Appeals & Denials: The Ins and Outs of Evidentiary Hearings

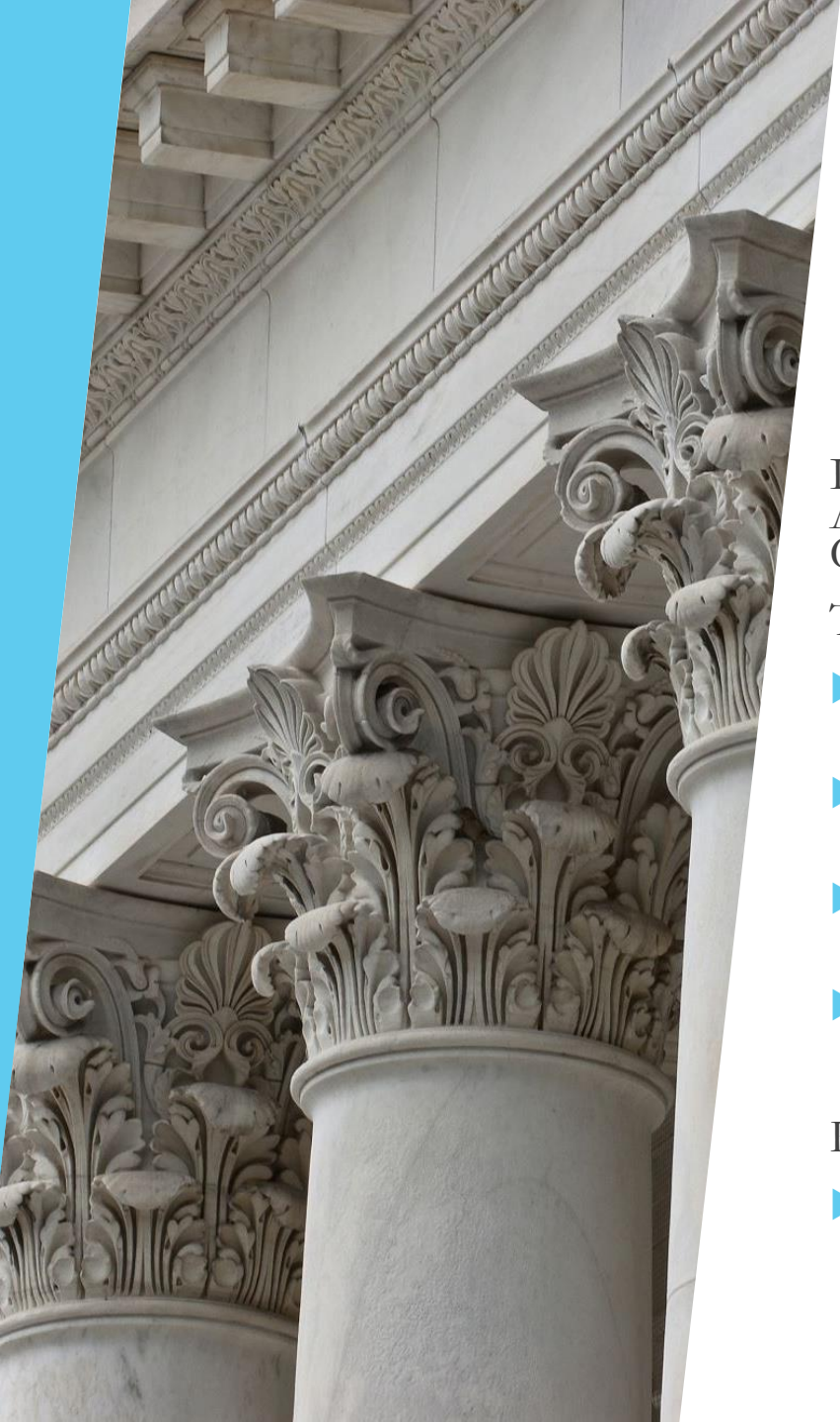
Making Defensible Land Use Decisions After <u>Alliance to Preserve the Old White Horse Road Corridor v. Greenville County Planning Commission</u>

