site plan or a sketch plan, including the following information:

(1) Delineation and specifications of a Conservation Area, including calculations, and any "Neighborhood Greens," play areas, or trail system to be constructed.

(2) A typical detail on the plan indicating minimum lot width, building setback lines, off-street parking, street trees, sidewalks, and street pavement and right-of-way width.

(3) Minimum Lot width area and percent of floodplain specifications in tabular form; and density calculations (gross and net).

(g) *Conservation Area Requirements.* In order to use the development standards of this section, the Conservation Area shall meet the following requirements:

(1) Delineation. Priority shall be given in delineating Conservation Areas as those areas of significance identified in the Existing Features Site Analysis Plan, around which the built areas are designed.

(2) Undeveloped and Natural. The Conservation Area shall remain undeveloped and natural except for the provision of non-motorized passive recreation opportunities, such as running, walking, biking, and similar outdoor activities. Trail construction and maintenance activities shall be allowed, including trail markers and routine mowing. For trail systems, boardwalks are allowed. Trail wetland and stream bank mitigation projects are also permitted. Natural vegetation shall not be disturbed, except for utility crossings within the required buffers.

a. "Primary Conservation Areas" are required to be included in the Conservation Area. These areas shall be covered by a provision for permanent protection and shall include 100-Year floodplains, stream buffer zones, and slopes greater than forty percent (40%) consisting of a contiguous area of at least 5,000 square feet, wetlands, endangered or threatened species or their habitat, archeological sites, cemeteries or burial grounds.

b. "Secondary Conservation Areas" are features that are acceptable and desirable for Conservation Area designation, and may be covered by the provisions for permanent protection. These include important historic sites, existing healthy, native forests of at least one (1) contiguous acre, scenic view sheds, peaks and rock outcroppings, prime agriculture lands consisting of at least five (5) contiguous acres, and existing trails that connect the tract to neighboring areas. Also considered Secondary Conservation Areas are "Neighborhood Greens"

and storm water management facilities and practices, and these may be constructed and maintained in the Conservation Area. However, "Neighborhood Greens" shall not exceed twenty percent (20%) of the total required Conservation Area.

c. Proposed Permanent Lakes that will be used for wet detention shall be credited at fifty percent (50%) of the land area.

d. Existing lakes that are used for stormwater detention shall be credited at one hundred percent (100%), and no more than fifty percent (50%) of land area located within a proposed permanent wet stormwater basin may be credited.

(3) Exclusions. The following features are excluded from the minimum amount of Conservation Area that must be set aside:

a. Residential yards.

b. Impervious surfaces in recreation areas shall not be credited.

c. Land area within power, gas pipeline easements, sewer line easements or pump stations shall not be credited unless these easements contain sensitive areas and are approved for common use areas.

d. Land area devoted to public or private streets or any land that has been, or is to be, conveyed to a public agency for such use as parks, schools, or other public facilities, shall not be credited.

e. Dry stormwater detention basins shall not be credited.

(4) Ownership of Conservation Areas. Prior to any building permits being issued for the subdivision, the Conservation Area that is delineated on the Final Plat shall be permanently protected by either one or both of the following options:

a. Option 1. Conveyance to Qualified Organizations or Entities. Except for "Neighborhood Greens," developed recreation areas or Secondary Conservation Areas not desired for permanent protection, the Conservation Area shall be permanently protected by the: 1) recording of a covenant or conveyance of an easement which runs in perpetuity under South Carolina law in favor of any corporation, trust, or other organization holding land for the use of the public or certain governmental entities; or 2) conveyance of a conservation easement running in perpetuity to a third party "qualified organization" recognized by Federal Treasury Regulation Section 1.170A-14(c)(l). Qualified organizations recognized by this Treasury Regulation include, but may not be limited to, governmental entities, local and national land trusts, or other conservation groups that are organized or operated primarily or substantially for one of the conversation purposes specified in the Internal Revenue Code. Governmental entities that qualify to be named in covenants or to receive conservation easements under the Treasury Regulation

referred to above for purposes of this section shall include the Federal government, the State of South Carolina, Richland County, or authorities of the State of South Carolina or Richland County. If a covenant is recorded or an easement conveyed in favor of a governmental entity, formal acceptance by the governmental entity or qualified conservation organization shall be obtained prior to the recording of the covenant or conveyance of the easement. The developer shall record the necessary legal instrument to accomplish protection of the Conversation Area prior to, or concurrent with, the recording of the Final Plat. Both the deed and the Final Plat shall contain, at a minimum, the following covenant:

"The Conservation Area conveyed by deed and shown on the Final Plat shall remain permanently protected and shall not be disturbed or cleared except to clean up storm damage, or to create or maintain hiking trails, and shall have the following goals: 1) protection of streams, floodplains and wetlands; 2) protection of steep slopes; 3) protection of woodlands, open fields and meadows; 4) protection of historical and archeological features; 5) protection of significant wildlife habitats; 6) protection of scenic vistas; and 7) passive recreation and connectivity with nearby open spaces. The following uses may be allowed: passive recreational amenities, such as pervious-surface paths and minimal parking spaces; picnic and restroom facilities (constructed facilities shall not exceed fifteen percent (15%) of the Conservation Area). This covenant is intended to benefit said area to the public and the use of same to the subdivision lot owners and residents, and it shall run in perpetuity."

b. Option 2. Conveyance to the Property Owners' Association. A deed conveying ownership of the Conservation Area in fee-simple to a property owner's association shall be recorded and delivered prior to, or concurrent with, the recording of the Final Plat for the first phase of the subdivision. The legal instrument shall contain, at a minimum, the same language required to be placed on a deed as stated in Option 1 of this Section.

The property owner's association bylaws or covenants, at a minimum, shall contain the following provisions:

a. Governance of the association.

b. Lien rights to the association for maintenance expenses and tax obligations.

c. Responsibility for maintenance of the open space, including, if applicable, low impact development stormwater management mechanisms.

d. Responsibility for insurance and taxes.

e. Automatic compulsory membership of all lot purchasers and their successors; and compulsory assessments.

f. Conditions and timing of transferring control of the association from the developer to the lot owners.

The property owner's association, or other entity approved in advance by the Planning department, shall be responsible for the continuous maintenance and/or preservation of buffers, Conservation Area, trails and recreation areas.

(h) *Development Requirements*. Subdivisions shall meet the following requirements:

(1) Minimum Subdivision Size: 2 contiguous acres.

(2) Lot Area: No minimum.

(3) Minimum Yard Areas (Setbacks):

a. Front: 20 feet; provided, however, the front yard setback may be reduced to 5 feet if dwellings are provided side or rear entry garages.

b. Rear: 20 feet.

c. Side: 5 feet.

d. Corner lots secondary side l/2 front or 10 feet

e. For alley loaded developments:

Front: 10 feet

Rear: 15 feet

Side: 3 feet, 6 feet combined

Corner lots secondary side 10 feet

f. For a zero "lot line" development:

Front: 15 feet

Rear: 15 feet

Side: 0 feet, 6 feet combined

Corner lots secondary side 7 1/2 feet

(4) Street Frontage Buffer along existing roads: Twenty-five (25) feet in width (not part of any building lot). The street frontage buffer shall remain undisturbed and natural, except for entrance features, necessary street construction activities, right-of-way crossings, public utility easements, and corner right-of-way miters or radii. If the required street frontage buffer is void of vegetation, it shall be planted in accordance to landscape buffer type "A" to provide an

effective visual screen, which may include landscaped berms and decorative fences. The street frontage buffer may be counted towards Conservation Area calculations.

(5) Maximum Height: Three (3) stories above ground level. (For the purpose of this subparagraph, "ground level" shall mean: the average finished ground elevation at the base of a structure to the highest point of the roof of the structure; provided that spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, mechanical equipment, or other such structures that are placed above roof level and are not intended for human occupancy, shall not be subject to height limitations).

(6) Yards: All disturbed areas on dwelling lots shall be stabilized with sod, or landscaped with mulch and native plants for landscaping and stabilization of the entire lot.

(7) Street trees shall be provided along all roads at intervals of twenty-five (25) feet and shall be 2 1/2 inch caliper/10 feet in height at time of planting.

(8) Proposed utilities shall be located underground.

(9) Community streets shall be as follows:

a. Main Roads - twenty-four (24) feet pavement width with 1.5 feet minimum rolled curb.

b. Park Roads - seventeen (17) feet pavement width with 1.5 feet minimum rolled curb. On cul-de-sac bulbs, the inside curb shall be one (1) foot ribbon curb.

c. Street Lighting - if street lighting is proposed, a pedestrian scale shall be utilized (maximum 12 feet in height).

d. All streets shall conform to Richland County standards for pavement section, horizontal and vertical curvature. All streets in the community will have sidewalks on at least one side.

e. Sidewalks shall provide access to community trail systems. All sidewalks shall be a minimum of five (5) feet wide and meet ADA standards. Sidewalks shall be setback five (5) feet from the curb, providing a grass or landscaped buffer between the sidewalk and roadway.

(10) Storm water management. Where possible, detention shall be accomplished in wet ponds. In addition, low impact development (LID) options shall be utilized when feasible throughout the community. However, in either case, storm water controls shall meet Richland County's standards. LID stormwater mechanisms, such as grassy cul-de-sacs and neighborhood greens shall be owned and maintain by the Home Owners' Association.

(11) Pervious material may be used for sidewalks and driveways. The maximum impervious surface allowed is fifty percent (50%) of the developed area.

(12) Certification shall be issued by the Richland County Council for the completion of development that meets the within Green code standards, which enhances the environment, improves our quality of life, and prioritizes Green Development.

(i) *Density*. The residential gross density in each zoning district is established in other sections of this Code; provided, however, bonus density shall be granted based on meeting open space conservation targets as follows:

-30% required minimum open space - 10% bonus density

- 40% open space provided - 20% bonus density

- 50% open space provided - 30% bonus density

Density bonus can be applied on a pro-rata basis for open space amounts falling between the benchmarks.

(j) *Appeals*. The Board of Zoning Appeals, consistent with section 26-58, shall hear appeals of decisions of the Planning Department pertaining to this section (26-186).

(Ord. No. 035-08HR, § II, 6-17-08; Ord. No. 004-09, § I, 2-17-09; Ord. No. 027-09HR, § XX, 5-19-09; Ord. 018-10HR, § IV, 5-4-10)

**Sec. 26-89. RS-LD Residential, Single-Family - Low Density District.**

(a) *Purpose.* The RS-LD District is intended as a single-family, detached residential district, and the requirements for this district are designed to maintain a suitable environment for single family living. Non- single family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.

(b) *Permitted uses, permitted uses with special requirements, and special exceptions.* See Article V., Section 26-141. Table of Permitted Uses, Permitted Uses with Special Requirements, and Special Exceptions.

(c) *Development standards.* See also Article V., Section 26-131. Table of Area, Yard, and Height Requirements. Provided, however, if a developer can meet the requirements found within Section 26-186, the development standards of 26-186(i) may be substituted for the standards required in this subsection.

(1) *Minimum lot area/maximum density:* Minimum lot area: 12,000 square feet or as determined by DHEC, but in no case shall it be less than 12,000 square feet. Maximum density standard: no more than one (1) principal dwelling unit may be placed on a lot except for permitted accessory dwellings. However, see the special requirement provisions for single-family zero lot line dwellings at Section 26-151(c) of this chapter.

(2) *Minimum lot width:* 75 feet.

(3) *Structure size standards:* None.

(4) *Setback standards:* The following minimum setbacks shall be required for principal uses in the RS-LD District:

a. Front: 25 feet.

b. Side: 16 feet total for side setbacks, with 5 feet minimum on any one side.

c. Rear: 20 feet.

Where zero lot line developments are permitted, the side setback shall meet the special requirements for such developments as set forth in Section 26-151 of this chapter.

The minimum side and rear setback requirement for accessory buildings/ structures in the RS-LD District is five (5) feet.

The landscape and bufferyard standards of Section 26-176 of this chapter may require additional setback distances; if so, the most restrictive requirements shall apply.

(5) *Height standards:* The maximum height of structures in the RS-LD District shall be 45 feet.



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(6) *Landscaping/bufferyard standards:* Landscaping and bufferyards shall be provided in accordance with Section 26-176 of this chapter.

(7) *Parking/loading standards:* Parking and loading facilities shall be provided as required by Section 26-173 and Section 26-174 of this chapter. No parking lots shall be permitted within any required setback.

(8) *Sidewalk and pedestrian amenities:* Sidewalks and other pedestrian amenities shall be provided as required by Section 26-179 of this chapter.

(9) *Signs:* Signs shall be regulated by the requirements of Section 26-180 of this chapter.

(10) *Recreation/open space standards:* Open space may be provided for new developments and expansions of existing developments in accordance with the Green Code standards of Section 26-184 of this chapter.

(11) *Design and operation standards:* None.

(Ord. No. 074-04HR, § V, 11-9-04; Ord. No. 043-07HR, § VI, 5-1-07; Ord. No. 035-08HR, § V, 6-17-08; Ord. No. 027-09HR, § V, 5-19-09; Ord. No. 028-09HR, § II, 5-19-09; Ord. No. 054-09HR, § VI, 11-3-09)



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**Sec. 26-21. Rules of construction.**

(b) *General rules of construction.*

(9) *Contiguous.* The word "contiguous", as applied to lots or districts, shall be interpreted as meaning "having a common boundary of ten (10) or more feet in length".

**Sec. 26-22. Definitions**

*Lot, adjacent.* A lot that is contiguous to another lot.

**Sec. 26-34. Development Review Team.**

(a) *Established; duties.* A development review team is hereby established, which shall have the following duties:

(1) *Land development review.* The development review team shall review and comment on all major land development applications and minor land development applications as needed. Such review shall be made in accordance with the procedures set forth in Section 26-53 of this chapter.

(2) *Subdivision review.* The development review team shall review and comment on all major subdivision plat applications and shall comment on minor subdivision plats as needed. Such review shall be made in accordance with the procedures set forth in Section 26-54 of this chapter.

(3) *Assistance to the planning department.* The development review team shall review and comment on other plans or applications as requested by the planning department and shall assist the staff of the planning department with any studies or other land development matters as necessary.

(4) *Other.* The development review team shall perform such additional powers and duties as may be set forth for the development review team of Richland County elsewhere in this chapter and other laws and regulations of the county.

(b) *Membership; operating procedures.* The development review team shall be appointed by the planning director. It shall consist of representatives of various departments within the county. The membership and operating procedures shall be as determined by the planning director. The planning director shall be a member of and shall serve as chair of the development review team.

(Ord. No. 074-04HR, § V, 11-9-04; Ord. No. 077-08HR, § I, 12-2-08)

**Sec. 26-54. Subdivision review and approval.**

d. *Sketch plan review and approval.*

(c) *Processes.* There are three types of subdivision review processes: administrative review, minor subdivision review, and major subdivision review. The type of process to be applied to a particular development application depends on the nature of the development proposed.

(3) *Major subdivision review.*

d. *Sketch plan review and approval.*

3. *Formal review.*

[a] *Public hearing or report before planning commission.* Following receipt of a report or appeal on a proposed major subdivision sketch plan, the matter shall be scheduled by the Richland County Planning Commission. The planning commission shall consider this matter at the next available meeting. There shall be no public hearing held in conjunction with a report on a sketch plan approved by the development review team. In these cases, the commission shall receive a report on the decision of the development review team for their information. In case of an appeal, the planning commission shall conduct a public hearing on said appeal. Failure by the planning commission to act within sixty (60) days of complete submittal shall constitute approval unless this time period is extended by mutual agreement.

[b] *Decision by the planning commission.* Where an appeal has been made to them on a major subdivision sketch plan, the Richland County Planning Commission, after conducting the public hearing, may: deny approval, table the application pending submittal of additional information, or approve the application. The planning commission shall approve the sketch plan if it finds:

[1] The proposed project complies with the policies and objectives of the county comprehensive plan.

[2] The proposed project complies with the purpose, scope, and provisions of this chapter.

[3] The county address coordinator has approved the subdivision name and addresses, and the planning commission has approved the subdivision road names. (See Section 26-183 of this chapter).

[4] The proposed project complies with the subdivision sketch plan checklist of the planning department.

The applicant shall be provided with a written statement of the planning commission's action (approval, approval with conditions, or denial). Such statement shall, at a minimum,

include findings of fact based on the criteria described above and shall establish the general parameters for the development of the entire area subject to the sketch plan. The county shall not accept an application for a preliminary plan, or for roads, storm drainage or sediment/ erosion control, until the sketch plan is approved.

4. *Variances.* Requests for variances, unless otherwise specified, shall be heard by the board of zoning appeals under the procedures set forth in Section 26-57 of this chapter.

5. *Appeals.* Pursuant to the requirements of Section 6-29-1150 (C) of the South Carolina Code of Laws, any person who may have a substantial interest in the decision may appeal such decision of the planning commission to the circuit court, provided that a proper petition is filed with the Richland County Clerk of Court within thirty (30) days after receipt of the written notice of the decision by the applicant. An appeal shall cease all staff and review agency activity regarding the subject project. However, a reconsideration request may be heard at the same time an appeal is pending. Since an appeal to the circuit court must be based on the factual record generated during the subdivision review process, it is the applicant's responsibility to present whatever factual evidence is deemed necessary to support his/her position. In the alternative, also within thirty (30) days, a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre- litigation mediation in accordance with Section 6-29-1150 and Section 6-29-1155 of the South Carolina Code of Laws.

## Sam Brick

**From:** Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson) [dbenjaminlc@sccourts.org]
**Sent:** Tuesday, December 17, 2013 3:27 PM
**To:** Sam Brick (sbrick2011@gmail.com); tw@tobywardlaw.com; Michael B. Wren (mwren@DML-LAW.com); dj@tobywardlaw.com
**Subject:** Brick v. Richland County Planning Commission - ORDERS
**Attachments:** Motion to Dismiss Fairways.pdf; Motion to Dismiss RCPC.pdf; Motion to Intervene.pdf

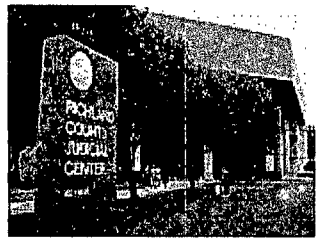
Good afternoon,

Three orders have been issued in this case, and they have been attached to this e-mail for your convenience.

Thanks,

Ashley Wheeling-Goodson
Law Clerk for The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

# Richland County
# 5th Judicial Circuit
# Public Index





Switch View

## Samuel T Brick vs Richland County Planning Commission

| | | | | | |
|---|---|---|---|---|---|
| **Case Number:** | **2013CP4001643** | **Court Agency:** | **Richland County Common Pleas** | **Filed Date:** | **03/18/2013** |
| **Case Type:** | **Common Pleas** | **Case Sub Type:** | **Appeal/Other 999** | **File Type:** | **Non-Jury** |
| **Status:** | **Dismissed** | **Assigned Judge:** | | | |
| **Disposition:** | **Dismissed by Court - not Rule 40J** | **Disposition Date:** | **12/17/2013** | **Disposition Judge:** | **Benjamin, Deandrea G** |
| **Original Source Doc:** | | **Original Case #:** | | | |
| **Judgment Number:** | | **Court Roster:** | | | |

**Case Parties** **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

| Name | Description | Type | Motion Roster | Begin Date | Completion Date | Documents |
|---|---|---|---|---|---|---|
| Brick, Samuel T | Form 4 Order Appeal DISMISSED. | Order | | 02/05/2014-12:13 | | |
| Brick, Samuel T | Motion For Reconsideration | Motion | | 12/27/2013-14:37 | 12/27/2013-14:37 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 12/27/2013-12:16 | 12/17/2013-12:16 | |
| Brick, Samuel T | Order Intervenor Fairways LLC's Motion to Dismiss is GRANTED | Order | | 12/17/2013-15:57 | 12/17/2013-15:57 | |
| Brick, Samuel T | Order Defendant's Richland County Planning Commisssion's Mot | Order | | 12/17/2013-15:56 | 12/17/2013-15:56 | |
| Brick, Samuel T | Order Fairways LLC's Motion to Intervene is GRANTED. | Order | | 12/17/2013-15:52 | 12/17/2013-15:52 | |
| Brick, Samuel T | Form 4 Order Hearing CONTINUED by Judge Manning | Order | | 12/13/2013-15:12 | 12/17/2013-15:12 | |
| Brick, Samuel T | Memorandum of Law | Filing | | 12/04/2013-08:40 | 12/17/2013-08:40 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 11/21/2013-15:18 | 12/17/2013-15:18 | |
| Brick, Samuel T | Motion For Continuance | Motion | | 11/21/2013-11:10 | 12/13/2013-11:10 | |
| Brick, Samuel T | Notice of Case | Action | | 11/15/2013- | 12/17/2013- | |

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| | | | | | | |
|---|---|---|---|---|---|---|
| | Roster Publication Sent | | | 10:42 | 10:42 | |
| Wren, Michael Brian | Notice of Case Roster Publication Sent | Action | | 11/15/2013-10:42 | 12/17/2013-10:42 | |
| Ward, Tobias Gavin Jr. | Notice of Case Roster Publication Sent | Action | | 11/15/2013-10:42 | 12/17/2013-10:42 | |
| Brick, Samuel T | Form Order the motion to intervene is GRANTED | Order | | 09/16/2013-09:20 | 12/17/2013-09:20 | |
| Brick, Samuel T | Form Order Plaintiff's Motion to Amend Notice of Appeal and | Order | | 09/16/2013-08:59 | 12/17/2013-08:59 | |
| Brick, Samuel T | Form Order Motion to Require Appellant to Post a Bond is WIT | Order | | 09/16/2013-08:58 | 12/17/2013-08:58 | |
| Brick, Samuel T | Affidavit in Response to Fairways Development LLC Motion to | Filing | | 08/21/2013-16:26 | 12/17/2013-16:26 | |
| Brick, Samuel T | Affidavit in Response to Fairways Development LLC Motion to | Filing | | 08/21/2013-16:25 | 12/17/2013-16:25 | |
| Brick, Samuel T | Affidavit in Response to Richland County Planning Commission | Filing | | 08/21/2013-16:24 | 12/17/2013-16:24 | |
| Richland County Planning Commission | Supplemental Record of Appral | Filing | | 08/19/2013-15:47 | 12/17/2013-15:47 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Brick, Samuel T | Notice of Motions Roster Publication | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |

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|---|---|---|---|---|---|---|
| | Sent | | | | | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 08/08/2013-16:07 | 12/17/2013-16:07 | |
| Brick, Samuel T | Memorandum of Law in Response to Richland County Planning Co | Filing | | 07/31/2013-09:37 | 12/17/2013-09:37 | |
| Brick, Samuel T | Memorandum of Law in Response to Fairways Development LLC Mo | Filing | | 07/31/2013-09:36 | 12/17/2013-09:36 | |
| Brick, Samuel T | Memorandum of Law in Response to Fairways Development LLC Mo | Filing | | 07/31/2013-09:35 | 12/17/2013-09:35 | |
| Brick, Samuel T | Memorandum of Law in Response to Fairways Development LLC Mo | Filing | | 07/31/2013-09:34 | 12/17/2013-09:34 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Brick, Samuel T | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Wren, Michael Brian | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Ward, Tobias Gavin Jr. | Notice of Motions Roster Publication Sent | Action | | 07/11/2013-14:56 | 12/17/2013-14:56 | |
| Brick, Samuel T | Verification/Verified | Filing | | 07/08/2013-10:41 | 12/17/2013-10:41 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 06/27/2013-13:42 | 12/17/2013-13:42 | |
| Brick, Samuel T | Motion to Amend Notice of Appeal and Appeal of The Richland | Motion | | 06/27/2013-10:34 | 12/17/2013-10:34 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 06/17/2013-14:34 | 12/17/2013-14:34 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 06/17/2013-14:33 | 12/17/2013-14:33 | |
| Brick, Samuel T | Order/Order Filing Fee | Filing | | 06/17/2013-14:33 | 12/17/2013-14:33 | |
| Brick, Samuel T | Motion to Require Appelant to Post a Bond or in The Alternat | Motion | | 06/17/2013-11:35 | 09/16/2013-11:35 | |
| Brick, Samuel T | Motion to Intervene | Motion | | 06/17/2013-10:58 | 09/16/2013-10:58 | |
| Brick, Samuel T | Motion to Dismiss Appeal/Fairways Development, LLC | Motion | | 06/17/2013-08:35 | 12/17/2013-08:35 | |
| Brick, Samuel T | Motion/Motion Filing Fee | Action | | 06/05/2013-11:23 | 12/17/2013-11:23 | |
| Richland County Planning Commission | Record on Appeal | Filing | | 06/05/2013-09:12 | 12/17/2013-09:12 | |
| Richland County Planning Commission | Return on Appeal | Filing | | 06/05/2013-09:11 | 12/17/2013-09:11 | |
| Richland County Planning Commission | Motion to Dismiss | Motion | | 06/05/2013-09:11 | 12/17/2013-09:11 | |
| Brick, Samuel T | Affidavit Of Service on Richland County Planning Commission | Filing | | 03/20/2013-16:02 | 12/17/2013-16:02 | |
| Brick, Samuel T | Appeal/Notice of Appeal | Filing | | 03/18/2013-15:20 | 12/17/2013-15:20 | |
| Brick, Samuel T | Petition/Filing Fee Required | Filing | | 03/18/2013-15:13 | 12/17/2013-15:13 | |
| Brick, Samuel T | Certificate of Exemption From ADR | Filing | | 03/18/2013-11:39 | 12/17/2013-11:39 | |

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EXHIBIT B1

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF RICHLAND | ) | |
| Samuel T. Brick, | ) | Civil Action No. 2013-CP-40-001643 |
| | ) | |
| Plaintiff, Appellant, | ) | |
| | ) | **Affidavit of R. Steve McNair** |
| -vs- | ) | |
| | ) | |
| Richland County Planning Commission, | ) | |
| | ) | |
| Defendant/Respondent | ) | |
| | ) | |
| Fairways Development, LLC | ) | |
| | ) | |
| Intervenor/Respondent | ) | |
| | ) | |

The undersigned, R. Steve McNair, after being duly sworn, gives testimony as follows:

1. I am a member of Longcreek Associates, LLC, which purchased the property which is the subject of this action from Fairways Development, LLC;

2. I am familiar with Mr. Brick's appeal and how the delay is affecting the development;

3. The planned Villages community is located throughout and around the Windermere Golf Course and on Lake Windermere. It is the initial key component for our " lifestyle themed" master planned community and the lake and golf course are key amenities in the development and marketing of that community. The Villages tract in essence is the center piece and the greatest part of our value is generated through lake access and other quality amenities such as walking trails, interactive parks, water front club house, etc. It should be noted that without the Villages tract we are simply another



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neighborhood without the distinction or added value that is present in "lifestyle" themed communities;

4. The Villages is located at the gateway to Long Creek Plantation and is a crucial component needed to rebrand Long Creek as a progressive neighborhood with distinct amenities that will enjoy broad participation;

5. The Brick appeal has delayed our ability to bring this important center piece forward within our development and has substantially interfered with our ability promote ourselves as a community with quality lifestyle driven features that is so important to the retirees, empty nesters and young professionals who will be the most likely occupants of this neighborhood;

6. The Brick appeal is substantially impacting the value of our real estate assets both directly and indirectly. First, the appeal is costing us real money in terms of interest carry, property taxes, legal expense, insurance, design services, surveying, and other similar development needs;

7. Indirectly, the subject lawsuit is costing us tremendous loss of value through delaying our quality amenity program that is the necessary center piece to promote our project as a cut above the competition. The lawsuit is arguably causing us to miss a very important portion of a upward trending business cycle that translates to significant opportunity cost;

8. In terms of direct costs, we are spending $60,000 per year on interest expense, $12,000 per year on property taxes, and we have spent more than $50,000 in site planning, surveying, and civil design where there may be redesign expense due to market demands that may change over time;

9. The indirect impact is quite significant in that the overall lot pricing for our neighboring properties is being significantly impacted by our inability to advertise and permit our property for development and thereby impacting our ability to ultimately offer the quality amenities to support our master planned community;

10. The value impact could be as much as 20% of the value of a lot in our neighborhood. By way of example, a lot without quality amenities in the Columbia area may bring $50,000 where a lot with a quality amenity program would bring $60,000. It should be noted that we have more than 600 lots to bring to market that are dependent on the Villages for amenity support.

