

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2017-000170

RECEIVED
JUN 12 2017
SC Court of Appeals

Citizens for Quality Rural Living, Inc.

Appellant,

v.

Greenville County Planning Commission,
and RMDC, Inc.

Respondents.

RECORD ON APPEAL

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2305425**

**Citizens For Quality Rural
Living Inc**

**Planning Commission RMDC Inc
Greenville County**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ 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: **Court grants Respondent's Motion To Dismiss due to Appellant's lack of standing in this matter:**

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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

2162

Judge Code

12/7/2016

Date

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

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

Barbara Faith Martzin B. Faith Martzin, PC 33 Market
Point Drive Greenville, SC 29607

H. Dean Campbell Deputy County Attorney 301 University
Ridge, Suite 2400 Greenville, SC 29601
William A. Coates PO Box 10529 Greenville, SC 29603
Jeffrey D. Wile 301 University Ridge Ste. 2400 Greenville,
SC 29601-3681

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: Citizens For Quality Rural Living Inc VS Planning Commission
Greenville County , defendant, et al
Case Number: 2016CP2305425
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-12-07 15:58:18 page 3 of 3

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2305425**

**Citizens For Quality Rural
Living Inc**

**Planning Commission RMDC Inc
Greenville County**

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Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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☐ 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: After careful review of the documents submitted, Court denies Appellant's Motion To Alter Or Amend Judgment And/Or Motion For Reconsideration

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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.

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If applicable, describe the property, including tax map information and address, referenced in the order:

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Circuit Court Judge

2162

Judge Code

12/30/2016

Date

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

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

Barbara Faith Martzin B. Faith Martzin, PC 33 Market
Point Drive Greenville, SC 29607

H. Dean Campbell Deputy County Attorney 301 University
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William A. Coates PO Box 10529 Greenville, SC 29603
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ATTORNEY(S) FOR THE PLAINTIFF(S)

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Greenville Common Pleas

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Greenville County , defendant, et al
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So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-12-30 12:51:20 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Citizens for Quality Rural Living, Inc.,
Appellant/Petitioner,

v.

Greenville County Planning Commission,
and RMDC, Inc.,
Respondents/Defendants

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-23-4248

SUMMONS

TO THE RESPONDENTS/DEFENDANTS ABOVE NAMED:

WITHIN 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an Answer to the attached Notice of Appeal and Appeal. The answer must be served on the plaintiff's attorney, B. Faith Martzin, whose address is 33 Market Point Drive, Greenville, South Carolina 29615. If you fail to do so, a judgment by default will be requested against you for the relief demanded in the Appeal. You must also file your answer or motion with the Court.

s/ B. Faith Martzin

Barbara Faith Martzin, Esq.
S. C. Bar Number 011817
B. Faith Martzin, PC
33 Market Point Drive
Greenville, SC 29607
864/551-2604

Greenville, South Carolina

Dated: September 19, 2016

NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM GREENVILLE COUNTY PLANNING COMMISSION

Milton Shockley, Jr., Chairman

Subdivision Application 2016-194

Citizens for Quality Rural
Living, Inc.,

Appellants,

v.

Greenville County Planning
Commission, and RMDC,
Inc.

Respondents.

NOTICE OF APPEAL

Citizens for Quality Rural Living, Inc., appeal Greenville County Planning Commission's approval of the Copperleaf Subdivision preliminary subdivision, assigned number 2016-194, by oral vote on August 24, 2016, and noted by letter of the Greenville County Subdivision Administrator dated August 29, 2016.

September 19, 2016

s/B. Faith Martzin
Barbara Faith Martzin
33 Market Point Dr
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(864) 551-2604
Email: fmartzin@martzinlaw.com
Attorney for Appellants

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Citizens for Quality Rural Living, Inc.,
Appellant/Plaintiff,

vs.

Greenville County Planning Commission,
RMDC, Inc.,
Respondents/Defendants

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-23-_____

**APPEAL AND REQUEST
FOR DECLARATORY RELIEF**

Appellant/Plaintiff, complaining of Defendant Greenville County Planning Commission, and appealing its decision to approve the proposal of Defendant RMDC, Inc., a subdivision proposal entitled "Copperleaf Subdivision," assigned Greenville County Planning Docket number 2016-194, would respectfully show unto the Court as follows:

PARTIES and JURISDICTION

1. Appellant Citizens for Quality Rural Living, Inc., is a not for profit community entity incorporated in South Carolina whose members are residents of the County of Greenville owning property in the vicinity of the subdivision approved and are impacted by the decision of the Greenville County Planning Commission, some of whom are owners of farms or property in the immediate vicinity of the subdivision proposed in this matter, namely South Shirley Road, Woodside Road and McKelvey Road.

2. Respondent Greenville County Planning Commission ("Planning Commission") is an appointed local planning commission as defined in Section 6-29-310, et. seq., South Carolina Code of Laws, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created pursuant to that legislation.

3. Respondent RMDC, Inc., is, upon information and belief, a Florida corporation, and is named on the subdivision plat as the Developer, and is a necessary party to this action.

4. The subdivision which is the subject of this appeal covers approximately 82.17 acres in Greenville County, in an area that is unzoned but included in the Future Land Use Map and the Greenville County Comprehensive Plan.

5. This Court has personal jurisdiction over the parties due to their location or activities in Greenville County.

6. Venue is proper in this Court since the real property subject involved is situate within Greenville County, the Planning Commission is an arm of county Government of Greenville County, and the Appellant/Plaintiff is duly incorporated in South Carolina and represents residents and property owners in Greenville County.

7. This Court has subject matter of this action pursuant to South Carolina Code of Laws, Section 6-29-1150, 1976, as amended, and Greenville County Land Development Regulations, Article 1, Section 1.5 (2008).

STATEMENT OF FACTS

8. RMDC, Inc. applied for preliminary approval of its plan to develop "Copperleaf Subdivision," a high density subdivision in a rural section of the County of Greenville adjoining Woodside Road, South Shirley Road and McKelvey Road.

9. This subdivision has come before the Planning Commission four times, specifically on November 18, 2015, March 23, 2016, May 25, 2016, and most recently on August 24, 2016.

10. Many members of the community were in attendance at each meeting in opposition to the subdivision, and spoke against the subdivision for reasons including largely inconsistency with the Comprehensive Land Use Plan, incompatibility with the surrounding community, and public health and safety due to the roads in the area and environmental concerns.

11. In November 2015, the Planning Commission denied the application because the "development was not consistent with Future Land Use Plan for the area." No additional reason was given. (Letter of Greenville County Subdivision Administrator dated November 19, 2015.) The subdivision proposal at that time included 100 lots.

12. In March 2016, the Planning Commission denied the application because of (1) "Lack of second entrance," and (2) "Density as proposed by the Comprehensive Plan." No additional reason was given. (Letter of Greenville County Community Subdivision

Administrator dated March 24, 2016.) The revised subdivision proposal acted upon that month included 80 lots, which was reduced by 20 lots from the previous proposal.

13. In May 2016, the Planning Commission denied without explanation. (Letter of Greenville County Subdivision Administrator dated May 27, 2016.) However, the hearing testimony and discussion among the Commissioners included the Greenville County Comprehensive Land Use Plan, the Land Development Regulations and a statement from a Commissioner that "I think this commission does have the discretion to take action which it feels like is in the best interest of the community at large based on this broad grant of authority from County Council, which is binding authority, binding law. If this county chooses to do so, it can determine that the subdivision is not in the best interest of this community." The revised subdivision proposal in May again included 80 lots, the same number as the previous proposal.

14. In August 2016, yet another revised subdivision plat (subdivision file number 2016-194) was submitted which increased the proposed lots to 95 from the previous 80 lots; the Planning Commission approved the subdivision. (Letter of Greenville County Subdivision Administrator dated August 29, 2016.) At least two Commission members, including the Member who moved approval, expressed dismay that they believed they were technically bound to approve the subdivision and they were bound to follow the staff recommendation because they believed the Commission had no legal authority by which to deny the subdivision approval, despite expressing the a strong disapproval for what they saw in the proposal. The motion was approved by voice vote. The approval was noted in a letter from the Planning Department Subdivision Administrator dated August 29, 2016.

15. At the August meeting, the subdivision engineer, the Planning Department staff and members of the public addressed the Commission, as may be more fully described throughout this pleading.

STANDARD OF REVIEW

16. The Court may apply the same standard to appeal of Planning Commission decisions that it would apply to Zoning Board decisions. "A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused

its discretion.” *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standards to a Planning Commission decision). Further, “a decision of a municipal [Z]oning Board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

17. Although a review Court gives deference to those applying local zoning ordinances, ordinances are subject to “a broader and more independent review . . . when the issue concerns the construction of an ordinance.” *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 568 666 S.E.2d 892 894 (2008), cited in *Mikell v. County of Charleston*, 386 S.E.2d 326, 687 S.E.2d 326, 329 ((2009).

GROUND FOR APPEAL

I. Error of Law

18. The Appellant/Plaintiff, complaining of the Respondents/Defendants, reiterates all of the allegations set forth above as if fully repeated herein.
19. The decision of the Planning Commission was based on an error of law, in that at least two members of the Commission expressly stated that although they did not want to approve the subdivision, they believed they had no legal basis on which they could deny the plan because the applicant had met all the technical requisites required by the Planning Department staff. (Applicant admitted at the Planning Commission meeting that it has not met the Comprehensive Plan lot size requirement.)
20. Contrary to the mistaken belief of the Commission, the Commission does have authority to deny plans that they believe do not meet the best interests of the community.
21. **The Comprehensive Land Use Plan.** The Commission has authority to deny plans under the Comprehensive Land Use Plan.
 - a. The Greenville County Comprehensive Land Use Plan, adopted by Ordinance No. 4333 of Greenville County Council on December 1, 2009, creatively entitled “Imagine Greenville County Tomorrow’s Vision

Today,” was reviewed and underwent a five year update. The Plans are mandated by South Carolina Code of Laws Section 6-29-510, et. seq. and provides that within the Plan, “All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.” S. C. Code Section 6-29-510(E).

- b. Both the original plan and the update contain a Future Land Use Map which designates the area south of Highway 418 in Greenville County as Rural Land Use 1 or Rural Land Use 2. Rural Land Use 2 provides for an “Ideal density of up to 1 [housing] unit per 3 acres.”
- c. All of the area concerned with this appeal is south of Highway 418 and lies within the Rural Land Use designations.
- d. Thus, the Planning Division as the author of this Plan, recommended to Council that the Rural Land Use designation for this area is “the best location and intensity of uses based on information from the needs and barriers identified in the other elements of the Comprehensive Plan.” Indeed, the Plan describes the Future Land Use map as the “most important part of the Land Use element” of the Comprehensive Plan.” Greenville County Comprehensive Plan 5 Year Review, p. 16.
- e. While the Plan is not legally binding, nonetheless, it is self-described as being “a useful tool to promote and maintain future growth and improve the quality of life for all residents of Greenville County,” and “is intended to serve as a reference guide and as a decision making tool for local government officials, as well as private businesses and the public.” Imagine Greenville County Tomorrow’s Vision Today, p. xvi
- f. A recent proposal to amend the Comprehensive Plan for the Taylors area states, “The objective of this community plan is to help ensure future

prosperity by recommending strategic land use decisions.” “Taylors: a community plan,” 2016 Greenville County Planning Department, p.5.

- g. The Planning Commission by and through its County Attorney in its recent Answer in Civil Action No. 2015-CP-23-07433 filed July 27, 2016, admits the authority of the Comprehensive Plan and the Commissions’ ability act upon it as follows:

[T]he Comprehensive Plan is adopted by Ordinance and mandated by State law, as S.C. Code Ann. 6-29-510 states “the local planning commission **shall develop and maintain a planning process** which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and **desirable to guide the development and redevelopment of its jurisdiction**” (emphasis added). Pursuant to state law, the Planning Commission has every right to consider the applicable portions of the Comprehensive Plan while deciding matters before it. The Comprehensive Plan is a policy document. The Future Land Use Map is part of the Comprehensive Plan and contains suggested, not mandatory, density provisions and shows the desired location of different land uses in Greenville County. While certainly not a regulation or binding in any way, the Comprehensive Plan is a tool the Commission used in exercising its discretionary authority to deny the Copperleaf application.

[Emphasis by the county attorney in the pleading.]

- h. If the Planning Commission cannot give any weight to the Comprehensive Plan, as the Commissioners appeared to believe, and make decisions in accordance with it, then it has no use whatsoever as a “reference guide and decision making tool” and no way to “ensure future prosperity.” The Commission has, in fact, ignored the guidelines set forth by its own body and adopted by County Council. Consideration of the policies in the Comprehensive Plan would have given the Commission considerable leeway to deny or demand changes to the Copperleaf proposal.

22. Land Development Regulations. The Planning Commission is tasked with consideration of all subdivisions proposed within the unincorporated portions of Greenville County under the Greenville County Land Development Regulations,

which were promulgated pursuant to Title 6, Chapter 29, Article 7 of the South Carolina Code of Laws.

