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November 4, 2021

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Via Email

John K. Dubose, III  
2530 Devine Street  
Columbia, SC 29205

Re: Patterson Preserve - Improper Expiration of  
Preliminary Plat

John:

As discussed, our firm represents Exeter Development Company, LLC ("Developer"). On June 18, 2019, the Planning Commission *conditionally approved* a preliminary plat for 177 lots on approximately 103 acres. Developer sought to commence development around December 2020 and was informed that grading or other infrastructure activities could not be conducted until final preliminary plat approval. On April 2, 2021, Lancaster County *approved* the Preliminary Plat for Patterson Reserve. See enclosed Preliminary Plat with April 2, 2021 approval stamp. The County mailed confirmation of Preliminary Plat approval to Developer's engineer of record on April 2, 2021 with a letter stating: "This letter is to confirm APPROVAL of your Preliminary Plat plans." See enclosed letter.

Despite the April 2, 2021 approval and extensive discussions with County Planning Staff during the first half of 2021, the County sent Developer a letter dated October 27, 2021 indicating that the Preliminary Plat expired. See enclosed letter. Specifically, the letter states:

Lancaster County Unified Development Ordinance (UDO Section 9.2.3 establishes the Planning Commission as the approving agency for Preliminary Plans. UDO Section 9.2.3 and Section 9.2.10(B)(9) establish a two-year permit validity period, as is consistent with S.C.Code, § 6-29-1530. The Preliminary Plat for the development known as Patterson Preserve was approved by the Lancaster County Planning Commission June 18, 2019. Lancaster County did not receive a formal extension request pursuant to UDO Section 9.2.10(B)(10) on or before June 18, 2021, therefore the plat is now expired and is null and void.<sup>1</sup>

Developer does not debate that vested rights are established for a period of two years after plan approval. However, the Preliminary Plat was not approved until April 2, 2021. The state vested rights statutes cited in the County's October 27, 2021 letter clarify the difference between "approval" and "conditional approval."

"'Approved' or 'approval' means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan or a phased development plan."

"'Conditionally approved' or 'conditional approval' means an interim action taken by a local governing body that provides authorization for a site specific development plan or a phased development plan but is subject to approval."

S.C.Code Ann. § 6-29-1520 (1), (3). The state statutes further provide that a local governing body must provide two-year vested rights in an approved site specific development plan and may provide two-year vested rights in a conditionally approved site specific development plan. S.C.Code Ann. § 6-29-1530.

The County expressly chose not to provide vested rights for conditionally approved plans.

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<sup>1</sup> It must be noted that UDO Section 9.2.10(B)(10) stating that the County "may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension" is contrary to both S.C.Code § 6-29-1530(A)(2)(b) and Lancaster County UDO Sections 9.2.17(A)(2) and (B)(3) which mandate approval of up to five annual extensions.

The Planning Commission shall not provide for or approve the establishment of a two-year vested right in a conditionally approved site specific development plan. No two-year vested right is established in a conditionally approved site specific development plan until such vested right is specifically and expressly approved by the Planning Commission in writing when a site specific development plan is approved without conditions.

UDO Section 9.2.17(A)(3); see also UDO Section 9.2.17(B)(1)(d) ("No vested right is established under a conditionally approved phased development plan"). Section 9.2.17(A)(5) provides: "No vested right in a site specific development plan shall attach or be established until plan applications and required documents have been received, *all required approvals have been given or granted*, and all fees have been paid in accordance with the procedures outlined in this code." "Following an approval or approval with conditions of the Preliminary Plat by the Planning Commission, the applicant will be directed to prepare detailed Construction Documents for review by the Administrator and members of the TRC (as necessary) . . . The applicant may make changes and submit a revised plan which revisions shall be submitted, reviewed and acted on in accordance with the procedures set forth in this section. Once the applicant secures approval of the Preliminary Plan and Construction Documents, the applicant will be directed to proceed to the preparation of a Final Plat." UDO Section 9.2.10(B)(7).

In this case, approval of the revised plans meeting the conditions of the conditional approval were made by the TRC on April 2, 2021 which resulted in approval of the Preliminary Plan. The County's UDO and operational procedures have the TRC making approval of conditionally approved plans. UDO Section 9.2.10(B)(7).<sup>2</sup>

Developer has vested rights to develop the Patterson Preserve for two years from final Preliminary Plan approval on

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<sup>2</sup> See also Section 9.2.10(B)(5) stating "[o]nce an application is deemed complete by the Administrator, the TRC shall review the application and approve, deny, or approve with conditions the Preliminary Plat based on compliance with the land development standards contained in this ordinance within 65 working days of its submittal. If no action is taken by the Planning Commission within this time period, the Preliminary Plat shall be deemed approved." The Planning Commission took no further action after TRC approval of the revised Preliminary Plat resulting in deeming the Preliminary Plat approved.