11. I ask this court to find that our development is not stayed by Brick's appeal and to the extent it is stayed, that Brick must post an appellate bond of at least $150,000 to cover some of the delay damages he is causing by the appeal.

R. Steve McNair, Member of
Longcdreek Associates, LLC

SWORN to before me this
22nd day of May, 2014

Notary Public for South Carolina
My Commission Expires: 3/26/19

Assessor Data View

The information provided on this page reflects data as of **December 31, 2013** and should be used for reference only. For official assessment information, please contact the Richland County Assessor's Office.

Information presented on the Assessor's Database is collected, organized and provided for the convenience of the user and is intended solely for informational purposes. **ANY USER THEREOF OR RELIANCE THEREON IS AT THE SOLE DISCRETION, RISK AND RESPONSIBILITY OF THE USER.** While every attempt is made to provide information that is accurate at the date of publication, portions of such information may be incorrect or not current. **RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.** All official records of the County and the countywide elected officials are on file in their respective offices and may be viewed by the public at those offices.

**Owner Information**

| | |
|---|---|
| Tax Map Number: | R20405-02-01 |
| Owner: | SPPLA INC |
| Address 1: | 7900-D STEVENS MILL RD |
| Address 2: | |
| Address 3 | |
| City/State/Zip: | MATTHEW<br>NC 28104 |
| Property Location/Code: | N/S LONGTOWN RD V |

**Tax Information**

| | |
|---|---|
| Year: | 2013 |
| Property Tax Relief: | $0.00 |
| Local Option Sales Tax Credit: | ($515.11) |
| Tax Amount: | $13,935.98 |
| Paid: | No |
| Homestead: | No |
| Assessed: | $24,340.00 |

**Assessment Information**

| | | | |
|---|---|---|---|
| Year Of Assessment: | 2014 | Legal Residence: | No |
| Tax District: | 2DP | Sewer Connection: | |
| Acreage Of Parcel: | 20.38 | Water Connection: | |
| Non-Agriculture Value: | $405,600.00 | Agriculture Value: | $0.00 |
| Building Value: | $0.00 | Improvements: | $0.00 |
| Taxable Value: | $405,600.00 | | |
| Zoning: | RS-LD | | |

**Property Information**

| | | |
|---|---|---|
| Legal Description: | PARCEL 1 | 144.3X480.7X115X700XECT |

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946.2X107.1X207.5X51.7X46.2X

#PR RB1820-194 RB1889-1871

Land Type: RESIDENTIAL LAND

## Sales History

| Current Owner Name | Sale Date | V/I | Book/Page | Sale Price | Qual Code |
|---|---|---|---|---|---|
| SPPLA INC | 09/06/2013 | | R1893/ 968 | $2,000.00 | |
| SPPLA LLC | 04/03/2013 | V | R1849/ 738 | $277,000.00 | Q |
| LONGCREEK ASSOCIATES LLC% | 12/17/2012 | V | R1820/ 2444 | $400,000.00 | 9 |
| FAIRWAYS DEVELOPMENT LLC | 10/10/2007 | | R1365/ 1863 | $0.00 | |

Qualification Code Definitions

## Structure Information

| Building Number | Year Structure Was Assessed | Building Description | Actual Year Built | Number Of Bathrooms | Number Of Bedrooms | Total Number Of Stories | Heated Square Footage | Total Square Footage |
|---|---|---|---|---|---|---|---|---|

## Structure Details

| Structure Type | Structure Description | Building Number |
|---|---|---|

## Exemptions

| Exemption Year | Exemption Description |
|---|---|

EXHIBIT F
PAGE 2

STATE OF SOUTH CAROLINA )
) DEED
COUNTY OF RICHLAND )

KNOW ALL MEN BY THESE PRESENTS That

FAIRWAYS DEVELOPMENT, LLC

(hereinafter called "GRANTOR"), in the State aforesaid, for and in consideration of the sum of Four Hundred Thousand and 00/100 ($400,000.00) Dollars to GRANTOR in hand paid at and before the sealing of these presents by **LONGCREEK ASSOCIATES, LLC** (hereinafter called "GRANTEE"), in the State aforesaid (the receipt of which is hereby acknowledged), has granted, bargained, sold and released unto **LONGCREEK ASSOCIATES, LLC**:

All that certain piece, parcel of tract land, together with improvements thereon, situate, containing 20.28 acres, more or less, situate, lying and being at the northeastern corner of Club Colony Parkway and Longtown Road East, and adjacent to Fairways No. 11 and 10 of the Windermere Country Club Golf Course, in the community known as LongCreek Plantation, near the Town of Blythewood, County of Richland, State of South Carolina being shown and designated as Parcel 1 on a plat prepared for LongCreek Associates, LLC by Cox and Dinkins, Inc. dated April 12, 2012, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1820 at page 194.

The above plat is incorporated herein by reference and is made a part hereof for a more complete and accurate description. All measurements shown on said plat are a little more or less.

DERIVATION: This is a portion of the property conveyed to Fairways Development General Partnership by deed of J and J Corporation dated July 11, 1980, recorded July 14, 1980, in Deed Book D-545 page 850. Fairways Development General Partnership converted from a General Partnership to a Limited Liability Company on August 8, 2007, as evidenced by Agreement of Conversion filed in the Office of the Secretary of State and attached to Agreement of Conversion which was recorded in the Office of the Register of Deeds for Richland County on October 10, 2007, in Record Book 1365 at page 1863.

GRANTEE'S Mailing Address: 600 Independence Boulevard
Greenville, SC 29615

TMS No.: 20401-01-03 (PT. OF)

This conveyance is made subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Book 1820-2444
2012104516 12/17/2012 15:22:47.623 Deed
Fee:$10.00 County Tax: $440.00 State Tax: $1040.00

2012104516 John T. Hopkins II Richland County R.O.D

EXHIBIT E
PAGE 1

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Richland County Register of Deeds
Audited by Paul Brawley 2007

Instrument: 2012104516 Book/Page: R 1820 : 2445 DateTime: 12/17/2012 15:22:47:623 Document: 01

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the GRANTEE and GRANTEE'S Successors and Assigns forever.

AND THE GRANTOR hereby binds GRANTOR and GRANTOR'S Successors and Assigns to warrant and forever defend all and singular the premises unto the GRANTEE and GRANTEE'S Successors and Assigns against GRANTOR and GRANTOR'S Successors, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the within Deed has been executed by Fairways Development General Partnership by its duly authorized Partner United Financial Corporation by its duly authorized President John T. Bakhaus this 13th day of December, 2012.

Signed, Sealed and Delivered
In The Presence of:

FAIRWAYS DEVELOPMENT, LLC

By: United Financial Corporation
Managing Member

By: John T. Bakhaus (SEAL)
John T. Bakhaus, President

STATE OF SOUTH CAROLINA )
)
COUNTY OF RICHLAND )

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that John T. Bakhaus, as President of United Financial Corporation, managing member of Fairways Development, LLC personally appeared before me this day and acknowledged the execution of the within instrument.

SWORN to and SUBSCRIBED before me
this 13th of December, 2012.

Notary Public for South Carolina
My Commission Expires: 3/25/19

EXHIBIT E
PAGE 2

Richland County Register of Deeds

Audited by Paul Brawley 2007

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# Community Vision & Design Standards for

# Long Creek Plantation New Development

Sustainable, Green Community Concepts

Prepared by Sustainable Design Consultants, Inc.

EXHIBIT D

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PAGE 1

# LONGCREEK PLANTATION DEVELOPMENT TEAM

## OWNER

LongCreek Development, LLC
2004 Longtown Road East
Blythewood, SC 29016
Contacts: Steve McNair
Ron Johnson
David Schade
Milton Shockley

## DESIGN TEAM

Sustainable Design Consultants, Inc.
Planning-Civil Engineering-Landscape Architecture
810 Dutch Square Blvd, Ste 217
Columbia, SC 29207
Contacts: John Thomas, R.L.A.,A.I.C.P. President
John Champoux, R.L.A., LEED A.P., Vice President
Frank Hahne, P.E., Vice President

## ENGINEERING/ SURVEY CONSULTANTS

Cox and Dinkins, Inc.
724 Beltline Boulevard
Columbia, SC 29205
Contact: Darren Holcombe, P.E., Vice President

Palmetto Civil Solutions
P.O. Box 648
Blythewood, SC 29016
Contact: David Winburn, President

Inman Surveying, Inc.
2223 Bull Street
Columbia, SC 29201
Contact: Rick Inman, P.L.S., President

## WETLAND CONSULTANTS

Palmetto Environmental Consulting, Inc.
955 East Main Street, Suite E #52
Lexington, SC 29072
Contacts: Robert Bunch, Principal
Chris Lake, Principal

Yancey Environmental Solutions
832 Arbutus Drive
Columbia, SC 29205
Contact: Yancey McLeod, Principal

EXHIBIT D

PAGE 2

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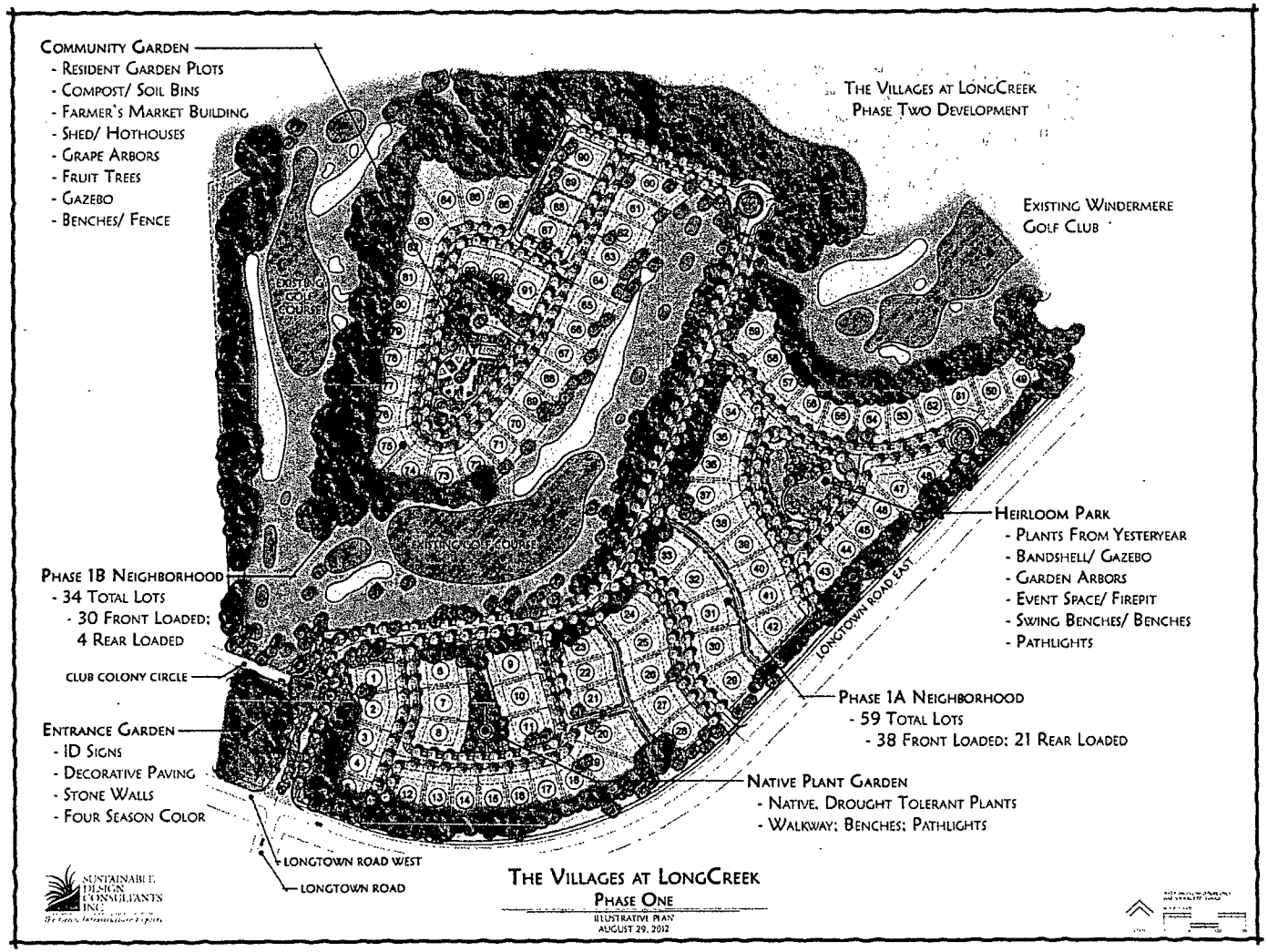
## PHASE ONE

### ILLUSTRATIVE PLAN

Typical Community Vision for Long Creek Plantation

The first phase of development will consist of 90 total lots, many with golf, wooded and/ or park views. Each street will be lined with trees and sidewalk. Along Longtown Road East and the entry drive, a planted buffer will separate and hide lots from vehicular traffic.

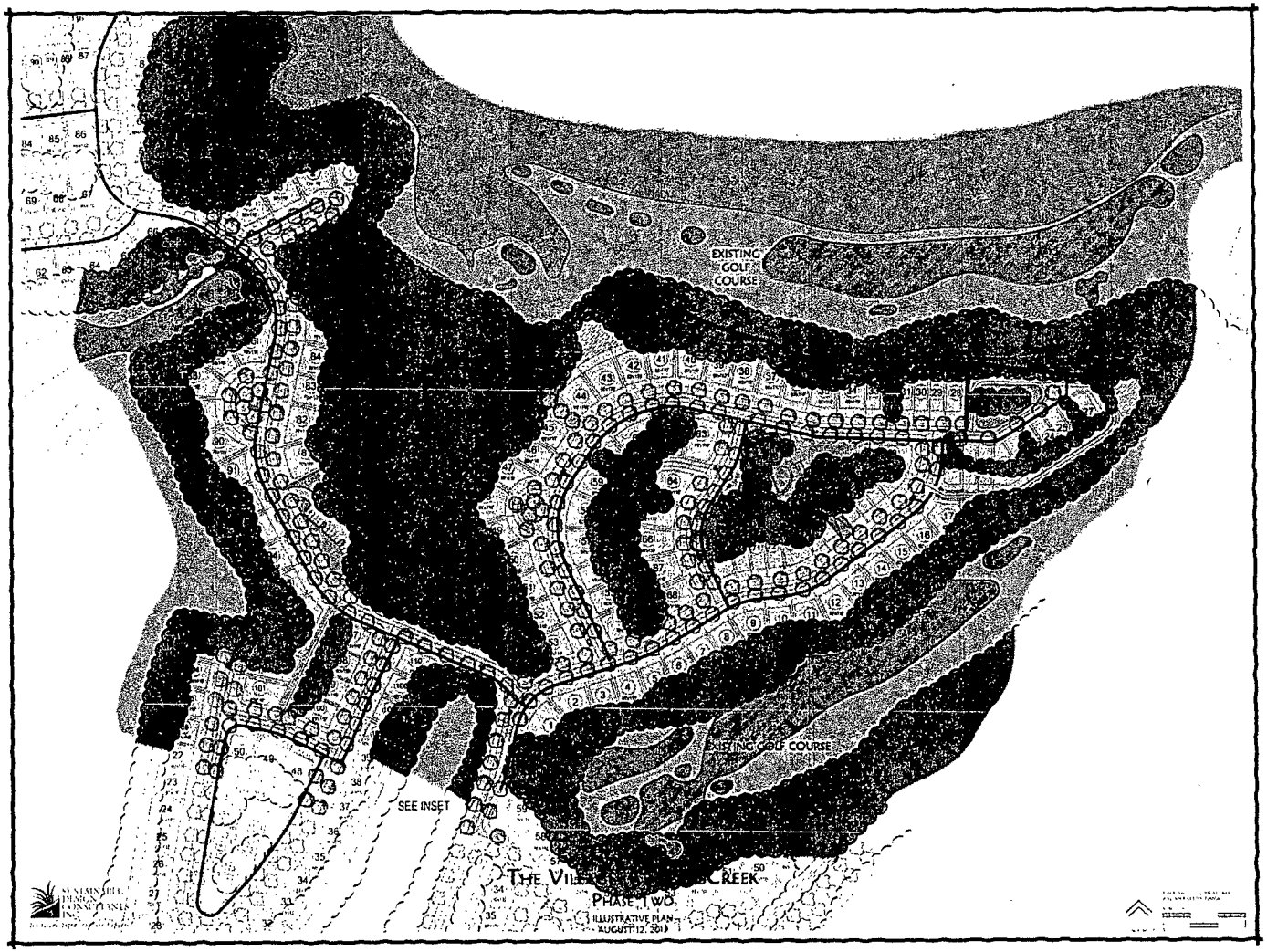
Phase One amenities will include the Entrance Garden, Native Plant Garden, Heirloom Park, and Victory Garden.



**PHASE TWO**

ILLUSTRATIVE PLAN

Typical Community Vision for Long Creek Plantation



**PHASE THREE**

ILLUSTRATIVE PLAN

Typical Community Vision for Long Creek Plantation

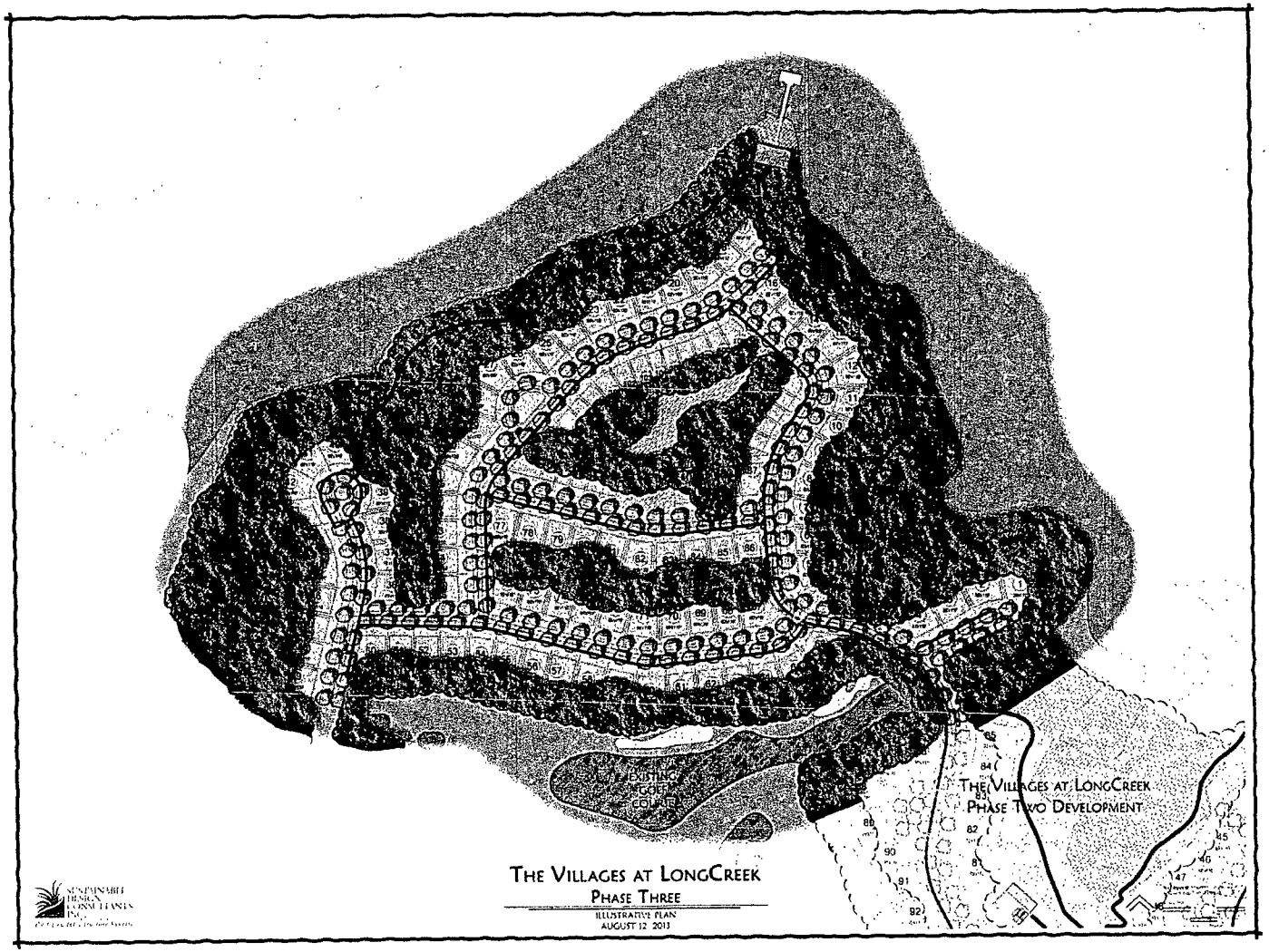



EXHIBIT D PAGE 5

**STATE OF SOUTH CAROLINA** )
)
**COUNTY OF RICHLAND** )
)
**SAMUEL T. BRICK.** )
124 Runneymede Drive )
Columbia, SC 29016, )
803 546 4895 Plaintiff )
)
**vs.** )
)
**RICHLAND COUNTY** )
Ms. Michelle Onley, Acting Clerk; )
2020 Hampton Street 4th Floor )
Columbia, SC 29202, 803 576 2060, )
)
**TRACY HEGLER**, in her official capacity )
as Chair of the Richland County )
Development Review Team; )
Planning Department Offices )
2020 Hampton Street, 1st Floor )
Columbia, SC 29204, 803 576 2168, )
)
**SPARTY HAMMETT**, in his official )
capacity as Assistant Administrator )
Richland County; )
2020 Hampton Street Room 4058 )
Columbia, SC 29202, 803 576 2050, )
and; )
)
**PATRICK PALMER,** in his official )
capacity while serving as Chairman, )
Richland County Planning Comm. )
1910 Main Street, Suite 200 )
Columbia, SC 29201, 803 254 0100, )
Defendants; and )
)
**FAIRWAYS DEVELOPMENT, LLC,** )
as respondent in interest with )
regard to requested equitable )
remedies, )
John T. Bakhaus, Registered Agent )
2004 Longtown Road East )
Blythewood, SC 29016 )
803 7542017, )
Respondent. )

**IN THE COURT OF COMMON PLEAS**

**AMENDED AND SUPPLEMENTED**

**COMPLAINT**

**FOR**

**VARIOUS VIOLATIONS OF**

**THE SOUTH CAROLINA**

**FREEDOM OF INFORMATION ACT**

*Section 30-4-10 S.C. Code of Laws*

(Without attachments

as filed in the initial Complaint)



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I, Samuel T. Brick, the plaintiff in this civil action, do make the following claims:

## THE PARTIES

1. Plaintiff Samuel T. Brick is a citizen of South Carolina and lives within Richland County.

2. Defendant Richland County is a political subdivision of the State of South Carolina and as such through its various administrators administers the Land Development Code of Richland County, South Carolina (Chapter 26 of the Richland County Code of Ordinances, hereinafter referred to as the code). The code, among other things, guides development within the geographical area of Richland County in accordance with existing and future needs and promotes the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the area of its governance. (Section 26-2 of such code).

3. Defendant Tracy Hegler is the Planning Director of the Richland County Planning and Development Services Department, an executive body of Richland County created by section 2-216 of the code and, pursuant to section 26-35(b)(1) of the code serves on and coordinates the activities of the Richland County Development Review Team as established in Section 26-34 of the code. She performs her duties in Richland County. She manages the land development permitting processes, the subdivision and approval processes, and among other functions, serves on the Richland County Development Roundtable.

4. Defendant Sparty Hammett is an assistant county administrator for Richland County, an executive body of Richland County, with oversight responsibility for the Richland County

Planning and Development Services Department to include all its functions and serves as a member of the Richland County Development Roundtable. Among other things, he supervises the Richland County Planning Department and is Defendant Tracy Hegler's immediate supervisor. He performs his duties in Richland County.

5. Defendant Patrick Palmer is the Chairman of the Richland County Planning Commission which is authorized under Section 6-29-320 of the South Carolina Code. Section 2-332(b) of the code establishes the Richland County Planning Commission to perform all duties required by law. On October 1, 2012, Defendant Patrick Palmer served as Chairman in a published Planning Commission public meeting convened to discuss and act upon several matters over which it had jurisdiction. He is a resident of Richland County and has offices within Richland County.

6. Defendant Fairways Development, LLC, through its officer John T. Bakhaus, as an owner of property in a residential, single family low density district (Section 26-89 of the code) in Richland County, applied to the Richland County Planning and Development Services Department for development of approximately 100.7 acres under section 26-186 of the code. This section is called, "Green Code standards". The application was the first major development suggested utilizing such green code standards.

**JURISDICTION**

7. This case is brought under Title 30, Chapter 4 of the Code of Laws of South Carolina, known as the "Freedom of Information Act," and as referred to hereinafter as the Act. No jury trial is requested.

8. Section 30-4-100(a) of the Act authorizes any citizen of the State of South Carolina to apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce its provisions. The plaintiff contends that Richland County, the Chairman of the Richland

County Planning Commission, the Richland County Planning Director, and the Assistant Administrator with supervision over the Planning Department within the year previous to the date of filing this Complaint violated several provisions of the Act, as mentioned below in this Complaint. The plaintiff requests relief for damages by the defendants actions and inactions that violate the Act, as authorized by Section 30-4-100 of the Act and as pleaded for below.