- a. The intent Greenville County Land Development Regulations, which includes subdivisions, is as follows:

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the *harmonious, orderly, and progressive development of land* within the municipalities and counties of the State of South Carolina. In furtherance of this general intent, the regulation of land development by counties is authorized for the following purposes, among others:

1. to encourage the development of economically sound and stable counties;
2. to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;
3. to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;
4. to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and
5. *to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of counties.*

Greenville County Land Development Regulations Section 1.1 (italics added).

- b. The Planning Commission is the appeal mechanism for Planning Department staff decisions. LDR 1.5. Clearly, if the Commission has authority to hear and act on an appeal, it has authority to disagree with a Planning Department staff decision.

- c. The Planning Commission has authority to approve or deny actions or decisions made by the Planning Department staff: "Any action or decision designated to the Planning Department staff, pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, shall be reviewed and approved or denied within sixty (60) days of receipt to the Planning Department." LDR 1.3.A. Clearly, the Planning Commission has authority to deny plans which were submitted to and approved by the Planning Department.
- d. The Planning Commission has authority to vary from regulations when in its opinion "the strict application of the requirements contained in these regulations would result in substantial or excessive difficulties, hardships, or injustices" LDR 1.6.
- e. Furthermore, the Commission is expressly tasked to preserve the public interest: "The public interests of the county and its citizens are to be protected and the general intent and spirit of these regulations will be preserved." LDR 1.6.
- f. The Land Development Regulations are a minimum requirement, implying that the Commission can impose criteria which are higher than the LDR requirements when required to protect the public. "In interpreting the regulations expressed in this document, they shall be considered as the minimum provisions for the protection of the health, safety, and welfare of the general public. This document is not intended to cover all situations that may be encountered. National, state, and local design standards should be referenced when the criteria is not covered in this document." LDR 1.8.

23. It was clear from the statements of the Commissioners during the hearing that they desired to deny the approval of this subdivision, but believed they were compelled by law to approve it; and such belief was an error of law.

24. Appellant requests that this Court remand the decision to the Planning Commission with instructions that they can and should consider the policies in the Comprehensive Plan, Land Development Regulations and Future Land Use Map, all as adopted by the County of Greenville as guidelines for decisions made by the Planning Commission, and the Commission is not bound by the recommendations of the Planning Department staff, particularly in the face of an admission by the Applicant that he has not met the density requirements of the Comprehensive Plan.

II. Abuse of Discretion

25. The Appellant/Plaintiff, complaining of the Respondents/Defendants, reiterates all of the allegations set forth above as if fully repeated herein.
26. The decision of the Planning Commission approving the Copperleaf Subdivision preliminary subdivision plan was an abuse of discretion.
27. The members of the audience in opposition to the subdivision were clearly within the description of “residents of Greenville County” for whom the Plan is intended to preserve and promote the quality of life; the developer and the property owners are both registered Florida corporations. The residents of Greenville County described for the Commission the detriment to their “public health, safety, economy, good order, appearance, convenience, morals, and general welfare” that the subdivision would cause, as stated above, yet the Commission seemingly failed to give consideration to the impact on the Greenville County residents. If the future residents of the proposed subdivision were considered *in absentia*, their public safety is in great jeopardy based upon testimony given at the hearings regarding extreme angles in intersections, narrow roads and busy intersections at roads the future residents must necessarily turn onto (Highway 418 and Fairview Road).
28. The Commission ignored the “most important part of the Land Use element” of the Comprehensive plan, the Future Land Use Map, by approving a lot size averaging six-tenths (6/10ths) of an acre rather than the three (3) acre minimum recommended in the Comprehensive Plan, a five-fold factor being a clear and blatant deviation from the future land use plan, which the Planning Department itself designated with the

Plan to comply with the state statute for “the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.”

29. Land development regulations were authorized by state government, among other reasons, “to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.” SC Code 6-29-1120 (5), 1976, as amended. Aerial maps shown by the Commission staff and pointed out by statements of the community demonstrate that this subdivision is out of harmony with the local area.
- i. Testimony was provided that one would have to drive twelve miles down area roads to pass the number of houses that are intended to be put on 1 mile of new road in this subdivision, clearly indicating a density and usage out of harmony with the area.
 - ii. Aerial maps and testimony demonstrated the active farming nature of the area; a dense subdivision is not in harmony with either the comprehensive land use plan or the current area uses. Testimony included increased insurance costs for farmers in the area due to increased dwellings, and area farms already negatively impacted by subdivisions.
 - iii. Statements from a chemical engineer also included facts such as the following:
 1. 10 to 20 percent of septic systems fail. Run off from these failures seep into the surface and ground water.
 2. Lawn chemical application in these type subdivisions are over 10 times that of what farmers use to support their crops. Over 50 percent of these chemicals are washed into the surface water system through heavy watering and rain and are detrimental to nearby livestock. (The subdivision engineer pointed out at that because of the slope of the

land, the runoff would be into a lake and at least two creeks.)

3. Many wells in the vicinity are shallow bored wells that are 10 to 20 feet deep used to supply animal and human needs. Farmers will need to routinely test their wells for contamination at considerable expense.
30. At the November hearing, Planning Department staff noted that the "character of this development is more urban in nature due to its configuration, high number and size of the proposed lots." (Minutes Greenville County Planning Commission November 18, 2015).
31. In approving the subdivision, the Commission ignored its reference guide and planning tool, and approved a subdivision grossly outside the bounds of the Plan, inconsistent with the surrounding rural community and working farms, and thereby abused its discretion.

III. Arbitrary

32. The Appellant/Plaintiff, complaining of the Respondents/Defendants, reiterates all of the allegations set forth above as if fully repeated herein.
33. The decision of the Planning Commission that ignores the Comprehensive Plan was arbitrary.
34. The approval of the subdivision application after three previous denials, without substantive measures to bring the subdivision into line with the Future Land Use Plan (November denial reason), the density requirements of the Comprehensive Plan (a March denial reason), all with sustained community opposition, was arbitrary.
35. The Planning Commission previously denied the subdivision application twice with reference to Land Development Regulations (the Comprehensive Plan and the Future Land Use Map), denied the subdivision for no given reason in its official letter, but with extensive reference to the Land Development Regulations and the public health, safety and community during discussion of the motion, and then suddenly in August, without any objective reason or significant improvement in the protection of the public health and safety, ignored the Comprehensive Plan and Future Land Use Map,

the public health and safety for which the Land Development Regulations were enacted, and approved the proposal, all the while expressing that it wished it had some grounds on which to disapprove the proposal.

36. The subdivision as approved has more lots proposed in it (95) than the previous proposal (80 lots) which was denied twice based, at least in part, on density.
37. A speaker in favor of the subdivision developer acknowledged to the Commission that the proposal is out of compliance with the “three acre property – we can’t develop three acre properties. No one else can, either.” Later testimony from a community member referenced a five-acre lot size development in the area.
38. The approval of the Copperleaf Subdivision in August without reference to the Comprehensive Plan, a self-described “reference guide and ... decision making tool for local government officials” (Comprehensive Plan p. xvi), after repeated denials for failure to meet the Comprehensive Plan, is arbitrary and unreasonable and should be sent back to the Commission for action that is reasoned and considers the guidelines of the Comprehensive Plan, the Future Land Use Map and the Land Development Regulations.

IV. Failure to Meet Intent of Land Development Regulations regarding Traffic Safety

39. The Appellant/Plaintiff, complaining of the Respondents/Defendants, reiterates all of the allegations set forth above as if fully repeated herein.
40. The subdivision engineer and the Planning Department Staff indicated to the Commission that all county Land Development Regulations (LDR) regarding roads and traffic had been met.
41. The LDR requirements are a minimum requirement and are not necessarily all that is required to protect public health and safety. (See LDR 1.8, “In interpreting the regulations expressed in this document, they shall be considered as the minimum provisions for the protection of the health, safety, and welfare of the general public. This document is not intended to cover all situations that may be encountered. National, state, and local design standards should be referenced when the criteria is not covered in this document.”)

42. When considering other design standards as may be necessary by reference, the Land Development Regulations require that the higher standards apply: "Wherever the requirements made under authority of these regulations impose higher standards than are required in any other statute, local ordinance, or regulations, the provisions of these regulations shall govern. Wherever the provisions of any other statute, local ordinance, or regulations impose higher standards than are required by these regulations, the provisions of such statute, local ordinance, or regulations shall apply." LDR 1.4.
43. Testimony was given and the Commissioners were handed exhibits that demonstrated gross inadequacy in the safety of the county roads that the subdivision would feed onto. (See Exhibit A, Pages 1-5 attached.)
44. Statements from the Planning Department staff at previous hearings indicates that a house in a subdivision would generate approximately ten vehicular trips per day, so a ninety-five house subdivision would generate approximately 950 vehicular trips per day.
45. The intersection of currently existing county roads that is between the two exits from the proposed subdivision, and which traffic from the subdivision would be expected to use, is a forty-two (42°) degree angle (another estimate puts it at thirty-five (35°) degrees) turn, but the minimum angle required by Greenville County Land Development Regulations is sixty (60°) degrees. (See Page 1 of Exhibit A.) (The preferred angle for highways according to state regulations would be ninety (90°) degrees, with a minimum angle of seventy (70°) degrees. SCDOT Access and Roadside Management Standards, 2008 Edition, Section 5C-2 (p. 44-45).) Regular passenger vehicles cannot turn right from South Shirley onto Woodside without entering the lane of oncoming traffic. School buses and SUVs are unable to negotiate the existing turn without stopping in the roadway to back up. The developer has no plan to correct this safety hazard that his development would exacerbate.
46. The South Carolina Department of Transportation regulations require that the "developer of a site will be responsible for making roadway improvements and installing traffic control devices that may be necessary due to the impacts of the new

development. These include impacts through the **influence area** of the development and are not limited to those in front of the development.” SCDOT Access and Roadside Management Standards, 2008 Edition, Section 6A, p.54. (Emphasis added.)

47. Page 2 of Exhibit A maps the designated traffic flow. The developer is being required to widen portions of South Shirley Road, but not Woodside Road which is also a substandard width. Woodside is presumably the road onto which all traffic from the subdivision, whether using the South Shirley exit or the Woodside exit, would use to reach a collector road (Fairview Road). Woodside is clearly part of the influence area of the proposed development and should also be required to be widened, and a portion of the proposed development land used to make the intersection of Woodside and South Shirley safer for the public, rather than building houses against the roadway in such a way as to require future condemnation of the land of the existing homeowner at that intersection.
48. The subdivision traffic would end up on Fairview Road, which is state road S-55. The South Carolina Department of Transportation (SCDOT) regulations require a traffic impact study if a development is expected to generate more than 100 trips during the peak hour of an adjacent street to a project. SCDOT guidelines indicate that a subdivision of 90 single family homes would generate more than 100 peak hour trips. SCDOT, Access and Roadside Management Standards, Table 6-10, p. 54. The 95 houses proposed are more than the 90 houses in the DOT table to require a traffic impact study. A traffic impact study has not been conducted for this proposed subdivision, and under the “higher standards” required by the Land Development Regulations, traffic impact and turn lane warrant studies of the area of influence should be done prior to approval of this subdivision’s plans.
49. The latest traffic count data prior to the August commission meeting was that the area just north of the Woodside/Fairview Road intersection most likely to be the direction of travel for the subdivision residents was 8300 average annual daily trips. Testimony was given that this subdivision would generate a 15% increase in traffic on Fairview Road.

50. The decision to approve the subdivision application failed to take into account public safety as required by road regulations and should be remanded for action that meets public safety requirements, including traffic impact and turn lane warrant studies on Fairview Road.
51. The public meeting minutes of the Planning Commission are not available prior to the deadline for filing this appeal, and Appellants request the right to modify their pleading based upon the minutes as they may be published.

REQUEST FOR DECLARATORY RELIEF

52. The Appellant/Plaintiff, complaining of the Respondents/Defendants, reiterates all of the allegations set forth above as if fully repeated herein.
53. The Appellant/Plaintiff has standing to request a Declaratory Judgment pursuant to S. C. Code Section 15-53-10 et. seq. based upon the members' interests being adversely affected by the decision of the Planning Commission.
54. The Appellant/Plaintiff requests that this Court make a finding that the Planning Commission has authority to and should take into consideration the Comprehensive Land Use plans, Future Land Use Maps, and purposes and intent of the Land Development Regulations, all as adopted by Greenville County Council, when making decisions regarding subdivisions in unzoned areas of the County, that the Planning Commission is not bound to "rubber stamp" the decisions of the Planning Department staff, but act as a safety for the public health and safety and "to assure, in general, the wise and timely development" of the county, and may consider as well as the design standards for road development of state law.

