No. 268A22 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

SCHOOLDEV EAST, LLC,

Petitioner,

v.

TOWN OF WAKE FOREST,

Respondent.

From Wake County
No. 20CVS13930
No. COA21-359

****

MOTION OF NORTH CAROLINA COALITION OF CHARTER SCHOOLS TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER-APPELLANT

****

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the North Carolina Coalition of Charter Schools ("NCCCS") move the Court for leave to file an *amicus curiae* brief in support of Petitioner-Appellant, Schooldev East, LLC. The proposed brief is filed contemporaneously with this motion.

I. INTEREST OF *AMICUS CURIAE*

NCCCS is a nonprofit trade association that promotes and advocates for North Carolina charter schools. NCCCS is a member-led organization, representing the interests of eighty-four member charter schools and the over 71,000 students attending them. It lobbies for and promotes the interests of public charter schools before the North Carolina General Assembly, the State Board of Education, the State Department of Public Instruction, and courts.

NCCCS' advocacy is focused on ensuring equitable treatment for charter schools and in general advancing the interests of charter schools in law and policy. In addition, NCCCS promotes charter schools by correcting misconceptions and educating the public about charter schools, how they operate, and the benefits of having charter schools. NCCCS and its members have a significant interest in ensuring that the statutes, ordinances, and quasi-judicial processes at issue in this lawsuit are not applied in such a way that would allow opponents of charter schools to improperly deny land use, zoning, and other permit applications associated with charter schools in order to prevent the construction of new charter schools.

II. ISSUES ADDRESSED IN NCCCS' *AMICUS CURIAE* BRIEF

NCCCS' brief addresses the issue of whether the Town's decision to deny the Petitioner-Appellant's requested permit applications was proper and whether the Court of Appeals erred in upholding the Town's denial. In its brief, NCCCS examines the

legislative landscape authorizing the creation of charter schools and the limited scope of authority that has been delegated to local governments with respect to that process. NCCCS discusses why the ordinance at issue was inapplicable and exceeded the scope of what the Town may require when considering permits related to the construction of a charter school because it directly conflicts with North Carolina statute. Further, NCCCS discusses how the Town's decision, which was upheld by the Court of Appeals, was not based on competent, material, and substantial evidence in the record as required by the law; instead, the record demonstrates the Town relied upon generalized opinions and fears about charter schools to deny the applications.

Amicus support is especially important here, because the issues implicated by this case are far-reaching and can impact the types of requirements local governments may impose on petitioners seeking permits related to the construction of charter schools; the evidentiary burden on such petitioners; and the bases on which a local government can deny such petitions throughout the state.

For the foregoing reasons, *Amicus* respectfully request leave to file the attached *amicus curiae* brief.

DATED: July 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing on counsel of record by depositing a copy, contained in a first-class mail postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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This 7th day of July, 2023.

Electronically submitted
Richard A. Vinroot

No. 268A22 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA
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SCHOOLDEV EAST, LLC,

Petitioner,

v.

TOWN OF WAKE FOREST,

Respondent.

From Wake County
No. 20CVS13930
No. COA21-359

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BRIEF OF *AMICUS CURIAE* NORTH CAROLINA COALITION OF CHARTER SCHOOLS IN SUPPORT OF PETITIONER-APPELLANT

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No. 268A22 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

SCHOOLDEV EAST, LLC, Petitioner, v. TOWN OF WAKE FOREST, Respondent.	From Wake County No. 20CVS13930 No. COA21-359

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BRIEF OF *AMICUS CURIAE* NORTH CAROLINA COALITION OF CHARTER SCHOOLS IN SUPPORT OF PETITIONER-APPELLANT[1]

****

STATEMENT OF IDENTITY OF *AMICUS CURIAE* AND THEIR INTEREST IN THE CASE

The North Carolina Coalition of Charter Schools ("NCCCS") submits this *amicus curiae* brief in support of Petitioner-Appellant ("Schooldev"). NCCCS is a nonprofit trade association that promotes and advocates for North Carolina charter schools. The issues implicated by this case are of critical importance, as they may affect the standards and the sufficiency of evidence required by local governments to deny or grant petition applications relating to the development of charter schools. The interpretation of the statutes and evidence in this case will impact the

[1] Pursuant to N.C. R. App. P. 28(i)(2), *amicus* certify that no person or entity—other than *amicus* and their counsel—directly or indirectly either wrote this brief or contributed money for its preparation.

consideration of permit applications related to charter schools throughout North Carolina, which include *amicus'* members and those for whom *amicus* advocate.

