

Rebuttal to Exhibit 13

Regarding the Legal Opinion of Attorney Avena Recommending Denial of Application #25-2 ZRA

Prepared by: Eric Treaster
June 10, 2025

To: Members of the Planning and Zoning Commission

Exhibit 13, prepared by Attorney Avena, advises the PZC to deny my Application #25-2 and to defer any changes to the multifamily regulations until after the application for the Gales Ferry multifamily project is no longer pending before a land use board.

Attorney Avena's guidance is unnecessary because if new regulations have an effective date that begins after the Gales Ferry Multifamily development is no longer pending, then ***there is no need to deny my application.***

Exhibit 13 also advises you to deny my application because Attorney Avena apparently believes that your deliberations, or your approval of my application, *might be perceived as predetermination* that you intend to *prevent the approval* of the *pending Gales Ferry multifamily building project*.

Again, as long as ***the effective date of the new regulations is after the proposed Gales Ferry multifamily development is no longer a pending application***, then discussing and approving my proposed multifamily regulations will have *no bearing on preventing approval of the pending Gales Ferry Multifamily project*. It is not a valid reason to deny my application.

I want the record to be clear. ***As long as the effective date of new regulations begins after the Gales Ferry project is no longer pending, the proposed regulations cannot discourage or prevent the approval of the Gales Ferry project.*** I challenge Attorney Avena or anyone to show otherwise.

The Gales Ferry Multifamily project is an application that Wetlands received on February 24. It is Application #25-5 and is currently undergoing the public hearing process. Its public hearing is open and will close on or before July 2. If the application is approved, it is almost sure to become an application to the PZC.

Everyone agrees, including myself, that if the Gales Ferry Multifamily project is submitted to the PZC after its Wetlands approval, ***it should and will be subject to the current zoning regulations.***

If you agree that my application has merit, all you must do after its approval is to establish the effective date of the new regulations to begin after receipt of the pending Gales Ferry multifamily application. ***There is no need or benefit in denying my application.***

It is not complicated. ***The effective date you select will demonstrate to everyone that you intend to ensure the Gales Ferry Multifamily Development is subject only to the current zoning regulations.***

The wetlands decision on the Gales Ferry application will be rendered on or before August 6. If you review and approve my application and ***set the effective date of the new regulations to on or after September 1***, the applicant for the Gales Ferry multifamily development will have several weeks to submit his application to the PZC and be subject to the current regulations.

Although unlikely, Attorney Avena may believe that merely deliberating on my proposed regulations might be perceived as showing intent to deny the Gales Ferry multifamily development. I might agree if the current regulations for multifamily developments in Gales Ferry required a special permit, which would give you the authority to make discretionary decisions and impose discretionary conditions of approval. However, under the current zoning regulations, this is impossible.

It is impossible because the current zoning regulations permit multifamily developments in the Gales Ferry Development District as of right. This means, as an as-of-right land use, that you have no discretion and are unable to impose conditions of approval on any proposed multifamily development in the Gales Ferry Development District. It also means that if the pending Gales Ferry Multifamily application conforms with the current zoning regulations, you are required by law to approve the application.

Attorney Avena's legal opinion recommending the denial of my application appears to be unnecessary, unfair, and unjustified. As long as you establish an effective date of September 1, it is impossible for your deliberations on my application or your approval of my application to create a rational perception that you intend to deny the pending Gales Ferry Multifamily development.

As such, I request that Attorney Avena either withdraw his legal opinion that you deny my application or justify how my proposed regulations, if they become effective on September 1, can rationally be perceived by the applicant of the pending Gales Ferry multifamily development that you are predetermined to prevent approval of his project, as alleged at the top of the second page in Exhibit 13.

I know that attorneys representing land use boards, due to their expertise and experience, are respected and given deference by volunteer land use commissions. However, attorneys are human, and like all humans, they sometimes make mistakes. This is one of those rare times when an attorney has made a mistake, and I urge the error to be remedied.

Respectfully,

Eric Treaster