WHEREFORE, your Appellant/Plaintiff requests that this Court

- a. issue its order reversing the decision of the Greenville County Planning Commission approving the Copperleaf Subdivision, and
- b. issue a declaratory judgment providing relief requested, and
- c. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully Submitted,

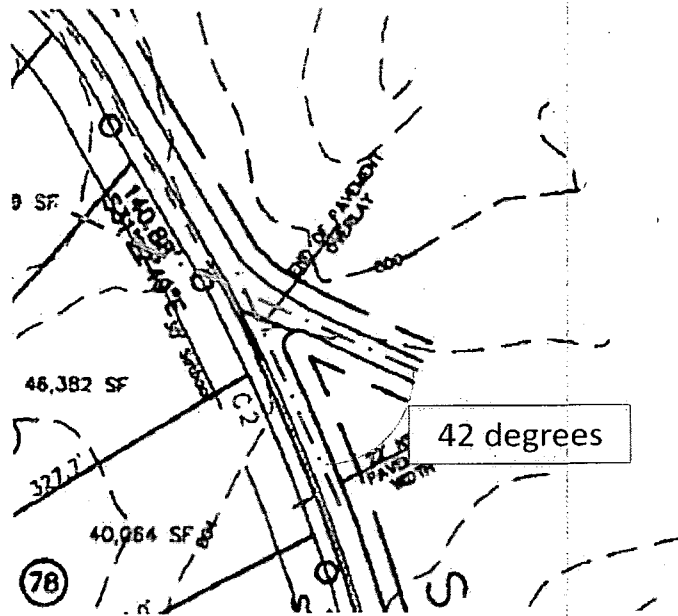
- 15 -

s/B. Faith Martzin
Barbara Faith Martzin,
B. Faith Martzin, PC
S.C. Bar No. 11817
33 Market Point Drive
Greenville, SC 29607
(864) 551-2604
(864) 751-6369 fax
fmartzin@martzinlaw.com

Attorney for Appellants

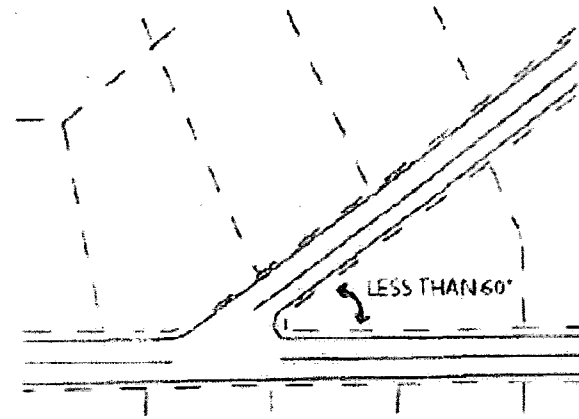
September 19, 2016
Greenville, South Carolina

S. Shirley Road to Woodside Road Intersection Does Not Conform to County Regulations



S. Shirley Road to Woodside Road Intersection

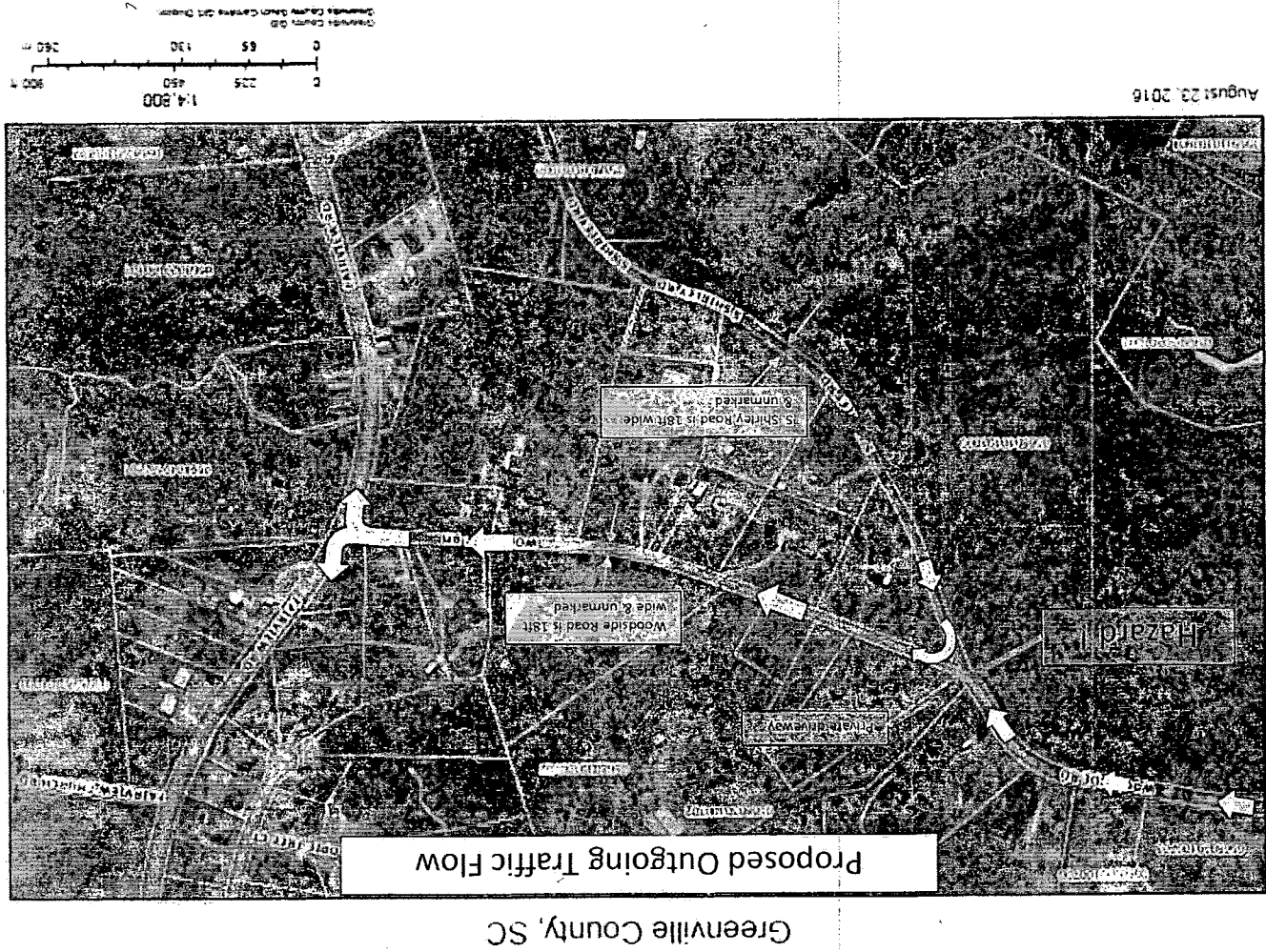
Angle = 42 degrees

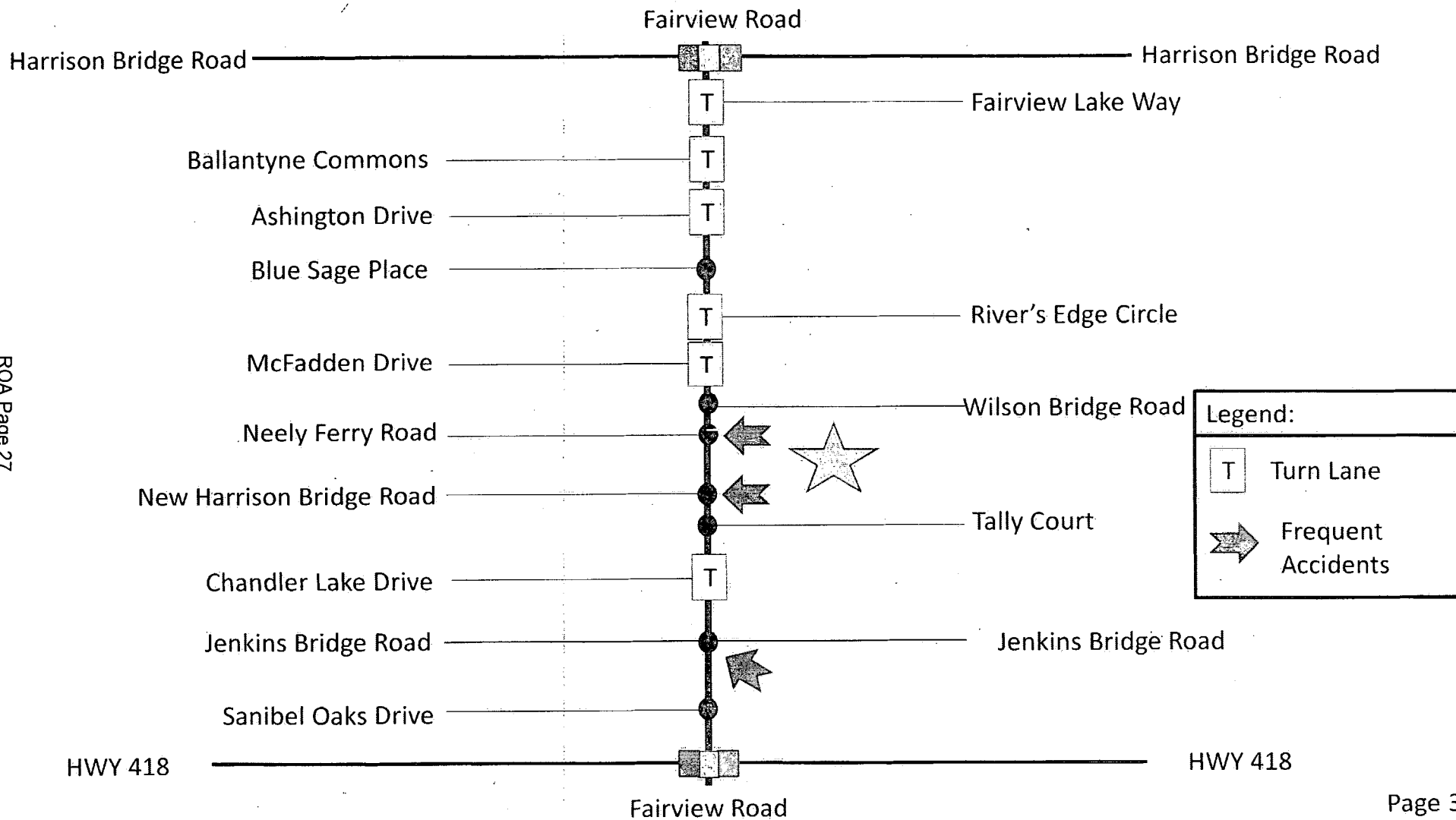


NOT PERMITTED

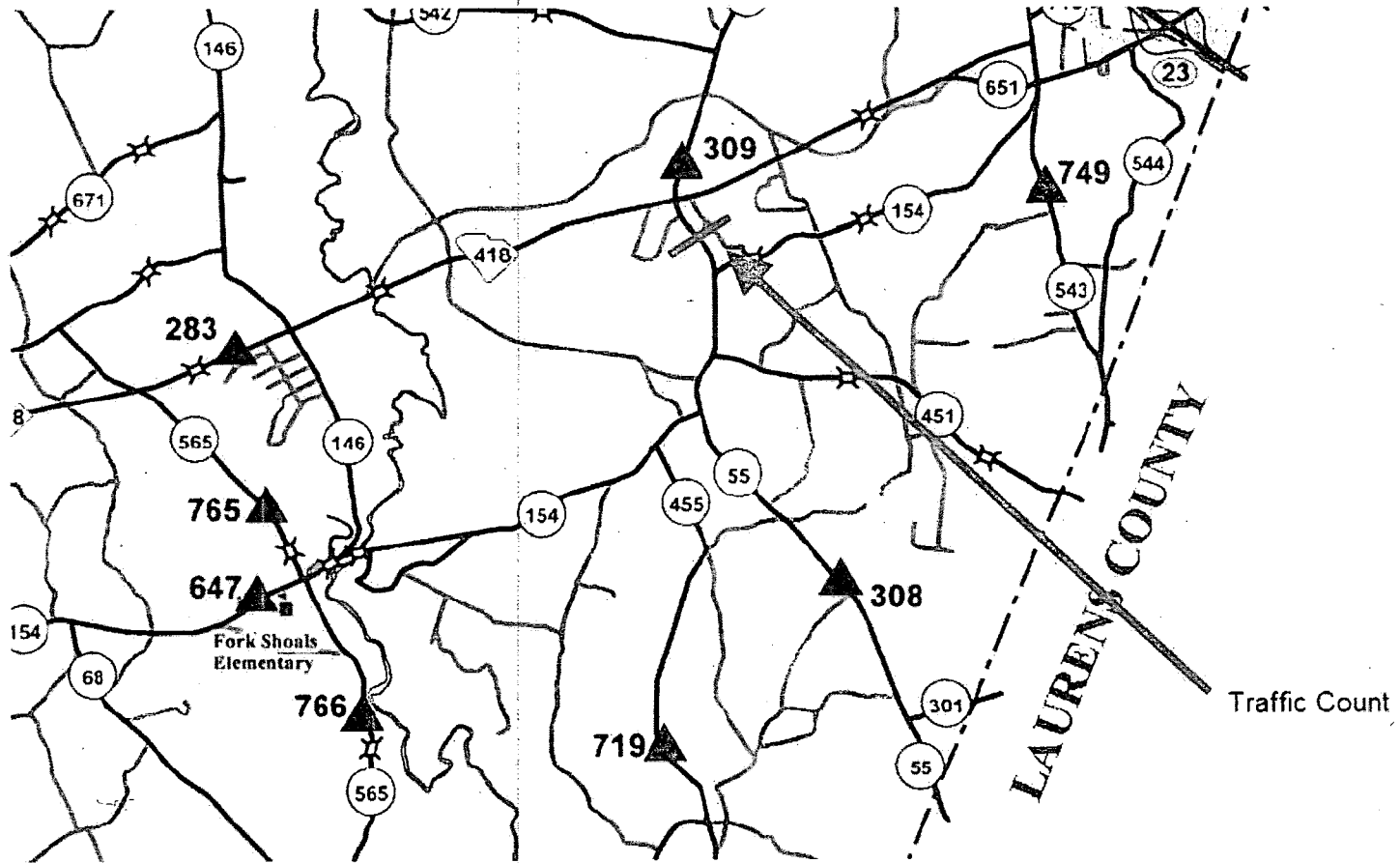
Greenville County Land Development Regulations, 8.1 B Design Standards for Public Roads, page LDR-48, Intersecting Roads