2026 SC Local Government Attorneys' Institute

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Objectives

- By the end of this webinar participants should understand:
- The role of Planning Commissions versus Boards of Zoning Appeals (BZAs)
- The judicial review standards applied by South Carolina Courts
- The significance of *Alliance to Preserve the Old White Horse Road Corridor*
- How applications should be evaluated
- How findings of fact should be developed
- How written decisions should be structured
- Common mistakes that create appellate risk



Why This Case Matters

In April 2026, the South Carolina Court of Appeals reversed approval of a Greenville County subdivision.

The Court found:

- The Planning Commission failed to provide adequate findings.
- The record did not demonstrate compliance with ordinance criteria.
- The Court could not determine the basis for approval.
- Meaningful judicial review was impossible.

Key takeaway from the decision of the Court:

- **A BOARD'S DECISION IS ONLY AS STRONG AS ITS RECORD.**

What the Court Said



The Court held:

- Findings of fact are necessary for meaningful appellate review.
- Courts must be able to determine:
  - What facts were found.
  - What ordinance standards were applied.
  - How the board reached its conclusion.
- **THE COURT EMPHASIZED THAT MEETING MINUTES, QUESTIONS, DISCUSSION, AND VOTE COUNTS ARE NOT SUBSTITUTES FOR ACTUAL FINDINGS.**

Land Use Decision Framework

Most appeals arise under:

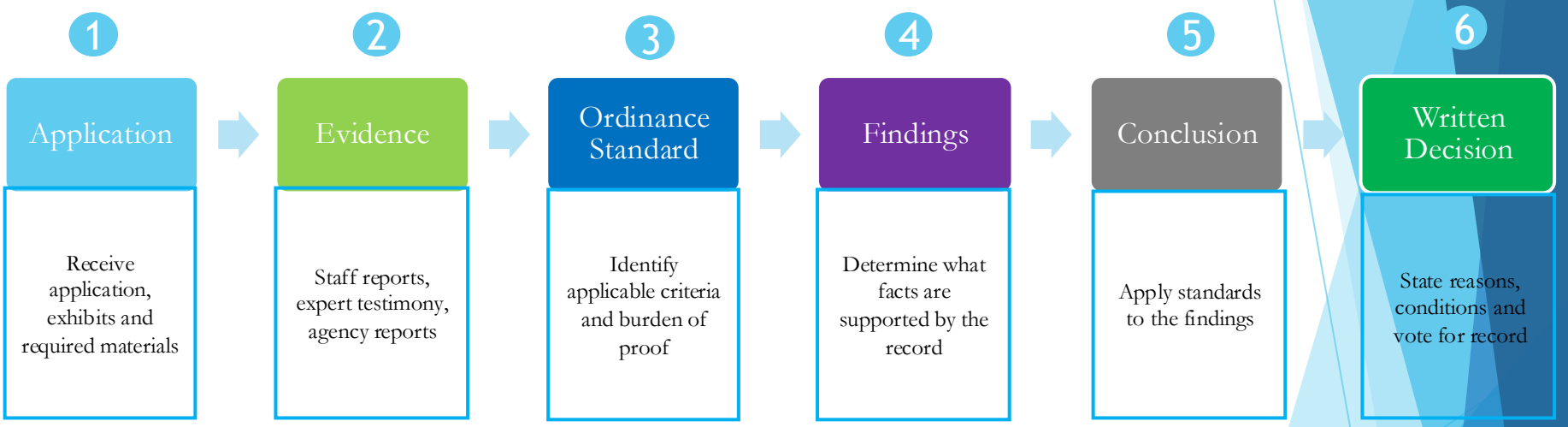
- South Carolina Local Government Comprehensive Planning Enabling Act
- Local zoning ordinances
- Local land development ordinances
- Comprehensive plans

Decision-makers do not decide based on:

- Personal preference
- Public popularity
- Political pressure
- General opposition or support

DECISION-MAKERS MUST APPLY ADOPTED STANDARDS.

