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VIA FEDEX OVERNIGHT DELIVERY & E-MAIL
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Mayor and City Council
City of North Augusta
Municipal Building
100 Georgia Avenue
North Augusta, SC 29841

Re: Annexation and Rezoning Request for Kellogg Tract, Parcel Nos. 012-08-01-001, 011-19-01-001, 011-11-14-045 (the "Property")

Dear Mayor and City Council:

Bloom Parham, LLP and Butler Snow, LLP represent D.R. Horton, Inc. ("D.R. Horton") with respect to the above referenced matter. D.R. Horton is the applicant to rezone Tax Parcel No. 012-02-01-001, to annex and rezone Tax Parcel Nos. 011-19-01-001, 011-11-14-045, and to approve the General Development Plan for the project (the "Application"). This correspondence is for purposes of requesting that Councilmember Briatico recuse himself from voting on the Application, given his demonstrated bias and lack of impartiality with respect to the Application and D.R. Horton.

The Application seeks to annex and rezone the Property to the PD – Planned Development zoning category. The PD zoning category is intended to "encourage flexibility in the development of land to promote its appropriate use; to improve the design, character and quality of new development; to facilitate the provision of streets and utilities; and to preserve the natural and scenic features of open space." Development Code § 4.12.13; *see also* S.C. Code Ann. §§ 6-29-720(C)(4), -740

That is exactly what is proposed for the development, including a mix of uses for single-family residential, mixed residential, general commercial, and open space. Notably, the General Development Plan (the "Plan"), includes approximately 29 acres to be preserved as passive open space, which includes the wetlands located on the Property, a 50-foot wetland buffer, and other surrounding areas. The purpose of this open space is to protect the environmentally sensitive areas on the Property and to create a natural amenity for the community to enjoy. The development will also include additional open spaces and parks throughout the community.

The City Staff and the Planning Commission recognized the Application's compatibility with the surrounding uses and zoning of adjacent property, the Comprehensive Plan, and the City's rezoning factors. As such, both the City Staff and Planning Commission recommended approval of the Application.

D.R. Horton is afforded the due process and equal protection guarantees under the Fifth and Fourteenth Amendments of the U.S. Constitution, as well as those same guarantees under article I, section III of the South Carolina Constitution. *See Harbit v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009), *as amended* (May 4, 2009). While South Carolina treats the enactment of a rezoning ordinance as a legislative action and affords the governing body discretion, that discretion is not boundless. Zoning actions remain subject to the procedures prescribed by statute and local ordinance. A municipality's zoning decision may be invalidated upon a clear showing "that the decision was arbitrary and capricious and had no reasonable relation to a lawful purpose." *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 279, 890 S.E.2d 748, 754 (2023); *see also Knowles v. City of Aiken*, 305 S.C. 219, 222-24, 407 S.E.2d 642-43 (1991).

In fact, Mayor Williams correctly recognized at the May 26, 2026 meeting that rezoning and annexation applications must be decided on the merits of the case and not based on personal feelings with respect to a particular developer. Nevertheless, that concern exists here.

This request does not rest on disagreement with Councilmember Briatico's general land-use policy views or his right to communicate with his constituents. Instead, this request is premised on his applicant-specific statements, material mischaracterization of the Application, and his expressed intention to use allegations concerning unrelated matters as a reason to prevent this pending Application from moving forward. Those statements evidence irrevocable prejudgment, D.R. Horton-specific hostility, and an unwillingness to evaluate the Application under the City's adopted criteria and the record presented. Indeed, despite the benefits to the City presented by the Application, it is clear that Councilmember Briatico is impermissibly biased and prejudiced against the Application and D.R. Horton. As Mayor Williams recognized, the Application must be made on its merits. But Councilmember Briatico's statements relating directly to the Application demonstrate that he has pre-determined his decision with personal animus, failed to evaluate the Application on its merits, and cannot satisfy his duty as an impartial decision-maker in this case.

For example, Councilmember Briatico made multiple misrepresentations on social media about the Application, erroneously stating that the Application seeks to develop the wetlands on the Property, which is demonstrably false:

[Image on Following Page]

Dennis Briatico
56m ·

Do what? 👀

So my recent post is directly in relation to the Kellogg Tract. It looks like there are three major actions coming up for vote. Hold on to the end of the post because the last part took me out:

. . .

👆 👆 👆 👆 👆

The city recognizes this as wetlands and as a wildlife refuge. Then they recommend developing on it anyway.