INTRODUCTION AND SUMMARY OF ARGUMENT

In his dissenting opinion, Judge Tyson succinctly stated what occurred in this case—the Commissioners of the Town of Wake Forest (the "Town") "violated their oath to be an impartial decision maker in a quasi-judicial proceeding" when they improperly denied Schooldev's permit applications. *Schooldev E., LLC v. Town of Wake Forest*, 284 N.C. App. 434, 458, 2022-NCCOA-494, ¶ 78, *review allowed,* 884 S.E.2d 726 (N.C. 2023), and *review on additional issues allowed,* 884 S.E.2d 732 (N.C. 2023) [hereinafter *Schooldev. E.*]. It is important to keep in mind what the Town's decision should ***not*** have been about: the merits of charter schools or school choice.

Yet, the record demonstrates that the Town's decision to deny Schooldev's permit applications was based on a desire to prevent a new charter school from being built—an issue that was not before the Town and over which the Town is supposed to have no role. After a quasi-judicial hearing where Schooldev and the Town's own staff presented evidence demonstrating that Schooldev's applications complied with all applicable ordinances, the Town engaged in a delayed deliberation that had little relevance to the record evidence and gave improper credence to the opinions of a few citizens who spoke against the proposed charter school.

The Town got it wrong in every respect—on the procedure, the evidence, and the law. And the Court of Appeals got it wrong by upholding the Town's decision. As the record and Judge Tyson's analysis demonstrate, Schooldev met the requirements

to secure the permits it requested. If permitted to stand, this decision would allow opponents of charter schools and local governments to circumvent the legislature's mandates in order to improperly block the creation of new charter schools.

ARGUMENT

I. North Carolina's legislature has made the policy decision to authorize charter schools.

Charter schools are tuition-free public schools open to all students that provide parents more options for their children's education by operating outside the traditional education system to offer innovative and high-quality instruction. North Carolina's legislature authorized creation of a system of charter schools when it passed the Charter School Act in 1996. Our statutes explicitly recognize the purpose of charter schools to:

> (1) Improve student learning; (2) Increase learning opportunities for all students. . .; (3) Encourage the use of different and innovative teaching methods; (4) Create new professional opportunities for teachers. . .; [and] (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. . . .

N.C. Gen. Stat. § 115C-218(a).

There is significant demand for charter schools in North Carolina. The State Board of Education reported that there were 206 charter schools operating during the 2022-2023 school year, serving roughly 137,500 students. North Carolina State Board of Education Department of Public Instruction, 2022 Annual Charter Schools Report, S.L. 2020-49 at 1, 3 (2023) https://www.dpi.nc.gov/charter-schools-2022-annual-report/download?attachment. Further, most charter schools have significant waitlists, with roughly 77,000 students on such lists. *Id.*

The State delegated the decision whether to authorize individual charter schools to the State Board of Education. *See* N.C. Gen. Stat. 115C-218.5. While local governments, like the Town here, have a role in zoning and land-use decisions, the governing statutes do not give them the authority to decide whether to open individual charter schools. Accordingly, they must exercise their authority within the bounds created by the state legislature. *See Heaton v. City of Charlotte*, 277 N.C. 506, 513, 178 S.E.2d 352, 356 (1971) ("A municipality has no inherent power to zone its territory and possesses only such power to zone as is delegated to it by the enabling statutes."); *Koontz v. City of Winston-Salem*, 280 N.C. 513, 520, 186 S.E.2d 897, 902 (1972) ("A municipality has only such powers as the legislature confers upon it.").