South Carolina Land Use Decision Framework



COMPLETE RECORD – MEANINGFUL JUDICIAL REVIEW – DEFENSIBLE DECISION

Building the Record

- Staff Reports
- Exhibits
- Testimony
- Agency Comments
- Public Input

Evidence vs. Opinion

Evidence

Evidence is Information That Helps Establish a Fact

Examples:

- ✅ Traffic Impact Studies
- ✅ Engineering Reports
- ✅ Environmental Assessments
- ✅ Agency Review Comments
- ✅ Staff Reports
- ✅ Survey Data
- ✅ Utility Capacity Letters
- ✅ Photographs
- ✅ Expert Testimony
- ✅ Site Plans
- ✅ Floodplain Maps
- ✅ Aerial Photography

Opinion

Opinion Is a Belief, Preference, or Conclusion Unsupported by Facts

Examples:

- ❌ "The road feels unsafe."
- ❌ "This project is too dense."
- ❌ "I don't think it fits."
- ❌ "Everyone in the community opposes it."
- ❌ "We've never done it this way before."
- ❌ "I just don't like it."

Evidence vs. Opinion

Defensible Decisions Require:

Evidence → Findings → Conclusions → Written Decision

Not:

Opinion → Vote → Appeal

Legislative vs Quasi-Judicial Decisions



Legislative Examples:

- Rezoning
- Ordinance amendments
- Text amendments
- Standard:
- Broad policy discretion

Quasi-Judicial Examples:

- Variances
- Special exceptions
- Appeals of administrative decisions
- Certain subdivision approvals

Standard:

- Evidence must support required findings

THE WHITE HORSE ROAD DECISION REINFORCES QUASI-JUDICIAL PRINCIPLES.

Planning Commission Responsibilities

Planning Commissions typically review:

- Preliminary plats
- Major subdivisions
- Site development plans
- Certain special development approvals

The question is not:

- "Do we like this project?"

The question is:

- "Does the application satisfy the ordinance requirements?"

BZA Responsibilities

BZAs typically hear:

- Administrative appeals
- Variances
- Special exceptions
- Interpretations

The BZA functions similarly to a court and Members should:

- Review evidence
- Apply ordinance standards
- Make findings
- Explain conclusions

Most Important Lesson from White Horse Road

Every required approval criterion must be addressed individually.

If the ordinance requires findings regarding:

- Compatibility
- Infrastructure
- Environmental impacts
- Access
- Traffic
- Public safety

THE BOARD MUST MAKE FINDINGS ON EACH APPLICABLE CRITERION.

FAILURE TO ADDRESS A REQUIRED CRITERION CREATES APPELLATE VULNERABILITY.

Evidence Matters

The Court repeatedly focused on evidentiary support.

Questions Commissioners/Members should ask:

- What evidence supports this finding?
- Is the evidence in the record?
- Is the evidence competent and relevant?
- Can a reviewing court identify it?

The record should contain:

- Staff reports
- Expert reports
- Agency comments
- Plans
- Testimony
- Exhibits





What Is Not Evidence

Not evidence:

- Personal opinions
- Rumors
- Social media comments
- Unsworn statements
- Generalized fears
- Political pressure

COMMISSION/BOARD MEMBERS SHOULD AVOID RELYING ON MATTERS OUTSIDE THE RECORD.

Staff Reports Are Helpful But Not Enough

Many Commissions/Boards rely heavily on staff recommendations.

Important rule:

- A staff recommendation does not become a board finding automatically.

The Commission/Board must:

- Adopt findings.
- State reasons.
- Connect evidence to ordinance standards.

The Findings of Fact Formula

A defensible finding has three parts:

- **Standard**

  What does the ordinance require?

- **Fact**

  What evidence establishes compliance or noncompliance?