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April 2, 2021. The County's conditional approval does not trigger expiration of the two-year vested rights period. In addition, Developer's expenditure of approximately \$175,000 since March 2021 to finalize development plans, construction drawings and related development costs in reliance on communications and approvals from Lancaster County provides a vested right.<sup>3</sup>

There has been miscommunication or misapplication of the UDO regarding approval and conditional approval of the Preliminary Plat for Patterson Preserve. Developer seeks to amicably resolve these issues and have its development rights restored. Please contact me upon your review to discuss resolution.

Sincerely,



W. Chaplin Spencer, Jr.

Enclosures

cc: Jeffrey Smerko

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<sup>3</sup> The County's UDO recognizes common law vested rights as follows: The landowner's rights are considered vested in the types of land use and density or intensity of uses defined in the development plan, and the vesting is not affected by later amendments to the UDO if the landowner:

- a. Obtains or is the beneficiary of a significant affirmative government act that remains in effect allowing development of a specific project;
- b. Relies in good faith on the significant affirmative government act; and
- c. Incurs significant obligations and expenses in the diligent pursuit of the specific project in reliance on the significant affirmative government act.

UDO Section 9.2.17(D)(1); see also Grays Hill Baptist Church v. Beaufort County, 431 S.C. 630, 850 S.E.2d 29, 34-35 (2020) (recognizing vested rights to complete approved plan upon significant expenditures).





Lancaster County  
Planning Department  
P. O. Box 1809  
Lancaster, SC 29721  
803.285.6005  
planning@lancastercountysc.net

April 02, 2021

Patrick Murphy  
R. Joe Harris & Associates, Inc.  
127 Ben Casey Drive  
Fort Mill, SC 29708

<b>Project Number</b>	291
<b>Project Name</b>	Patterson Preserve Subdivision
<b>Location</b>	Barberville Road & Harrisburg Rd
<b>Stage</b>	Preliminary Plat
<b>Parcel(s)</b>	0003-00-049.00, 0003-00-049.13
<b>Status</b>	Approved

Dear: Patrick Murphy

This letter is to confirm APPROVAL of your Preliminary Plat plans by the Lancaster County Technical Review Committee (TRC). You may now contact the Lancaster County Zoning Department and the Lancaster County Building Department regarding the necessary permits for this project. If you have any questions or concerns please contact me at (803) 285-6005. We look forward to working with you and your associates on this project in Lancaster County.

Please note that project as-builts shall be submitted prior to issuance of final plat approval or a building certificate of occupancy. These required as-builts shall be completed as per the attached as-built checklist and instructions.

Sincerely,

A handwritten signature in cursive script that reads "Chanda Kirkland".

Chanda Kirkland, Development Service Coordinator  
Lancaster County Government  
101 N Main St  
Lancaster, SC 29720  
P: (803) 416-9390



October 27, 2021

Jeffrey Smerko  
Exeter Development Company, LLC  
3176 National Drive  
Raleigh, NC 27612

**RE: PATTERSON PRESERVE PRELIMINARY PLAT EXPIRATION**

Dear Mr. Smerko,

This letter serves as official notification that your Preliminary Plat for the proposed Patterson Preserve using the Cluster Subdivision Overlay District (CSOD) including 177 homes has expired. This plat included Tax Map Numbers 0003-00-049.00, 0003-00-049.13, and 0003-00-049.17.

Lancaster County Unified Development Ordinance (UDO) Section 9.2.3 establishes the Planning Commission as the approving agency for Preliminary Plats. UDO Section 9.2.3 and Section 9.2.10 (B)(9) establish a two-year permit validity period, as is consistent with S.C. Code, § 6-29-1530. The Preliminary Plat for the development known as Patterson Preserve was approved by the Lancaster County Planning Commission June 18, 2019. Lancaster County did not receive a formal extension request pursuant to UDO Section 9.2.10(B)(10) on or before June 18, 2021, therefore the plat is now expired and is null and void.

Should you still wish to develop this property you will be required to submit a plan consistent with current regulations found in the Lancaster County Unified Development Ordinance beginning at the Sketch Plan stage.

Please feel free to contact me at 803.416.9433 or [adavis@lancastercountysc.net](mailto:adavis@lancastercountysc.net) if you have any questions.

Sincerely,  
Ashley Davis  
Senior Planner

C: Rox Burhans, Development Services Director  
John Dubose, County Attorney  
Mary Glace, Property Owner

Enc: UDO VIA URL:

[https://cms9files.revize.com/lancastercountysc/Document\\_Center/Department/Development%20Service/Planning/Updated%20UDO%2012.22.20/UDO%20-%20Combined%202020%2012-22.pdf](https://cms9files.revize.com/lancastercountysc/Document_Center/Department/Development%20Service/Planning/Updated%20UDO%2012.22.20/UDO%20-%20Combined%202020%2012-22.pdf)