9. The Richland County Development Roundtable is an advisory committee within the meaning of "Public Body" as defined by section 30-4-20 of the Act. It is supported by public funds with some members who are public employees and receiving compensation for their participation on this body. The Roundtable meets for the purpose of, among other things, advising the Planning Department and the County Council on policy relating to Land Development in Richland County. See Appendix A, a press release for a Land development information session regarding proposed changes to the code as well as a list of the Roundtable's members. The Roundtable meets at the public facility known as the Richland County Administration Building and makes recommendations to the County Council. See Appendix B, the first two pages of Minutes of the Richland County Council Regular Session on Tuesday, September 18. 2012. Appendix B shows the council scheduling a work session to examine Roundtable recommendations. Defendant Tracy Hegler is a member of the Richland County Development Roundtable and an employee and agent of Richland County. Defendant Sparty Hammett also is a member of the Roundtable and an employee and agent of Richland County.

10. The Richland County Development Review Team is supported by public funds and a public body within the meaning of Section 30-4-20(a) of the Act. The team is organized under section 26-38 of the code to review and comment on major and minor land development applications, major subdivision plat applications, and other plans or applications as requested by

the planning department. The team also reviews certain development applications under sections 26-53 and 26-54 of the code to determine if they comply with federal, state' and local laws as well as the county's comprehensive plan. The Development Review Team approves, approves conditionally, or denies applications. Defendant Tracy Hegler coordinates the activities and serves as chairperson of the Development Review Team. As the Planning Director, she supervises several members of the Development Review Team. Defendant Sparty Hammett has overall supervisory responsibility for the Development Review Team.

11. The Richland County Planning Commission is established pursuant to Section 2-332(b) of the Richland County Code. It duties, among others is to serve as an appellate body under Section 26-54(c)(3)d.3. of the code on appeals from the Richland County's subdivision and review procedures, specifically the decisions of a development review team's actions on a major subdivision sketch plan review and approval. On October 1, 2012, pursuant to its published agenda (See at Appendix C) it performed such a function and held a public meeting. It was a public body conducting a meeting. Defendant Patrick Palmer conducted the meeting of the Planning Commission on October 1, 2012, and moved at one point that it be closed for an executive session.

**FIRST VIOLATIONS**

**DEVELOPMENT ROUNDTABLE**

12. Richland County through its Planning Director and Assistant Administrator, defendants Tracy Hegler and Sparty Hammett operate an advisory committee known as the Richland County Development Roundtable, hereinafter referred to as the Roundtable. It is supported in part by public funds to recommend changes to county ordinances or to recommend new legislation. The Roundtable has met at the Richland County County Administrative offices on divers times

within the twelve months preceding the filing of this complaint. It developed recommendations and proposed changes to the Richland Development Code (See Appendix A).during this twelve-month period. In particular it examined the Green Code standards section of such code (Section 26-186). There was no notice of Roundtable meetings by published dates, times, or places of each meeting in accordance with Section 30-4-80 of the Act. There is no published agenda and no minutes to preserve its discussions, deliberations, reasons for proposed changes to ordinances, and actions as required in other provisions of the Act.

13. Plaintiff left a telephonic message with Defendant Tracy Hegler during the month of August, 2012, requesting a return call and information regarding the times and places the Roundtable would meet. She did not respond to these requests even after several subsequent calls.

14. A member of the Richland County Council admonished the plaintiff at a September council work session for not meeting with the Roundtable and mentioning certain problems regarding the Green Code standards section of the code. The Plaintiff spoke at the end of that work session with the deputy director of the Planning Department and asked as to when and how such meetings are advertised. The Plaintiff followed up the next day with an email requesting this information. The Planning Director, Defendant Tracy Hegler, responded to that email with copy to Defendant Sparty Hammett and characterized the Roundtable as a working task group. A copy of the email and response is at Appendix D.

15. On August 20, 2012, the plaintiff requested through provisions of the Act for a copy of the legislative history with regard to the Richland County Council's adoption of section 26-186, the Green Code standards (Appendix E). After an initial reply unresponsive to the request and a subsequent meeting with the Ombudsman's office and a request on September 6, 2012, for the

same information, the Ombudsman's Office forwarded documents as to enactment formality but with no legislative history or council discussions or comments regarding reasons for the provision, it's meaning, or otherwise. There were no records indicating why the proposal was enacted, its intent, its meaning or otherwise with regard its provisions. Plaintiff contends the proposal was a product of the Roundtable and it leaves no legislative history. The Ombudsman replied that Richland County has no further information regarding this matter. The correspondence without attachments is at Appendix F.

16. Defendant Hammett, as senior representative to the Roundtable for Richland County and Defendant Tracy Hegler, as staff contact for the Roundtable violated section 30-4-90 of the Act requiring minutes to be kept of the meeting and the contents of such minutes. Their failure to preserve such information, aside from the failure to provide a legislative history of ordinance enactment, as mentioned in paragraph 14 above, has far-reaching deleterious consequences as to the administration of complicated and important provisions relating to land management in Richland County.

17. Plaintiff requests equitable relief to cure as much of this violation as possible to include but not be limited to, the following:

A. An Order in the nature of a declaratory judgment by this Honorable Court that all future meetings of the Roundtable be treated as meetings of public bodies in conformity with the Freedom of Information Act.

B. An injunction against any further meetings of the Roundtable until an annual agenda is properly published.

C. An injunction requiring any meetings relating to changes, revisions or replacement provisions for Section 26-186, Green Code standards, be returned without

further Richland County action and that they be discarded with relevant matters addressed *ab initio* and placed on the agenda for the coming year.

D. That Plaintiff be awarded reasonable attorney fees, and costs of litigation to include all Planning Commission appeal fees, court filing fees, and such other costs and fees as this Honorable Court in its discretion deems necessary and appropriate.

**SECOND VIOLATIONS**

**DEVELOPMENT REVIEW TEAM, AUGUST 9, 2012**

18. Defendant Fairways Development LLC applied for a Green Code major development in July, 2012. The sketch plans for the proposed development was scheduled for a review by the Development Review Team review to be held August 9, 2012.

19. On August 7, 2012, Plaintiff and other members of the Richland County community met with various members of the Development Review Team to discuss interpretations of the Green Code as they would apply to the Fairways Development LLC application. The application did not apply for a bonus under subsection (i) of the Green Code standards section yet it included more dwelling units than authorized under the applicable zoning code (Section 26-89, RS-LD Residential, Single Family – Low Density). An interpretation of the Planning Director was that the Green Code standards were a de facto separate zoning district without a minimum lot area.

20. On August 8, 2012, the Defendant Tracy Hegler met with other members of the Planning Department at the Richland County Administrative Building to discuss the matters raised in the meeting of August 7, 2012, and to come to a consensus of the Planning Department with regard to the scheduled Development Review Team action on the submitted permit. The meeting discussed factors that related to the ultimate disposition of the Development Review Team's

proposed action on the sketch plan. Defendant Sparty Hammett had advance knowledge of the meeting.

21. At the August 8, 2012 meeting, a quorum of the members of the Development Review Team came to a consensus to approve the Fairways Development LLC sketch plans. The meeting was not open to the public as required under section 30-4-60 of the Act nor did any of the exemptions listed in Section 30-4-70 of the Act apply. Minutes of the August 8, 2012 meeting were not kept in accordance with Section 30-4-90 and there was no notice of the meeting as required by Section 30-4-80 of the Act.

22. On August 9, 2012, The Development Review Team met in accordance with its schedule with regard to the Fairways Development Application, known as The Villages @ Longcreek. Defendant Tracy Hegler convened the meeting and there was no discussion prior to a motion for approval. There was a second to the motion, and then there was a unanimous vote for approval.

23. Defendant Richland County, through its agents Defendant Tracy Hegler and Defendant Sparty Hammett, individually, and in their county positions as senior leaders in the administration of the county convened and participated or approved the convening and participation of the Development Review Team's private discussions and consensus determination in a non public meeting held at the Richland County administrative offices on August 8, 2012. This was with regard to a seminal application of a major development provision of the code that provides, as interpreted, provided a new *de facto* zoning district without zoning district changes as required by other sections of the code to include County Council approval. There are several interpretations of the Green Code provision that differed. The non public meeting violated Section 30-4-60 of the Act. This also undercut the purpose and intent of the

functions and operations of the Development Review Team by deciding matters designed for formal, public action in private.

24. Plaintiff requests equitable relief to cure as much of this violation as possible to include but not be limited to, the following:

A. That the Development Review Team's Action on the Concept Plan/sketch plan be declared null and void and be returned to the Development Review Team to hold a public meeting with public input on the Fairways Development LLC application.

B. That no development be authorized or conducted on the Fairways Development LLC application until such time as the Development Review Team has acted on the application and time for any authorized appeals have expired, or if an appeal is filed, until the appeals process is finalized to include any appeal to this Honorable Court.

C. That the Plaintiff be awarded reasonable attorney fees; costs of litigation to include all Planning Counsel appeal fees, court filing fees, and such other costs and fees as this Honorable Court in its discretion deems necessary and appropriate.

**THIRD VIOLATIONS**

**IMPROPER EXECUTIVE SESSION IN**

**APPEAL TO PLANNING COMMISSION**

25. On August 24, 2012 (revised September 5, 2012) under the provisions of Section 26-54(c)(3)d.1.[b] of the code, Plaintiff Samuel T. Brick appealed to the Richland County Planning Commission the decision of the Development Review Team to approve the application of Fairways Development LLC. The Planning Commission is required to conduct a public hearing

on such an appeal (Section 26-54(c)(3)d.3[a] of the code) and partially did so on October 1, 2012.

26. There are no specified hearing procedures for appeals to the Planning Commission other than that the Planning Commission must approve the sketch plan if it determines, among three other unrelated matters, that the proposed project complies with provisions of the Richland County Land Development Code. The Boards and Committees Coordinator for the Planning Department advised the Plaintiff that he should be present "to answer any questions the Commission may have." See Appendix F. The Plaintiff was allowed, along with any other member of the public, to address the commission on the matter and did so. He was not permitted to question Planning Department staff regarding their contentions or to provide the Planning Commission rebuttal information. The Planning Commission had no questions for the Plaintiff.

27. During the proceedings, after questions concerning a complicated matter regarding attached dwelling units, Defendant Patrick Palmer, acting as Planning Commission chairman, asked the other members of the commission to join him in an executive session, a meeting in private. They started to remove themselves and the attorney for the commission stated they needed a motion and reason to do so. The commission while walking out of the room heard a motion which was adopted to allow an executive session to obtain legal advice. Defendant Palmer then invited Defendant Tracy Hegler who is not a lawyer to join them and they all left the room with the Planning Commission attorney. There was no provision or opportunity for the appellant to object.

28. The executive session referred to in paragraph 27 does not meet any of the reasons that authorize a public body to hold a meeting closed to the public. Section 30-4-70 of the Act authorizes such meetings to discuss personnel matters, the development of security devices,

investigative proceedings regarding allegations of criminal misconduct, matters relating to the proposed locations or expanded business in the area, a specific provision of the Retirement System Investment Commission, and to obtain legal advice on specified claims and matters.

29. The matters for which legal advice may be provided in an executive session are specifically limited by paragraph 30-4-70(a)(2) of the Act. It gives exceptions to discuss negotiations incident to proposed specified contractual arrangements; to obtain legal advice where the advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege; to discuss settlement of legal claims; or to discuss the position of the public agency in the adversary situations involving the assertion of a claim against the agency. None of these exceptions are applicable to the appeal regarding an improper Development Review Team approval of a proposed site plan. There is no claim for monetary or other damages or adversarial action against Richland County. Furthermore, the inclusion of a non lawyer in an attorney-client communication, even though none is apposite, usually destroys the confidentiality required to assert the privilege.

30. The appeal requested relief in the nature of a return of the sketch plan to the owner to clarify and revise his submittal and in any proposed revision to follow specified provisions in the code. It also requested that the Development Review Team action on the sketch plan be nullified and a de novo review be conducted.

31. The appeal to the Planning Department was to an action by a team chaired by the person brought into the executive session. The inclusion by the decisions makers in an executive session of a person who is a party to the proceedings fails to follow the spirit and letter of the Section 30-4-60 of the Act as well as the primary and general provisions of the Act to perform public business in a public and open manner.

32. Defendant Richland County through its agents, to include its legal representative and Defendant Patrick Palmer as proponent of the referenced executive session and Chairman of the Planning Commission that conducted such executive session violated the spirit and provisions of the Act by conducting its decision-making functions in an executive session with the person in charge of the public body, the object of the appeal.

33. Plaintiff requests equitable relief to cure as much of this violation as possible to include but not be limited to, the following:

A. An Order by this Honorable Court that the Planning Commission actions on October 1, 2012, with regard to an appeal by Samuel T. Brick to the Development Review Team decision to approve the Villages at LongCreek sketch plans, as submitted by Defendant Fairways Development LLC, be declared null and void.

B. An injunction against any further action on the Villages at LongCreek project (RCF# SD-12-04; TMS# 20401-01-03) by Richland County until a de novo Development Review Team meeting acts on the sketch plan in conformity with the code and any and all appeals are heard and finally decided on such review should they be filed;

C. A declaratory judgment that any further appeals conducted by the Richland County Planning Commission follow the spirit and provisions of the Freedom of Information Act; and

D. That the Plaintiff be awarded reasonable attorney fees, and costs of litigation to include all Planning Commission appeal fees, court filing fees, and such other costs and fees as this Honorable Court in its discretion deems necessary and appropriate.

**FOURTH VIOLATION**

**FAILURE TO RESPOND WITHIN 15 WORKING DAYS**

## TO REQUEST FOR PUBLIC DOCUMENTS

34. On October 3, 2012, Plaintiff hand delivered a written request under section 30-4-30 to the Office of the Ombudsman for Richland County for various public documents. See request at Appendix G.

35. The request included permission to inspect and copy several requested documents in person the next day. Such copying of documents related to records of public bodies for the preceding six months of the request are authorized under Section 30-4-30(d). All documents requested were for public records generated within the past six months.

36. The afternoon of October 3, 2012, pursuant to a telephone call to the attorney for the Planning Department, the attorney advised Plaintiff that the documents would not be available for his perusal the following day as requested.

37. On October 15, 2012, the Richland County Ombudsman sent correspondence to Plaintiff requiring a fee of $175 for an advance payment of the costs for copying the requested documents (Appendix H). The correspondence noted the October 3, 2012 date for the request. Plaintiff did not receive the request until October 19, 2012, at which time he personally visited the Ombudsman's office to pay the fees.

38. Plaintiff questioned a fee of $175 which was changed to $125 after Plaintiff question one entry. The Plaintiff paid the fee by check while still in the Ombudsman's office October 19, 2012. (Appendix I).

39. On October 24, 2012, Plaintiff visited the Ombudsman's Office to request the status of his request. This was after the fifteen (15) working day period within which the County is allowed to respond. The Plaintiff was advised the documents would be delivered to them the next day and they would transmit them.

40. On October 31, 2012, Plaintiff called the Ombudsman's office to see if the documents had been transmitted by mail or otherwise were available. That office said the request was with the legal office and that office would respond. Plaintiff does not have the documents and does not have any reasons why they should not be provided as of October 31, 2012. Defendant Richland County is in violation of Section 30-4-30 (c) of the Act in not providing a response to the Plaintiff's request within the time allotted by the Act.

41. Part of the reasons for the request is to enable Plaintiff to make a determination as to whether to appeal the decision of the Planning Commission on a possible appeal to this Honorable Court and if such an appeal is considered appropriate, to have the necessary documents to file within the period permitted.

42. Plaintiff requests equitable relief to cure as much of this violation as possible to include but not be limited to, the following:

A. An order to Defendant Richland County to provide the Plaintiff the documents requested in his October 3, 2012, request under the Freedom of Information Act as set forth in Appendix G of this Complaint forthwith.

B. An order that Richland County place on hold any permitting, approvals, or actions on the Application by Defendant Fairways Development LLC, known as Villages at LongCreek, TMS Page 20401, until 30 days after Plaintiff has been notified of the Planning Commission's action on his appeal to the Development review Team Action on that application or until 30 days after Plaintiff has been provided the documents requested in his request under the Freedom of information Act of October 3, 2012, whichever date is later.

C. That the Plaintiff be awarded reasonable attorney fees; costs of litigation to include all fees for copying requested documents, court filing fees, and such other costs and fees as this Honorable Court in its discretion deems necessary and appropriate.

43. **Supplemental Pleading A.** Defendant Richland County through and by its agents, Defendants Sparty Hammett, who failed in his supervisory position that his subordinates follow South Carolina law, and Defendant Tracy Hegler, who as Planning Director is responsible under Section 26-34(b) of the Land Development Code of Richland County, South Carolina, for the operating procedures of the Development Review Team, failed to abide by Section 30-4-90 of the South Carolina Code, it being a reasonable time after November 29, 2012, for the preparation of minutes, by failing to keep a public record of such meeting in the form of written minutes of the public meeting of the Development Review Team in which it acted to determine the approval of a major land development project under Section 26-53(b)(3)d.2. of the Land Development Code of Richland County, South Carolina. Furthermore, that such action has been an ongoing Richland County procedure in continuous violation of the written minute's requirement for public bodies under the Freedom of Information Act.

44. **Supplemental Pleading B.** Defendant Patrick Palmer, as presiding officer of the Richland County Planning Commission, during a November 5, 2012, public session of such commission, failed to state the specific purpose of an executive session he entered into pursuant to his duty under Section 30-4-70(b) of the Freedom of Information Act, and furthermore on that date entered into an executive session of such planning commission to receive unspecified legal advice for that public body when legal advice was unavailable as not consistent with the reasons set for such advice under Section 30-4-70(a)(2) of the Freedom of Information Act. Specifically, no attorney-client privilege was available under such paragraph 70(a)(2) since there was no

pending, threatened, or potential claim against the county and, furthermore a non attorney and non member of the Planning Commission was invited to and did attend the session. Such failure is in violation of Section 30-4-60 of the Freedom of Information Act that every meeting of public bodies shall be open other than the specific exceptions of such Section 30-4-70.

45. Requested Relief for the preceding two violations as alleged in paragraphs 43 and 44 of this Amended and Supplemented Complaint follow:

A. A declaratory judgment that pursuant to Section 30-4-90, a public record in the form of written minutes be made in accordance with such section when the Richland County Development Review Team acts to determine the approval of a major land development project under Section 26-53(b)(3)d.2. of the Land Development Code of Richland County, South Carolina;

B. That executive sessions of the Planning Commission for the purposes of legal advice be specified with particularity as to the nature of such advice in advance of such sessions and, if for the receipt of legal advice, that such legal advice be limited when such body is acting as a tribunal to advice regarding specified matters as listed in Section 30-4-70 and if an attorney-client privilege is sought that no person other than members of the commission or their attorney/counsel be in attendance; and

C. That Plaintiff be awarded costs, attorney fees, and such other relief as this Honorable Court, in its discretion, deems necessary, equitable, and appropriate.

I, Samuel T. Brick, Plaintiff, believe that I am entitled to the relief requested in paragraphs 17,24, 33, 41 and 45 of this Complaint as set forth above and to reiterate generally, the equitable relief for each violation, the declaratory relief with regard to further conduct by the

Development Roundtable and the Richland County Planning Commission, and attorney fees, court costs, appeal costs for the Planning Commission appeal, costs of obtaining materials in support of the complaint be awarded the Plaintiff, and such other and further relief as this Honorable Court in its discretion deems necessary, proper, and appropriate.

I state under the penalty of perjury that the above is correct and truthful, except those based on my information and belief. (Note Below)

_____
Samuel T. Brick, Plaintiff, Pro se

Dated: Initially signed October 31, 2012 as to initial Complaint/February 26, 2013 for the Amended and Supplemental Complaint

***Note*:** As this is an amended and supplemented complaint prepared on February 26, 2013, I note that the relief requested in Paragraphs 24 A. and 33 A. of the initial Complaint with regard to the Development Review Team's actions on the application known as the Villages at LongCreek and the requests to declare it null and void are no longer apposite in that the Planning Commission returned the application to the Development Review Team after the initial Complaint was filed in this case and the Development Review Team purportedly reexamined and approved the application with minor changes. Also note that the relief requested in Paragraph 42 of the initial complaint is moot as the documents requested in Paragraphs A and B of the Complaint were provided Plaintiff after he filed the original Complaint and the request in Paragraph 42 B that Richland County place approvals on hold until thirty (30) days after the Planning Commission acts on the Plaintiff's appeal regarding a specified Land Development application is no longer

relevant. The issue of not notifying a person requesting documents of the public body's determination within the statutorily required period, however is a continuing violation that evades review and a Declaratory Judgment with regard to such continuing conduct remains an appropriate equitable resolution of this issue. The statement made and attested to when the Complaint was filed is correct and was truthful and statement above that includes the supplemental complaints and the relief therefore furthermore . I state under the penalty of perjury that the above is correct and truthful, except those based on my information and belief.

_____
Samuel T. Brick, Plaintiff, Pro se

Dated: February 26, 2013

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Plaintiff, pro se, do hereby certify that I served the foregoing Amended and Supplemented Complaint by mailing a copy of same, by United States Mail, First Class, postage prepaid, on February 26, 2013, to William H. Davidson, II and Michael B. Wrenn of Davidson & Lindemann, P.A., attorneys for Defendants Richland County, Tracy Hegler, Sparty Hammett, and Patrick Palmer, and to Fairways Development, LLC and, in the same manner and on the same date, to Tobias G. Ward, Attorney for Defendant Fairways Development LLC, addressed as follows:

William H. Davidson, II
Michael H. Wren
1611 Devonshire Drive, Second Floor
Post Office Box 8568

Columbia, SC 29202

Tobias G. Ward, Jr., Esquire
6 Calendar Court, Suite 3
Columbia, SC 29206

_____

Samuel T. Brick, Pro Se
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
Plaintiff

Blythewood, SC 29016
February 26, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

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Case No. 2013-CP-400-1643

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Samuel T. Brick — Appellant

v.

Richland County Planning Commission — Respondent

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**NOTICE OF APPEAL**

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Samuel T. Brick appeals the orders of the Honorable DeAndrea Gist Benjamin dated December 17, 2013, dismissing his appeal and Judge Benjamin's denial on February 5, 2014, of his motion of December 27, 2014, for reconsidering and amending such orders under SCRCP Rule 59. The denial of the motion for reconsideration was filed without hearing, oral argument on the motion, or further written order. Prior to addressing the motions to dismiss, the Court granted the petition of Fairways Development LLC to intervene in the matter. Fairways Development LLC then moved to dismiss and the court granted that motion. The court granted the motion of Respondent Richland County Planning Commission to dismiss based on her granting the motion of Fairways Development LLC to dismiss.



253-1

Appellant received written notice of entry of the denial of his motion for amending the orders on February 20, 2014. The envelope transmitting the notice is dated "FEB 18 2014."