- **Conclusion**

  How does that fact satisfy the standard?

- **Example:**

"The ordinance requires adequate access. The submitted traffic study and engineering review demonstrate adequate roadway capacity. Therefore, the Board finds the access requirement is satisfied."

Poor Findings

"The project appears compatible."

Problems:

No standard identified.

No evidence cited.

No reasoning provided.

HIGH APPELLATE RISK.

Strong Findings

"The ordinance requires compatibility with surrounding development patterns. The record contains testimony from the county planning staff, the applicant's site analysis, and zoning data showing adjacent properties consist primarily of residential uses. Based upon this evidence, the Commission finds the proposed residential development is compatible with surrounding land uses."

LOW APPELLATE RISK.



Variance Decisions

For variances, findings should address each statutory and ordinance factor individually.

Typical elements include:

- Extraordinary conditions.
- Hardship.
- Not self-created.
- Consistency with ordinance purpose.
- No substantial detriment.

FAILURE ON ONE REQUIRED ELEMENT MAY REQUIRE DENIAL.

Special Exception Decisions

Special exceptions require findings regarding:

- Ordinance standards.
- Conditions of approval.
- Compatibility.
- Public welfare impacts.

BZA should never simply state:

- "Motion approved." or "Motion denied."

THE RECORD MUST EXPLAIN WHY.



Subdivision and Site Plan Review

Apply objective standards consistently.

Examples:

Infrastructure
- Adequate roadway access
- Water Availability
- Sewer Availability
- Emergency services access

Transportation
- Road Capacity
- Safe ingress/egress
- Internal circulation

Compatibility
- Density
- Character Regulations
- Scale
- Consistency with zoning

Environmental
- Floodplains
- Drainage
- Stormwater management
- Natural Resources

Open Space
- Minimum amount
- Configuration
- Functionality

General Compliance
- Conformance with zoning districts
- Conformance with subdivision regs

Structuring Written Decisions

Recommended format:

- Procedural history
- Jurisdiction
- Findings of fact
- Applicable standards
- Conclusions
- Decision
- Conditions (if applicable)

Lancaster County Planning Commission
101 N. Main St. / P.O. Box 1809
Lancaster, SC 29721
(803) 285-6005

NOTICE OF DECISION

Case No.:
Applicant:
Owner:
Property Location:
Tax Map ID (TMS):
Zoning District:
Request:

BACKGROUND

FINDINGS OF FACT

Based on the application, staff report, submitted materials, and testimony presented at the public hearing, the Planning Commission finds:

APPLICABLE STANDARDS

The request is governed by

ANALYSIS AND CONCLUSIONS

Based on the Findings of Fact and applicable standards, the Planning Commission concludes:

DECISION

Based on the foregoing Findings of Fact and Conclusions, the Lancaster County Planning Commission hereby:

Lancaster County Planning Commission
101 N. Main St. / P.O. Box 1809
Lancaster, SC 29721
(803) 285-6005

VOTE

Motion to by:
Second by:

Vote:

ORDER

This decision constitutes of the Lancaster County Planning Commission on this matter.

ADDITIONAL INFORMATION

This decision does/does not require a hearing before the Lancaster County Council

The applicant should be aware that Planning Commission's decision may be appealed, regarding applications for ***Preliminary Plat, New Road Names, and Subdivisions*** by any person with substantial interest in the decision, to the Circuit Court for the County of Lancaster within 30 days of the date of the public hearing.