The Town overstepped the boundaries put in place by the legislature when it denied Schooldev's permit applications. Schooldev submitted two applications: a major site plan application (the "Site Plan") and a major subdivision plan (the "Subdivision Plan") related to the construction of a new charter school, Wake Prep, within the Town's planning jurisdiction. Sections 15.8.2 and 15.9.2 of the Town's Unified Development Ordinance ("UDO") required the Town to approve both applications if Schooldev produced evidence tending to establish four findings of fact. Schooldev Br. at 10-11.

The Town held a quasi-judicial public hearing in September 2020 regarding both petitions, at which Schooldev and the Town's own staff presented evidence demonstrating that Schooldev met all applicable Town ordinances and the required findings of fact. Yet, when the Town Board deliberated a month later, they voted to

deny Schooldev's applications based on UDO Section 3.7.5 (the "Ordinance") which, in relevant part, calls for (A) demonstrating how "walking and bicycle accessibility by schoolchildren to schools" can be achieved, including through "construction of additional off-premise sidewalks, multi-use trails/paths or greenways to connect existing networks"; and (B) providing pedestrian connectivity to surrounding residential areas. (R p 335). On appeal, the Court of Appeals upheld the Town's denials because Schooldev did not demonstrate sufficient pedestrian accessibility and connectivity under the Ordinance, and therefore failed to satisfy the second required finding of fact. *Schooldev E.*, 284 N.C. App. at 452–53, 2022-NCCOA-494, ¶ 56.

This Ordinance was not a proper basis to deny Schooldev's applications because it is irrelevant and goes beyond the scope of what the legislature has allowed local governments to require for schools. Even if the Ordinance was applicable, Schooldev met its burden to produce evidence tending to show its requirements were satisfied.

II. The Town, Superior Court, and Court of Appeals erred in upholding denial of Schooldev's applications based on an irrelevant and unlawful zoning ordinance.

Neither of Schooldev's permit applications specifically concerned the zoning of the relevant land, yet a zoning ordinance is the sole basis supporting denial of the applications.[2] Zoning regulations are distinct from subdivision regulations. As

[2] The Town also denied the permit applications based on Community Plan Policies S-1 and S-3. (R p 262–66). The Court of Appeals correctly determined that these broad policy statements were not controlling and could not provide a proper basis for denying the applications. *Schooldev E.*, 284 N.C. App. at 449–51, 2022-NCCOA-494, ¶ 42–48. A contrary holding would allow local governments to circumvent the

explained by this Court, "zoning" refers to "'the regulation by a local governmental entity of the use of land within a given community, and of the buildings and structures which may be located thereon, in accordance with a general plan." *Lanvale Properties, LLC v. Cnty. of Cabarrus*, 366 N.C. 142, 157, 731 S.E.2d 800, 811 (2012) (quoting *Chrismon v. Guilford Cnty.*, 322 N.C. 611, 617, 370 S.E.2d 579, 583 (1988)). In contrast, subdivision ordinances are generally "designed to 'regulate the creation of new lots or separate parcels of land.'" *Lanvale Properties*, 366 N.C. at 158, 731 S.E.2d at 812 (quoting David W. Owens, *Land Use Law in North Carolina* 49 (2d ed. 2011)). The distinctions between zoning and subdivision ordinances are "*critical* because, while both types of ordinances regulate the use of real property, they do so in very different ways." *Lanvale Properties*, 366 N.C. at 159, 731 S.E.2d at 812–13 (emphasis added).

The Town, Superior Court, and Court of Appeals failed to recognize the Ordinance as a zoning ordinance, not a subdivision ordinance. *See* Schooldev Br. at 18–27; *Schooldev E.*, 284 N.C. App. 434, 457–58, 2022-NCCOA-494, ¶ 74–76, *review allowed,* 884 S.E.2d 726 (N.C. 2023), and *review on additional issues allowed,* 884 S.E.2d 732 (N.C. 2023) (Tyson, J., concurring in part and dissenting in part). The Ordinance purports to require provision of off-premises sidewalks across multiple properties, specifically when considering construction of a school. Such a concern falls into the categories of items addressed by zoning ordinances, which "regulate land use

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legislature's mandates and block the construction of charter schools by creating amorphous policy statements.

activities over multiple properties located within a distinct area of the county's territorial jurisdiction." *Lanvale Properties*, 366 N.C. at 158–59, 731 S.E.2d at 812.