Angle not less than 60 degrees

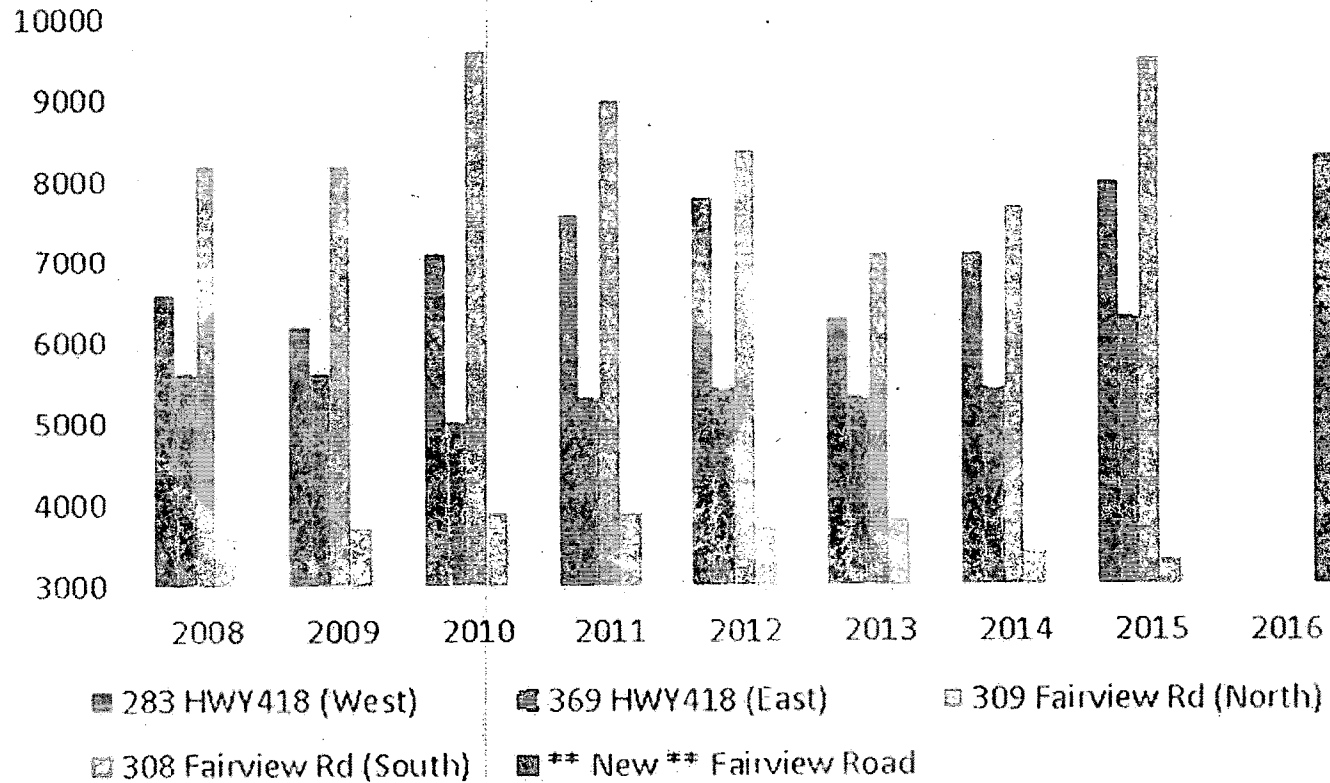




Fairview Road Traffic Data – Supplemental Traffic Count Location



AADT Nearest Fairview Road and HWY 418 Intersection Proxy for Fairview Road (S-55) / Fairview Church Road (S-154) Intersection



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Citizens for Quality Rural Living, Inc.,	)	Civil Action No. 2016-CP-23-5425
Appellant/Petitioner	)	
	)	
v.	)	
	)	
Greenville County Planning Commission,	)	RETURN TO THE APPEAL FROM THE
and RMDC, Inc.,	)	DECISION OF THE GREENVILLE
Respondents/Defendants	)	COUNTY PLANNING COMMISSION
	)	
	)	

The Respondent, Greenville County Planning Commission, answering the Appeal of the Plaintiffs, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. This Respondent denies each and every allegation of Plaintiffs' Appeal not admitted, modified or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. As to the allegations contained in Paragraphs 1 of Appellant's Appeal, this Respondent lacks sufficient knowledge and information so as to form a belief as to the truth of the allegations contained therein and, therefore, this Respondents deny said allegations and demand strict proof thereof.
3. This Respondent admits the allegations contained in Paragraph 2 of Appellant's Appeal.
4. As to the allegations contained in Paragraph 3 and 4 of Appellant's Appeal, upon information and belief, this Respondent admits the allegations contained therein.
5. As to the allegations contained in Paragraph 5-7, inclusive, of Appellant's Appeal, this Respondent denies the allegations contained therein, and demands strict proof thereof. S.C. Code Ann. § 6-29-1150 limits the right to appeal from a planning commission decision to property owners whose land is the subject of the decision. Under the express language from S.C. Code Ann. § 6-29-1150 governing the appeals process, Appellant does not have standing to bring this appeal.

6. Responding to the allegations contained in Paragraph 8 of Appellant's Appeal, Respondent admits that RMDC, Inc. applied for preliminary approval for a subdivision called "Copperleaf" near Woodside Road, South Shirley Road, and McKelvey Road in Greenville County. Respondent denies all other allegations contained in Paragraph 8, and demands strict proof thereof
7. Responding to the allegations contained in Paragraph 9 of Appellant's Appeal, Respondent admits that the Copperleaf subdivision was considered by the Planning Commission four times and would note that neither State law nor the County's Land Development Regulations limits the submission of proposed subdivisions for plat approval.
8. Responding to the allegations contained in Paragraph 10 of Appellant's Appeal, Respondent admits that members of the public spoke in opposition to the subdivision and gave various reasons for their opposition.
9. Responding to the allegations contained in Paragraph 11 of Appellant's Appeal, Respondent admits that the Planning Commission denied the preliminary plat application for Copperleaf in November 2015 and that the subdivision administrator at the time, Sonya Dawson, wrote a letter to the developer indicating the Commission denied the application because the Commission had determined that the development was not consistent with the Future Land Use Plan for the area.
10. Respondent admits the allegations contained in Paragraph 12 of Appellant's Appeal.
11. Responding to the allegations contained in Paragraph 13 of Appellant's Appeal, Respondent admits that the letter from the Subdivision Administrator to the developer dated May 27, 2016 did not explain the Planning Commission grounds for denial. Pursuant to S.C. Code Ann. § 6-29-1150, state law only requires the developer to be notified in writing of the action taken.
12. Responding to the allegations contained in Paragraph 14 of Appellant's Appeal, this Respondent admits that the Planning Commission approved the Copperleaf Subdivision in August 2016. The proposed subdivision met all the requirements of the Land Development Regulations and the requirements of the Subdivision Advisory Committee. Further responding to the allegations contained in Paragraph 14 of Appellant's Appeal, this Responding admits that the motion was approved by voice vote and that the approval was noted in a letter from the Subdivision Administrator dated August 29, 2016. Respondent

denies the remaining allegations contained in Paragraph 14 of Appellant's Appeal, and demands strict proof thereof.

13. This Respondent admits the allegations contained in Paragraph 15 of Appellant's Appeal.
14. Responding to the allegations contained in Paragraph 16 of Appellant's Appeal, this Respondent agrees that a Court may apply the same standard to appeals of Planning Commission decisions that it would apply to Board of Zoning Appeal decisions. Further responding to the allegations contained in Paragraph 16 of Appellant's Appeal, Respondent alleges that this Court's standard of review of this matter is whether Defendant's decision is correct as a matter of law. [See: S.C. Code Ann. § 6-29-840(A), as amended]. By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it. Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008) (citing S.C. Code Ann. § 6-29-840 (2005)). Furthermore, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). This Defendant further alleges that there is ample evidence in the record to support the decision of the Greenville County Planning Commission.
15. As to the allegations contained in Paragraph 17 of Appellant's Appeal, this Respondent, upon information and belief, alleges that the allegations contained therein constitute a legal conclusion to which a response from this Respondent is not necessary.
16. As to the allegations contained in Paragraph 18 of Appellant's Appeal, the allegations contained therein do not require a response from this Respondent.
17. This Respondent denies the allegations contained in Paragraph 19 of Appellant's Appeal, and demands strict proof thereof. Further responding to the allegations contained in Paragraph 19 of Appellant's Appeal, this Respondent denies that there is any requirement in the Comprehensive Plan regarding lot size; at most, the Comprehensive Plan, which is not a regulation or local ordinance, contains suggested lot sizes.
18. As to the allegations contained in Paragraph 20 of Appellant's Appeal, this Respondent denies that the Planning Commission operated under any mistaken beliefs concerning the decision that is the subject of this appeal, and demands strict proof thereof.
19. As to the allegations contained in Paragraph 21 of Appellant's Appeal, this Respondent denies that the Commission has authority to deny a subdivision plat in the unzoned area of

the County solely on the basis of the Comprehensive Plan, and demands strict proof thereof. This Respondent asserts that the Commission may look to the Comprehensive Plan when rendering decisions on subdivision applications, but the Comprehensive Plan is a policy document containing suggested, not mandatory, density provisions. For the unzoned area of the County, the Comprehensive Plan itself states that the Future Land Use Map “identifies communities by their density. The density is the requirement for maintaining the character of the area and defining potential impacts on the infrastructure. **Unzoned areas are to remain undefined relating to residential density and if zoning occurs in the future, allowable density use will be defined by the citizens (property owners) in any newly zoned area using a legally approved process.**” (emphasis added). (Exhibit “A”, Chapter 4, Greenville Comprehensive Plan, pgs. 7 and 9). The Comprehensive Plan, therefore firmly points to zoning as the density regulation in Greenville County. Further responding to the allegations contained in Paragraph 21 of Appellant’s Appeal, this Respondent admits that the Comprehensive Plan is not legally binding, and that it is a useful tool for local government officials. Further responding to the allegations contained in Paragraph 21 of Appellant’s Appeal, this Respondent denies that the Planning Commission appears to believe it cannot give any weight to the Comprehensive Plan, and demands strict proof thereof. Given the Comprehensive Plan’s language concerning the unzoned area of the County, the Planning Commission realizes that it cannot base a decision on a subdivision in the unzoned area of Greenville County solely on the Comprehensive Plan. Further responding to the allegations contained in Paragraph 21 of Appellant’s Appeal, this Respondent denies the Planning Commission has ignored guidelines established by County Council, and demands strict proof thereof. Further responding to the allegations contained in Paragraph 21 of Appellant’s Appeal, this Respondent admits that the Taylors Area Plan’s objective is to help ensure future prosperity by recommending strategic land use decision. The entire area that is designated as the Future Land Use map in the Taylors Plan is zoned. No area plan for the land that is the subject of this Appeal has been adopted (and the property that is the subject of this appeal is in the unzoned area of the County). Further responding to the allegations contained in Paragraph 21 of Appellant’s Appeal, this Respondent denies that the Comprehensive Plan alone gives the Planning Commission considerable leeway to deny or demand changes to the Copperleaf proposal, and demands strict proof thereof.