March 11, 2014

Samuel T. Brick, *Pro se*
124 Runneymede Drive
Blythewood, SC 29016
803 546 4895
sbrick2011@gmail.com

Other Counsel of Record:

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Michael B. Wren, Esquire
Davidson & Lindemann, P.A.
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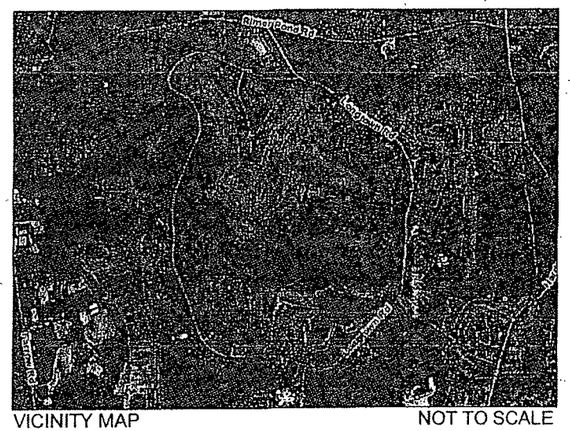
Post Office Box 8568
Columbia, SC 29202
Attorneys for Respondent Richland County Planning Commission

Tobias G. Ward, Jr., Esquire
P.O. Box 6138
Columbia, SC 29260
Attorney for Intervenor/Respondent Fairways Development LLC

# THE VILLAGES AT LONGCREEK

## LONGCREEK PLANTATION
## BLYTHEWOOD, SOUTH CAROLINA



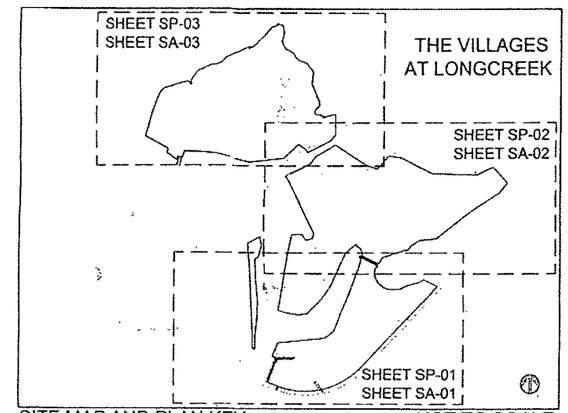
VICINITY MAP NOT TO SCALE

### MAJOR SUBDIVISION SKETCH PLANS FOR REVIEW BY RICHLAND COUNTY, SC

Prepared by:
SUSTAINABLE DESIGN CONSULTANTS, INC.
SDCI Project Number: 11102

Prepared for:
LONGCREEK ASSOCIATES, LLC
600 Independence Blvd
Greenville, SC 29615

NOVEMBER 7, 2012




SITE MAP AND PLAN KEY NOT TO SCALE


CONSULTANTS:
SURVEYING
COX AND DINKINS, INC.
724 BELTLINE BLVD.,
COLUMBIA, SC 29205
(803) 254-0518

WETLANDS
PALMETTO
ENVIRONMENTAL
CONSULTING, INC.
1801 CHARLESTON HWY.,
SUITE B-3, CAYCE, SC 29033
(803) 791-1033

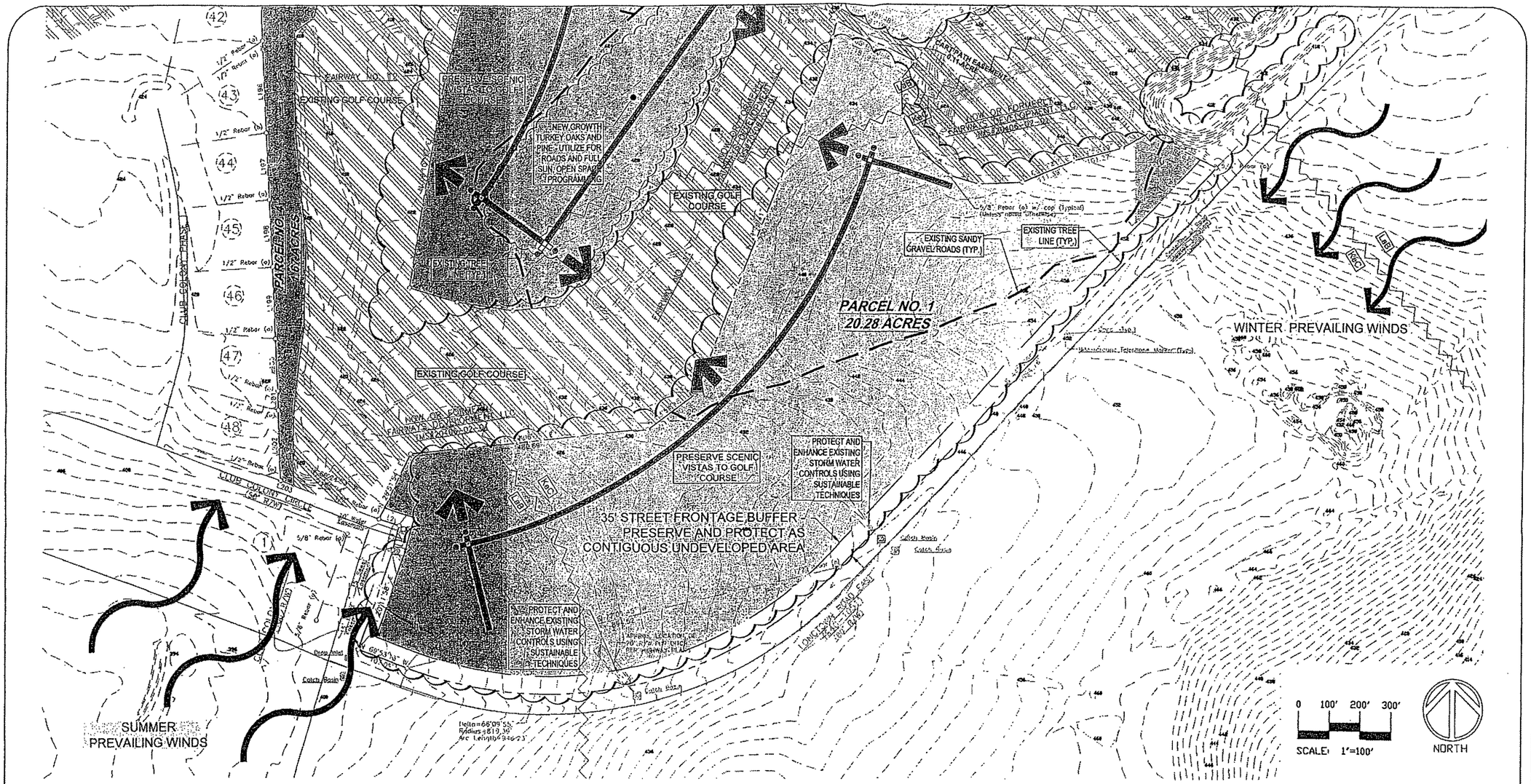
SOILS
S&ME, INC.
134 SUPER ROAD,
COLUMBIA, SC 29210
(803) 561-9024


SUSTAINABLE DESIGN CONSULTANTS INC.
*The Green Infrastructure Experts*

PLAN LIST:


COVERSHEET
SP-01 SKETCH PLAN
SP-02 SKETCH PLAN
SP-03 SKETCH PLAN
SA-01 SITE ANALYSIS
SA-02 SITE ANALYSIS
SA-03 SITE ANALYSIS


SUBMITTED FOR APPROVAL




NOTES:

1. SOILS INFORMATION TAKEN FROM "SOIL SURVEY OF RICHLAND COUNTY, SOUTH CAROLINA" BY THE UNITED STATES DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE. ALL LOCATIONS ARE APPROXIMATE. THERE ARE THREE SOILS AT THIS SITE;

   1.1. LaB=LAKELAND SANDS;

   1.2. LaD=LAKELAND SANDS;

   1.3. KeC=KERSHAW SANDS.

2. ALL SURVEY INFORMATION PROVIDED BY COX AND DINKINS, INC., 724 BELTLINE BLVD., COLUMBIA, SC 29205.

3. FLOOD ZONE INFORMATION ARE APPROX. LOCATIONS OF ZONE AE LIMITS, SCALED FROM FIRM PANEL 45079C0145 K, DATED SEPTEMBER 29, 2010

4. WETLAND DELINEATION PROVIDED BY PALMETTO ENVIRONMENTAL CONSULTANTING, 1801 CHARLESTON HIGHWAY, SUITE B-3, CAYCE, SC 29033.

5. NO HISTORICAL OR ARCHEOLOGICAL FEATURES ARE ON PROPERTIES.

6. NO PROTECTED PLANT SPECIES AS LISTED BY THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES ARE ON PROPERTIES.

7. NO MARKETABLE TIMBER HAS BEEN REMOVED WITHIN THE PAST TWENTY-FOUR MONTHS.

8. SUBJECT PROPERTY: TMS#: 20401-01-03

KEY:

- DELINEATED WETLANDS
- STEEP SLOPES (GREATER THAN 25%)
- SIGNIFICANT TREE RESOURCE AREA
- DEVELOPABLE AREAS
- EXISTING GOLF COURSE
- EXISTING TREE LINE
- PROPERTY BOUNDARY
- WETLAND BUFFER
- 100' WATERBODY BUFFER
- STREET FRONTAGE BUFFER
- FLOODPLAIN LIMITS
- SOIL TYPES LINE
- EX. SANDY GRAVEL ROAD
- EXISTING CONTOURS

SDCI
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WETLANDS
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SOILS
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COLUMBIA, SC 29210
(803) 561-9074
CLIENT:
LONGCREEK ASSOCS., LLC
600 INDEPENDENCE BLVD.
GREENVILLE, SC 29615

# THE VILLAGES AT LONGCREEK
## Existing Features Site Analysis

Blythewood, South Carolina

SHEET NAME:
SITE ANALYSIS

DATE:
2012-11-07

PROJECT #:
11102

REVISIONS:

SUBMITTED FOR APPROVAL

DRAWN BY: JC, EW
CHECKED BY: JT, FH
SHEET #: SA-01

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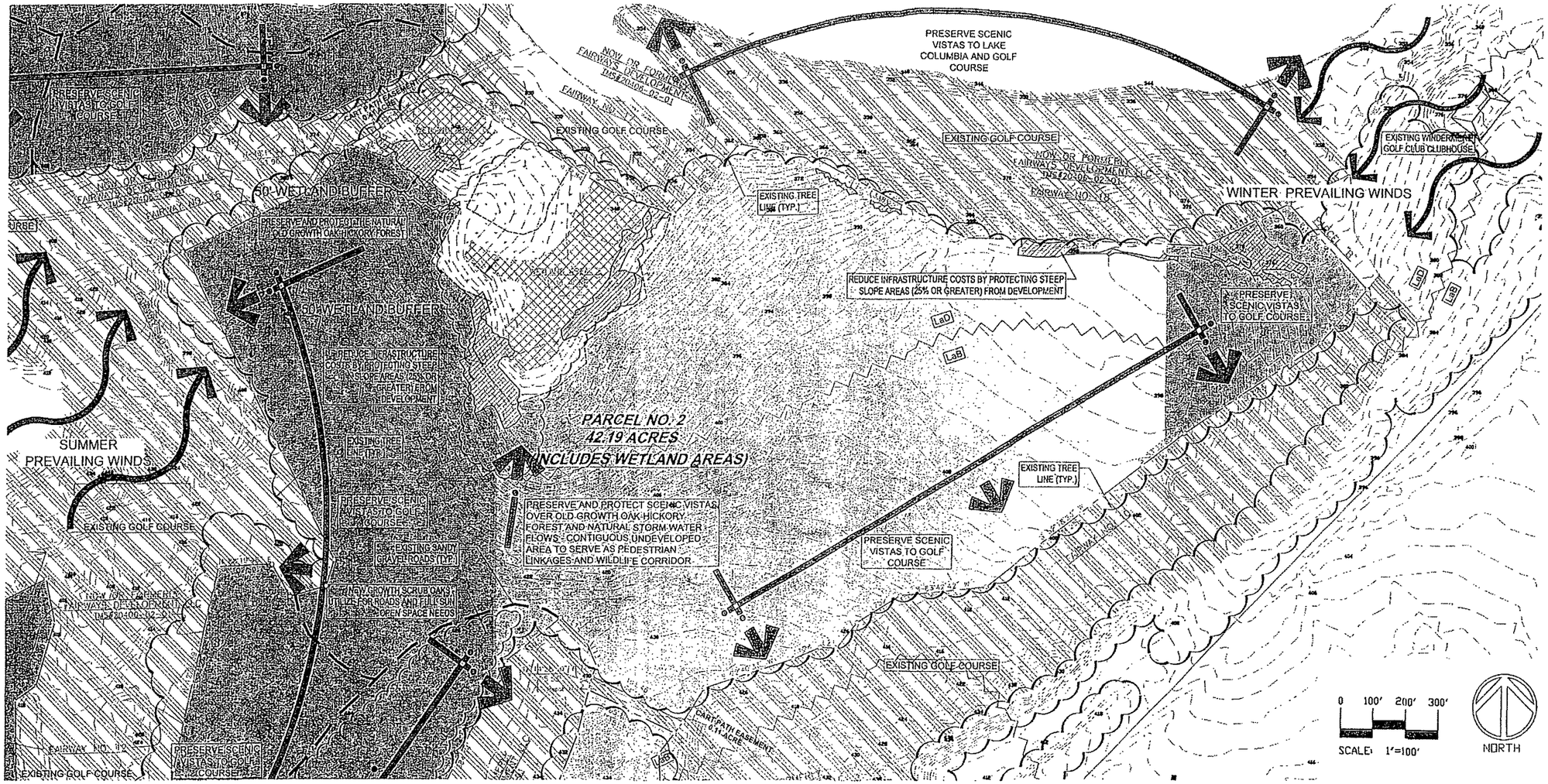


NOTES:

1. SOILS INFORMATION TAKEN FROM "SOIL SURVEY OF RICHLAND COUNTY, SOUTH CAROLINA" BY THE UNITED STATES DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE. ALL LOCATIONS ARE APPROXIMATE. THERE ARE THREE SOILS AT THIS SITE:

   1.1. LaB=LAKELAND SANDS;

   1.2. LaD=LAKELAND SANDS;

   1.3. KeC=KERSHAW SANDS.

2. ALL SURVEY INFORMATION PROVIDED BY COX AND DINKINS, INC., 724 BELTLINE BLVD., COLUMBIA, SC 29205.
3. FLOOD ZONE INFORMATION ARE APPROX. LOCATIONS OF ZONE AE LIMITS, SCALED FROM FIRM PANEL 45079C0145 K, DATED SEPTEMBER 29, 2010
4. WETLAND DELINEATION PROVIDED BY PALMETTO ENVIRONMENTAL CONSULTANTING, 1801 CHARLESTON HIGHWAY, SUITE B-3, CAYCE, SC 29033.
5. NO HISTORICAL OR ARCHEOLOGICAL FEATURES ARE ON PROPERTIES.
6. NO PROTECTED PLANT SPECIES AS LISTED BY THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES ARE ON PROPERTIES.
7. NO MARKETABLE TIMBER HAS BEEN REMOVED WITHIN THE PAST TWENTY-FOUR MONTHS.
8. SUBJECT PROPERTY: TMS#: 20401-01-03

KEY:

- DELINEATED WETLANDS
- STEEP SLOPES (GREATER THAN 25%)
- SIGNIFICANT TREE RESOURCE AREA
- DEVELOPABLE AREAS
- EXISTING GOLF COURSE
- EXISTING TREE LINE
- PROPERTY BOUNDARY
- WETLAND BUFFER
- 100' WATERBODY BUFFER
- STREET FRONTAGE BUFFER
- FLOODPLAIN LIMITS
- SOIL TYPES LINE
- EX. SANDY GRAVEL ROAD
- EXISTING CONTOURS

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(803) 561-9024
CLIENT:
LONGCREEK ASSOCS., LLC
600 INDEPENDENCE BLVD.
GREENVILLE, SC 29615

# THE VILLAGES AT LONGCREEK
## Existing Features Site Analysis

Blythewood, South Carolina

SHEET NAME:
SITE ANALYSIS

DATE:
2012-11-07

PROJECT #:
11102

REVISIONS:

SUBMITTED FOR APPROVAL

DRAWN BY: JC, EW
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SHEET #: SA-02

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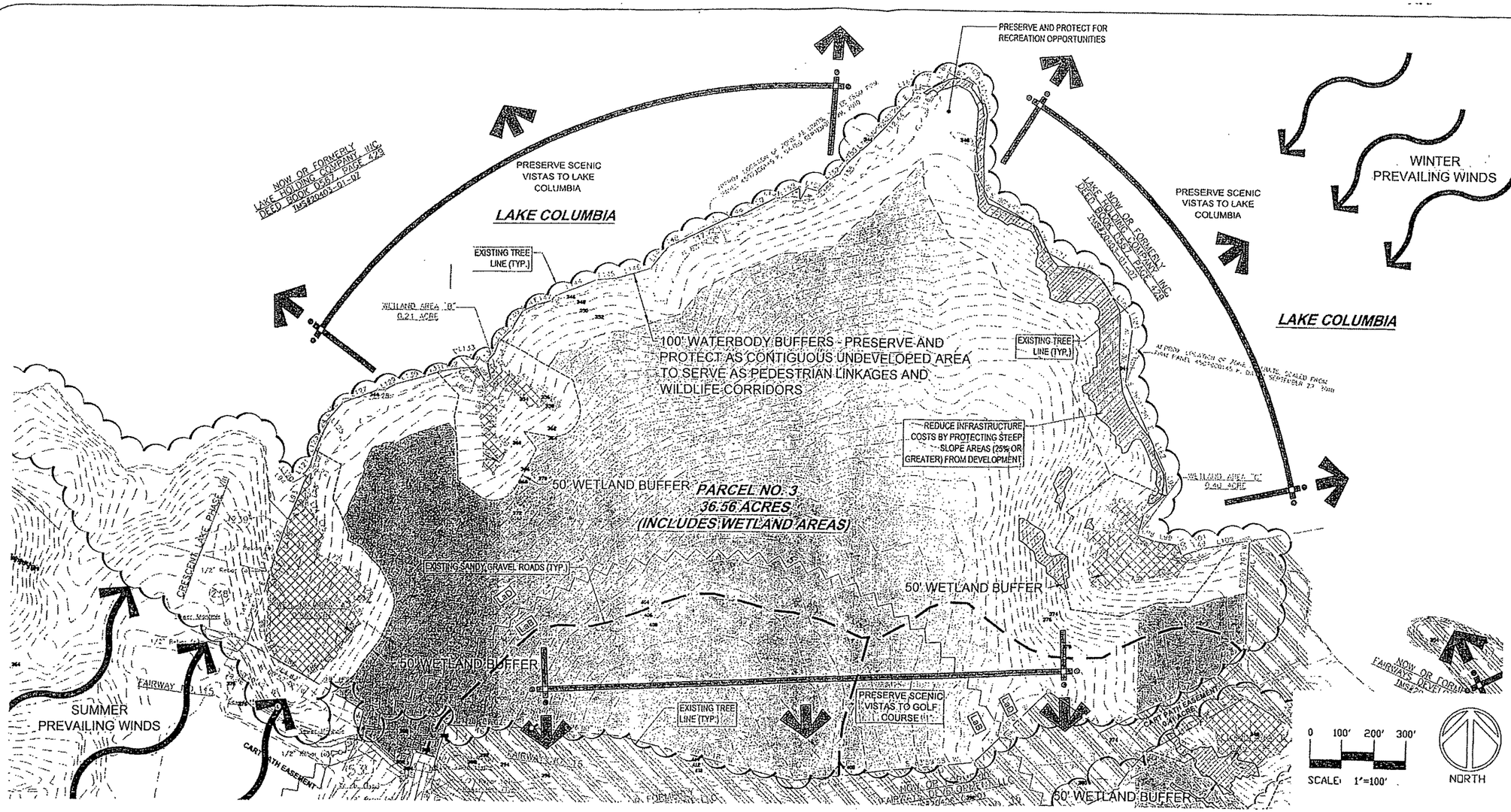


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8. SUBJECT PROPERTY: TMS#: 20401-01-03

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# THE VILLAGES AT LONGCREEK
## Existing Features Site Analysis

Blythewood, South Carolina

SHEET NAME:
SITE ANALYSIS

DATE:
2012-11-07

PROJECT #:
11102

REVISIONS:

SUBMITTED FOR APPROVAL

DRAWN BY: JC, EW
CHECKED BY: JT, FH
SHEET #: SA-03

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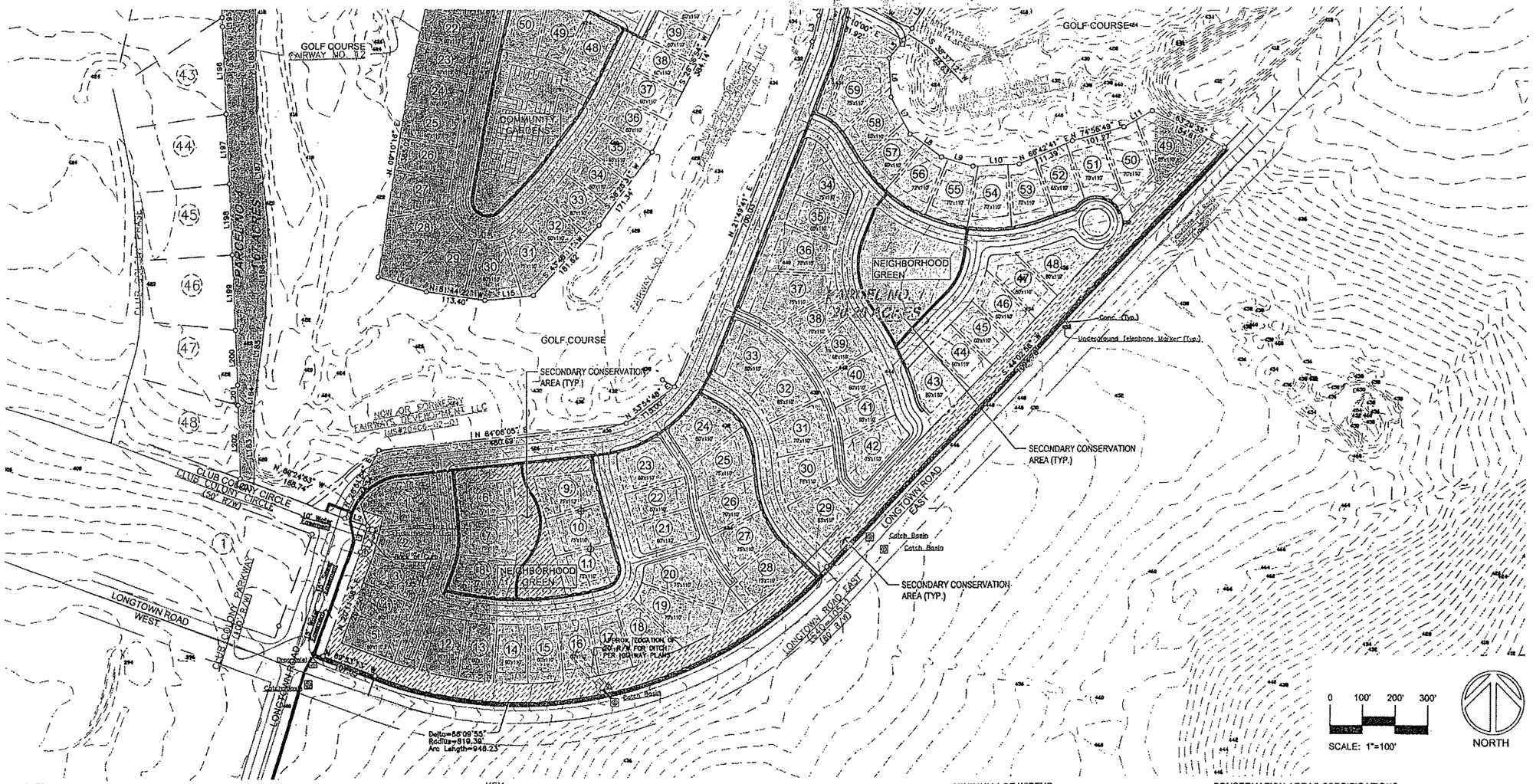


NOTES:

1. TOTAL SUBDIVISION DEVELOPMENT ACREAGE = 100.7 ACRES.
2. EXISTING ZONING: RS-LD
3. TOTAL DEVELOPABLE UNITS PERMITTED UNDER RS-LD ZONING = 363 UNITS
4. TOTAL UNITS REQUESTED = 332 UNITS
5. TOTAL OPEN SPACE PROVIDED = 30.77 ACRES -or- 30.5%.
6. ALL SURVEY INFORMATION PROVIDED BY COX AND DINKINS, INC., 724 BELTLINE BLVD., COLUMBIA, SC 29205.
7. TOPOGRAPHIC INFORMATION (2 FOOT CONTOURS) PROVIDED BY RICHLAND COUNTY GIS.
8. FLOOD ZONE INFORMATION ARE APPROX. LOCATIONS OF ZONE AE LIMITS, SCALED FROM FIRM PANEL 45079C0145 K, DATED SEPTEMBER 29, 2010
9. WETLAND DELINEATION PROVIDED BY PALMETTO ENVIRONMENTAL CONSULTING, 1801 CHARLESTON HIGHWAY, SUITE B-3, CAYCE, SC 29033.
10. NO HISTORICAL OR ARCHEOLOGICAL FEATURES ARE KNOWN OR SUSPECTED ON THE PROPERTY.
11. NO PROTECTED PLANT SPECIES AS LISTED BY THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES ARE KNOWN OR HAVE BEEN DETECTED ON THE PROPERTY.
12. NO MARKETABLE TIMBER HAS BEEN REMOVED WITHIN THE PAST TWENTY-FOUR MONTHS.
13. CONCEPT PLAN FOLLOWS THE DEVELOPMENT REQUIREMENTS FOUND WITHIN RICHLAND COUNTY'S GREEN CODE AT THE TIME OF THIS PLAN.
14. FIRE HYDRANTS WILL BE DISTRIBUTED THROUGHOUT THE SITE PER THE RICHLAND COUNTY FIRE DEPARTMENT GUIDELINES AND REGULATIONS.
15. THE LOT DIMENSIONS LABELED ON THE PLAN ARE MEASURED AT THE MIDPOINT OF EACH LOT AND REPRESENT THE AVERAGE LENGTH AND WIDTH.

KEY:

- PRIMARY CONSERVATION AREAS
- SECONDARY CONSERVATION AREAS
- DEVELOPABLE AREAS PER SITE ANALYSIS
- DELINEATED WETLANDS
- L105 PROPERTY BOUNDARY
- WETLAND BUFFER
- 100' WATERBODY BUFFER
- STREET FRONTAGE BUFFER
- FLOODPLAIN LIMITS
- 450 EXISTING CONTOURS
- PROPOSED TRAILS
- PROPOSED SIDEWALKS
- PROPOSED ROADS
- PROPOSED ROAD CENTERLINE
- PROPOSED ROAD ROW LINE
- PROPOSED LOT LINE
- PROPOSED ALLEY ROW LINE
- PROPOSED BUILDING SETBACK LINE
- PROPOSED CROSSWALKS
- (42) LOT NUMBERS

MINIMUM LOT WIDTHS:

DETACHED SINGLE FAMILY: 60' MINIMUM
ATTACHED 2 UNIT SINGLE FAMILY: 25' MINIMUM

MINIMUM YARD SETBACKS:

DETACHED SINGLE FAMILY:
FRONT LOADED:
FRONT: 20 FEET (5 FEET WITH SIDE OR REAR ENTRY GARAGES)
REAR: 20 FEET
SIDE: 5 FEET
CORNER LOTS SECONDARY SIDE: 1/2 FRONT OR 10 FEET

ALLEY LOADED:
FRONT: 10 FEET
REAR: 15 FEET
SIDE: 3 FEET, 6 FEET COMBINED
CORNER LOTS SECONDARY SIDE: 10 FEET

ZERO LOT LINE (2 UNIT LOTS):
FRONT: 15 FEET
REAR: 15 FEET
SIDE: 0 FEET, 6 FEET COMBINED
CORNER LOTS SECONDARY SIDE: 7.5 FEET

BUFFERS:

STREET FRONTAGE BUFFER: 25 FOOT MINIMUM; 35 FOOT PROVIDED ALONG LONGTOWN ROAD EAST.

WETLAND: 50 FOOT.

WATERBODY (LAKE COLUMBIA): 100 FOOT.

CONSERVATION AREAS SPECIFICATIONS:

PRIMARY:
- TOTAL AREA = 12.93 ACRES
- TO REMAIN PERMANENTLY UNDEVELOPED AND NATURAL EXCEPT FOR THE PROVISION OF NON-MOTORIZED PASSIVE RECREATION OPPORTUNITIES AND MAINTENANCE ACTIVITIES ALONG BUILT TRAILS AND BOARDWALKS. NO NATURAL VEGETATION TO BE DISTURBED WITHIN BUFFERS, EXCEPT FOR UTILITY CROSSINGS.
- AREAS INCLUDE: 100-YR. FLOODPLAINS AND BUFFER ZONES.

SECONDARY:
- TOTAL AREA = 11.01 ACRES TO REMAIN PERMANENTLY PROTECTED.
- AREAS INCLUDE: EXISTING HEALTHY, NATIVE FORESTS OF AT LEAST ONE CONTIGUOUS ACRE; SCENIC VIEWSHEDS; CONSTRUCTED NEIGHBORHOOD GREENS; AND CONSTRUCTED STORM WATER MANAGEMENT FACILITIES.

ADDITIONAL OPEN SPACE:
- TOTAL AREA = 6.83 AC
- AREAS INCLUDE: BUFFERS AND COMMON AREAS

TOTAL OPEN SPACE (TO INCLUDE PRIMARY AND SECONDARY CONSERVATION AREAS AS WELL AS ANY ADDITIONAL OPEN SPACE THAT DOESN'T QUALIFY AS CONSERVATION AREAS) = 30.77 AC (30.5%)
- 4.31 AC (14.0%) OF CONSERVATION AREA IN NEIGHBORHOOD GREENS

EXCLUSIONS:
- RESIDENTIAL YARDS; IMPERVIOUS SURFACES IN RECREATION AREAS; UTILITY EASEMENTS; PUBLIC OR PRIVATE STREETS; AREAS CONVEYED TO PUBLIC AGENCIES; AND DRY STORM WATER DETENTION BASINS.