Should you have any questions, please contact the Planning Department

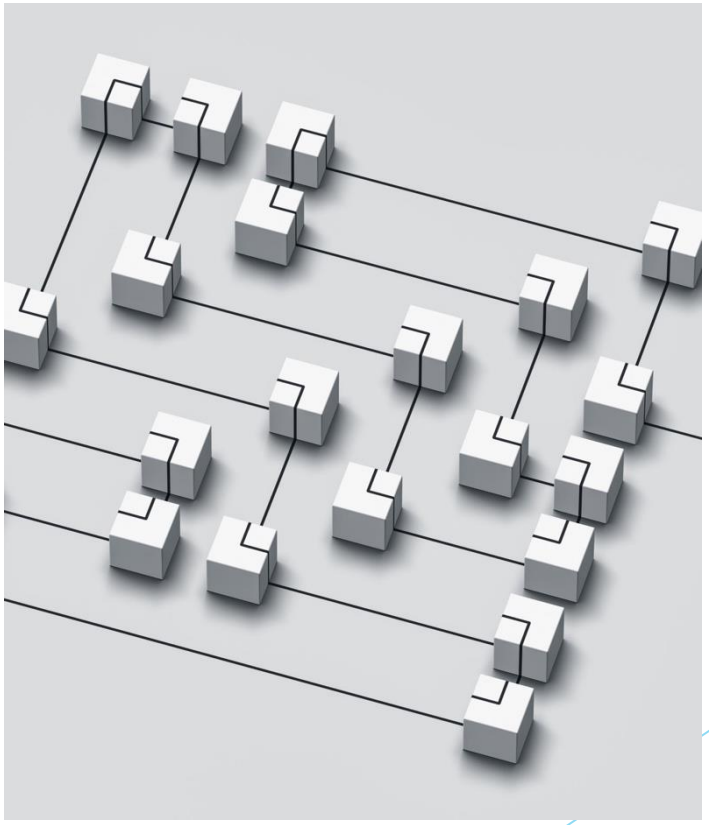
Secretary, Lancaster County Planning Commission

Date:

Finding of Fact Checklist

For every application ask:

- What ordinance section applies?
- What evidence supports compliance?
- What evidence opposes compliance?
- How was conflicting evidence resolved?
- Have all required criteria been addressed?
- Can a circuit court follow our reasoning?



Building The Administrative Record

The record should include:

- Application Materials
- Staff Reports
- Meeting Packets
- Agency Comments
- Exhibits
- Public Comments
- Expert Testimony
- Meeting Transcript or Recording
- Written Findings

A STRONG RECORD PROTECTS THE COMMISSION/BOARD.

Common Appellate Problems

- Common reasons decisions are reversed:
- Missing findings.
- Conclusory findings.
- Failure to address required criteria.
- Lack of supporting evidence.
- Reliance on improper considerations.
- Procedural due process concerns.
- Inadequate record.

Practical Guidance During Hearings

Ask:

- "Where is that in the record?"
- "Which ordinance standard does that address?"
- "What evidence supports that statement?"
- "Do we need a finding on this issue?"

These questions improve defensibility.



White Horse Road Impact Going Forward

Expect:

- More detailed findings.
- More detailed staff reports.
- Greater scrutiny of subdivision approvals.
- Increased focus on record development.
- More appeals challenging inadequate findings.

THE DECISION WILL INFLUENCE PLANNING COMMISSIONS AND BZA STATEWIDE.

Best Practices

- Apply the ordinance exactly as written.
- Focus on evidence.
- Address every required criterion.
- Make explicit findings.
- Explain reasoning.
- Build a complete record.
- Separate policy preferences from legal standards.

Case Study Exercise - PC

Scenario

- The Planning Commission is considering a preliminary plat application for **Willow Creek**, a proposed 92-lot subdivision on 65 acres.
- The property is located in a rural-residential area.
- Surrounding properties include:
  - 40-acre horse farm to the north
  - 60-acre cattle farm to the east
  - 5-acre residential lots to the south
  - Conservation easement property to the west
- The zoning district allows:
  - Single-family residential development
  - Cluster developments
  - Maximum density of 2 units per acre
- The proposal includes:
  - 92 homes
  - 25 acres of open space
  - One entrance on a two-lane county road
  - Internal private streets
  - Stormwater detention facilities

Evidence Presented

Traffic Engineer

- Existing roadway can accommodate projected traffic with an estimated 78 peak-hour trips.
- No traffic study required by ordinance.