20. Responding to the allegations contained in Paragraph 22 of Appellant's Appeal, this Respondent admits that the Planning Commission reviews subdivision applications in Greenville County pursuant to the County's Land Development Regulations. Further responding to the allegations contained in Paragraph 22 of Appellant's Appeal, this Respondent admits that the Planning Commission has authority to disagree with a staff recommendation. In exercising its discretionary authority, however, the Planning Commission certainly may agree with a staff recommendation as well.
21. This Respondent denies the allegations contained in Paragraph 23 of Appellant's Appeal, and demands strict proof thereof.
22. This Respondent denies the allegations contained in Paragraph 24 of Appellant's Appeal, and demands strict proof thereof. Further responding to the allegations contained in Paragraph 24 of Appellant's Appeal, this Respondent denies that there is any "density requirement" in the Comprehensive Plan, and demands strict proof thereof.
23. As to the allegations contained in Paragraph 25 of Appellant's Appeal, this Respondent asserts that the allegations contained therein do not require a response from this Respondent.
24. This Respondent denies the allegations contained in Paragraph 26 of Appellant's Appeal, and demands strict proof thereof.
25. As to the allegations contained in Paragraph 27 of Appellant's Appeal, this Respondent, upon information and belief, admits that opponents to the plan were residents of Greenville County and the developer and property owners are registered Florida corporations. As to the remaining allegations contained in Paragraph 27 of Appellant's Appeal, this Respondent denies said allegations, and demands strict proof thereof.
26. As to the allegations contained in Paragraph 28 of Appellant's Appeal, this Respondent admits that the three acre minimum lot size in the Future Land Use Map is a recommendation only. This Respondent denies the remaining allegations contained in Paragraph 28, and demands strict proof thereof.
27. As to the allegations contained in Paragraph 29 of Appellant's Appeal, this Respondent admits that land development regulations are authorized by state law to assure, in general, wise and timely development. This development meets all of the requirements of the Greenville County Land Development Regulations. Further responding to the allegations contained in Paragraph 29 of Appellant's Appeal, this Respondent admits that people

opposed to the subdivision spoke at the Commission and raised several issues that they were concerned about. As to the remaining allegations contained in Paragraph 29 of Appellant's Appeal, this Respondent denies said allegations, and demands strict proof thereof.

28. This Respondent admits the allegations contained in Paragraph 30 of Appellant's Appeal.

29. This Respondent denies the allegations contained in Paragraph 31, and demands strict proof thereof.

30. As to the allegations contained in Paragraph 32 of Appellant's Appeal, this Respondent alleges that the allegations contained therein do not require a response from this Respondent.

31. This Respondent denies the allegations contained in Paragraph 33-38, inclusive, of Appellant's Appeal, and demand strict proof thereof. In approving the subdivision plan, the Planning Commission recognized the proposal met all the requirements of the Land Development Regulations and that the proposed development would have to comply with the specific requirements made by the Subdivision Advisory Committee. (See Exhibit "B", Letter to Roy Palmer and Subdivision Advisory Committee Specific Requirements).

32. As to the allegations contained in Paragraph 39 of Appellant's Appeal, the allegations contained therein do not require a response from this Respondent.

33. This Respondent admits the allegations contained in Paragraph 40-42, inclusive, of Appellant's Appeal.

34. This Respondent denies the allegations contained in Paragraph 43 of Appellant's Appeal, and demands strict proof thereof.

35. This Respondent admits the allegations contained in Paragraph 44 of Appellant's Appeal.

36. This Respondent denies the allegations contained in Paragraph 45 of Appellant's Appeal, and demands strict proof thereof.

37. This Respondent admits the allegations contained in Paragraph 46 of Appellant's Appeal.

38. As to the allegations contained in Paragraph 47 of Appellant's Appeal, this Respondent admits that the developer is being required to widen portions of South Shirley Road. As to the remaining allegations contained in Paragraph 47 of Appellant's Appeal, this Respondent denies said allegations, and demands strict proof thereof.

39. This Respondent denies the allegations contained in Paragraph 48-50, inclusive, of Appellant's Appeal, and demands strict proof thereof.

40. As to the allegations contained in Paragraph 51-52 of Appellant's Appeal, the allegations contained therein do not require a response from this Respondent.
41. This Respondent denies the allegations contained in Paragraph 53 of Appellant's Appeal, and demands strict proof thereof. This is an appeal from a decision of a planning commission under the provisions of S.C. Code Ann. § 6-29-1150 *et seq.*
42. This Respondent denies the allegations contained in Paragraph 54 of Appellant's Appeal, and demands strict proof thereof. The County's Comprehensive Plan clearly indicates that unzoned areas of the County are to remain undefined relating to residential density until zoning occurs. This Respondent admits that the Planning Commission is not bound to "rubber stamp" a recommendation from Planning Department staff, but the Commission can certainly approve a recommendation from staff if all requirements of the Subdivision Advisory Committee and all the requirements of the Land Development Regulations have been met by the applicant, as is the case with this proposal.

WHEREFORE, having answered the allegations contained in Plaintiff's Appeal, this Defendant prays that in reviewing the questions presented by the appeal, this Court shall determine only whether the decision of the board is correct as a matter of law. Respondent therefore prays that this Court issue an Order dismissing Plaintiffs' Complaint and for such other and further relief as this Court may deem just and proper.

s/ Dean Campbell

Dean Campbell (S.C. Bar # 14130)

Jeffrey D. Wile (S.C. Bar #6102)

301 University Ridge, Suite 2400

Greenville, SC 29601

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Attorneys for Respondent Greenville County
Planning Commission

Greenville, South Carolina

October 18, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
CITIZENS FOR QUALITY	)	Case No. 2016-CP-23-05425
RURAL LIVING, INC.,	)	
	)	
APPELLANT/PETITIONER,	)	
	)	
vs.	)	RESPONDENT/DEFENDANT
	)	RMDC, INC.'S MOTION TO DISMISS
THE GREENVILLE COUNTY	)	
PLANNING COMMISSION and	)	
RMDC, INC.,	)	
	)	
RESPONDENTS/DEFENDANTS.	)	

**TO: B. FAITH MARTZIN, ESQ., ATTORNEY FOR CITIZENS FOR QUALITY
RURAL LIVING, INC.:**

YOU WILL PLEASE TAKE NOTICE of the undersigned, as attorney for Respondent/Defendant RMDC, Inc. ("RMDC") will appear on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the presiding Judge, and move for an order dismissing Plaintiff's Complaint in the above-captioned matter for the following reasons, to wit:

1. Pursuant to SCRCF Rule 12(b)(1), this Court lacks subject matter jurisdiction in that S.C. Code § 6-29-1150 confers the right of appeal of a decision of the Greenville County Planning Commission ("Planning Commission") only upon the owner of the property that is the subject of the decision of the Planning Commission. Plaintiff is not the owner of the property that is subject of the decision of the Planning Commission in this matter; and
2. Pursuant to Rule 12(b)(6), Plaintiff's Complaint fails to state a claim upon which relief can be granted.

This Motion will be supplemented by a memorandum of law.

RESPECTFULLY SUBMITTED,

ROE CASSIDY COATES & PRICE, P.A.

s/ William A. Coates

William A. Coates, SC Bar # 1289

(1052 North Church Street, 29601)

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Attorneys for Respondents/Defendants RMDC, Inc.

Greenville, South Carolina

October 18, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
CITIZENS FOR QUALITY	)	Case No. 2016-CP-23-05425
RURAL LIVING, INC.,	)	
	)	
APPELLANT/PETITIONER,	)	
	)	
vs.	)	RESPONDENT/DEFENDANT
	)	RMDC, INC.'S MEMORANDUM
THE GREENVILLE COUNTY	)	IN SUPPORT OF ITS
PLANNING COMMISSION and	)	MOTION TO DISMISS
RMDC, INC.,	)	
	)	
RESPONDENTS/DEFENDANTS.	)	
	)	

Respondent/ Defendant RMDC, Inc. ("RMDC") submits this Memorandum in Support of its Motion to Dismiss. For the reasons set forth herein, RMDC's Motion should be granted and this case dismissed.

BACKGROUND

RMDC applied to the Greenville County Planning Commission ("Planning Commission") to approve its plan to develop "Copperleaf," a subdivision located in an unzoned portion of Greenville County. On August 24, 2016, the Planning Commission approved the subdivision by voice vote. On September 19, 2016, Appellant/Petitioner filed a Notice of Appeal and Request for Declaratory Relief. RMDC subsequently filed its Motion to Dismiss the appeal, as Appellant/Petitioner has no standing to appeal the Planning Commission's decision. Thus, this Court is without subject matter jurisdiction of this case, and the appeal/complaint fails to state facts sufficient to constitute a cause of action.

ARGUMENT

Since at least 1829, South Carolina law has been clear that an appeal is not allowed from an inferior tribunal except where it is expressly granted by statute. *Cormand v. Wall*, 1 Bail. 209, 17 S.C.L. 209 (1829); *Whipper v. Talbird*, 32 S.C. 1, 10 S.E.578 (1890); *Sasser v. South Carolina Democratic Party*, 277 S.C. 67, 282 S.E.2d 602 (1981). “[T]he procedure on appeal to the Circuit Court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing for such appeals.” Rule 74, South Carolina Rules of Civil Procedure. Accordingly, unless Appellant/Petitioner has a statutory right to appeal the decision of the Planning Commission, this matter must be dismissed. No such right exists.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (“Planning Act”), S.C. Code § 6-29-310, et seq. governs the appeal process from various local government boards. In 2003, the General Assembly enacted the “Land Use Dispute Resolution Act,” which amended the Planning Act by adding Section 6-29-1150, addressing the right of appeal from a decision of the Planning Commission. Section 6-29-1150(D) provides as follows:

(D)(1) An appeal from the decision of the Planning Commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of 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 6-29-1155. (Emphasis added)

It is undisputed that Appellant/Petitioner is not the owner of the land on which the proposed subdivision will lie. As Section 6-29-1150 provides that an appeal from a decision of

the Planning Commission may be taken only by the owner of the property, Appellant/Petitioner may not appeal the decision and has no standing to bring this suit.

It is clear that the General Assembly intended to restrict the right to appeal a planning commission decision to the property owner. In the Planning Act, the General Assembly allowed appeals from a Board of Zoning Appeal (“BZA”) decision by “[A] person who has a substantial interest in any decision of the Board of Appeals or officer or agent of the appropriate governing authority ...” Section 6-29-820(A). Thus, the General Assembly consciously differentiated between appeals from decisions of a planning commission and appeals from a board of zoning appeals.

Courts must “presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). “The legislature is presumed to have fully understood the meaning of the words it used in a statute, and unless the meaning is vague or indefinite, we presume it intended to use the ordinary and common meaning or in their well defined legal sense.” *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 569, 556 S.E.2d 731 (Ct. App. 2001). When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).. The language of the Planning Act is clear and unambiguous. The only person allowed to appeal from a decision of a planning commission is the owner of the affected property. Appellant/Petitioner is not the property owner. Appellant/Petitioner has no standing to bring this matter to court. This matter must be dismissed.

RESPECTFULLY SUBMITTED,

ROE CASSIDY COATES & PRICE, P.A.

s/ William A. Coates

William A. Coates, SC Bar # 1289

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Attorneys for Respondents/Defendants RMDC, Inc.

Greenville, South Carolina

October 27, 2016

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Citizens for Quality Rural Living, Inc.,
Appellant/Petitioner,

v.

Greenville County Planning Commission,
and RMDC, Inc.,
Respondents/Defendants

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-23-5425

**MEMORANDUM
IN OPPOSITION TO
RMDC's MOTION TO DISMISS**

Appellant/Plaintiff, responding to the Memorandum of Respondent/Defendant RMDC, Inc., would respectfully show unto the Court as follows:

FACTS RELATED TO THIS MOTION

1. Appellant Citizens for Quality Rural Living, Inc., is a not for profit community entity incorporated in South Carolina whose members are residents of the County of Greenville owning property in the vicinity of the subdivision approved and are impacted by the decision of the Greenville County Planning Commission, some of whom are owners of farms or property in the immediate vicinity of the subdivision proposed in this matter, namely South Shirley Road, Woodside Road and McKelvey Road.

2. Respondent Greenville County Planning Commission ("Planning Commission") is an appointed local planning commission as defined in Section 6-29-310, et. seq., South Carolina Code of Laws, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created pursuant to that legislation.

3. Respondent RMDC, Inc., is, upon information and belief, a Florida corporation registered in South Carolina as a foreign corporation, and is named on the subdivision plat as the Developer, and is a necessary party to this action.

4. RMDC, Inc. applied for preliminary approval of its plan to develop "Copperleaf Subdivision," a high density subdivision in a rural section of the County of Greenville adjoining Woodside Road, South Shirley Road and McKelvey Road.

5. This subdivision has come before the Planning Commission four times, specifically on November 18, 2015, March 23, 2016, May 25, 2016, and most recently on August 24,

2016. In each instance, the Developer/Applicant is listed as RMDC Inc, P. O. Box 15887, Tallahassee, FL 32317. The property owner, also a Florida entity upon information and belief, is never listed as a party to the subdivision application before the Greenville County Planning Commission and has not registered as a foreign corporation to do business in South Carolina. (See "Preliminary Subdivision Data Sheet" for each application attached as Exhibits A1-4 hereto.)

6. Many members of the community were in attendance at each meeting in opposition to the subdivision, and stood in opposition to the subdivision for reasons including largely inconsistency with the Comprehensive Land Use Plan, incompatibility with the surrounding community, and public health and safety due to the roads in the area and environmental concerns.

ISSUES FOR THIS MOTION

The Respondent/Defendant RMDC raises two issues for this motion hearing:

7. Whether this Court has subject matter jurisdiction; and
8. Whether the Appeal states a claim upon which relief can be granted.