OWNERSHIP:
- OWNERSHIP OF CONSERVATION AREAS WILL BE CONVEYED PER THE PROVISIONS IN THE RICHLAND COUNTY GREEN CODE AS OF THE DATE OF THESE DRAWINGS.

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CLIENT:
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GREENVILLE, SC 29615

# THE VILLAGES AT LONGCREEK
## SKETCH PLAN

Richland County, South Carolina

SHEET NAME:
SKETCH PLAN

DATE:
2012-11-07

PROJECT #:
11102

REVISIONS:

SUBMITTED FOR APPROVAL

DRAWN BY: JC, EW
CHECKED BY: JT, FH
SHEET #: SP-01

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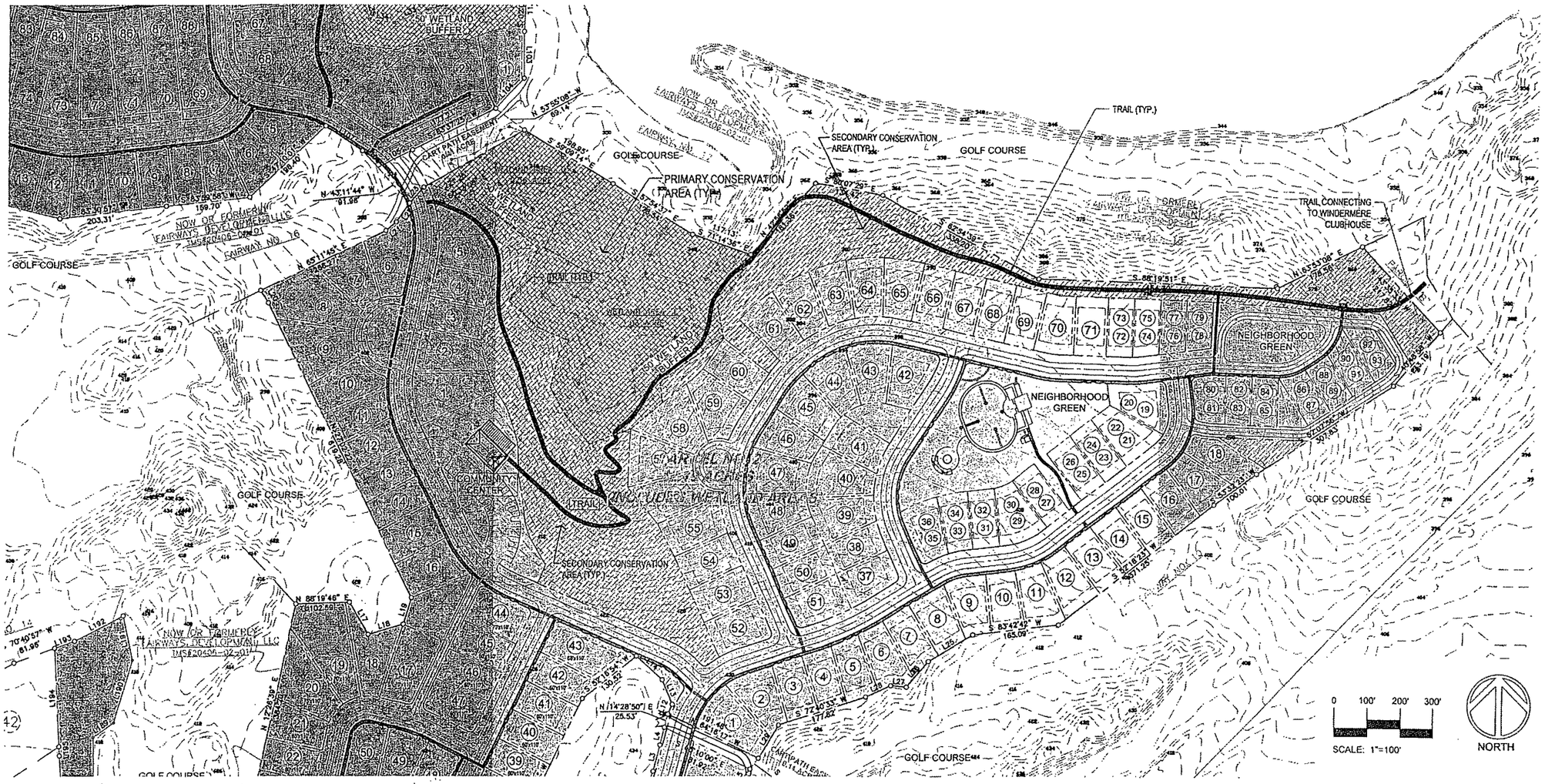
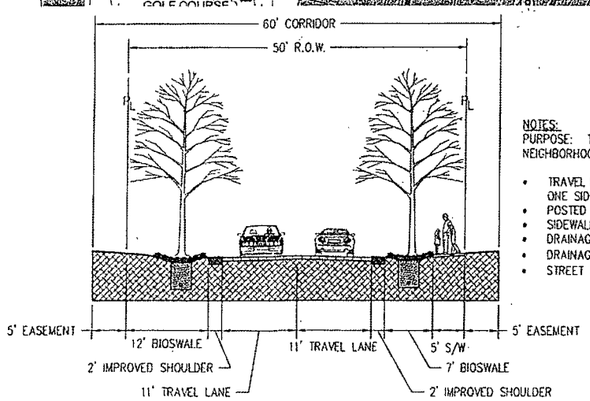
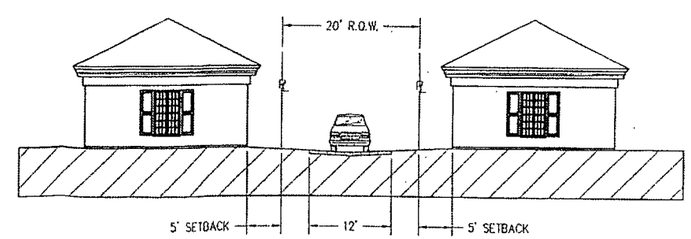



NOTES:
PURPOSE: TO PROVIDE LOW SPEED ACCESS THROUGH NEIGHBORHOOD.

- TRAVEL LANES CAN BE CROWNED OR SHEET FLOW TO ONE SIDE
- POSTED SPEED 15 – 20 MPH
- SIDEWALK ON ONE SIDE
- DRAINAGE BIOSWALES ON ONE OR EACH SIDE
- DRAINAGE AND/OR UTILITY EASEMENT EACH SIDE
- STREET TREES ON EACH SIDE AT 25' O.C.

1 TYPICAL STREET SECTION
1" = 10'




NOTES:
PURPOSE: TO PROVIDE LOW SPEED ACCESS TO REAR OF LOTS.

- POSTED SPEED – NONE
- NO SIDEWALKS, CURBS, OR LIGHTING
- INVERTED SWALE

2 TYPICAL ALLEYWAY
1" = 10'

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THE VILLAGES AT LONGCREEK
SKETCH PLAN

Richland County, South Carolina

SHEET NAME:
SKETCH PLAN

DATE:
2012-11-07

PROJECT #:
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SUBMITTED FOR APPROVAL

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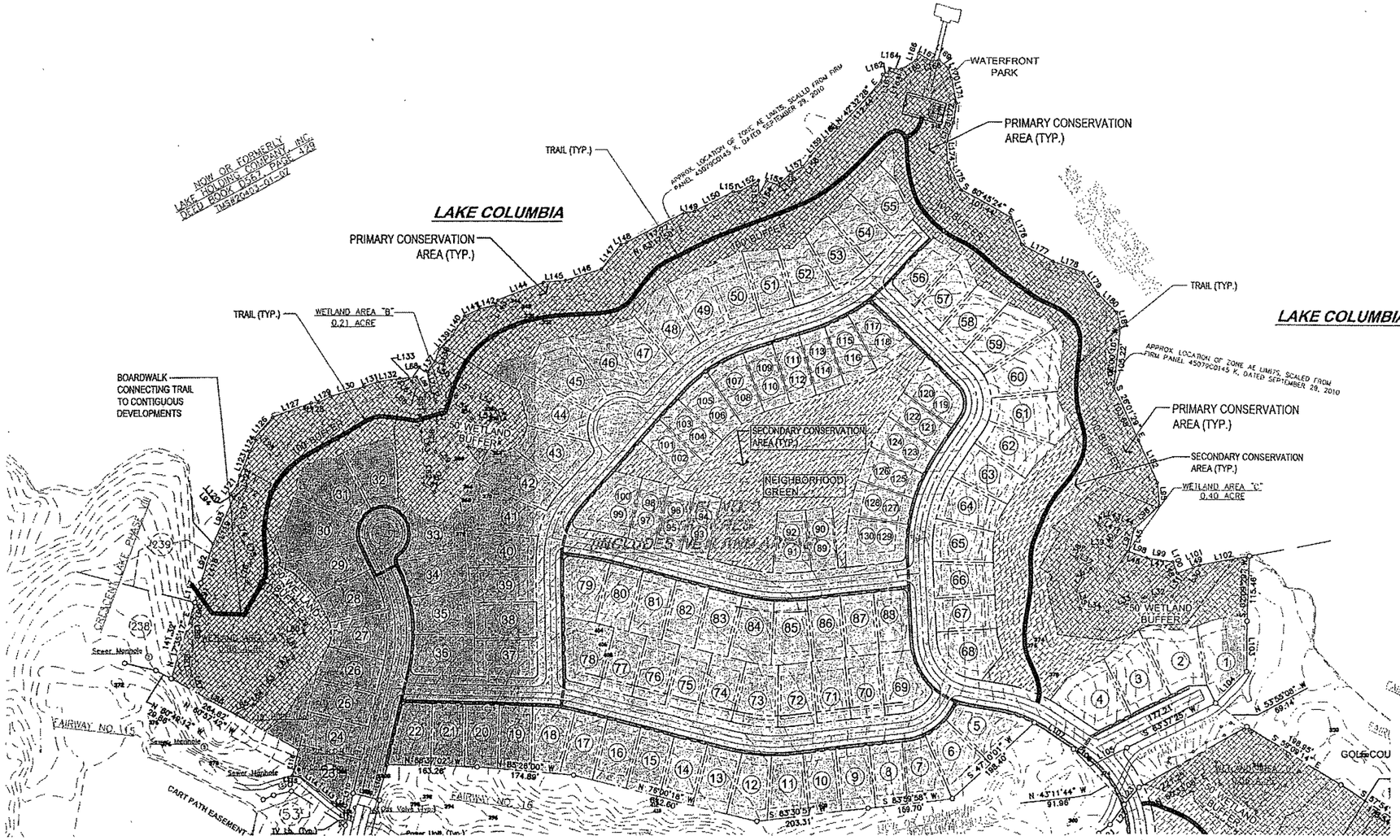


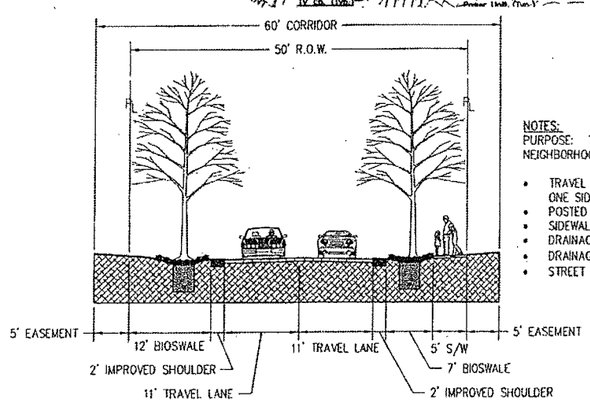


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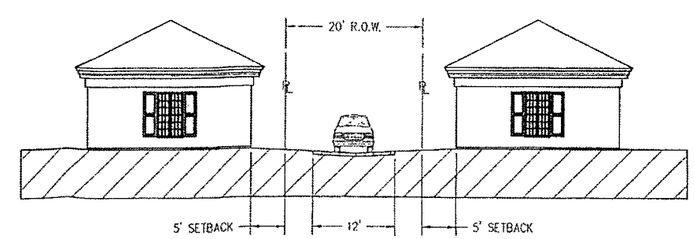


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## SKETCH PLAN

Richland County, South Carolina

SHEET NAME:
SKETCH PLAN

DATE:
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PROJECT #:
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REVISIONS:

SUBMITTED FOR APPROVAL

DRAWN BY: JC, EW
CHECKED BY: JT, FH
SHEET #: SP-03

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# Richland County
# Development Review Team

November 29, 2012
1:00 pm

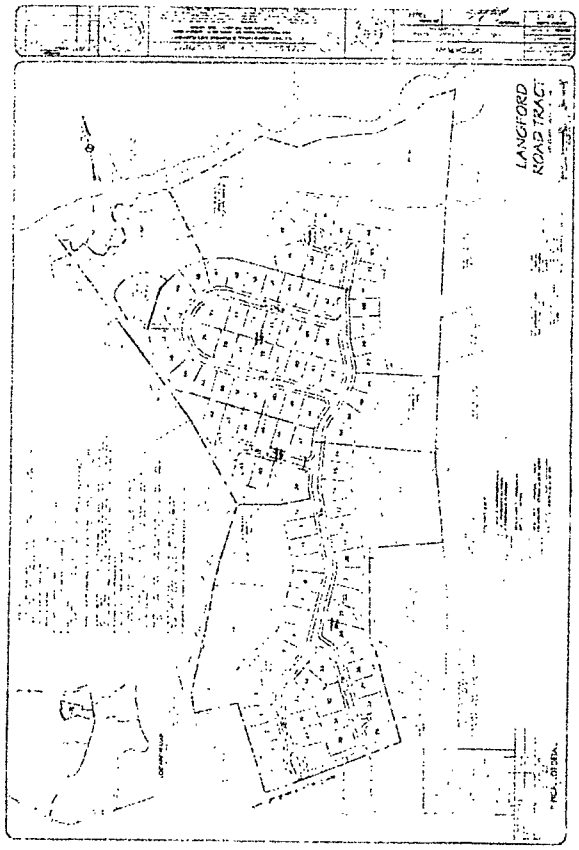
A-2 262

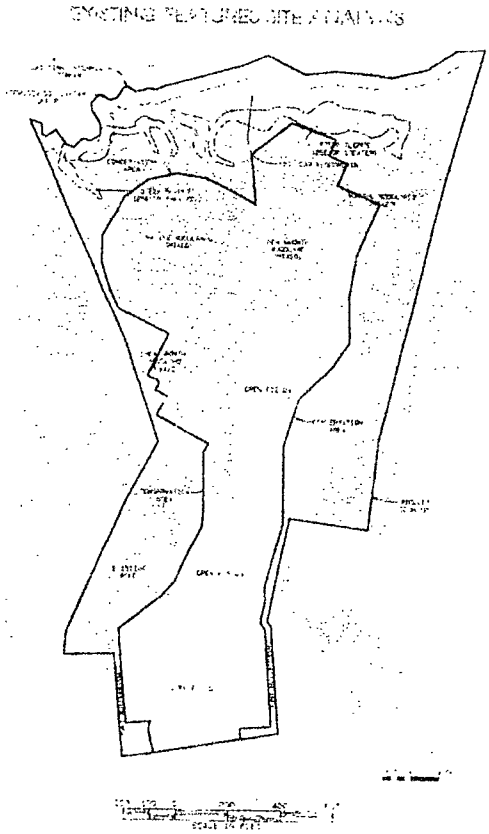
# Development Review Team Meeting
# November 29, 2012

**Langford Road Tract — Sketch Plans**

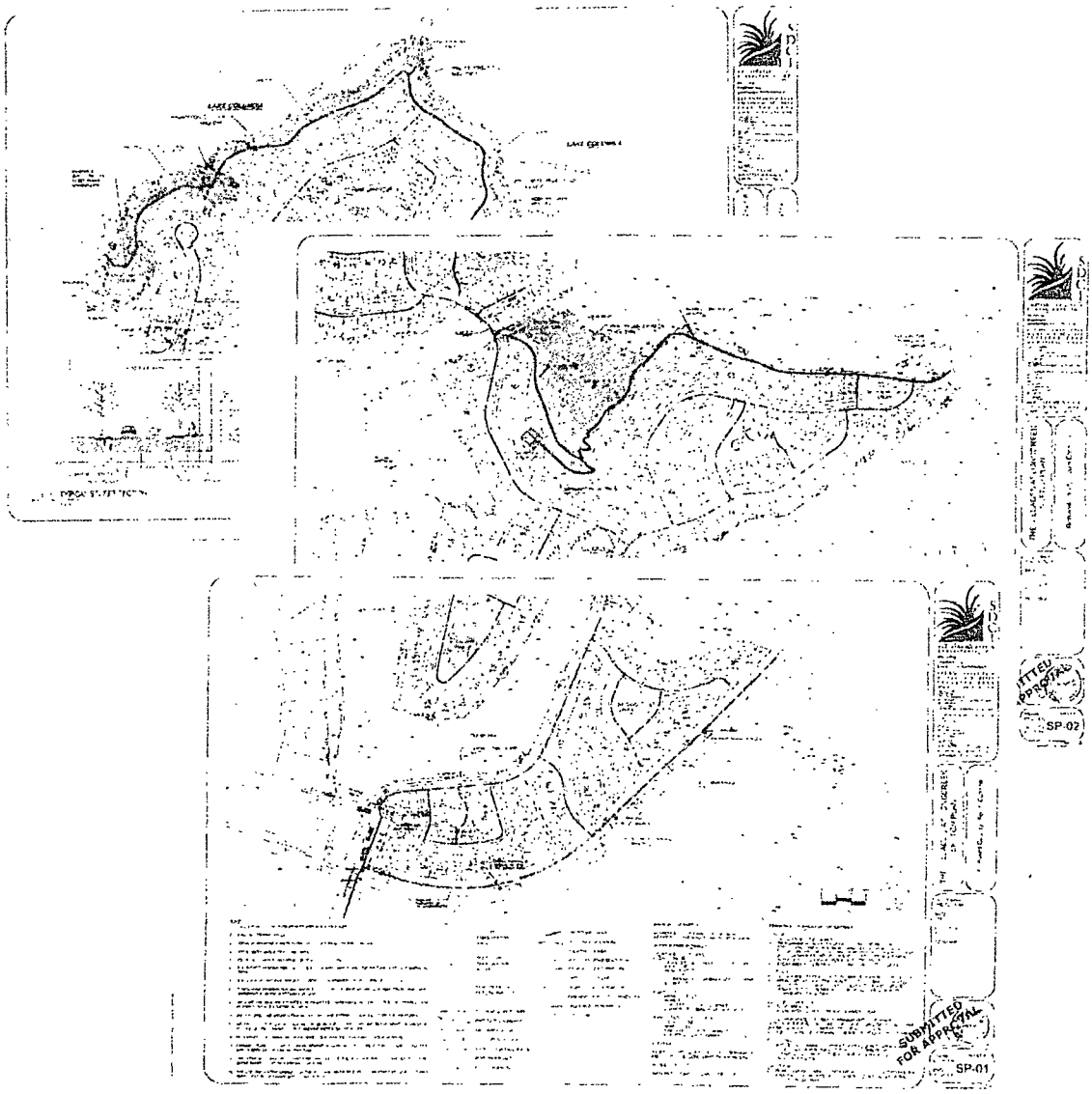
**Project Number**: SD-12-05
**Applicant**: First Palmetto Bank, c/o Brent Hutto
**Location**: Langford Road in the Blythewood area
**TMS#:** 17800-01-71
**Zoning**: RU (Rural District)
**Acreage:** 60.32 acres

**Description of project**: The applicant is proposing a single-family residential subdivision under the Green Code provision of the Richland County Land Development Code. One access point off Langford Road will provide access to 101 lots. The developer is providing 28.99 acres of open space (conservation area), which comprises 48.06% of the total acreage. A prorated density bonus of 26.89% was used in calculating the maximum number of lots allowed.



# Villages at LongCreek Sketch Plans



**RICHLAND COUNTY, SOUTH CAROLINA**
**PLANNING & DEVELOPMENT SERVICES DEPARTMENT**
Planning & Development Services
Office 803-576-2180 Fax: 803-576-2182

January 28, 2013

Mr. Samuel T. Brick
124 Runneymede Drive
Blythewood, SC 29016

13-04 AR Administrative Review
Village at Longcreek
Flycatcher Lane, Longcreek Plantation
TMS# 20401-01-03

Dear Mr. Brick:

**The above matter will be reviewed by the Planning Commission at their Monday, February 4, 2013 meeting**. It is advisable for you, or your representative, to be present to answer any questions the Commission may have.

The Planning Commission meetings are held in the County Council Chambers of the Richland County Administration Building at 2020 Hampton Harden Street in Columbia. **The public meeting begins at 1:00 PM.**

You should be advised that the Richland County Planning Commission records all of its meetings and prepares a verbatim transcript. Anyone wishing copy of the transcript may contact me at 576-2176 or E-Mail me at haynessu@rcgov.us.

Please refer to our project number above in any future communication regarding this project.

Sincerely,

Suzie Haynes

Suzie Haynes
Boards & Committees Coordinator

CHAIRMAN PALMER: All those in favor say aye?

*[Approved: Westbrook, McDaniel, Tuttle, Palmer, Gilchrist; Absent for vote: Cairns, Brown; Absent: Van Dine]*

CHAIRMAN PALMER: And we have no road names. So Map Amendments, Case No. 13-03 MA.

**CASE NO. 13-03 MA:**

MR. LEGER: Thank you, Mr. Chairman. We do have one map amendment this month. The Applicant is Mr. Wayne Huggins. The property's located at the intersection of Garners Ferry Road and Congaree Road. It's almost two acres in size, currently zoned RU. And Mr. Huggins is requesting a GC, General Commercial District. The RU District zoning classification was the original zoning adopted from 1977. In the vicinity, to the north we have property zoned RU, which is currently undeveloped and there is some residential in that vicinity. To the south we have an undeveloped wooded parcel, wooded, and there is a school as well to the south and some residential. To the east we have residents as well and to the west we have an EMS station across from Congaree Road. In the vicinity further to the west there is some commercial use and that is shown, commercial zoning, that is shown in your summary. The subject property is occupied by what appears to be a single-family residence at one time. I'm told that it was used as a doctor's office. There's a, again there's a mixture of uses along Garners Ferry Road from small scale cafes to hardware stores and the like. Further to the east there is a concrete, kind of a manufacturing plant, it's hard to tell whether that facility is actually being used at the current time. Other than that our Comprehensive Plan recommends Rural out in this vicinity along Garners Ferry Road, where again commercial should be

1 that are wetlands and some very steep slopes like I just mentioned, and some other
2 secondary conservation districts under the Green Code. The, there's some problems
3 with the Comprehensive Plan that I want to note. There are four things that you have to
4 look at that, that I'm addressing, and I'm gonna address them, all four of them, but I'll
5 start with the Comprehensive Plan. First of all with regard to the land use element, one
6 of the things about the Comprehensive Plan is to minimize impervious surfaces and
7 we'll get to this in a little bit later, but there's no, whatsoever no utilization or
8 implementation of any kind of idea of impervious surfaces being limited in this
9 application. It is not a priority investment area. You guys know this because you guys
10 prepared the Comprehensive Plan so you know what priority investment areas are. This
11 is not one, we don't get any monies, there's no special things, and also under the goals
12 and the ideas of the priority investment areas, that's a particular area where you get
13 special things and you're supposed to have a little bit more, little bit more liberal
14 changes would happen in a priority investment area than in the other areas. The
15 facilities element, there's a specific chart in there that talks about the community
16 facilities element and the, it says 2.75 dwelling units per acre is what's recommended,
17 this has a whole lot more than that. It's not in sync with the transportation element,
18 there's no bus service, it's not close to employment centers, there are no walkways
19 throughout the general area. There are walkways throughout the Green Code area but
20 once you get out of the Green Code area there are no other walkways. There's a long
21 commute into town, 16 or 17 miles so it's not really in sync with the transportation
22 element either. The land use element, there's a, the, the Planning Director will direct
23 you to a little bit of a language in there that talks about suburban areas should be

1 developed at four to eight dwelling units per acre, which would cover all the zonings
2 districts within the, the suburban area. The zoning map has not changed in the
3 Comprehensive Plan and in this particular area it's zoned at low density, single-family
4 residential, low density. The, the purpose section, we, you're supposed to look at the
5 purpose, the scope and the provisions. The purpose section, Section 26-2(A)(5), it
6 specifically fails to enforce density and the distribution of populations. No density is
7 enforced in this so that's a specific violation of that provision. Okay, now the meat of the
8 appeal there's the inter workability and the application of Sections 26-89, 26-86, and
9 basically those two, two sections. Now, the density provision under Section 26-89, and I
10 heard Mr. Palmer, Chairman Palmer talk about this before, where he says that it's a,
11 you know, you get a gross, you get the maximum houses, you can put them in, it's all
12 done by the number of acres total. That's not the case. The density is one dwelling unit
13 per lot area, and that's a statutory definition of density, one dwelling unit per lot area.
14 And the lot area is no more than 12,000 square feet per lot area. That's the, that's
15 exactly what the language of the law says on 26-89. There are two exceptions, two
16 exceptions only and they're both in the statute. One exception is if DHEC determines
17 otherwise, and the other exception is 26(I), it's specified as an exception and it, it talks
18 about the, the – my mind is just – wait a minute – it speaks specifically to the
19 development standards of 26(I), and that's the only place where they talk specifically
20 about development standards where they refer to the Green Code. So 26(I) are the
21 development standards of the Green Code according to 26-89. And you have to look at
22 these together, because they're the only two exceptions, it doesn't talk about anything
23 else. So, and here's another thing that's very important, vitally important is both of these

1 provisions, the provision with regard to 26(I) and the Green Code were both enacted
2 with the same ordinance. It's the same ordinance, it's not one after the other, one before
3 the other or anything of that nature. So if you're looking at that from a perspective of, of,
4 you know, how they work together, they do. It's 26(I). Now, so that means a lot when we
5 get to the, how many houses and all that sort of thing. But I, I mentioned the two
6 exceptions. What's the difference? Alright, the project calls for 332 dwelling units, that's
7 with no density, there's – and again, like, I mean, I can't enforce this more, you can't,
8 there's just no density. That's the only residential, the only zoning or residential area
9 that we have in Richland County, all the residential districts have zoning densities in
10 them. There's none being applied to this particular project. Okay, now what, you know,
11 it, if you have the, you look at density and you see how it works and it's only the
12 buildable land, it's not the total land in the property, it's the buildable land. It says it shall
13 be no more than, no, in no case shall it be more than . . . that's statutory language. Mr.
14 Tuttle's shaking his head, but I'll tell you Mr. Tuttle also looked at a program in 19 – just
15 let the Record say he was shaking his head, and that's alright cause I understand you
16 probably disagree with me on that – but back in 2009, you sat on a, on a, on a, a
17 commission with the Corps of Engineers and this county Planning Department, under
18 the Roundtable aspects of it –
19 CHAIRMAN PALMER: Mr. Brick?
20 MR. BRICK: Yes.
21 CHAIRMAN PALMER: Can you please just keep it to the, to the complaint that
22 you have and not [inaudible] stories about individuals on the Planning Commission?