Civil Engineer

- Water and sewer capacity available.
- Stormwater design exceeds ordinance requirements and no FEMA floodplain impacts.

Planner

- Density equals 1.41 units per acre.
- Consistent with zoning district.
- Open space exceeds ordinance minimum.

Staff Report

- Staff recommends approval as infrastructure is adequate; density is consistent with zoning and environmental constraints are addressed.

Public Opposition

- "The road is already dangerous."
- "This development is not compatible with our rural community."
- "The area floods during heavy rain."
- "We moved here for open space."

Agency Comments

- **Fire Department -** No objection.
- **Public Works -** No objection.
- **Utility Provider -** Capacity available**.**

BOARD REVIEW

Question 1

- Identify the review standards - What ordinance criteria must be satisfied?

Question 2

- What evidence supports approval?

Question 3

- What evidence supports denial?

Question 4

- Which evidence is competent and which evidence is merely opinion?

Question 5

- Can findings be made regarding:

Infrastructure

- Yes / No and Why?

Compatibility

- Yes / No and Why?

Environmental Conditions

- Yes / No and Why?

Question 6

- What additional evidence would you request before voting?
- Examples:

  Traffic study?

  Drainage analysis?

  Revised plan?

  Agency review?

Case Study Exercise – BZA

SCENARIO - The Oak Ridge Road Variance

- **Applicant:** Smith Family Properties, LLC
- **Property Location:** 1450 Oak Ridge Road
- **Zoning District:** Rural Residential (RR)
- **Lot Size:** 0.78 acres
- **Request:** Reduce required side setback from 25 feet to 12 feet to permit construction of a 1,200-square-foot home addition.
- **Variance Requested:** 13-foot reduction in side setback.

Property Conditions

- **Existing Conditions**

  Lot created in 1962

  Existing residence constructed in 1965

  Triangular-shaped parcel with narrowest point being only 85 feet wide

  Existing septic field limits building placement

  Stream buffer affects rear yard

- **Unique Circumstances**

  Shape and dimensions are unique to this parcel

  Constraints not common to neighboring properties

  Conditions existed before current zoning ordinance

(Record must contain evidence establishing the unique characteristics of the property)

Applicant's Evidence

- **Submitted Materials**

  Boundary survey

  Site plan

  Aerial photographs

  Septic permit

  Engineer's report

  Photographs of existing conditions

- **Applicant Testimony**
- The addition cannot reasonably be located elsewhere because of septic restrictions and stream buffer limitations.

(All exhibits entered into the record)

(Assertions alone are insufficient; evidence must support findings)

Staff Findings

Zoning ordinance requirements

Site constraints

Alternative building locations

Potential neighborhood impacts

- **Staff Conclusion**

  The parcel contains extraordinary physical conditions not generally applicable to nearby lots.

  Staff recommends approval subject to conditions.

(Staff recommendations must be supported by evidence documented in the record)

Public Hearing

- **Public Notice**

  Published according to ordinance requirements

  Adjacent property owners notified

- **Public Comments**

  Support

  Addition is compatible with neighborhood character

  Improves existing home

  Opposition

  Concern regarding drainage

  Concern regarding precedent

- **Board Response**

  Engineer addressed drainage concerns using submitted plans.

  (Public concerns should be acknowledged and addressed in the record.)

Required Variance Criteria

- **Criterion 1 -** Extraordinary and exceptional conditions exist.

  Evidence:
  Triangular lot shape, stream buffer, septic location.

- **Criterion 2 -** Conditions do not generally apply to surrounding properties.

  Evidence:
  Survey comparison with nearby lots.

- **Criterion 3 -** Hardship not self-created.

  Evidence:
  Lot predates ordinance by decades.

- **Criterion 4 -** Variance is necessary for reasonable use.

  Evidence:
  Alternative layouts analyzed and rejected.