Even when adopted as part of a UDO, zoning ordinances and subdivision ordinances retain their "functional distinctions." *Id.* This Court has recognized the legislature's decision to separate the enabling statutes authorizing zoning and subdivision statutes as "deliberate[]." *Town of Nags Head v. Tillett*, 314 N.C. 627, 630, 336 S.E.2d 394, 397 (1985). Accordingly, a zoning ordinance should not operate as the sole basis to deny permit applications unrelated to the zoning of the property at issue. Since the Ordinance here is a zoning ordinance, it was unrelated to Schooldev's permit applications and it was error for the Town and courts to rely on it to deny the applications.

In any event, it was not proper to deny Schooldev's permit applications based on the Ordinance because it is in direct conflict with a North Carolina statute. The legislature limits the offsite "street improvements" that a city can require to only those "required for safe ingress and egress to the municipal street system *and* that are physically connected to a driveway on the school site." N.C. Gen. Stat. § 160A-307.1 (emphasis added). As explained further in Judge Tyson's dissent as well as Schooldev's brief to this Court, the statutory language, history, context, and purpose, as well as case law, all support the conclusion that "street improvements" as used in the statute includes sidewalks and should operate to prevent local governments from requiring offsite sidewalk improvements. Schooldev Br. 36–41; *Schooldev E.*, 284 N.C. App. at 461–64, 2022-NCCOA-494, ¶ 93–109.

A local government must operate within the authority granted to it by the state legislature. *See Heaton v. City of Charlotte*, 277 N.C. 506, 513, 178 S.E.2d 352, 356 (1971). The Ordinance goes beyond the Town's authority because it purports to require that Schooldev provide offsite street improvements in violation of this North Carolina statute. If left undisturbed, this decision would allow local governments to circumvent the legislature's mandates and intent to limit the barriers and costs associated with building charter schools by instituting offsite improvement requirements that do not specifically relate to the street itself.

III. The Town's decision to deny Schooldev's permit applications is irreconcilable with the record.

Even if the Ordinance was applicable, Schooldev presented sufficient evidence to satisfy its requirements. In this quasi-judicial hearing, Schooldev bore a burden of *production*, not a burden of *persuasion. See PHG Asheville, LLC v. City of Asheville*, 374 N.C. 133, 149, 839 S.E.2d 755, 765–66 (2020). Accordingly, if Schooldev "'produced competent, material, and substantial evidence *tending to establish* the existence of the facts and conditions which the ordinance requires for the issuance of" the permits, then it was *prima facie* entitled to the issuance of the permits. *Id.* (emphasis in original) (quoting *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 468, 202 S.E.2d 129, 136 (1974)). At that point, the decision to deny the applications would need to be "'based upon findings contra which are supported by competent, material, and substantial evidence appearing in the record.'" *Id.*

Where a petitioner presents sufficient evidence of compliance with a local ordinance and no competent evidence is presented in opposition, the petitioner is

entitled to issuance of the permit. *See PHG Asheville, LLC*, 374 N.C. at 158, 839 S.E.2d at 771. In *PHG Asheville*, this Court agreed that the petitioner presented "competent, material, and substantial evidence" in support of its petition for a conditional use permit where it "submitted a large volume of evidence that its. . . project met all ordinance standards" and presented testimony from five witnesses, including three experts who so concluded. 374 N.C. at 152–53, 839 S.E.2d at 768. Because this satisfied the petitioner's burden of production, the City Council "lack[ed] the authority to deny PHG's application in the absence of competent, material, and substantial evidence tending to support a different outcome." 374 N.C. at 155, 839 S.E.2d at 769. This Court concluded PHG was entitled to the requested conditional use permit because no such evidence was presented. 374 N.C. at 158, 839 S.E.2d at 771.