1 MR. BRICK: Alright. Alright. The statute says 12,000 square feet is the minimum
2 or the, or the maximum – it's the, you can't have more than, or you can't have less than
3 12,000 square feet unless you get the bonus density under 26-186(I), so that's, in any
4 event the number of houses is considerable. From 332 dwelling units, which you could
5 never get under this particular provision with the 12,000 as the minimum lot size, you
6 could never get that on 100 acres, and the reason you can't get it is cause you have to
7 have infrastructure. So once you have the infrastructure of the roads, you can't build on
8 roads, you can't get density on that, you can't have a lot on a road, so you don't get
9 credit for it unless you have the minimum, it's 12,000 square feet. So if you take 30, you
10 know, 30% is the, the, the set aside, another 15% of infrastructure, you get to be about
11 55 building acres, so that gives you 199 dwelling units. So that's just one general idea,
12 and you can work that and play with that and do a lot of different things on that, but
13 that's what the law says. The law says no more than 12,000 per buildable, or 12,000 per
14 lot area and one dwelling unit is the density requirement. One dwelling unit per lot area,
15 that's what your requirement is under the law. Now, the, the Planning Department takes
16 away this, the density requirements because they say that the zoning districts have
17 development standards found within – well, the 20-186(B) [sic] talks about zoning
18 districts found within this section may be applied in lieu of the applicable zoning district.
19 Now the only ones that are found within this section are in subsection (I), we already
20 saw that earlier and subsection (I) is density and that's the only place where you have
21 zoning standards. The, what's the difference between standards and requirement?
22 Standards are something that are set up or established by authority as a rule for
23 measuring quantity. Requirements are things applicable and a condition precedent to

1 any one who wants to obtain the benefit. Requirements apply to everybody, they apply
2 to everybody. Standards will apply to the people in the area that is concerned. So the
3 requirements provision in 26-186(H) has development requirements. They don't call it
4 standards. You have to look at the plain meaning of the law, it says, development
5 requirements. And these are things that you have to get to get into the bonus sections.
6 To get into the bonus sections you have to meet the minimum requirements. And this
7 applies to every applicant. Now why would they have two, why would they have no
8 minimum lot size in 26-186(H)? Why would they say that? And the reason they say it is
9 because they have two provisions that are eligible for this in Sections 93 and 94, the
10 multi, multi-family housing, they both have no minimum lot size. If you had anything else
11 in there besides that you would disenfranchise both of those two groups and the statute
12 wouldn't make sense for those two. By the way, they also have minimum width
13 requirements in there, they both have a 50' minimum width requirement even though
14 there's no minimum lot size, and there are standards that they have in there. So in any
15 event, the, the, there's just no reason for, not to have a density. The statute itself
16 provides density. It, it talks about it on both sides, 80, 26-89, the beginning of it, it talks
17 about the density standards, it's there. The Planning Department and the Development
18 Review Team did not apply the density standards in this particular thing. This is an error
19 in the application of the Green Code and the administration of residential low density
20 zoning district applicable to the project. The only development standard found in this
21 section is the density provision and, with its bonus feature. In understanding statutory
22 construction and understanding several principles apply, most important is legislative
23 intent. And why do we have this? The bonus is a bonus, it's for, the intent is to give a

1 conservation set aside you get a bonus. And that's the reason why you have it, that's
2 the purpose behind the Green Code, to do that, as well as to meet some other Green
3 requirements. So in any event, I'll move along. Minimum lot widths is not being applied,
4 it's not being enforced. And there's no reason why it shouldn't be enforced. First of all it
5 says the, the standards found within this section. It's not found in this section except for
6 one area in the concept plan where they talk about minimum lot widths have to be
7 reported. So why would they say minimum? Minimum connotes, and, and, something
8 that has to be met. It's, it connotes a standard. But they say minimum lot widths have to
9 be reported. They're not reported. They're, lots widths are reported by they're not
10 enforced under 26-89, which is where your development standards are for the minimum
11 lot widths. So in any event, that's, I think you have to send it back for no other reason
12 than for minimum lot widths not being reported. Pervious material, now pervious
13 material, Mr. Tuttle knows from the, the, and I'll give you all a copy of, of this study, this
14 is pretty important, I'd like to put this in for the Record too. This is a study that was done
15 in 2009 – for the Record, please. And I just have a couple of pages on it. In, in
16 conservation districts in Green Code areas, pervious surfaces are vitally important. It's
17 a, it's a real, it's a major part of, of conservation. You don't want to have pervious,
18 pervious material overwhelming the development because of the water flow. The first
19 sentence in this subsection (H)(11), which is a requirement, is that, it's a permissive
20 sentence, you can use pervious material on driveways and, and sidewalks, permissive,
21 that's all it is. The second one is a requirement, it's a maximum use of it, you can't have
22 more than 50% impervious material in your developed areas. Not the entire area, but it
23 specifically says developed areas, so that's another violation. Am I out, am I done?

CHAIRMAN PALMER: We'll give you one more minute to wrap up.

MR. BRICK: Okay, gotcha. Thank you, sir. The, I, two other quick things because you're supposed to look at two other things, the sketch plan, it's the wrong sketch plan. They don't have a sketch plan for Green Code. They should have a sketch plan so you would meet all the Green Code requirements, there's none there. But in any event the sketch plan has a free, they took away the, the, the fee, that's not marked, it's not applicable, I don't know why. And also, I don't know anything about roads, the roads aspect I don't know whether that's been approved by you or not, it's not in the sketch plan at all. There's no indication that there are roads. If I only have a minute, that's probably done. Thank you.

CHAIRMAN PALMER: Thank you. Planning Department?

MS. HEGLER: Thank you. I am prepared to answer I think what was originally in his appeal one by one, but instead of doing that I guess I'll just respond to what he directly reported on.

CHAIRMAN PALMER: I think if you could respond –

MS. HEGLER: Whatever you think is easiest, but.

CHAIRMAN PALMER: - whatever you think is, is best.

MS. HEGLER: I'll jump around a bit then, I think, so. Yes, the Comprehensive Plan does certainly set the guiding principles for growth in the county. It's a very important document for us, but it's not a regulatory item. It simply is a guiding principle. You know, we certainly look to those things when we make decisions on these development applications and reported those during the last appeal. He's correct, it's not in a priority investment area, it's in what's called a suburban area and the

1 Comprehensive Plan does outline recommendations for what suburban areas should
2 look like, which as he mentioned is four to eight dwelling units per acre. That's reported
3 several times in the land use element of the Comprehensive Plan, so we use that as our
4 guiding principles. The community facilities element which Mr. Brick mentioned, what,
5 states 2.75 units per acre. That, that chart is a modeling document of numbers that went
6 into a program. It's a program that looks at how much of the land would be developed at
7 a future build out scenario. That's what the Comprehensive Plan looks at in the future,
8 so in 2035, if population is X and we have designated this much acreage as suburban,
9 what is, if we, if we filled up every single acre, what would that density be? So 2.75 is
10 the number it came to, but it also states right after that, that that is not the most efficient
11 use of land and it highly recommends that we develop at a higher density. So the 2.75 is
12 merely a modeling number to interpret what kind of developable acreage we would
13 obtain. It's very clear in the Comprehensive Plan that four to eight units is what the
14 county is prescribed as their suburban densities. And I didn't, you know, the Appellant
15 mentioned that it's not in sync with the transportation element, there are suggestions in
16 the housing element that, that development be located near large employment centers
17 and on bus lines, it's a suggestion only. It also suggests in the transportation element
18 that we do urban infill and that we provide a variety of housing types. So you can see
19 we can go through this, there's kind of just different pieces of the Comprehensive Plan,
20 you can't meet every single strategic goal within the Comprehensive Plan, that's, those
21 things would contradict. So, I mean, I think that certainly we, we proved last time and
22 continue to think that this project does certainly fit within the Comprehensive Plan's
23 goals. Moving on to parts of the Code that were questioned, we certainly use the Green

1 Code as, it slightly stands alone, it states very clearly that it is a Code that you can use
2 in lieu of, the standards of which you can use in lieu of the underlying densities, so
3 that's 26-186. Mr. Brick referenced 86 multiple times and that is not the appropriate
4 Code. So the Green Code is 26-186, and the underlying zoning for this site which is
5 RSLD is in fact 26-89. Yes, density is one dwelling unit per lot area, that is still true for
6 Longcreek, the Villages at Longcreek, there's only one unit per lot. There are the
7 exceptions that Mr. Brick mentioned that, for the minimum lot area. Again, I would speak
8 to the beginning intro of the Green Code, which specifies that those are standards that
9 can be used in lieu of the underlying, that sets it apart. It specifically states that there
10 are no minimum lot areas within the Green Code, Chapter 186. I would also find in my
11 notes the state enabling legislation that sets up and establishes for local governments
12 speaks to the ability to create clustering neighborhoods. In fact, it encourages it, and it
13 says that those, in clustered neighborhoods you may vary your lot sizes from your
14 otherwise applicable lot sizes. So this is enforced all throughout this, this idea of
15 clustering and getting away from minimum lot sizes, even in your underlying zoning.
16 Yes, the project calls for 332 units. We could calculate a density from that, I'm not sure
17 what Mr. Brick means when he mentions there's no density. You know, there is certainly
18 density, if you take that, divide it by 100 acres roughly, that's 3.32 units per acre. The
19 underlying zoning allows 3.63, that's a gross density, that's common practice
20 everywhere, in planning practice anyway. Again, he mentioned you can't have less than
21 12,000 square feet. I completely disagree by the, by the intent of the Code, by the intro
22 in the Code and by state enabling legislation that allows us to do clustering
23 development. I think I've spoken to some of this a couple times. And again, the idea

that the no minimum lot area is specific to RM-MD and RM-HD, those are two of the underlying zoning districts in which you can apply the Green Code. It lists maybe six or seven, and that those two don't have minimum lot sizes, that is correct. The others do. I think that's a stretch. It's, it very clearly states in the Green Code in 186 there's no minimum lot size, it doesn't say there's no minimum lot size consistent with only those two zoning districts and all others must apply. That would be clearly stated if that were the intent. Again, speaking to legislative intent, Mr. Brick mentioned, absolutely, conservation set aside gets a bonus, that is the intent of this Code as well. The, the property has more than set aside what it's, what it's allowed to enact this density bonus, they did not. They're building what they're allowed to under the underlying, in fact less. So there is no density bonus but they are in fact putting aside 30% of their acreage, which allows them to relax their lot sizes. There's no minimum set aside required to relax a lot size. There's only a minimum to enact a density bonus and we've, we've discussed that before with this Body. The, the requirement for pervious material, I would wholeheartedly agree that that's a, a strange statement and I would also argue that if it were to be a requirement they would be separated, they would not state, you may use pervious material and if you do then, then here's the 50% requirement. But I would argue that we have been working with the developer, particularly the conservation department has, on much of the, the low impact development design techniques that they are proposing for the site. The soils are actually very permeable on the first, if you, if you – remember, if you recall the plan is, is three stages; the bottom three, the north and say the south in the middle are actually Lakeland soils, they're very sandy, they actually have enormous infiltration rates. There's expected to be very little runoff in that

1 site just naturally. And the northern most piece which is adjacent to the lake, has 100'
2 buffer, it's 50% more than it should be as required by our Code. They are more clay like
3 soils so their infiltration rate is a little less stable, but they are designing specific LID
4 principles, Low Impact Development, drainage principles, so. I mean, I think we're
5 gonna find, even if you were to take the second half of that sentence as a requirement,
6 that this site is well on its way to, to, to proving that correct, but they are working to
7 create some Low Impact Development or design techniques and, and given the soils
8 themselves I think we're gonna find that it's certainly gonna meet the requirements. It
9 has to meet the requirements for storm water runoff, regardless of that statement. They
10 cannot have more runoff post production than they did in pre, those standards still
11 apply. Those standards and those numbers will be calculated during the preliminary
12 planning phase. If you recall this is a concept plan. Those are numbers that would be
13 calculated in the next phase of development, so those will still need to be absolutely
14 made to be true. I can go over other parts of the appeal, I mean, I think that addresses
15 the few things that Mr. Brick brought up. Again, it's, it's the DRT's interpretation of 186,
16 the Green Code, as a Code that has standards in lieu of the underlying zoning. The
17 underlying zoning district does set a starting point for us, it establishes the basis for
18 what we would consider the density to be and if we were to enact a density bonus,
19 where would we go from there. But otherwise, we, we take the Green Code at its, at its
20 word as a, as a set aside, specific stand alone standards.
21 CHAIRMAN PALMER: Okay, thank you. And Ronald Johnson?
22 **TESTIMONY OF RONALD JOHNSON:**

1 MR. JOHNSON: Mr. Chair, Members of the Planning Commission, and Staff, I
2 want to thank you for allowing us to come here today. First of all I want to apologize that
3 everyone is having to once again review something that had been previously approved.
4 I am reminded, however, that we failed to prepare our application properly and thus we
5 find ourselves here again today. You've heard far more about rules and regulations than
6 I think any of us perhaps wanted to, but I will say that as a responsible developer, the
7 plan that we have prepared, worked with Staff, we held seven open forum meetings in
8 the, in and around the Longcreek area and invited participation both from residents as
9 well as people outside of the area to come in and voice their concerns or questions
10 about what it is to operate and develop under the Green Code, to what is involved in low
11 impact development, and those of us in the business would suggest that the type of
12 development that we are proposing is much more responsible, number one, it preserves
13 far more of the developable area by the set asides that have been talked about. We
14 believe very strongly in the conservation aspects of what we're doing. Staff knows full
15 well that we have engaged outside services to have a tree study done, we've had
16 wetlands surveyed and delineated so we have gone above and beyond to try to make
17 sure that the areas that we are proposing, that you have seen in the plan, will be
18 developed in the areas that would have the least damaging impact on the, on the land in
19 question. So again, I want to apologize that we're all here again, but I do hope that the
20 Commission understands what we have tried to do and hope to endeavor to do would
21 be, will be done in the best professional manner. Thank you.
22 CHAIRMAN PALMER: Thank you, and that's all we have signed up to speak. So,
23 what's the finding of the Planning Commission as it applies to the appeal?

1 MR. TUTTLE: Mr. Chairman, I'd like to make a motion that we deny the appeal.

2 CHAIRMAN PALMER: We have a motion. Do we have a second?

3 MS. CAIRNS: I'm just trying to think, if the, if the, the law requires, our or our

4 rules require findings of fact and, in our order, but I'm just, I'm not sure if we need to

5 offer any of that in terms of the ultimate determination.

6 MS. LINDER: In my opinion absent your specific determinations, we would go by

7 what's been spoken on the Record. We'd go with the facts that have been presented.

8 And if you're going to rule that you are, you're accepting the facts as presented by Staff

9 or the facts accepted by Mr., or presented by Mr. Brick, you may do, do that. Or you,

10 you've got some discretion here.

11 MS. CAIRNS: Okay.

12 MS. LINDER: If it's possible for you to elucidate a little bit more as to why you're

13 ruling the way you're ruling, that would also be appreciated.

14 MS. CAIRNS: I, I mean, I would just like to offer that I believe the, the application

15 of the Code by Staff as offered here in terms of, that the role of the Comp Plan as a

16 guiding principle, and the lot density issue, the lot size issue, was an appropriate

17 determination by Staff for the application. So barring any specific, other than that, but I

18 mean, does the Green Code allow the elimination of a specific lot size, I think that that

19 was an accurate interpretation by Staff. And I think basically everything trickled from

20 there, and that the Comp Plan is a guiding principle, not requirements. So I would in

21 essence second that the appeal be denied.

22 CHAIRMAN PALMER: We have a motion and a second. Any other discussion?

23 All those in favor of the motion please signify by raising your hand?

*[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown; Absent: Van Dine]*

CHAIRMAN PALMER: And there's none opposed. Okay.

MS. LINDER: Could someone ask Ms. McDaniel to come back in?

CHAIRMAN PALMER: Other Items for Discussion, the adoption of the Planning Commission's Rules & Procedures?

MR. PRICE: Mr. Chair, the [inaudible] review, they were based upon the discussion that we had at the last meeting in January. We just ask that you take a look at those. If you have any further suggestions we would then place this on the March Agenda for your adoption.

CHAIRMAN PALMER: Okay. Thanks. Director's Report of Action, Zoning Public Hearing Report, Development Review Team Report, these are just all parts of our package for information?

MS. HEGLER: Yes, sir.

CHAIRMAN PALMER: Okay. Do we have a motion to adjourn?

MR. BROWN: So moved.

MR. TUTTLE: Second.

CHAIRMAN PALMER: All those in favor say aye?

*[Approved: Cairns, Westbrook, McDaniel, Tuttle, Palmer, Gilchrist, Theus, Brown; Absent: Van Dine]*

CHAIRMAN PALMER: Alright, okay.

*[Meeting Adjourned at 2:45 pm]*

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| **STATE OF SOUTH CAROLINA** | ) | **BEFORE THE** |
| **COUNTY OF RICHLAND** | ) | **RICHLAND COUNTY PLANNING COMMISSION** |
| **SAMUEL T. BRICK** | ) | **Case No.: 13-04 AR; TMC# 20401-01-03** |
| Appellant | ) | |
| VS. | ) | |
| **RICHLAND COUNTY PLANNING DEPARTMENT** | ) | **MEMORANDUM OF LAW** |
| | ) | **STATUTORY CONSTRUCTION** |
| Appellee | ) | |

## MEMORANDUM OF LAW; STATUTORY CONSTRUCTION

Appellant, Samuel T. Brick, contends his appeal is based principally on the statutory construction and interoperability of the following Richland County Code provisions as being administered by the Richland County Planning Director:

(1) Section 26-186(b) in relation to Section 26-89(c) with regard to the Planning Department and the Development Review Team's interpretation of Section 26-186(h)(2) as a development standard rather than a requirement in a condition precedent provision;

(2) Section 26-186(h)(11) as not being applicable because the mandatory requirement in the second sentence depends on the permissive sentence preceding it; and

(3) Section 26-89(c)(2) as being inapplicable because a minimum width standard is not listed in Section 26-186 (sometimes herein referred to as the "Green Code") other than as a reporting provision mandated by Section 26-186(f)(3) and not being applicable further because Section 26-186(b) provides an overall standards provision which applies a comprehensive set of zoning standards that otherwise are listed in Section 26-186.



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For the first issue both Section 26-186 and Section 26-89(c) were enacted by the same Ordinance in 2008, Ord. 035-08HR; 6-17-08.

Section 26-186(b) reads as follows:

> "(b) *Applicability/Establishment.* The owner of property within an RU, RR, RS-E, RS-LD, RS-MD, MH, RM-MD, RM-HD, or CC zoning district may apply the development standards found within this section, in lieu of the development standards set forth for the applicable zoning district, subject to the requirements of this section."

and Section 26-89(c) reads:

> "(c) *Development Standards*. See also Article V., Section 26-131. Table of Area, Yard, and Height Requirements. Provided, however, if a developer can meet the requirements found within Section 26-186, the development standards of Section 26-186(i) may be substituted for the standards required in this subsection.
>
> "(1) Minium lot area/maximum density: Minimum lot area: 12,000 square feet or as determined by DHEC, but in no case shall it be less than 12,000 square feet. Maximum density standard: no more than one (1) principal dwelling unit may be placed on a lot except for permitted accessory dwellings. However, see the special requirement provisions for single family zero lot line dwellings at Section 26-151(c) of this chapter.
>
> "(2) Minimum lot width: 75 feet."

Subsection 26-89(b) continues with other standards, all specified in the provision as "standards" with the exception of two paragraphs that relate to other sections of the Land Development Code, provisions regarding sidewalk and pedestrian amenities and signs.

Section 26-186(h) has a catchline entitled, "*Development requirements*." Paragraph (2) of that requirements provision states, "Lot Area: No Minimum." The Planning Director and the rest of the Development Review Team interpret this last provision as setting the standard for the entire provision and making the provisions of Section 26-186(i) and Section 26-89 inapplicable. The Director interprets this one isolated requirements provision as removing any density requirement for an applicant who applies under Section 26-186. No other residential zoning provision in the Richland County Land Development Code is lacking a density requirement. To change the density requirement normally requires an ordinance that must pass through this



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Honorable Commission to the County Council for a change to the zoning maps. Two other residential zoning provisions that are authorized to use the provisions of Section 26-186, RM-MD and RM-HD, Sections 26-93 and 26-94, respectively, Residential Multi-Family-Medium Density –High Density districts have "no minimum lot area" requirements with designated densities of eight (8) and sixteen (16) units per acre, respectively. Both provisions have a minimum lot width standard of 50 feet. Section 26-186 (i), as referenced in Section 26-89, is the density provision for Section 26-186 but ignored by the Planning Department and Development Review Team as not applicable because of the no minimum lot area requirement provision. The "no minimum lot area" language in Section 26-186(h) is relevant and meaningful not with regard to any standards otherwise applicable under the zoning district provisions but because if the Green Code required a minimum lot area, it would disenfranchise the use of the Green Code by those two zoning districts with the no minimum lot areas even though the districts specifically are included in Section 26-186(b).

There are only two exceptions to the lot area requirement in Section 26-89. DHEC is one and Section 26-186(i) is the other. Section 26-186(i) is entitled "*Density*." Again, all the residential districts in the zoning provisions have density standards. Section 26-186(i) is not enforced in this project and the Planning Director states it is not relevant because of the Section 26-186(h) no minimum lot size language that the Director concludes trumps all other "standards" in the Green Code.

Section 26-186, similar to many other Green Codes throughout the Nation, provides a reward for a developer giving up lands as conservation areas in order to obtain lessened density. Section 26-186(i) provides the bonus reward with a lessened lot size as a reward for a varying amount of conservation set asides. For 30% of the total project set aside, the provision gives a 10% bonus in density as determined by lot area in the various zoning districts. So for the area

developed in the instant project, instead of 12,000 square feet per lot area, with a thirty (30%) percent conservation set aside, the developer with the ten (10%) percent bonus could apply lot areas of 10,800 square feet. Density standards otherwise are not malleable. Throughout the Richland County Land Development Code zoning provisions refer to a "standards" language similar, except for the square footage designation to that in Section 26-89. They refer to lot areas with specific language "but in no case shall it be less than". With the ten (10%) bonus, as authorized as a specific exception to Section 26-186(i) it would be 10,800 square feet.

The density for the zoning district applicable to the instant project and for most residential single-family zoning districts is one dwelling unit per lot area. There is no such thing as gross density or net density in Richland County zoning districts. The lot areas are prescribed and the "but in no case shall it be less than" language is specific, clear, plain, and mandatory. Statutory construction requires a term to be given its full effect if at all possible. Should the Planning Director and the Development Review Team's interpretation that Paragraph 26-186 (h)(2) controls the density of the project, then the density bonus would be meaningless because no bonus would be available under subsection (i). Furthermore, the Green Code would be the only provision in the residential zoning districts with no density standard whatsoever. If there is a zero density standard, then there would be a zero bonus and the provision would have no effect. In the instant case, the language of the statute taken as a whole is clear and not ambiguous. The terms used are consistent with the reading of the ordinance as a whole. The term "standards" consistently is used for density and to define the character of the each of the various zoning districts. The term "requirements" as used in the Land Development Code and otherwise in "plain meaning" vernacular and, specifically as used in Subsection (h) of the Green Code, entitled "Requirements," means meeting specified provisions as statutory prerequisites for

authorizations or benefits. The use normally is consistent for all applicants and such is the case in the Green Code "Requirements" section.

In this regard a legislature's intent is ascertained primarily from the plain language of an ordinance. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002); Stephen v. Avins Constr. Co., 324 S.C. 334, 338, 478 S.E.2d 74, 76 (Ct. App. 1996). In Mikell, et al v. County of Charleston, et al, 387 S.C. 67, 690 S.E.2d 777(1910), a similar case to this, the South Carolina Supreme Court gave guidance as to statutory construction. It said the primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

Mikell, supra, ruled that where two provisions deal with the same issue, one in a general and the other in a more specific and definite manner, the more specific prevails. In this case Section 26-89 is the more specific especially with the reference to subsection (i) and definite with the "but in no case shall it be less" language than the very general language in Section 26-186. See in this regard, Capco of Summerville v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 628 S.E.2d 38 (2006). See also Wooten ex rel. Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (specific statutory provision prevails over a more general one); Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a specific statute prevails over a more general one).

The Courts have given guidance that when reviewing issues involving the construction of an ordinance, the determination of legislative intent is a matter of law. Eagle Container LLC v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." Id. at 568, 666 S.E.2d at 894 *citing* Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). Again, the determination of legislative intent is a matter of law. *Id.* In this case this Honorable Body, the Richland County Planning Commission, may make decisions as to how closely a project complies with the Comprehensive Plan, or to whether it fulfills the intent of provisions that require it to harmonize the zoning districts but the construction of the ordinance is a matter of law that is within the province of the courts.

Again, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Garvin v. State, 365 S.C. 16, 21, 615 S.E.2d 451, 453 (2005); Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003); Knotts v. S.C. Dept of Natural Resources, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002). The primary purpose in construing a statute is to ascertain legislative intent. Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005). The fact that Sections 26-89 and 26-186 were enacted by the same Ordinance in 2008 gives special credence to the inter-workability of both provisions particularly when the language is similar and both provisions refer to "standards" which are used consistently throughout the Land Development Code with regard to density.

What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Knotts, 348 S.C. at 10, 558 S.E.2d at 516 (quoting Norman J. Singer,

Sutherland Statutory Construction, §46.03 at 94 (5th Ed. 1992)); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001). "The legislature's intent should be ascertained primarily from the plain language of the statute." The first question of statutory interpretation is whether the statute's meaning is clear on its face. Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citing Kennedy v. South Carolina Ret. Sys., 345 S.C. 339, 549 S.E.2d 243 (2001)). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and a judicial body will not impose another meaning. Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001) (citing Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)).