- **Criterion 5 -** Relief granted is minimum necessary.

  Evidence:
  Applicant reduced original request from 18 feet to 13 feet.

- **Criterion 6 -** No substantial detriment to public welfare.

  Evidence:
  Drainage report and staff review.

(Each approval criterion must be supported by specific evidence.)

Board Deliberation

- **Board Discussion**

  Board members discuss:

  Site constraints

  Alternatives considered

  Public comments

  Engineering evidence

- **Motion**

  Motion includes findings tied to evidence.

  (A simple motion to approve is not enough. Findings should be articulated on the record.)

Defensible Findings

- The Board finds:

  The triangular shape of the lot creates extraordinary physical conditions.

  The hardship is not self-created.

  Stream buffer and septic restrictions limit reasonable building locations.

  The requested relief represents the minimum variance necessary.

  The variance will not adversely affect neighboring properties.

  The variance is consistent with the intent of the zoning ordinance.

  Each finding cites supporting exhibits.

Written Decision

- **Decision Includes**
  - Findings of fact
  - Conclusions of law
  - Conditions of approval
  - Reference to exhibits
  - Vote of each board member
- **Attached Exhibits**
  - Survey
  - Site plan
  - Staff report
  - Public comments
  - Engineering report

(The record must allow a reviewing court to understand why the decision was made.)

Best Practices Checklist

- ✓ Enter all exhibits into the record
- ✓ Address every variance criterion separately
- ✓ Require evidence, not conclusions
- ✓ Respond to public concerns
- ✓ Deliberate on the record
- ✓ Adopt written findings
- ✓ Connect findings to evidence
- ✓ Create a record that can survive judicial review

Top Ten Lessons from White Horse

1. A Planning Commission or BZA must create a record that explains its decision

- The court reversed the approval because the Planning Commission failed to maintain a record showing the grounds for approval. A bare vote is not enough. The public record must allow meaningful review of why the project was approved.

2. "Any evidence" review is not a free pass

- Courts give Planning Commissions and BZA deference, but there still must be evidence supporting the decision. If the record lacks evidence on required criteria, the approval can be overturned.

3. Statutory recordkeeping requirements matter

- The court emphasized that South Carolina law requires a public record of actions and the grounds for approval or disapproval. Failure to document those grounds creates legal vulnerability.

4. Required approval criteria must be supported by evidence

- When local regulations establish approval criteria, each criterion must be supported by evidence in the record. Assumptions and unsupported conclusions are insufficient.

5. Infrastructure and transportation impacts cannot be glossed over

- The court found little evidence that existing roads and transportation infrastructure could support the development. Statements that improvements would be made later were not enough.

Top Ten Lessons from White Horse (cont.)

6. Compatibility with surrounding land use is a real standard

- The court closely examined whether the proposed density fit the surrounding rural and equestrian character of the area. Compatibility standards must be analyzed, not merely recited.

7. Staff recommendations are not evidence by themselves

- A planning staff recommendation may be considered, but the court found that a recommendation unsupported by the underlying record cannot carry the approval on its own.

8. Environmental concerns require actual support in the record

- Flooding concerns, drainage issues, and environmental compatibility cannot be deferred to future design stages when those issues are part of the required approval criteria.

9. Public opposition becomes important when officials fail to rebut it

- The record contained substantial citizen concerns regarding traffic, flooding, access, and compatibility. Because little contrary evidence existed, those concerns became significant in the court's review.

10. Transparency and meaningful public review are essential

- The overarching theme of Opinion 6144 is that local government decisions must be transparent, supported by evidence, and documented well enough that citizens and courts can understand the basis for approval.

Final Takeaway

The central lesson of *Alliance to Preserve the Old White Horse Road Corridor*:

A decision without findings is a decision vulnerable to reversal.

The role of a Planning Commission or BZA is not merely to vote.

The role is to create a record demonstrating why the ordinance standards were or were not satisfied.

That record is what survives appellate review.



Questions?