LAW

Subject Matter Jurisdiction

9. This Court has subject matter of this action pursuant to South Carolina Code of Laws, Section 6-29-1150, 1976, as amended, and Greenville County Land Development Regulations, Article 1, Section 1.5 (2008).

10. Article 1, Section 1.5 of the Greenville County Land Development Regulations, paragraphs 2 and 3, state as follows:

An appeal from the decision of the Planning Commission may be made pursuant to the provisions of Title 6, Chapter 29. taken to Circuit Court within thirty (30) days after actual notice of the decision.

Any person aggrieved by a decision of the Commission rendered after hearing may within thirty (30) days after notice thereof file an appeal in circuit court for a review of the decision of the Commissioners pursuant to Section 6-29-1150 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

11. This Regulation clearly allows appeals by "[a]ny person aggrieved by a decision of the Commission."

12. South Carolina Code Section 6-29-1150, to which Respondent refers, states in relevant part as follows:

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of 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 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

13. Subparagraph (D)(1), similar to the Land Development Regulations, allows for appeals from the planning commission to this Circuit Court and does not apply any limitation on who may appeal.

14. Subparagraph (D)(2), to which Respondent refers, is not a limitation of who may appeal but an additional requirement upon an appeal by a landowner. If a landowner appeals, the landowner must request pre-litigation mediation. (Some courts have interpreted this subsection to be an opportunity for mediation, not a requirement. *Dippel & Fowler v. Horry County Planning Department*, Unpublished Opinion No. 2011-UP-108 (March 16, 2011))

15. The landowner has never been named as a party to this subdivision application, although the application has been filed, in various forms, at least four times. The landowner may be a partner with the developer, may hope to sell to the developer, may be doing business under the name of the developer, or have other interests, but has never joined in the application process by applying for approval of the subdivision application or filing a motion to intervene in this action, although certainly cognizant of the action.

16. The developer, however, is a necessary party to an appeal from the Planning Commission. See *Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 367 S.E.2d 160, 161 (S.C. 1988) (“[W]e adopt the majority rule and hold that a development permittee is a necessary party to an appeal of its permit.”).

17. This Court has subject matter jurisdiction over the appeal under both the Land Development Regulations and the South Carolina statutes, and the necessary parties have been joined.

Failure to State a Cause of Action

18. Respondent/Defendant alleges that the Appeal fails to state a cause of action upon which relief can be granted.

19. The standard of review for a 12(b)(6) motion can be summarized as follows:

When reviewing a dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). “The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief.” *Id.* at 112-113, 659 S.E.2d at 161. The court will not sustain the motion if the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 698 S.E.2d 879, 882 (S.C. App., 2010)

20. The denial of a motion to dismiss for failure to state a cause of action is not predicated on the likelihood of success on the merits: “The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts that plaintiff will prevail in the action.” *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8, 9 (1987), citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 (1969).
21. The Appeal/Complaint states numerous substantive causes of action or bases for appeal, any one of which, viewed in the light most favorable to the Appellant/Plaintiff, the Appellant/Plaintiff could prevail upon, in addition to its request for Declaratory Judgment, and this matter should proceed to hearing.

Appellant/Plaintiff requests the opportunity to augment its Memorandum should Respondent/Defendant's arguments under its brief Motion to Dismiss be other than the arguments assumed on its face.

Respectfully Submitted,

s/B. Faith Martzin
Barbara Faith Martzin,
B. Faith Martzin, PC
S.C. Bar No: 11817
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Greenville, SC 29607
(864) 551-2604
(864) 751-6369 fax
fmartzin@martzinlaw.com

Attorney for Appellants

October 27, 2016

Greenville, South Carolina



Exhibit A-1

PRELIMINARY SUBDIVISION DATA SHEET

Copperleaf Subdivision

Subdivision File Number: 2015-221

Subdivision Name: Copperleaf Subdivision

Submittal Date: November 4, 2015

SAC Meeting Date/Time: November 16, 2015 @ 9:30 a.m.

SAC Meeting Location: County Square Conference Room D

Planning Commission Meeting Date/Time: November 18, 2015 @ 4:30 p.m.

Planning Commission Meeting Location: County Square Conference Room D



Developer:	RMDC Inc.	Engineer:	Darin Foy
Developer Address:	P.O. Box 15887 Tallahassee, FL 32317	Engineer Address:	P.O. Box 15887 Tallahassee, FL 32317
Developer Telephone:	850-399-0646	Engineer Telephone:	229-558-0740

TMS Number:	0568010101000	Acres:	82.17 acres ±
		Streets:	Public / 1.43 MI ±
Zoning:	Unzoned	Number of Lots:	100
Existing Access:	McKelvey Road, South Shirley Road, Woodside Road	Council District:	26
Extension of Existing Development:	No	Census Tract:	003104
Sewer District:	Septic	Municipality:	No
Fire District:	Canebrake Fire	Variance Requested:	No
Water Provider:	Greenville Water	Cluster Development:	No Option:
		Open Space Required:	
		Open Space Provided:	



PRELIMINARY SUBDIVISION DATA SHEET

Copperleaf Subdivision

Subdivision File Number: 2016-133

Subdivision Name: Copperleaf Subdivision

Submittal Date: March 2, 2016

SAC Meeting Date/Time: March 14, 2016 @ 9:30 A.M.

SAC Meeting Location: County Square Conference Room A

Planning Commission Meeting Date/Time: March 23, 2016 @ 4:30 P.M.

Planning Commission Meeting Location: County Square Conference Room D

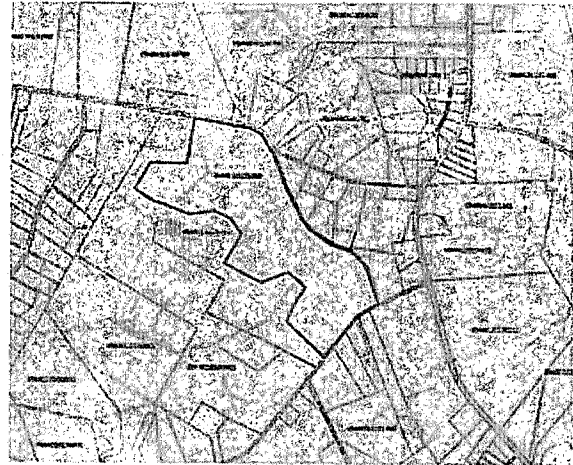


Developer:	RMDC Inc. Richard Yates	Engineer:	Darin Foy
Developer Address:	P.O. Box 15887 Tallahassee, FL 32317	Engineer Address:	P.O. Box 15887 Tallahassee, FL 32317
Developer Telephone:	850-399-0646	Engineer Telephone:	229-558-0740
TMS Number:	0568010101000	Acres:	82.17 acres ±
		Streets:	Public / 0.93 miles ±
Zoning:	Unzoned	Number of Lots:	80
Existing Access:	So. Shirley Road, McKelvey Road, Woodside Road	Council District:	26
Extension of Existing Development:	No	Census Tract:	003104
Sewer District:	Septic	Municipality:	No
Fire District:	Canebrake Fire	Variance Requested:	No
Water Provider:	Greenville Water	Cluster Development:	No Option:
		Open Space Required:	
		Open Space Provided:	

**PRELIMINARY SUBDIVISION DATA SHEET**

Copperleaf Subdivision

Subdivision File Number: 2016-133
Subdivision Name: Copperleaf Subdivision
Submittal Date: May 3, 2016
SAC Meeting Date/Time: May 16, 2016 @ 9:30 A.M.
SAC Meeting Location: County Square Conference Room A
Planning Commission Meeting Date/Time: May 25, 2016 @ 4:30 P.M.
Planning Commission Meeting Location: County Square Conference Room D



Developer:	RMDC Inc.	Engineer:	Mitchell L. Baker, Sr. MLB Engineering LLC
Developer Address:	P.O. Box 15887 Tallahassee, FL 32317	Engineer Address:	408 S. Almond Dr. Simpsonville, SC 29681
Developer Telephone:	229-558-0740	Engineer Telephone:	864-962-8112

TMS Number:	0568010101000	Acres:	82.17 acres ±
		Streets:	Public / 0.93 miles ±
Zoning:	Unzoned	Number of Lots:	80
Existing Access:	So. Shirley Road, McKelvey Road, Woodside Road	Council District:	26
Extension of Existing Development:	No	Census Tract:	003104
Sewer District:	Septic	Municipality:	No
Fire District:	Canebrake Fire	Variance Requested:	No
Water Provider:	Greenville Water	Cluster Development:	No Option:
		Open Space Required:	
		Open Space Provided:	



**Greenville
County**

PRELIMINARY SUBDIVISION DATA SHEET

Copperleaf Subdivision

Subdivision File Number: 2016-194

Subdivision Name: Copperleaf Subdivision

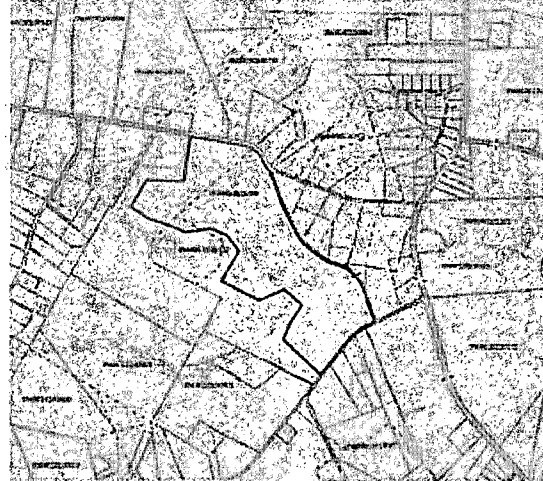
Submittal Date: July 29, 2016

SAC Meeting Date/Time: August 15, 2016 @ 9:30 A.M.

SAC Meeting Location: County Square Conference Room A

Planning Commission Meeting Date/Time: August 24, 2015 @ 4:30 P.M.

Planning Commission Meeting Location: County Square Conference Room D



Developer:	RMDC, Inc.	Engineer:	MLB Engineering, LLC Mitchell L. Baker, Sr.
Developer Address:	P.O. Box 15887 Tallahassee, FL 32317	Engineer Address:	408 S. Almond Drive Simpsonville, SC 29681
Developer Telephone:	229-558-0740	Engineer Telephone:	864-962-8112

TMS Number:	0568010101000	Acres:	82.17 acres ±
		Streets:	Public / 1.00 miles ±
		Number of Lots:	95
Zoning:	Unzoned	Council District:	26
Existing Access:	So. Shirley Road, Woodside Road, McKelvey Road	Census Tract:	003104
Extension of Existing Development:	No	Municipality:	No
Sewer District:	Septic	Variance Requested:	No
		Cluster Development:	No Option:
Fire District:	Canebrake Fire	Open Space Required:	
Water Provider:	Greenville Water	Open Space Provided:	

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CITIZENS FOR QUALITY RURAL
LIVING, INC.,

APPELLANT/PETITIONER,

v.

THE GREENVILLE COUNTY PLANNING
COMMISSION and RMDC, INC.,

RESPONDENT/DEFENDANTS.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-05425

**BRIEF FROM GREENVILLE COUNTY
PLANNING COMMISSION IN
SUPPORT OF MOTION TO DISMISS**

The Greenville County Planning Commission adopts and supports the Motion to Dismiss the Appeal from the Planning Commission filed by RMDC, Inc. S.C. Code Ann. §6-29-1150 does not provide the right to appeal a decision by the commission to any person or entity except the property owner whose land is the subject of the decision of the commission.

The right of appeal is a matter of grace and is not an inherent or vested right. *Turner v. Joseph Walker School District No. 9*, 215 S.C. 472, 56 S.E.2d 243. No appeal is to be allowed from an inferior or special tribunal, except in cases where it is expressly granted by law. *Sasser v. South Carolina Democratic Party*, 277 S.C. 67, 69 (S.C. 1981) [Citing *Whipper v. Talbird*, 32 S.C. 1, 10 S.E. 578 (1890)].

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 ("Planning Act"), codified at S.C. Code §6-29-1110, governs the appeals process from various local government boards. The Planning Act includes the procedure to appeal a decision made by a local planning commission.

In Greenville County, the land development regulations require plans for major subdivisions to be approved by the Greenville County Planning Commission. Pursuant to state law, an appeal from a planning commission decision must be filed with the circuit court within 30 days after actual notice of the decision. S.C. Code § 6-29-1150(D)(1). S.C. Code § 6-29-1150(D)(2) provides that "(a) **property owner whose land is the subject of a decision** of the planning commission may appeal by filing a notice of appeal with the circuit court" (emphasis added).

Prior to 2003 the Planning Act did not specify the procedures for an appeal from a planning commission decision on land development to the circuit court. In 2003, the General Assembly enacted the "Land Use Dispute Resolution Act", which amended the Planning Act and added S.C. Code § 6-29-1150(D)(2) to provide appeal rights solely to property owners whose land is the subject of a planning commission decision. In the same 2003 legislation, the General Assembly provided that appeals from board of zoning appeal ("BZA") decisions to circuit court could be made by "(a) person who has a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority..." S.C. Ann. § 6-29-820(A).