The same analysis applies here. Schooldev provided the Town with extensive documentation and a thorough presentation at the September 2020 hearing containing evidence tending to show that all applicable ordinances and requirements were satisfied. This included the testimony of nine witnesses, three of whom were experts. *Schooldev E.*, 284 N.C. App. 434, 459, 2022-NCCOA-494, ¶ 79, *review allowed,* 884 S.E.2d 726 (N.C. 2023), and *review on additional issues allowed,* 884 S.E.2d 732 (N.C. 2023) (Tyson, J. concurring in part and dissenting in part). The Town's staff did not present any evidence contradicting Schooldev's showing of compliance. (R p 95–108, 203–06).

Schooldev's evidence specifically addressed the Ordinance by showing that it would construct a 10-foot-wide multi-use path along the road frontage of the lot. *See* R p 73–74, 162, 212–13. This path would provide bicycle and pedestrian connection to at least one residential neighborhood and a park with further pedestrian paths. *See id*. Under such circumstances, Schooldev made a *prima facie* showing of compliance with the Ordinance by demonstrating how "walking and bicycle accessibility by schoolchildren to schools" would be achieved and providing pedestrian connectivity to surrounding residential areas. (R p 335).

The Town failed to base its decision to deny the permits on competent, material, and substantial evidence as the law requires. No one at the hearing "presented any evidence of noncompliance with any of the Town's ordinances or policies." *Schooldev E.*, 284 N.C. App. at 459, 2022-NCCOA-494, ¶ 79 (Tyson, J. concurring in part and dissenting in part). The Commissioners engaged in very little discussion about pedestrian accessibility or connectivity with the surrounding area. Indeed, when deliberating regarding the Site Plan, the extent of the conversation regarding pedestrian connectivity was one comment by one Commissioner that he did not believe Schooldev presented evidence of "true connectivity" to surrounding neighborhoods. (R p 252–53). The Commissioners did not engage in *any* deliberation related specifically to the second finding of fact, and made no reference to the Ordinance until a motion was made to deny the second finding of fact based upon it. (R p 253, 255). Under these circumstances, the Town's decision to deny the Site Plan

petition cannot be said to be based on competent, material and substantial evidence in the record.

The deliberations regarding the Subdivision Plan were no better. While the Town raised the Ordinance during its deliberation on the second finding of fact, it merely quoted the Ordinance with one Commissioner concluding that "they don't connect." (R p 256). In deliberations regarding other findings, the Town's attorney advised that "[t]he general rule by statute, without getting into the details, is that other than safe ingress and egress to the school, no other transportation-related requirements can be a condition or a basis for denial of an application." *Id*. Mayor Jones then reiterated that they could not deny the petition based on a lack of offsite sidewalks. (R p 257). Despite this clear understanding, a lack of offsite sidewalks is the only basis cited for denial of Schooldev's permit applications.

The Court of Appeals upheld denial of the petitions because Schooldev's evidence demonstrated it "would provide pedestrian connectivity to only one residential neighborhood through Joyner Park." *Schooldev E.*, 284 N.C. App. at 453, 2022-NCCOA-494, ¶ 56. This analysis improperly demands more from Schooldev than the presentation of evidence "*tending to establish* the existence of the facts and conditions which the ordinance requires." The law did not require Schooldev to persuade the Town or courts that there existed *sufficient* pedestrian connectivity—this would amount to imposing a burden of *persuasion*.

The record is devoid of any competent evidence tending to show that Schooldev did not satisfy the Ordinance. Because Schooldev made a *prima facie* showing of

compliance with the Ordinance, it was error for the Town to deny its permit applications without stating or citing to a single piece of competent, material, and substantial evidence *contra* to Schooldev's showing of entitlement to the permit.

IV. The Town erred by considering opinions about the merits of charter schools when it denied Schooldev's permit applications.

The Town's lawyer, Sam Slater, stated clearly at the beginning of the September 2020 hearing: "[O]pinions about whether a charter school is good, bad, or neutral are not relevant to the decisions to be made by these boards." (R p 202). In a quasi-judicial hearing, the Commissioners must be "neutral, impartial, and base their decisions solely upon the evidence submitted." *PHG Asheville, LLC v. City of Asheville*, 262 N.C. App. 231, 239, 822 S.E.2d 79, 85 (2018), *aff'd as modified*, 374 N.C. 133, 839 S.E.2d 755 (2020). Even "[c]ouncil members' personal or policy preferences are irrelevant and immaterial" and the board may not rely on "extraneous or incompetent evidence" when making decisions *Id*.