The Planning Director's interpretation in the instant project is a forced construction that eliminates the density provision thereby expanding the applicability of the ordinance by opening up density with no bounds something novel and at odds with the intent and zoning provisions of the Land Development Code. The courts have opined and ruled, "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (citing Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). Statutory terms must be construed in context and their meaning determined by looking at the other terms used in the statute." Morgan, 352 S.C. at 366, 574 S.E.2d at 206 (Ct. App. 2002) (citing Southern Mut. Church Ins. Co. v. South Carolina Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 412 S.E.2d 377 (1991)). Under the plain meaning rule, it is not the interpreter's place to change the meaning of a clear and unambiguous statute. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005) (citing Hodges, 341 S.C. 79, 533 S.E.2d

578; Bayle, 344 S.C. at 122, 542 S.E.2d at 739). When the terms of a statute are clear, the administrators must apply those terms according to their literal meaning and there is no room for construction. Georgia-Carolina Bail Bonds, 354 S.C. at 24, 579 S.E.2d at 337 (citing Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002); Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999); see also Parsons v. Georgetown Steel, 318 S.C. 63, 65, 456 S.E.2d 366, 367 (1995).

The Planning Director bases her decision to eliminate density and lot width standards on one provision, Paragraph (h)(2) of the Requirements section of the Green Code that states "Lot Area: No minimum." The Green Code actually calls for reporting lot width minimums applicable to the project and it includes a specific density provision that refers to other provisions of the code for as to the required density. It uses the term, "however" which clearly indicates the intention that such provisions apply while noting that a bonus density is available with a specified set aside.

The courts have consistently stated that all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002); State v. Hudson, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). In construing a statute, a court looks to the language as a whole in light of its manifest

purpose. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). The real purpose and intent of the lawmakers will prevail over the literal import of the words. Id. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Id. (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). An interpretation that one requirements provision that relates to a negative imposition and by doing so negates density for the entire Green Code in the face of specific density requirements and other "standards' provisions along with a land development code that bases compatibility functions on density is plainly absurd. A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. Id. The language must also be read in a sense which "harmonizes with its subject matter and accords with its general purpose." Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (citing Hitachi Data Sys. Corp., 309 S.C. at 178, 420 S.E.2d at 846). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (citing Tillotson v. Keith Smith Builders, 357 S.C. 554, 593 S.E.2d 621 (Ct. App. 2004); Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992)). Reading no minimum lot size in the requirements section as a provision to ensure all eligible zoning districts can benefit from the bonus provisions and be eligible as a Green Code project fits this effect.

The minimum lot width, as mentioned above is a "standard" that is recognized in Section 26-186(f) and required in the project's concept plan. The term "minimum" is used in the provision and denotes a plain meaning that there is a "standard" involved. No minimum lot width is enforced in this project. The "no minimum lot size" language does not necessarily mean no lot width standard is applicable. See Sections 26-93 and 26-94 in this regard. If the language that the standards of the Green Code "found within this section" may be used in lieu of the standards for the applicable zoning district is what the Planning Director depends on, then it is noted that the Green Code does not have a no minimum lot width standard, just a provision that it must be reported in the concept plan. The language is clear in this regard. The words "found within this section" in Section 26-186(b) further clarifies that the "standards" of Subsection 26-186(i) are the standards found within the Green Code in the lot area/density standards that may vary with their bonus from the density standards found in the applicable zoning district.

Finally, within the Land Development Code Section 26-21(d)(3)b provides a statutory method of dealing with conflict or inconsistency with provisions of the chapter. It states that in the event of conflict between requirements or standards in their application to an individual use, the more restrictive provision shall apply. In the instant case if Section 26-89 and Section 26-186 are at odds with regard to the application of density standards, than the more restrictive provision, Section 26-89, must apply according to this statutory construction provision. It requires that the standards of 26-186(i) apply with regard to the application of the Green Code. It is more specific and restrictive than the language in Section 26-186(b). Accordingly, the language in Section 26-89 relating to Section 26-186(i) as an exception to density must be considered controlling and applicable. This interpretation negates any further consideration of the requirements section and its provision that the Planning Director depends on to remove any density whatsoever or other zoning district standards from applications of the Green Code.

The Planning Director's interpretation of Paragraph 26-186(h)(11) regarding pervious surfaces is forced and wrong. The provision reads as follows:

"(11) Pervious material may be used for sidewalks and driveways. The maximum impervious surface allowed is fifty percent (50%) of the developed area."

The first sentence is suggestive and, in relation to the second sentence of the paragraph, a mandatory provision, provides a mechanism for the developer to meet the fifty (50%) percent requirement for pervious surfaces in the developed area. Your Appellant asked the Planning Director to what areas of the project she thought the language in Paragraph (11) referred but she rejected the question with her statement that it did not apply because sidewalks and driveways are not pervious in this project, or words to that effect. The area concerned obviously is the area to be developed and does not include the conservation districts, primary and secondary. Most Green Codes throughout the various counties of the nation are concerned with water and its deleterious effects in developed areas. This is particularly relevant for the subject project that borders a shallow lake and is in a fragile environment. Many construction practices are required or suggested to attack erosion and the harmful effects of water flows. Best Practices include rain gardens and many limit the use of impervious surfaces, just as does the Richland County Green Code. A study done by the Corps of Engineers and this County completed in October, 2009, and entitled "Recommended Development Principles" started its report with the following sentence included in the introduction,

"While effective zoning and comprehensive planning are critical to protecting natural resources, communities also have to explore measures to minimize the impact of impervious cover, maintain natural hydrology, and preserve contiguous open space on sites where development is to occur."

The first of four basic objectives of the study was:

"1. Reduce overall site impervious cover."

The project site, the subject of this appeal, contains many slopes and hills. It currently has natural hydrology throughout. In one area where the owner cut out a dirt road, the erosion by his disturbance is such that it caused deep ruts in the road to make it impassable without four-wheel drive capability with high level clearances. Mr. Tuttle was a member of the 2009 study group and must understand the importance of an impervious requirement in a green code project. The interpretation of Paragraph (11) is clear that developed areas must have no more than fifty (50%) percent impervious surface. The suggested manner to get there is that it is permissible to use pervious sidewalks and driveways.

Your Applicant notes the Purpose section of the Land Development Code of Richland County, South Carolina, Section 26-2 (a) especially its Paragraph (5) that states as a purpose:

"(5) To regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities and other purposes;".

In this project the Planning Director abandoned the density requirements of the Code and accordingly fails to follow or uphold this stated purpose of the Richland County Land Development Code.

In the Richland County Comprehensive Plan the Planning Director has disregarded all the various elements to include their goals and strategies and singularly relies on language in the Land Use Element that is neither a goal or strategy. It states in suburban areas that residential developments should occur at medium densities. This does not consider the use of Priority Investment Areas, Transportation Elements, the Community Facilities Element, or that the Future Land Use does not change zoning. The Community Facilities Element actually has a density chart that recommends density in suburban residential areas of 2.75 dwelling units per acre to obtain an adequate facilities support. The Priority Investment Areas are designed for development of higher densities and are areas that the County Council has agreed to invest in



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with better infrastructure, etc. The area of the project is not near any employment centers, is a substantial commute to employment areas, is not in a priority investment area, there is no bus service, and it is an area with established rural character developed in accordance with the preceding Comprehensive Plan. The Planning Director is tasked with ensuring compliance with the entire plan, not just an isolated section. Her reliance on one isolated section fails in this regard.

The Subdivision Submittal Checklist is not compatible with the Green Code submissions in that the Green Code has substantially more requirements for its Concept Plan and, accordingly there should be more items to check . Of the required items to be checked the list for the instant project fails to indicate that zoning is disregarded, that fees are not paid, and that street names are not included. It is unknown whether street names have been authorized.

The Owner of the property did not file an application for the project "desiring to use the development standards of this section." He instead filed on behalf of an unincorporated group that is unable to hold property in its name. The Green Code further states that the owner who applies is the one to develop the property (see Section 26-186(b)). It does not authorize the owner to file on behalf of another unincorporated party who may or may not develop the property. The language of the Green Code is plain in this regard. The application, accordingly, among the other stated reasons in this Memorandum
still is deficient on its face.

Respectfully Submitted,

Your Applicant, Samuel T. Brick, and on behalf of Your Applicant, Monika Iskersky.

Photo Credit: Cheryl Johnson

# RECOMMENDED DEVELOPMENT PRINCIPLES

## for Richland County, South Carolina

## Consensus of the Site Planning Roundtable

FUNDED IN PART BY:
Richland County, SC
U.S. Army Corps of Engineers, Charleston District

DEVELOPED IN COORDINATION WITH:
Center for Watershed Protection, Inc.
Home Builders Association of Greater Columbia
Richland County, SC

October 2009

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## Purpose

This document presents specific recommendations for fostering more environmentally-sensitive site development in Richland County. These recommendations were crafted by a diverse cross-section of local developers, local government, homebuilders, environmental, and other community professionals that participated in the Richland County Site Planning Roundtable.

## Introduction and Background

Recent projections indicate that the developed area in the US will increase by 22 million hectares from 2003 – 2030 with the greatest increase projected to occur in the Southeast and South Central regions of the US (White et al., 2009). Development has historically led to degradation in water quality and biological integrity (NRCS, 2001). The impacts of urbanization on the water quality, biology and physical conditions of aquatic systems are well documented (CWP, 2003). As such, local codes and ordinances that enable the reduced impact of development on local water resources are critical to future sustainability.

Protecting water resources and the character of the local landscape, while allowing growth and promoting redevelopment, requires local governments, developers and site designers to fundamentally change current development practices. Deciding where to allow or encourage development and protect natural resources is a difficult issue that jurisdictions have to balance. While effective zoning and comprehensive planning are critical to protecting natural resources, communities also have to explore measures to minimize the impact of impervious cover, maintain natural hydrology, and preserve contiguous open space on sites where development is to occur.

Toward this end, the Center for Watershed Protection, in concert with Richland County, convened a local Site Planning Roundtable in Richland County.

The Site Planning Roundtable process in Richland County was modeled after the National Site Planning Roundtable (CWP, 1998a), the 22 Better Site Design Principles (CWP, 1998b) and four basic objectives:

1. Reduce overall site impervious cover
2. Preserve and enhance existing natural resources
3. Integrate stormwater management
4. Retain a marketable product

The Better Site Design Principles act as benchmarks upon which more specific code and ordinance recommendations were adapted for Richland County. The benefits of applying these Better Site Design Principles are summarized Table 1 on the following page.

26-54(c)(3)b

[1] *The project is in compliance with the development regulations of Richland County.* If the sketch plan is approved by the development review team, the planning department shall notify the applicant and transmit the sketch plan to the planning commission for their information only. (Ord. No. 079-12HR; 12-11-12)

[2] *The project is not in compliance with the development regulations of Richland County.* The sketch plan shall be denied, and the reasons for denial shall be provided to the applicant. The sketch plan may be revised to address the reasons for denial and resubmitted. Revised sketch plans shall be administratively reviewed; provided, however, major changes that materially affect the characteristics of the sketch plan, as determined by the Planning Director, may require an additional DRT review. (Ord. No. 079-12HR; 12-11-12)

The decision of the DRT will be posted on the first day of the month outside of the Planning Department Office, on the bulletin board located in the lobby of the County Administration Building, and on the County website. Appeals must be filed to the Planning Commission within fifteen (15) days of the posting. (Ord. No. 079-12HR; 12-11-12)

3. *Variances.* Requests for variances, unless otherwise specified, shall be heard by the board of zoning appeals under the procedures set forth in Section 26-57 of this chapter.

4. *Appeals.*

[a] Appeals shall be made to the Richland County Planning Commission, subject to the procedures set forth in Sec. 26-58 and the payment of fees as established by Richland County Council. (Ord. No. 079-12HR; 12-11-12)

[b] Pursuant to the requirements of Section 6-29-1150 (c) of the South Carolina Code of Laws, any person who may have a substantial interest in the decision of the planning commission may appeal such decision to the



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circuit court, provided that a proper petition is filed with the Richland County Clerk of Court within thirty (30) days after receipt of the written notice of the decision by the applicant. An appeal shall cease all staff review regarding the subject property. However, a reconsideration request may be heard at the same time as an appeal is pending. Since an appeal to the circuit court must be based on the factual record generated during the subdivision review process, it is the applicant's responsibility to present whatever factual evidence is deemed necessary to support his/her position. In the alternative, also within thirty (30) days, a property owner whose land is the subject of a decision by the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1150 and Section 6-29-1155 of the South Carolina Code of Laws. (Ord. No. 079-12HR; 12-11-12)

5. *Approval validity.* In accordance with Section 6-29-1510, et seq. of the South Carolina Code of Laws 1976, as amended, upon written notice of sketch plan approval for a subdivision phase, the applicant shall have a two (2) year vested right to proceed with the development of the approved subdivision phase under the requirements of Article V (Zoning Districts and District Standards) of this Chapter, which are in effect on the date of sketch plan approval. Failure to submit an application for preliminary plan approval within this two (2) year period shall render the sketch plan approval void. However, the applicant may request a one (1) year extension of this time period no later than thirty (30) days and no earlier than sixty (60) days prior to the expiration of the sketch plan approval. The request for an extension must be approved unless otherwise prohibited by an intervening amendment to this chapter, such amendment having become effective prior to the expiration of the approval. Likewise, and in the same manner, the applicant may apply for four (4) more one (1) year extensions. Any change from the approved sketch plan that has not first been reviewed and approved by the planning department shall render the sketch plan approval invalid. (Ord. No. 075-05HR; 10-18-05) (Ord. No. 079-12HR; 12-11-12)

c. *Preliminary (construction drawings) subdivision plan review and approval.* (Ord. No. 079-12HR; 12-11-12)



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**Sec. 26-58. Appeals of administrative decisions.**

(a) *Purpose.* The board of zoning appeals shall hear and decide appeals when it is alleged that there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter. Provided, however, the planning commission shall hear and decide appeals from staff decisions on land development permit applications and subdivision applications.

(b) *Appeal submittal.*

(1) *Application.* An appeal of an administrative decision may be taken by any person who may have a substantial interest in the decision; provided, however, appeals pursuant to Section 26-54(c)(3)d.1. or Section 26-54(c)(3)e.6. above may only be taken by the applicant, a contiguous landowner, or an adjacent landowner. All appeals must be filed with the planning department on a form provided by the department, and must contain all information and plans as required on the application form. Such appeal must include the specific section of this chapter (or the specific design detail) from which the appeal is taken and the basis or reason for the appeal. All appeals must be filed no later than thirty (30) days after the order, requirement, decision, or determination that is alleged to be in error is made. (Ord. 059-12HR; 10-16-12)

(2) *Fees.* An application fee, as established by the Richland County Council, shall be submitted with the application.

(3) *Stay of proceedings pending appeal.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken, certifies to the board of zoning appeals or planning commission, as applicable, after notice of appeal is filed with them, that by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed other than by a restraining order that may be granted by the board or commission or by a court of competent jurisdiction on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(c) *Staff review.* Once an appeal is received by the planning department, the matter will be scheduled for consideration at a public hearing by the board of zoning appeals or planning commission, as applicable. The schedule for meetings of these boards shall be maintained in the planning department. Staff shall prepare a report detailing the regulations and interpretation behind the matter being appealed.

(d) *Public notification.* Notice of the public hearing on the appeal shall be published at least fifteen (15) days prior to the public hearing in a newspaper of general circulation in the county, as well as due notice given to the parties in interest.

(e) *Formal review.* Upon receiving the application, the board of zoning appeals or planning commission (as applicable) shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent. After conducting the public hearing, the board of zoning appeals or planning commission (as applicable) shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision, or determination in question. These boards shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit. These boards in the execution of the duties specified herein may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction. The decision of these boards must be in writing and permanently filed in the planning department as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of these boards, which must be delivered to parties of interest by certified mail.

(f) *Appeals*: A person who may have a substantial interest in the decision of the board of zoning appeals or planning commission (as applicable) regarding an appeal of an administrative decision, may appeal from such decision of the board or commission to the circuit court, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the decision of the board or commission is mailed. In the alternative, also within thirty (30) days, a property owner whose land is the subject of a decision by the board or commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1150 and Section 6-29-1155 of the South Carolina Code of Laws. All appeals must be taken in accordance with all applicable laws of the State of South Carolina.

## ARTICLE V. ZONING DISTRICTS AND DISTRICT STANDARDS

**Sec. 26-81. Purpose.**

For the purpose of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity and general welfare of Richland County, Richland County is hereby divided into districts as enumerated in this article.

**Sec. 26-82. Official zoning map.**

(a) *Official map.* The boundaries of the zoning districts established by this article shall be shown on a series of maps entitled, "Zoning Map of Unincorporated Richland County, South Carolina".

(b) *Maintenance of official copy of zoning map.* The official copy of the zoning map shall be maintained in the office of the Richland County Planning and Development Services Department and all amendments that reflect a change in the zoning map shall be recorded upon it. The official copy of the zoning map shall be available for inspection by the general public at any time during the county's normal business operating hours.

(c) *Zoning maps other than official copy.* The planning department may distribute copies of the zoning map to the general public for reference purposes. However, the official copy of the zoning map, maintained in the office of the Richland County Planning and Development Services Department, plus official records of the clerk of council regarding actions of the county council to amend district boundaries, shall constitute the only official description of the location of zoning district boundaries.

(d) *Interpretation of zoning map.* See Section 26-21(a) of this chapter.

**Sec. 26-83. Establishment of zoning districts.**

(a) *General.* Within the unincorporated areas of Richland County there are four (4) types of zoning districts: general use districts, planned development districts, overlay districts, and neighborhood master plan overlay districts. The regulations of this chapter shall apply uniformly to each class or kind of structure or land located within any of the enumerated district classifications. Within the districts as established by this chapter, the requirements as set forth in these sections shall be complied with in addition to any other general or specific requirements of this chapter. (Ord. 019-08HR; 3-18-08)

(b) *General use districts.* General use districts are those in which a variety of uses are permitted. For the purpose of this chapter, the zoning jurisdiction of Richland



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County, South Carolina, is hereby divided into the following general use zoning districts:

| | |
|---|---|
| PR | Parks and Recreation District (Ord. 054-09; 11-3-09) |
| TROS | Traditional Recreation Open Space District (Ord. 043–07HR; 5-1-07) |
| RU | Rural District |
| RR | Rural Residential District |
| RS-E | Residential, Single-Family – Estate District |
| RS-LD | Residential, Single-Family - Low Density District |
| RS-MD | Residential, Single-Family - Medium Density District |
| RS-HD | Residential, Single-Family - High Density District |
| MH | Manufactured Home District |
| RM-MD | Residential, Multi-Family - Medium Density District |
| RM-HD | Residential, Multi-Family - High Density District |
| OI | Office and Institutional District |
| NC | Neighborhood Commercial District |
| RC | Rural Commercial District |
| GC | General Commercial District |
| M-1 | Light Industrial District |
| LI | Light Industrial District |
| HI | Heavy Industrial District |

(c) *Planned development districts.* A planned development district is a zoning designation of a lot or tract of land that permits development as is specifically depicted on plans approved in the process of zoning such lot or tract of land. For the purpose of this chapter, the following planned development districts are available for tracts meeting the specified requirements in the zoning jurisdiction of Richland County, South Carolina:

| | |
|---|---|
| PDD | Planned Development District |
| TC | Town and Country District |

(d) *Overlay districts.* Overlay districts are zoning districts that overlap one or more general use districts. Overlay districts involve additional regulations on some or all of the property within the underlying general use districts. For the purpose of this chapter the following overlay districts are established in the zoning jurisdiction of Richland County, South Carolina:

| | |
|---|---|
| AP | Airport Height Restrictive Overlay District |
| C | Conservation Overlay District |
| FP | Floodplain Overlay District |
| RD | Redevelopment Overlay District |
| EP | Environmental Protection Overlay District (Ord. 006-10HR; 1-19-10) |

(e) *Neighborhood Master Plan districts.* Neighborhood Master Plan districts are general use or overlay zoning districts that are intended to promote the revitalization of



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existing blighted commercial and residential areas, while encouraging reinvestment in and reuse of areas in the manner consistent with the specific master planning area and Comprehensive Plan for Richland County. Revitalization initiates housing and economic opportunities, which promotes socially vibrant centers of community life through the coordinated efforts of public, private, and community organizations. For the purpose of this chapter, the following neighborhood Master Plan districts and Master Plan overlay districts are established in the zoning jurisdiction of Richland County, South Carolina: (Ord. 018-10HR; 4-20-10)

| | |
|---|---|
| CRD | Corridor Redevelopment Overlay District (Ord. 019-08HR; 3-18-08) |
| DBWP | Decker Boulevard/Woodfield Park Neighborhood Redevelopment Overlay District (Ord. 005-09HR; 2-17-09) |
| CC | Crane Creek Neighborhood District, which includes: (Ord. 018-10HR; 5-4-10) |
| | CC-1 Residential (Ord. 018-10HR; 5-4-10) |
| | CC-2 Neighborhood Mixed Use (Ord. 018-10HR; 5-4-10) |
| | CC-3 Activity Center Mixed Use (Ord. 018-10HR; 5-4-10) |
| | CC-4 Industrial (Ord. 018-10HR; 5-4-10) |

**Sec. 26-93. RM-MD Residential, Multi-Family - Medium Density District.**

(a) *Purpose.* The RM-MD District is intended to permit a full range of low to medium density multi-family housing types, along with single-family detached and zero lot line housing units. Non-residential development that is normally required to provide for the basic elements of a balanced and attractive residential area is also permitted. This district is intended to provide a transitional area between high-density areas and to permit medium density multi-family development in areas where existing conditions make higher density development inappropriate.

(b) *Permitted uses, permitted uses with special requirements, and special exceptions.* See Article V., Section 26-141. Table of Permitted Uses, Permitted Uses with Special Requirements, and Special Exceptions.

(c) *Development standards.* See also Article V., Section 26-131. Table of Area, Yard, and Height Requirements.

(1) *Minimum lot area/maximum density*: Minimum lot area: no minimum lot area requirement except as determined by DHEC. Maximum density standard: no more than eight (8) units per acre. See also the special requirement provisions for single-family zero lot line dwellings at Section 26-151(c) of this chapter. (Ord. 028-09HR; 5-19-09)

(2) *Minimum lot width*: 50 feet.

(3) *Structure size standards*: None.

(4) *Setback standards*: The following minimum setbacks shall be required for principal uses in the RM-MD District:

a. Front: 25 feet.

b. Side: 7 feet.

c. Rear: 20 feet.

Where zero lot line developments are permitted, the side setback shall meet the special requirements for such developments as set forth in Section 26-151 of this chapter.

The minimum side and rear setback requirement for accessory buildings/ structures in the RM-MD District is five (5) feet.

The landscape and bufferyard standards of Section 26-176 of this chapter may require additional setback distances; if so, the most restrictive requirements shall apply.

(5) *Height standards*: The maximum height of structures in the RM-MD District shall be 45 feet.

(6) *Landscaping/bufferyard standards*: Landscaping and bufferyards shall be provided in accordance with Section 26-176 of this chapter.

(7) *Parking/loading standards*: Parking and loading facilities shall be provided as required by Section 26-173 and Section 26-174 of this chapter. No parking lots shall be permitted within any required setback.

(8) *Sidewalk and pedestrian amenities*: Sidewalks and other pedestrian amenities shall be provided as required by Section 26-179 of this chapter.

(9) *Signs*: Signs shall be regulated by the requirements of Section 26-180 of this chapter.

(10) *Recreation/open space standards:* Open space may be provided for new developments and expansions of existing developments in accordance with the Green Code standards of Section 26-186 of this chapter. (Ord. 027-09HR; 5-19-09)

(11) *Design and operation standards*: None.

**Sec. 26-94. RM-HD Residential, Multi-Family - High Density District.**

(a) *Purpose*. The RM-HD District is established to provide for high-density residential development in Richland County, allowing compact development consisting of the full spectrum of residential unit types where adequate public facilities are available. This district is intended to allow a mix of residential unit types to provide a balance of housing opportunities while maintaining neighborhood compatibility. This district may serve as a transitional district between lower density residential and low intensity commercial uses.

(b) *Permitted uses, permitted uses with special requirements, and special exceptions*. See Article V., Section 26-141. Table of Permitted Uses, Permitted Uses with Special Requirements, and Special Exceptions.

(c) *Development standards*. See also Section 26-131. Table of Area, Yard, and Height Requirements and Section 26-151(c) and Section 26-152(d) for standards for high-rise buildings. (Ord. 028-09HR; 5-19-09)

(1) *Minimum lot area/maximum density*. Minimum lot area: no minimum lot area requirement except as required by DHEC. Maximum density standard: no more than sixteen (16) units per acre. See also the special requirement provisions for single-family zero lot line dwellings at Section 26-151(c) of this chapter. (Ord. 028-09HR; 5-19-09)

(2) *Minimum lot width*: 50 feet.

(3) *Structure size standards*: None.

(4) *Setback standards*: The following minimum setbacks shall be required for principal uses in the RM-HD District:

a. Front: 25 feet.

b. Side: 7 feet.

c. Rear: 20 feet.

Where zero lot line developments are permitted, the side setback shall meet the special requirements for such developments as set forth in Section 26-151 of this chapter.

The minimum side and rear setback requirement for accessory buildings or structures in the RM-HD District is five (5) feet.

The landscape and bufferyard standards of Section 26-176 of this chapter may require additional setback distances; if so, the most restrictive requirements shall apply.

(5) *Height standards*: The maximum height of structures in the RM-HD District shall be three (3) stories or forty-five (45) feet, whichever is taller. However, high rise structures may be permitted as a permitted use subject to special requirements (4-5 stories) or as a special exception (6 or more stories), as set forth in Section 26-151(c) and Section 26-152(d) of this chapter. (Ord. 028-09HR; 5-19-09)

(6) *Landscaping/bufferyard standards*: Landscaping and bufferyards shall be provided in accordance with Section 26-176 of this chapter.

(7) *Parking/loading standards*: Parking and loading facilities shall be provided as required by Section 26-173 and Section 26-174 of this chapter. No parking lots shall be permitted within any required setback.

(8) *Sidewalk and pedestrian amenities*: Sidewalks and other pedestrian amenities shall be provided as required by Section 26-179 of this chapter.

(9) *Signs*: Signs shall be regulated by the requirements of Section 26-180 of this chapter.

(10) *Recreation/open space standards:* Open space may be provided for new developments and expansions of existing developments in accordance with the Green Code standards of Section 26-186 of this chapter. (Ord. 027-09HR; 5-19-09)

(11) *Design and operation standards*: None.

ARTICLE VII. GENERAL DEVELOPMENT, SITE, AND PERFORMANCE STANDARDS

**Sec. 26-171. General.** (Ord. 019-09HR; 3-17-09)

(a) *Purpose*. This article sets forth standards for land development in the unincorporated areas of Richland County, South Carolina, concerning a variety of different development issues. These standards are designed to ensure the compatibility of development within the county and to implement the policies found in the county's comprehensive plan. The applicability of the standards set forth in this article may vary based on the use, location, and zoning district (as set forth in this chapter). The criteria set forth in this article, as with all other requirements, must be satisfied before an application for development will be approved.