Had the General Assembly wanted to expand the appeal rights to persons with a substantial interest in a decision of the planning commission, as it did with BZA decisions, it could have done so. The plain language of the statute specifies who had the right to appeal decisions from these different local government boards.

Appellant/Plaintiff argues that the County's Land Development Regulations allows appeals by any person aggrieved by a decision of the Commission. This language was in the Greenville County Land Development regulations prior to the 2003 amendment to the State Planning Act that specified who had the right to appeal Planning Commission decisions. The 2003 state law amendment created a conflict with local law. An ordinance adopted by a local government must be consistent with the general law of the State, as enacted by the Legislature. Otherwise, the ordinance is void. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002).

Greenville County Council is in the process of updating and amending the County Land Development Regulations. This legislative process began over two years ago, and has resulted in an ordinance that is currently pending before County Council. This ordinance is on County Council's agenda to receive second reading on November 1, 2016. In this updated ordinance, the "any person aggrieved" language has been replaced to ensure the local law is consistent with state law. (See Greenville County Land Development Regulations 1.6.2 (as proposed for Second Reading on November 1, 2016), Exhibit "A".)

For the foregoing reasons, The Greenville County Planning Commission requests an Order from this Court dismissing this appeal.

Respectfully submitted,

s/ Dean Campbell
Dean Campbell
Deputy County Attorney
301 University Ridge, Ste. 2400
Greenville, South Carolina 29601

October 27, 2016

Greenville, South Carolina

**Attorney for Defendant Greenville County
Planning Commission**

Greenville County Land Development Regulations (as proposed for Second Reading on November 1, 2016)

1.6.2 Appeals

Any authorized action or decision made by the Community Planning, Development and Public Works Department staff may be appealed to the Planning Commission within fifteen (15) days. Any appeals will be scheduled for the next available Planning Commission meeting for consideration. An appeal from the decision of the Planning Commission must be made within thirty (30) days after actual notice of the decision pursuant to the provisions of Title 6, Chapter 29 of the Code of Laws of South Carolina, as amended.

EXHIBIT “A”

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Citizens for Quality Rural Living, Inc.,
Appellant/Petitioner,

v.

Greenville County Planning Commission,
and RMDC, Inc.,
Respondents/Defendants

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-23-5425

**NOTICE OF MOTION
AND MOTION TO
ALTER OR AMEND JUDGMENT
AND/OR MOTION FOR
RECONSIDERATION**

TO: THE HONORABLE LETITIA H. VERDIN

H. DEAN CAMPBELL, JEFFREY D. WILE AND WILLIAM A. COATES,
Attorneys for the respective Respondents/Defendants.

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Appellant/Petitioner Citizens for Quality Rural Living, Inc., will move before the Honorable Letitia H. Verdin at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering, amending, and/or reconsidering the Order dismissing this case for lack of standing dated December 7, 2016. Counsel for the Petitioner/Plaintiff received notice of entry of the Order on December 8, 2016.

The Appellant/Plaintiff's motion is based upon the following grounds:

The Order dismissing the case does not address each of the grounds set forth in the pre-trial motions, nor does it specify any particular ground among those argued before the Court and in motion and memoranda upon which the Court's order is based. The purpose of this motion is to respectfully request that the Court address each of the grounds raised by the

parties so that such issues are properly preserved for appellate review. Specifically, the Petitioner requests the Court to issue a ruling on the following grounds:

1. Whether Appellant is a duly incorporated entity in South Carolina representing members who are residents of the County of Greenville owning property in the vicinity of the subdivision approved; whether Appellant's members are impacted by the decision of the Greenville County Planning Commission granting RMDC's preliminary plan to develop a subdivision.

2. Whether Greenville County Land Development Regulations, Article 1, Section 1.5 which, at the time of hearing, read "Any person aggrieved by a decision of the Commission . . . may ... appeal" includes neighbors and surrounding property owners or entities that represent them within the meaning of "any person aggrieved."

3. Whether the Court took into consideration amended Land Development Regulations pending at the time of oral argument.

4. Whether South Carolina Code Section 6-29-1150 D)(1), which reads "An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision," allows citizens affected by planning commission decisions or entities representing them to appeal decisions of the Planning Commission, particularly when considered with the following code section which states in part concerning mediation of disputes with the Planning Commission that "[a] person who is not the owner of the property may petition to intervene as a party, and this motion must be

granted if the person has a substantial interest in the decision of the planning commission.”

S. C. Code §6-29-1155.

5. Whether the Appellants/Petitioners have standing under the public interest or public importance standard or the Declaratory Judgment Act to set forth a uniform standard for the application of the Comprehensive Land Use Plan in Planning Commission decisions affecting unzoned areas of the county (approximately 2/3rds of the land mass of Greenville County) and traffic standards.

Wherefore, Appellant/Petitioner respectfully asks the Court to alter or amend its Order to specify with particularity the grounds upon which the Court’s decision was made, or to reconsider its judgment.

Respectfully Submitted,

s/B. Faith Martzin
Barbara Faith Martzin,
B. Faith Martzin, PC
S.C. Bar No. 11817
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Greenville, SC 29607
(864) 551-2604
(864) 751-6369 fax
fmartzin@martzinlaw.com

Attorney for Appellant

December 15, 2016
Greenville, South Carolina

I N D E XWITNESSPAGE

No Witnesses.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: All right. And we're here on the motion to dismiss for *Citizens for Quality Rural Living v. The Planning Commission*, and we're a little bit early.

MR. COATES: I'll check and see if the Appellant's attorney is here.

THE COURT: Okay. Fantastic. If not, we'll take a little break.

(Brief recess.)

MS. MARTZIN: Your Honor, I'm Faith Martzin. I am, I guess, defending the motion in the next hearing, and I do have people who expect this to start at ten o'clock ---

THE COURT: That's fine.

MS. MARTZIN: --- who may still be on their way.

THE COURT: Sure. Okay. That's perfectly fine. Just checking to see if everybody was here, we'd get going. If not, don't worry about it.

MS. MARTZIN: All right. Thank you.

THE COURT: Thank you.

(From 9:51 to 10:03, a brief recess was taken.)

THE COURT: All right. It's my understanding

1 that in this matter the actual appeal by consent of
2 parties is continued to a later day ---

3 MR. COATES: Correct, Your Honor.

4 THE COURT: --- for this motion to be heard; is
5 that correct?

6 All right. And then this is RNDC's motion to
7 dismiss, and it's filed pursuant to 12(B)(1) and
8 12(B)(6).

9 All right. Yes, sir.

10 MR. COATES: Thank you, Your Honor. Bill
11 Coates for Roe Cassidy Coates & Price in Greenville
12 for RNDC.

13 Your Honor, this is -- as Your Honor has noted,
14 this is an appeal from a decision of the Greenville
15 County Planning Commission rendered August the 24th
16 of this year, approving a subdivision known as
17 Copper Leaf in the southern part of Greenville
18 County. RNDC is the developer of record.

19 Importantly, Your Honor, this land is un-zoned,
20 so we're not talking about an appeal from the Board
21 of Zoning Appeals or something like that.

22 I believe Ms. Martzin has filed a memorandum.
23 I filed a memorandum. Also, Mr. Campbell's filed a
24 memorandum. I'll be happy to hand up a copy of our
25 memorandum if ---

1 THE COURT: I don't -- I don't see it in -- in
2 my queue yet on my -- my binder for this case, but
3 it may just not have been updated. All right.

4 MR. COATES: All right. Thank you, Your Honor.

5 Our -- our motion is based on the statutes of
6 South Carolina, and it's very simple. The plaintiff
7 in this case has no right to appeal and, therefore,
8 has no standing to bring this appeal.

9 The statute regarding appeals from the decision
10 of the planning commission is limited to the owner
11 of the property. Without question, the plaintiff in
12 this case is not the owner of the property; thereof,
13 a collection of to have formed. I'll call it a
14 citizens group. It isn't -- it is filed with the
15 Secretary of State.

16 Now, as we say in our papers, Your Honor, since
17 at least 1829, it's been the law of South Carolina
18 that there is no appeal from an in -- an inferior
19 tribunal, unless there is an expressed grant of a
20 right to appeal. And that's confirmed in Rule 74 of
21 the South Carolina Rules of Civil Procedure, which
22 says that any appeals have to be made in accordance
23 with the statute.

24 The applicable statute in this case is Section
25 6-29-1150(D) which limits appeals to the owner of

1 the property. It says, (D)(2), "A property owner
2 whose land is subject of a decision of the planning
3 commission may appeal by filing a notice of appeal
4 with the Circuit Court," so on and so forth.

5 As I've indicated, there's no question that my
6 client or -- or the owner of the property did not
7 appeal. These folks are not the owners of the
8 property. We believe the statute controls.

9 Now, the other side says a couple of things.
10 One, they say that there's a county regulation that
11 conflicts with this. Well, Mr. Campbell, assistant
12 county attorney is here, and they have filed a
13 memorandum in support of our motion to appeal.

14 And with the Court's permission, he's going to
15 address that particular issue, but the short answer
16 to that is, where a county regulation conflicts with
17 a state statute, there is no question that the state
18 statute prevails, not the county regulation.

19 The second thing that they -- the opposition
20 would say is, that, well, this statute really grants
21 a right of appeal because the first part of Section
22 (D)(1) says, "An appeal from the decision of the
23 planning commission must be taken to the Circuit
24 Court within 30 days after actual notice of the
25 decision." And they argued that somehow that gives,

1 I guess, the world the right to appeal.

2 Here what we really have, Your Honor, is, we
3 have a -- we have two statutes, both involved in
4 2003. The General Assembly enacted two statutes,
5 one involving the planning commission, and the
6 second involving the Board of Zoning Appeals.

7 And the statute involving the Board of Zoning
8 Appeals allows for a person who has a substantial
9 interest in any decision of the Board of Zoning
10 Appeals or an officer or agent of a county or a city
11 or whatever to appeal. But the General Assembly did
12 not grant that right to -- with regard to a decision
13 of the planning commission to anyone other than the
14 landowner.

15 Now, and -- and, in fact, they -- Ms. Martzin
16 cites -- cites a case which is an unpublished case
17 called *Dippel v. Horry County Planning Department*,
18 but the Dippel case only addresses the issue of
19 whether or not it's mandatory when -- if Your Honor
20 were to continue to read the statute, the appeal
21 statute provides that the owner of the property, in
22 addition to filing the appeal, can request
23 mediation. The Dippel case went off on whether or
24 not the request for mediation is mandatory.

25 In other words, if you don't -- what that case

1 went off on, number one, it was an appeal by the
2 landowner, so it's not on all fours already.
3 Secondly, the question in that case was, here we
4 have a landowner who appealed the decision of the
5 planning commission, but he -- but that landowner
6 did not request mediation.

7 The question before the Court of Appeals in an
8 unpublished opinion was, "Does the request for
9 mediation -- is the request for mediation mandatory?
10 And because the request for mediation wasn't made,
11 does that mean that the appeal is subject to
12 dismissal?" And the Court of Appeals said, "No.
13 That is not mandatory. It's -- it's up to the -- to
14 the landowner."

15 And so here is sort of where we are.
16 The United -- every Court from the United States
17 Supreme Court to the South Carolina Supreme Court to
18 the Court of Appeals in interpreting statutes and
19 dealing with statutory interpretation says the
20 following things:

21 One: "A Court must presume that a legislature
22 means what it says and says what it means when it
23 writes a statute."

24 Secondly: "That a Court must presume that when
25 a legislature -- when the legislature of the General

1 Assembly writes a statute, it understands what it's
2 doing when it puts the words in the statute or
3 doesn't put words in the statute."

4 And number three: "Where the terms of a
5 statute are clear and unambiguous," as we contend
6 they are here, "there's no issue about statutory
7 interpretation. The Court must interpret the
8 statute as it is written using the words that --
9 that are in there."

10 The language in this act is clear. It is
11 limited -- an appeal is limited to the landowner.

12 THE COURT: Okay.

13 MR. COATES: These folks are not the
14 landowners. This is not a zoning case. If this
15 were a zoning case and this were an appeal from a
16 decision of the Board of Zoning Appeals, that might
17 be a different story, but the legislature, and I
18 would point this out to Your Honor, if you look at
19 the statute, if you look at the statute under the
20 history, it talks about the 2003 amendment.

21 And it says that it added Subsections (D)(2),
22 (D)(3), and (D)(4). And (D)(2) says, "A property
23 owner whose land is the subject of a decision of the
24 planning commission may appeal." So the legislature
25 specifically limited in 2003 an appeal from the

1 planning commission to the property owner.

2 More importantly, Your Honor, if you were to go
3 one further down, and this is not in my memorandum,
4 but I will cite it to you, Section 6-29-1155 which
5 talks about pre-litigation mediation says, "If a
6 property owner files a notice of appeal." It
7 doesn't say if anybody else files.

8 Their -- their interpretation, respectfully,
9 Your Honor, number one, I don't think you get to
10 statutory interpretation because the statute's
11 clear.