It is inappropriate to deny a petition based on "generalized lay concerns, speculation, and 'mere expression of opinion.'" *Ecoplexus Inc. v. Cnty. of Currituck, Bd. of Commissioners*, 257 N.C. App. 9, 20, 809 S.E.2d 148, 157 (2017). In *Ecoplexus*, the Court of Appeals reversed and remanded the denial of a special use permit where the petitioner made a *prima facie* showing of entitlement and the Board lacked competent, material, and substantial evidence to overcome that showing. *Id*. The Court of Appeals determined that the Board's findings were improperly based on "generalized fear[s] of the Board" and "[g]eneral assertions criticizing solar farms by lay witnesses" which do not amount to competent, material, and substantial evidence

sufficient to rebut the petitioner's *prima facie* showing. 257 N.C. App. at 18, 809 S.E.2d at 165.

Like the City Council in *Ecoplexus*, the Town here improperly weighed generalized criticisms of charter schools when denying Schooldev's permit applications. Notwithstanding Mr. Slater's instruction and the law, a handful of citizens expressed lay opinions in opposition to the creation of a new charter school in the quasi-judicial hearing. This included statements that

- the area is or would become "overly saturated with charters which will drain funding" to other public schools (R p 237. *See also* R p 238; 239);
- charter schools lead to "segregation" in schools (R p 237–38); and
- other public schools are under-enrolled and adding a charter school would make that issue worse (R p 237–39).

None of these opinions were competent evidence relevant to the proceedings. The issue whether to create a charter school was not before the Town.

The Town's subsequent October 20 deliberations demonstrate that the Commissioners not only took these lay opinions into account, they gave them weight when evaluating the petition applications. The Commissioners' irrelevant statements include the following:

- "[C]ommunity schools are supposed to be within the confines of what the makeup of the surrounding community is. . . . [T]hey have a very large marketing plan that's going to target other surrounding communities and, to me, that just doesn't meet the community plan aspect. . . ." (R p 252).

- "I cannot see how this fits as a community school." (R p 252).
- "[W]ith it directly abutting beside a school that's below occupancy, to say that it won't draw students from there which means less money going into that school which means even a potential harm impact on that school. . . I can't find [the third criteria]. . . ." (R p 254).

None of these statements reflect proper considerations. That the Town spent more time discussing these irrelevant concerns than discussing the Ordinance that is now the basis for denial of the permits is telling. They suggest that the denial of Schooldev's permit applications was based not on a failure to meet applicable criteria, but upon unsupported opinions and concerns about creating a new charter school. It was error for the Town to allow such opinions about the desirability of charter schools to influence its decisions regarding Schooldev's permit applications.

CONCLUSION

A quasi-judicial hearing is required to be impartial, its results based on competent and material evidence in the record. That is not what happened in this case. The Town denied Schooldev's permit applications based on a zoning ordinance that both Schooldev and the Town believed was inapplicable until the Commissioners raised it as a basis to deny Schooldev's permit applications during deliberations almost a month after the public hearing. In doing so, the Town did not—and could not—point to any evidence refuting Schooldev's showing that its plans complied with all applicable ordinances. Thus, the Town engaged in a biased assessment of Schooldev's applications which demonstrated a misunderstanding of the facts and

law and a general distrust for charter schools. The question whether a charter school should be built was not before the Town, and opinions about the desirability of charter schools should not be permitted as the basis for denial of Schooldev's applications.

For the foregoing reasons, this Court should reverse the judgment of the Court of Appeals, and remand with instructions directing the Town to approve Schooldev's site plan and subdivision requests.

DATED: July 7, 2023

Respectfully submitted,

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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WORD COUNT CERTIFICATION

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, I hereby certify that the foregoing brief, which is prepared using a proportional font, is less than 3,750 words (excluding cover, indices, table of authorities, certificates of service, and this certificate of compliance) as reported by the word processing software.

DATED: July 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing on counsel of record by depositing a copy, contained in a first-class mail postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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This 7th day of July, 2023.

Electronically submitted
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