(b) *Buffers*. All required and/or approved buffers, provided from existing vegetation and/or an approved landscape plan, for a project, shall not be disturbed, and trees and shrubs shall be preserved by the owner.

(c) *Common areas and open space*. All required and/or approved common areas, open space, recreation areas, and planted and/or vegetative areas shall be preserved as such and shall not change to another use unless plans are submitted to and approved by the Development Review Team.

(d) *Utilities*. Prior to the installation of utility lines and related appurtenances, unless within the approved limits of clearing and noted on approved plans, the utility provider shall submit plans to the planning department and a land disturbance permit and land development permit issued pursuant to the requirements of Sections 26-53, 26-54 and 26-64 (a).

**Sec. 26-172. Density and dimensional standards.**

(a) *Number of principal buildings per lot.*

(1) *General.* The number of principal buildings allowed on an individual lot is limited as set forth in Article V. of this chapter.

(2) *Single-family dwellings.* There shall be no more than one single-family dwelling on an individual lot in a single-family residential zoning district except for permitted accessory dwellings.

(b) *Required setbacks; allowable encroachment into required setbacks.*

(1) *General.* No building, structure, or land shall be used or occupied and no building structure or part thereof shall be erected, constructed, reconstructed, moved, or altered unless it meets the minimum setback requirements established in Article V. for the use or overlay district in which it is located, except as otherwise established in this chapter.

### Sec. 2-215. Staff; personnel.

The staff and personnel assigned to the Tax Assessor shall be subject to the county personnel system and their compensation determined accordingly.

(Ord. No. 061-12HR, § IV, 11-13-12)

## DIVISION 4. PLANNING AND DEVELOPMENT SERVICES

**Editor's note**--The editor has treated Ord. No. 1627-87, which reorganized the zoning department, as amendatory of Div. 4.

**Cross reference(s)**--Licenses, Ch. 16; planning, Ch. 20; land development, Ch. 26.

### Sec. 2-216. Creation; director.

There is hereby created the Planning and Development Services Department, and the position of Planning Director, who shall be responsible to the county administrator to direct and coordinate the operations and activities of the department. The county administrator shall appoint the director and his/her term of office shall be at the pleasure of the county administrator.

(Ord. No. 1627-87, § 2, 6-16-87; Ord. No. 045-01HR, § I, 7-10-01; Ord. No. 051-05HR, § I, 7-12-05; Ord. No. 016-08HR, § I, 3-4-08)

### Sec. 2-217. Qualifications of director; selection; compensation.

The Planning Director shall be a graduate of an accredited college or university, preferably with a degree in planning, engineering, architecture or related field; and shall have had at least five (5) years of responsible, practical experience in urban planning and/or in a municipal or county regulatory agency. The director shall possess education, training and experience related to planning and/or code enforcement that is satisfactory to the county administrator.

(Ord. No. 045-01HR,§ I, 7-10-01; Ord. No. 051-05HR, § I, 7-12-05; Ord. No. 016-08HR, § I, 3-4-08)

### Sec. 2-218. Responsibilities; powers; duties.

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The Planning Director shall direct and supervise all functions of the department, including the permitting and enforcement provisions of the county's zoning and land development regulations. The director shall adhere to the county's comprehensive plan and shall work closely with the county officials responsible for planning and code enforcement activities. The director shall be responsible for establishing liaisons and/or working relationships with all private and public agencies engaged in economic and/or industrial development. The director shall recommend amendments to the comprehensive plan and to the county's zoning and land development regulations, and shall present such recommendations to the Planning Commission and/or County Council.

(Ord. No. 045-01HR, § I, 7-10-01; Ord. No. 051-05HR, § I, 7-12-05; Ord. No. 016-08HR, § I, 3-4-08)

**Sec. 2-219. Staff; personnel.**

The staff and personnel assigned to the Planning Director shall be subject to the county personnel system and their compensation determined accordingly.

(Ord. No. 045-01HR, § I, 7-10-01; Ord. No. 051-05HR, § I, 7-12-05; Ord. No. 016-08HR, § , 3-4-08)

**Secs. 2-220--2-221. Reserved.**

## DIVISION 4A. BUILDING CODES AND INSPECTIONS

**Sec. 2-222. Creation; director.**

There is hereby created the Building Codes and Inspections Department, and the position of Building Codes and Inspections Director who shall be responsible to the county administrator to direct and coordinate the operations and activities of the department. The county administrator shall appoint the director and his/her term of office shall be at the pleasure of the county administrator.

(Ord. No. 016-08HR, § II, 3-4-08)

**Sec. 2-223. Qualifications of director; selection; compensation.**

The Building Codes and Inspections Director shall be a graduate of an

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five (5) days prior to the hearing, to be heard. Such list shall be a priority list of speakers and the speakers shall be recognized by the chairman of council in the order in which their requests were received by the clerk; provided, however, the chairman has the authority to vary the order of recognition.

(e) Citizens not included on the priority list may be allowed to speak after all scheduled speakers have been recognized.

(f) The chairman of council shall announce the public hearing, and state the rules governing such hearing. The floor shall be opened for comments from the public.

(g) A citizen addressing council should come forward to the podium facing council, and speak in an audible voice, first giving his/her name.

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(h) A citizen's comments will be limited to two (2) minutes, or in the discretion of the chair, extended beyond the two-minute limitation, depending on the length of the agenda and the number of speakers to be heard The proponents shall speak first and shall be limited to no more than one hour for their presentation. The opponents shall follow and shall be limited to no more than one hour. The time spent in answering questions from council shall not be counted against the total hour allotted. An addition of no more than thirty (30) minutes may be allowed each side for rebuttal.

(i) Each speaker is requested to sign the docket located at the clerk's desk, giving his/her name, address, and telephone number.

(j) Should written comments be distributed by the speaker to council and/or the news media, a copy shall be left at the clerk's desk.

(Code 1976, § 2-4002)

**Sec. 2-30. Reserved.**

**Sec. 2-31. Emergency ordinances.**

(a) An emergency ordinance may be enacted only to meet public emergencies affecting life, health, safety, or the property of the people. Such an ordinance may not levy taxes, grant, renew or extend a franchise nor may it impose or change a service rate.

(b) Each emergency ordinance shall contain a declaration that an emergency exists, defining the emergency, and shall be entitled an "Emergency Ordinance."

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# Appendix D

## Selected Pages of the 2009 Comprehensive Plan of Richland County

## GOALS AND IMPLEMENTATION STRATEGIES

The goals of this Element promote an atmosphere of cooperation among residents, officials and local government staff; promote orderly growth which benefits the County residents, are considerate of resources and enhance community character; promote a higher quality of life for all residents; and cooperate with adjacent jurisdictions on common issues.

**GOAL 1**
Promote a variety of housing choices accommodating increasing household numbers and types.

**Implementation Strategies**:

- Continue enabling a range of housing densities in the Land Development Code.
- Support higher residential densities in priority development areas.
- Provide residential density bonuses for conservation subdivisions.
- Continue accessory dwellings as permitted uses in most residential zoning districts.
- Promote and enable residential infill development and redevelopment and mixed use residential over retail.

**Time Frame:** Continuous

**GOAL 2**
Plan for a range of desirable urban, suburban, and rural communities with varied lifestyles and landscapes.

**Implementation Strategies**:

- On the Future Land Use Map, designate the locations of urban, suburban, rural, and conservation land use classes and priority development areas.
- Reform the zoning maps to facilitate planned future land uses.
- Develop a capital improvements program that aligns community infrastructure investments with planned future land use.

**Time Frame**: Continuous

**GOAL 3**
Encourage mixed use development and redevelopment, especially in priority investment areas.

**Implementation Strategies**:

- Create centers of community with recreational, cultural, and civic opportunities for engaged senior citizens.
- Support a variety of nearby housing choices that enable aging in place.
- Increase the proximity of residential, commercial, office, and civic land uses reducing trip distances, automobile travel, and air pollution.
- Develop a network of pedestrian, bicyclist, and traffic-calming streetscapes for active lifestyles and neighborhood interactions.
- Improve transit services for reduced automobile dependency.

**Time Frame**: Continuous



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# AVAILABILITY OF PUBLIC FACILITIES AND SERVICES

Realizing the community's vision for growth and prosperity requires adequate public facilities and services availability concurrent with new development. This section of the Element summarizes future year impacts to supporting public facilities and services based on current service delivery standards. It further identifies any potential hurdles for implementing land use patterns and intensities envisioned by the County. When appropriate, national standards or averages are provided for facilities and services, should county officials wish to compare the current level of service to these standards.

Previous sections of the Element provide more detailed analysis of existing conditions for public facilities and services provided to residents of Richland County—including available capacity and the ability of these facilities and services to support existing development patterns and intensities.

## METHODOLOGY

Impacts to supporting infrastructure generated by the land use patterns and intensities depicted in the County's Future Land Use Map were calculated using Community Viz software. This software a decision-based GIS tool considers the tradeoffs between different development scenarios and their competing impacts on infrastructure. Demand estimates for the Comprehensive Plan assume non-residential build-out of the Future Land Use Map (FLUM), and residential growth predicted through 2030. Capacity for growth was calculated using development criteria (as applicable) set forth in the compatible zoning districts assumed for each future land use category (see General Development Characteristics Matrix & Service Delivery Standards at the end of this chapter).

An internal script was run with Community Viz software removing areas deemed highly constrained for development (i.e., water bodies, permanent conservation areas, parkland, and flood zones) before performing the impact calculations. This method accurately estimates the impacts development may have on supporting infrastructure. A site efficiency factor (50%-90%) associated with each future land use category and character area (as depicted in the Land Use Element) was also applied to the parcels included in the analysis accounting for land typically dedicated to certain on-site improvements (e.g. internal streets, storm water management, open space, etc.) necessitated by new development. The remaining portion(s) of a parcel after removal of development constraints and on-site infrastructure was used estimating residential and non-residential growth potential of the County's Future Land Use Map (FLUM).

Residential impacts to infrastructure reported in the Comprehensive Plan reflect the residential household forecast for the planning horizon (2030) presented in the Population Element. However, in the absence of similar forecasts for non-residential growth, non-residential impacts to infrastructure reported in the Comprehensive Plan for full build-out of the FLUM should be considered a worst-case scenario. This scenario would very likely improve if factors for prevailing market conditions were reflected in the analysis, or if it was considered that not all non-residential development within the various land use categories would build-out using the criteria (as applicable) identified for the implementing zoning district. The methodology used for evaluating the impacts to infrastructure generated by the FLUM meets the minimum rules and requirements for preparing a municipal comprehensive plan set forth in the Section 6-29-510(D) of the Code of Laws of South Carolina.

## ANTICIPATED GROWTH AND DEVELOPMENT

The 2009 Richland County Comprehensive Plan recognizes growth will continue beyond the 22-year planning horizon assumed for the plan update. Therefore, the FLUM includes acreage for both residential and non-residential land use categories that exceeds demand forecasted for 2030. The extra acreage allows for unanticipated growth or changing market conditions to be



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General Development Characteristics Matrix & Service Delivery Standards

| FLU_CODE | FLU_CHARAC | FAR | DENSITY | SITE_EFFICIENCY | PARKING | BUILDING_HEIGHT |
|---|---|---|---|---|---|---|
| RES (Residential) | CSV (Conservation) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| RES | RUR (Rural) | 0.00 | 0.75 | 0.30 | 0.00 | 0.00 |
| RES | SUB (Suburban) | 0.00 | 2.75 | 0.50 | 0.00 | 0.00 |
| RES | URB (Urban) | 0.00 | 6.00 | 0.70 | 0.00 | 0.00 |
| [redacted] | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| [redacted] | RUR | 0.00 | 0.00 | 0.40 | 2.00 | 1.00 |
| [redacted] | SUB | 0.25 | 0.00 | 0.70 | 5.00 | 2.00 |
| [redacted] | URB | 0.50 | 0.00 | 0.80 | 5.00 | 2.00 |
| IPF (Institutional and Public Facilities) | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| IPF | RUR | 0.00 | 0.00 | 0.30 | 2.00 | 1.00 |
| IPF | SUB | 0.25 | 0.00 | 0.35 | 4.00 | 2.00 |
| IPF | URB | 0.50 | 0.00 | 0.40 | 4.00 | 2.00 |
| RU (Rural Uses) | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| RU | RUR | 0.00 | 0.00 | 0.50 | 0.00 | 0.00 |
| RU | SUB | 0.00 | 0.25 | 0.50 | 0.00 | 0.00 |
| RU | URB | 0.00 | 0.50 | 0.50 | 0.00 | 0.00 |
| [redacted] | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| [redacted] | RUR | 0.00 | 0.00 | 0.60 | 1.00 | 1.00 |
| [redacted] | SUB | 0.25 | 0.00 | 0.75 | 3.00 | 2.00 |
| [redacted] | URB | 0.50 | 0.00 | 0.80 | 3.00 | 3.00 |
| [redacted] | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| [redacted] | RUR | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| [redacted] | SUB | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| [redacted] | URB | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| WWH (Working Warehouse) | CSV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| WWH | RUR | 0.00 | 0.00 | 0.00 | 1.00 | 1.00 |
| WWH | SUB | 0.00 | 0.00 | 0.65 | 3.00 | 2.00 |
| WWH | URB | 0.00 | 0.00 | 0.70 | 3.00 | 2.00 |

**Residential density measured as number of dwelling units per gross acre; Floor to Area Ratio (FAR) measured as the amount of total gross building square footage (all floors) divided by area of the parcel in square feet; site efficiency factor represents the portion of the parcel remaining for development after removal of on-site infrastructure assumed to serve the development (e.g., internal streets, stormwater infrastructure, required open space); Average building height measured in stories, parking requirement measured as number of spaces per dwelling unit or number of spaces per 1,000 square feet of non-residential land use.*

***If a cell is coded grey, than the field value is not applicable to land use- character area combination/*

**** OS and IPF land uses do not contribute to the supply of non residential square footage or dwelling units.*

*****Government and University owned land, is included in the IPF or OS land use categories, as appropriate.*



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MISCOUNTED
VACANT

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Table 103 South East Planning Area Land Use

| | SOUTHEAST |
|---|---|
| Institutional | 1.2% |
| Residential | 26.0% |
| Agricultural | 37.3% |
| Commercial | 0.6% |
| Government | 28.6% |
| Industrial | 0.7% |
| Vacant | 3.5% |
| Recreation | 0.1% |

Source: Richland County Planning Staff (ArcGIS Data June 2008)
(*Note that these percentages are estimates. Categories may be greater or less than 100% due to unavailable or incomplete data)

### *NEIGHBORHOOD MASTER PLANS*

There are two Neighborhood Master Plans in the South East, Hopkins/29061 and Lower Richland/Garners Ferry Road, intended to guide improvements and growth and include recommendations regarding future land use for residential, commercial, open space, civic, and recreation uses as well as capital improvements that will impact safety, housing, economic development, community access and public services. The Plans outline the priority of improvements, cost estimates and timelines for implementation and completion. For more visit http://www.richlandonline.com/departments/Planning/NeighborhoodPlanningAreas.asp.

## *FUTURE LAND USE*

The Future Land Use Map (FLUM) serves as a guide for growth **and does not change the current zoning of any area**. When rezoning requests appear before the County, this Map will guide decision making and assist in determining whether the proposed rezoning is in accordance with goals for future growth. This Element provides a broad, long term view of the future of the County over the next 10 years. The policies and maps are provided as a framework for elected officials, neighborhoods, and citizens as they consider and evaluate future land use.

For residential uses, urban lands shall contain 8 or more dwelling units per acre; suburban lands shall contain 4-8 dwelling units per acre. Rural lands shall consist of 1 unit per ¾ acres.

Based on data compiled by the County GIS department, there are approximately 170,000 acres (264 square miles) of buildable land available in the County, equating to 36.6% of all County acreage (excluding water).

Table 104 Buildable Acreage

| | BUILDABLE ACREAGE | ADDITIONAL DWELLING UNITS | ADDITIONAL POPULATION* |
|---|---|---|---|
| Urban (8 du/acre) | 13,071 | 104,568 | 250,963 |
| Urban (16 du/acre) | 13,071 | 209,136 | 501,926 |
| Suburban (4 du/acre) | 33,742 | 133,888 | 321,331 |
| Suburban (8 du/acre) | 33,742 | 269,936 | 647,846 |
| Rural (33,000 sq. ft. lots) | 122,389 | 161,553 | 387,728 |

*Assuming 2.4 persons per household

Approximately 26% of the developable parcels are located in the urban and suburban areas as defined on the Future Land Use Map. Buildout of available parcels in the urban and suburban areas will accommodate a maximum of 501,926 and 647,846 additional residents, respectively. The population is anticipated growing by an additional 79,433 residents (2020), indicating that growth can be managed while simultaneously preserving rural areas. Currently Greenville and Charleston Counties have land use designations of 1 dwelling unit per 3 acres of land. This



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Housing types should be varied, at densities greater than eight dwelling units per acre. Residential areas are encouraged containing a mix of residential, commercial, and civic land uses. Multifamily may be used as a compatible high density development.

Commercial/Office activities should be located at traffic junctions or in areas with existing commercial and office uses.

Industrial activities should be compatible with the surrounding land uses. Activities producing noise, smoke, or odors should not locate adjacent to residential or commercial uses. Proposed uses should consider sites with adequate room for expansion and existing infrastructure. Sites will be considered during the rezoning process and periodically updated.

Institutional uses such as schools, libraries, government facilities, police and fire stations should be located in appropriate locations serving the community. Locations should be considered on a case by case basis.

Public facilities such as schools, libraries, and recreation centers should be located to reinforcing neighborhoods and communities.

Recreational uses including community parks, pocket parks, and community gardens should be located in appropriate locations serving the community with provisions for connectivity to the surrounding areas. The National Recreation and Park Association (NRPA) recommends 6.25 to 10.5 acres of parks open space per 1,000 people.

***Suburban Land Use***

Throughout the suburban areas infill development should be a focus in residential, commercial and industrial areas, complementing and connecting the existing sprawl pattern. Housing should be varied at 4-8 units per acre. Streets should accommodate automobiles, transit, bicycling, and walking. Principal streetscapes should have turning lanes, transit stops, bikeways, sidewalks and crosswalks, trees and other landscaping, appropriate lighting, and sign controls. Buildings should be oriented to the street, but located outside future rights-of-way. Automobile access should be managed with shared driveways, shared side streets, and interconnected parking lots. Underutilized commercial strips and big-box retail parcels can be divided and redeveloped into smaller blocks with street extensions and pedestrian-friendly designs. Existing housing should be maintained and rehabilitated with traffic calmed on residential streets. Recreational areas and open space should include regional parks, athletic fields, community parks, community gardens, and greenways along forested stream corridors. Public facilities such as schools, libraries, and recreation centers should be located reinforcing community centers. The floodplain should be buffered from development, complying with the Richland County Land Development Code and Goal 5 of the Land Use Element.

Residential areas are encouraged to contain a mix of residential and civic land uses. Existing single family developments may be adjacent to multifamily or a PDD including a buffer from higher intensity uses. Residential developments should occur at medium densities of 4-8 dwelling units per acre.

Commercial/Office activities should be located at traffic junctions or areas where existing commercial and office uses are located. These uses should not encroach on established residential areas.

Industrial activities should be compatible with the surrounding land uses and should not locate near residential or commercial uses without adequate space for buffering/setbacks. Proposed industrial uses should consider sites with adequate room for expansion, existing infrastructure,

**GOAL 5**
Protect Watersheds throughout the County.

**Implementation Strategy:**

- Collaborate with the SC Department of Health and Environmental Control (DHEC) State Laws and Regulations and create local regulations with an emphasis on improving environmental conditions.
- Create incentives for reducing impervious surface material used in construction.
- Assist existing Watershed Stewardship programs/Watershed Associations in educating and involving the public.
- Establish a Watershed Protection Overlay District limiting land use activities that increase the risk of water pollution.

**Time Frame:** 3 years.

**GOAL 6**
Increase open and green space throughout the County by creating incentives preserving land.

**Implementation Strategy:** Support green developments, the use of conservation easements and the Parks and Open Space provision as defined by the County Land Development Code.

**Time Frame:** Continuous.

**GOAL 7**
Establish and maintain Parks and Greenways.

**Implementation Strategy:**

- Establish a protected greenway corridor/trail system.
- Connect existing parks and trails.
- Construct partnerships between governmental and non-governmental agencies maintaining existing programs while developing new ones.
- Encourage private and public investment.
- Create or assist existing civic volunteer programs maintaining current Parks and Greenways.

**Time Frame:** 2 years

**GOAL 8**
Improve air quality throughout the County.

**Implementation Strategy:**

- Raise public awareness of environmentally friendly practices such as carpooling, biking to work, and public transportation.
- Encourage innovative clean air programs promoted by the Central Midlands Council of Governments, our local Clean Air advocates. Programs include staggered work hours reducing emissions during peak traffic times and/or compressed work weeks reducing the number of trips to and from work.
- Prevent sprawl which requires longer commutes affecting air quality. Create incentives for environmentally friendly land use patterns.
- Attentively monitor air quality in an effort to prevent non-attainment status.

**Time Frame:** 3 years

**GOAL 4**
Promote Compact Developments: high density compact mixed use residential developments designed to reduce the amount of infrastructure and impervious surfaces.

**Implementation Strategy**:
- Identify the locations of vacant and/or abandoned land with adequate infrastructure for potential use for Compact Development.
- Offer incentives to developers such as Incentive Zoning or Transfer of Developers Rights (TDR).

**Time Frame:** Immediate and throughout the life of this plan.

**GOAL 5**
Protect the quality of the County's waterways.

**Implementation Strategy**:
- Create incentives increasing the size of buffers surrounding waterways.
- Limit the amount of impervious surfaces surrounding waterways.

**Time Frame:** Immediate and throughout the life of this plan.

**GOAL 6**
Promote Transit Oriented Developments (TODs), moderate to high density mixed use developments centered on a major transit stop, designed for pedestrians without excluding automobiles.

**Implementation Strategy**:
- Identify potential areas for redevelopment into TODs.
- Identify potential areas based on existing mixed land uses bordering or within the existing and proposed CMRTA bus routes.
- Distribute information on TODs to developers while involving the appropriate shareholders.

**Time Frame:** Immediate and throughout the life of this plan.

**GOAL 7**
Study the land uses around Fort Jackson and McEntire limiting the encroachment of incompatible land uses.

**Implementation Strategy**:
- Adopt regulatory land use protection measures protecting these facilities from encroachment of incompatible and undesirable land uses.
- Continue active County participation in the Joint Land Use Study (JLUS) for these facilities.
- Execute agreements among the adjacent local governments implementing the JLUS recommendations.

**Time Frame:** Immediate and throughout the life of this plan.

SEC. 26-22

*Cross-access easement.* An easement wherein a grantor conveys to a grantee, his/her/its heirs, successors in interest, and/or assigns, a perpetual nonexclusive easement that may include such matters as: vehicular and pedestrian access, ingress, egress; the location and amount of parking of vehicles; and/or landscaped areas; and/or any shared maintenance responsibilities. (Ord. 014-10HR; 3-16-10)

*Cul-de-sac.* A road having one end open to traffic and the other end terminated by a vehicular turnaround; a dead-end street.

*Days.* Unless otherwise specified, days shall mean calendar days.

26-22 *Density.* The number of dwelling units per gross acre of land.

*Design capacity.* The volume of annual average daily trips (AADTs) of a given roadway segment at which traffic flows with minimal delay. The design capacity is based on the geometry of the roadway segment and its functional classification. (Ord. 038-09HR; 7-21-09)

*Designated water resource.* A perennial surface water body that normally flows or contains water throughout the year, except during extreme droughts. These water bodies typically have a defined channel or shoreline and support a diverse population of aquatic insects, including some with life cycles that require permanent water. Those water bodies with channels are able to sort and move channel materials.

*Developer.* Any person acting on his own behalf as a property owner, or as an agent for a property owner, who makes application for development plan approval as set forth in this chapter.

*Development.* Any of the following actions undertaken by a public or private individual or entity: (a) any land altering activities associated with the division of a lot, tract, or parcel of land into two (2) or more lots, plots, sites, tracts, parcels, or other divisions by plan or deed; or (b) any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, clearing, mining, dredging, filling, grading, paving, berming, diking, excavation or drilling operations, or storage of equipment or materials.

*DHEC.* The South Carolina Department of Health and Environmental Control.

*Diameter at breast height (DBH).* The standard measure of tree diameter for trees existing on a site by measuring a tree trunk at a height of four and one-half (4½) feet above the ground and by measuring a tree split into multiple trunks below four and one-half (4½) feet at its most narrow point beneath the split. (Ord. 055-12HR; 10-16-12)

*Dormitory.* A building or part of a building operated by an academic institution containing rooms forming one (1) or more habitable units that are used or intended to be used by enrollees or employees of the institution for living and sleeping, but are not fully self-contained residential facilities. (Ord. 057-10HR; 9-21-10)

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

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SC Court of Appeals

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**APPEAL FROM RICHLAND COUNTY**
Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2013-CP-400-1643

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**Appellate Case No. 2014-000583**

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Samuel T. Brick, Appellant,

v.

Richland County Planning Commission and Fairways Development, LLC, Intervenor, Respondents

**PROOF OF SERVICE**

**AND**
**CERTIFICATE OF COUNSEL**

***Proof of Service***: Appellant Samuel T. Brick hereby certifies that on this 19 day of December, 2014, under the provisions of Rule 210, SCACR, he delivered a copy of the Amended Record on Appeal and this Proof of Service and Certificate of Counsel to the law offices of Davidson & Lindemann, P.A. for Andrew F. Lindemann and Michael B. Wren, as attorneys for Respondent Richland County Planning Commission, at 1116 Devonshire Drive, Columbia, South Carolina, and to the law offices of Tobias G. Ward, Jr. and J. Derrick Jackson, at Suite 3, 6 Calendar Court, Columbia, South Carolina. A copy of the forwarding correspondence in attached hereto.

***Certificate of Counsel***: In accordance with Rule 210 (g), SCACR, and the Order of the Honorable Paul E. Short, Jr., The South Carolina Court of Appeals, of December 4, 2014, Appellant Samuel T. Brick, *pro se*, certifies that the Amended Record on Appeal contains all

material proposed to be included by any of the parties and not any other material.

Samuel T. Brick, Appellant, Pro se
124 Runneymede Drive
Blythewood, South Carolina 29016
(803) 546-4895
sbrick2011@gmail.com

December 19, 2014

Columbia, South Carolina

Signature of Receiving Person at Law Offices of Davidson & Lindemann, P.A.

12/19/14
Date

Signature of Receiving Person at Law Offices Of Tobias G. Ward, Jr. and J. Derrick Jackson

12-19-14
Date

**Record of DRT Meeting**

**November 29, 2012**

**Written Minutes not kept**

# Computer Disc Attached

A-3