12 In one case the Board of Zoning Appeals,
13 someone like a citizens group whose land is
14 substantially affected may have an opportunity.
15 That's a decision for the Board of Zoning Appeals.
16 Legislature made it a statute with the Planning
17 Committee.

18 And for that reason, Your Honor, I would submit
19 to you that these folks do not have statutory right
20 to appeal. I would refer Your Honor back to the
21 1829 case that we have cited where it says that an
22 appeal -- a right to appeal must be expressly
23 granted. And there is no grant of appeal in this --
24 in this statute to anyone other than the landowner.

25 I think Mr. Campbell may have a couple of

1 things he'd like to say.

2 THE COURT: Thank you.

3 MR. CAMPBELL: Thank you, Your Honor. May it
4 please the Court?

5 Dean Campbell, Greenville County Attorney's
6 Office. I, too, filed a brief. I don't know if you
7 have that.

8 THE COURT: I -- I just -- it -- I've just been
9 able to pull it up, and so in all -- in all candor
10 to both sides, I haven't read anyone's brief. I've
11 read the motion in this case, and that was it.

12 MR. CAMPBELL: Basically, I'm the attorney for
13 the planning commission. The commission expressly
14 agrees with Mr. Coates' position in this matter
15 concerning the standing argument. And the right to
16 appeal is not something that's just as broad as can
17 be. It has to be provided. And the statute in this
18 case provides that the landowner has the right to
19 appeal a decision of the planning commission.

20 And very briefly, it was the Planning Act of
21 '94 that established both the appeal process for the
22 Board of Zoning Appeals and the planning commission.
23 And in that -- in that statute, the General Assembly
24 said, "A person aggrieved by a decision could appeal
25 from BZA." And they differentiated with the

1 planning commission by saying landowner could
2 appeal.

3 They certainly didn't leave it open ended and
4 say anyone, or that's not our interpretation that
5 they -- that they allowed anyone, as Mr. Coates
6 said, in the world to be able to appeal.

7 And I wanted to address one issue very briefly.
8 There is a citation to a county ordinance in the
9 Appellant's memorandum opposing the motion, which
10 basically talks about how the county ordinance says
11 any person aggrieved can appeal a decision of the
12 planning commission. And that language is currently
13 in the county ordinance; however, that language was
14 passed by county counsel in April of 2003.

15 In June of 2003, the State Legislature amended
16 the Planning Act. And when they did that, they
17 provided that the appeal rights were solely for
18 landowners. So when the State Legislature amended
19 state law, that trumped what was in the county
20 ordinance.

21 Now, quite frankly, a neighboring landowner, we
22 can find no record of an appeal in Greenville County
23 since that time until 2015 when in 2015-CP-23-07078,
24 a group called the Satterfield Road Neighborhood
25 Association filed an appeal. They were neighboring

1 landowners, and they filed an appeal posing a
2 planning commission suit.

3 And this Court in that case ruled -- and I have
4 a copy of that ruling, Your Honor -- that they did
5 not have standings.

6 (To the clerk.) If you'll pass that up.

7 So it's our position that the Appellants do not
8 have standing pursuant to the claim, unambiguous
9 language of the statute. We think the landowner,
10 per the statute, is the only entity that has the
11 right to appeal a decision of the planning
12 commission.

13 THE COURT: All right. Thank you.

14 MR. CAMPBELL: Thank you.

15 THE COURT: All right. Ms. Martin -- Martzin.
16 I'm sorry.

17 MS. MARTZIN: It's Martzin. My name is Faith
18 Martzin, and it is my distinct privilege to
19 represent the Citizens for Quality Rural Living.
20 Many of them are in the courtroom today.

21 And let me pass up, if I may ---

22 THE COURT: Thank you.

23 MS. MARTZIN: --- a roster demonstrating -- or
24 the first page in there is a roster demonstrating
25 that many of these landowners are contiguous to this

1 property, and there are other landowners in the
2 vicinity.

3 The public is first invited to be a part of the
4 process that has brought us here today by the
5 requirement that the land to be subdivided be posted
6 with a notice of public hearing for 30 days prior to
7 the hearing before the planning commission. This
8 comes from Article 3, Section 3.1, of the Greenville
9 County Land Development Regulations.

10 If the public is not to be involved, there's no
11 need to post. If the posting is for 21 -- 29 days
12 instead of 30, the hearing will be cancelled. I've
13 been in that position before. The public is invited
14 to give input at the hearing at the planning
15 commission; albeit, it is limited. Article 4 of the
16 Commission's bylaws gives any one individual up to
17 five minutes to speak, unless the planning
18 commission chooses to extend their time.

19 Our commission generally gives ten minutes to
20 each side, the developer or the person who is
21 seeking the permit and the people in opposition,
22 regardless of the number of people who may have
23 packed that hearing room.

24 Both the state statute and the County of
25 Regulations address their right to appeal. The

1 County of Regulations reference the state statute as
2 the procedure to be followed upon appeal, and that
3 is from the County Land Development Regulations
4 Article 1, Section 1.5, paragraph 2 and 3. And it
5 simply says, "An appeal from the decision of the
6 planning commission may be made pursuant to the
7 provisions of Title 6, Chapter 29, taken to Circuit
8 Court within 30 days after actual notice of the
9 decision," and then the language to which
10 Mr. Campbell referred, "Any person aggrieved by the
11 decision of the commission rendered after hearing,
12 may within 30 days after notice thereof file an
13 appeal in Circuit Court for review of the decision
14 pursuant to 6-29-150 of the South Carolina Local
15 Government Comprehensive Planning Enabling Act."

16 The statute, which has already been referred
17 to, 6-29-150, states in relevant part as follows:
18 First -- first section, "An appeal from the decision
19 of a planning commission" -- and you should have
20 this in front of you ---

21 THE COURT: I do.

22 MS. MARTZIN: --- "must be taken to the Circuit
23 Court within 30 days after actual notice of the
24 decision."

25 No limitation. And this subsection is given on

1 who may appeal. The public has been invited to be
2 part of the process up to this point. Subsection 2
3 does give some other options if the Appellant is a
4 landowner. It allows the landowner to ask for
5 mediation. Anyone else is not given that option.

6 Counsel, in fact, referred to the section
7 following, 1155, which starts out, "If a property
8 owner files for pre-litigation mediation." If you
9 will read later on in that same section, it says, "A
10 person who is not the owner of the property may
11 petition to intervene in the mediation as a party,
12 and this motion must be granted if the person has
13 substantial interest in the decision of the planning
14 commission."

15 There are a couple of Spanish Wells cases --
16 and one of the parties was Spanish Wells dealing
17 with substantial interest permittees being parties
18 to an appeal of this nature and substantial interest
19 would include those who have property that is
20 contiguous or in the vicinity of the land at issue.

21 Subsection B of Section 155 says, "That the
22 property owner or his representative, any other
23 person claiming an ownership interest in the
24 property or his representative and any other person
25 who has been granted leave to intervene must be

1 notified and have the opportunity to attend the
2 mediation." So clearly the statute goes well beyond
3 the property owner. In fact, in this situation
4 before the Court, the property owner was not even
5 the one who applied for the sub-development
6 application.

7 Counsel, in their memorandum, compares this
8 section to the appeals section of the Board of
9 Zoning Appeals. And if you look at the context, the
10 language is indeed parallel. The first section
11 under Board of Zoning Appeals allows any person with
12 substantial interest to appeal.

13 And then the following section again -- this
14 was again the same 2003 amendment that they've
15 referred to previously as the section about the
16 owners -- "If the owners wish to appeal, then they
17 can ask for mediation." So it is an additional
18 means for the owner to seek redress, not a
19 limitation of who may appeal under the first
20 subsection.

21 Other counties are in accord with this
22 interpretation. Charleston County's Land
23 Development Regulations read, "Any person with a
24 substantial interest in the decision of the planning
25 commission may appeal a final decision to the

1 Circuit Court."

2 Horry County says, "Any party aggrieved by a
3 decision of the planning commission may appeal the
4 decision to the Circuit Court of Horry County."

5 Richland County's Land Development
6 Regulations -- and I believe I passed up a copy of
7 this section from them -- reads, "An appeal from the
8 decision of the planning commission by a person who
9 may have been a substantial interest" -- and I would
10 point out that this is, I believe, 2010. I didn't
11 bring this up to the podium with me. So it's after
12 the 2003 amendment.

13 Says again, "An appeal from a decision of the
14 planning commission by any person who may have a
15 substantial interest in the decision must be taken
16 to the Circuit Court within 30 days after actual
17 notice of the decision.

18 "In the alternative, also within 30 days, a
19 property owner whose land is the subject of the
20 decision by the planning commission may appeal by
21 filing a notice of appeal with the Circuit Court
22 accompanied by a request for pre-litigation
23 mediation in accord with Section 6-29-1150 and
24 6-29-1155 of the South Carolina Code of Laws."

25 Carlton County, whose land development was --

1 was adopted in 2010 says, "Any party aggrieved by a
2 decision of the planning commission regarding the
3 standards enumerated in these regulations or ruling
4 on a requested modification may appeal the decision
5 to the Circuit Court of Carlton County. The
6 aggrieved party shall file a petition within -- with
7 the Clerk of Court within 30 days of the Planning
8 Commission's decision."

9 So again, these other counties definitely
10 interpret this legislation to read any aggrieved
11 party in accord is the 2 -- 2014 comprehensive
12 planning guide for local governments published by
13 the Municipal -- Municipal Association of Greenville
14 County. And in explaining this 2003 amendment, it
15 says -- it talks about -- and this would be under
16 the parallel provisions in the Board -- Board of
17 Zoning Appeals.

18 "A person with a substantial interest may
19 appeal a decision of the Circuit Court," -- going
20 through these things that we have talked about. "A
21 2003 amendment to the Comprehensive Planning Act
22 allowed an alternative appeal procedure for the
23 property owner whose land is the subject of BZA
24 decision."

25 And, of course, that would be the mediation

1 proceeding. And the section where they talk
2 about -- this code section before the Court, 1150,
3 reflects again that 2003 amendment was to offer an
4 additional means for the property owner to obtain
5 redress.

6 The county has indicated that the ordinance is
7 to be amended. That is not the laws that currently
8 exist. And in addition, the amendment does not --
9 it's -- it's some good editing. It pulls a somewhat
10 wordy regulation into fewer words, but again, it
11 does not change that a party may appeal within
12 30 days.

13 That's all I have.

14 THE COURT: Thank you. I appreciate it. I'll
15 just hear from you very briefly.

16 MR. COATES: Thank you, Your Honor.

17 First, I will -- this is an unpublished
18 decision that -- that is in their brief that I
19 referred to, the Dippel case. I'll pass that up ---

20 THE COURT: Thank you.

21 MR. COATES: --- whenever Your Honor considers
22 this.

23 Secondly, frankly, no matter what the county of
24 Charleston, the county of Carlton, the county of
25 whoever, whatever their regulations say, their

1 regulations no matter what county it is, no matter
2 what municipal association may think or interpret
3 does not trump state law.

4 And if you look at what happened here, Your
5 Honor, and go back and look at the statutes in the
6 amendment parts to the statute, the statute that
7 allowed an appeal by an interested party, if you
8 will, from the Board of Zoning Appeals was in effect
9 in 2003.

10 In 2003, the legislature specifically added to
11 the planning commission statute a limitation on who
12 could appeal from the planning commission, and it is
13 limited to the property owner. So I get back to
14 number one, I don't think we get the statutory
15 interpretation at all because the legislature -- we
16 don't even get to legislative intent. It simply
17 glance -- the only grant in this statute to -- of
18 anyone to appeal is the grant of the right to the
19 property owner.

20 You don't get the right to appeal by osmosis.
21 You don't get the right to appeal by common law.
22 You get the right to appeal from an inferior
23 tribunal only if the legislature has granted it
24 expressly to you.

25 The only person to whom or to which the right

1 of appeal from a planning commission has been
2 expressly granted or granted at all is the property
3 owner.

4 THE COURT: All right. I appreciate it.

5 Well, as I told you earlier, I have not, in all
6 candor, read your memos. I did see the motion, but
7 for whatever reason, my -- my binder or -- on the
8 e-filing did not update with your memos, so I'm
9 going to need some time to read those. I also want
10 to take a look at the case law and the statutes that
11 you've referred to.

12 I'd anticipate issuing a decision possibly by
13 the end of next week, but in -- but to afford myself
14 enough time to look at everything, it might be three
15 weeks before I decide, but it would be between two
16 and three weeks.

17 MR. COATES: Thank you, Your Honor.

18 THE COURT: I always like to tell people when
19 to expect a decision, so...

20 All right. Thank y'all very much. I
21 appreciate your fine arguments on both sides.

22 (The proceedings concluded at 10:29 p.m.)

23 * * * * *

24

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Greenville County, South Carolina, on the 1st day of November, 2016.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

February 25, 2017

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2017-000170

Citizens for Quality Rural Living,
Inc.

Appellant,

v.

Greenville County Planning
Commission, and RMDC, Inc.

Respondents.

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JUN 12 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 22, 2017


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