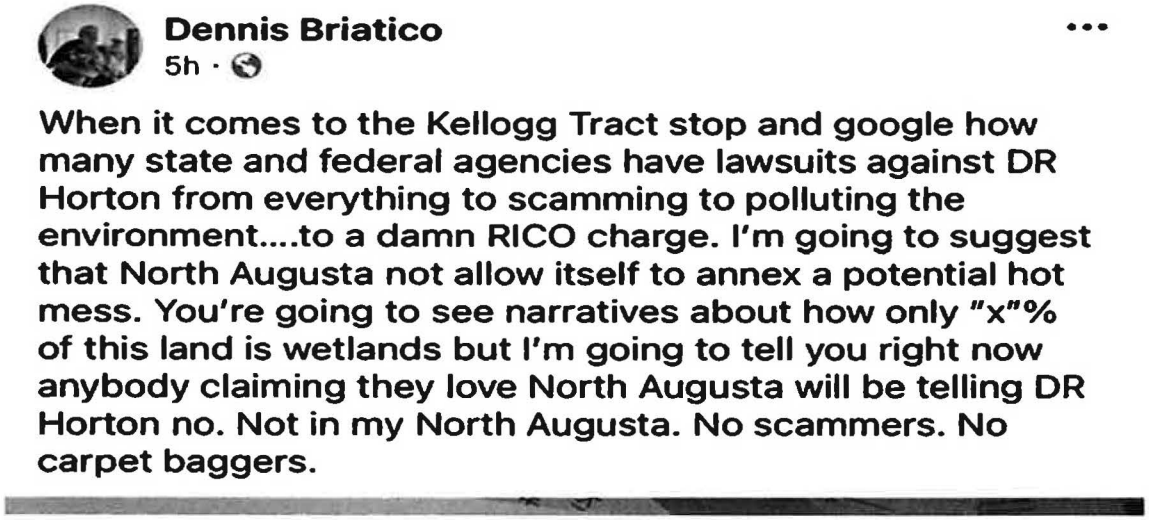
👇 👇 👇 👇 👇 👇

The planning commission voted yes to turn wetlands into houses. Your voices is the only thing that can stop the city council from doing the same.

It is evident in the Application that the wetlands will be preserved, and Councilmember Briatico's statements are inaccurate. What's more, Councilmember Briatico sought to elicit public opposition to the project through his social media posts based on an entirely false premise.

In addition, Councilmember Briatico has made statements about D.R. Horton related to completely unrelated matters and made derogatory comments against D.R. Horton directly:

[Image on Following Page]

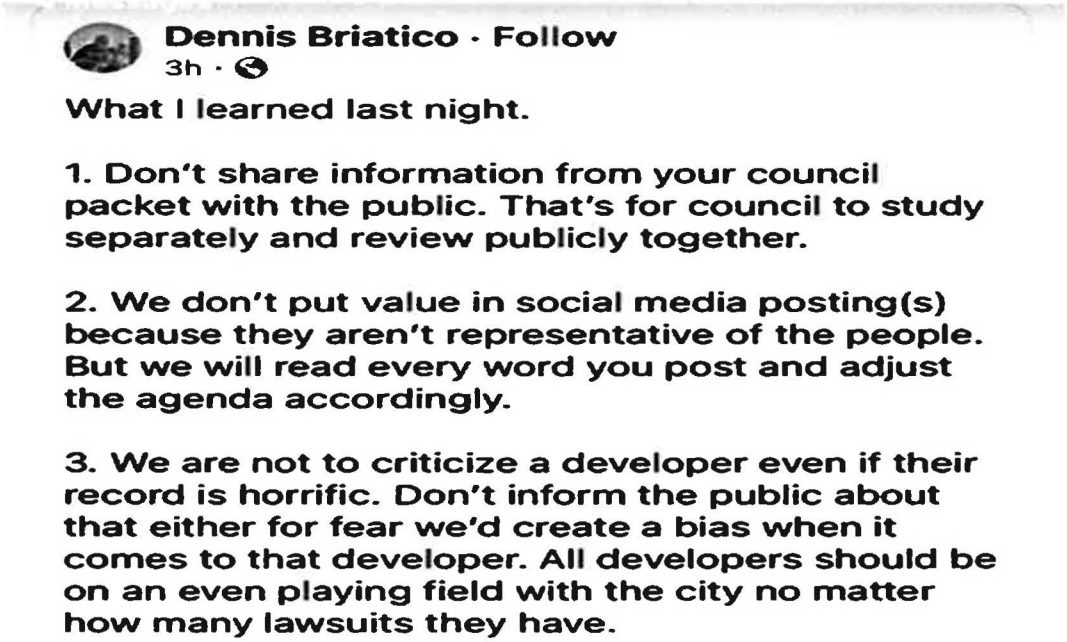


Dennis Briatico
5h ·

When it comes to the Kellogg Tract stop and google how many state and federal agencies have lawsuits against DR Horton from everything to scamming to polluting the environment....to a damn RICO charge. I'm going to suggest that North Augusta not allow itself to annex a potential hot mess. You're going to see narratives about how only "x"% of this land is wetlands but I'm going to tell you right now anybody claiming they love North Augusta will be telling DR Horton no. Not in my North Augusta. No scammers. No carpet baggers.

Referring to the applicant in a pending rezoning matter as "scammers" and "carpet baggers" is not merely an expression of a general land-use policy preference. It is evidence of applicant-specific hostility and prejudgment. D.R. Horton's concern is that Councilmember Briatico's continued participation in disparaging commentary—detached from any limiting principles—and participation would convert the City's consideration of the Application into a predetermined, personality-based decision unrelated to legitimate land-use considerations.

In fact, Councilmember Briatico and the City have recognized that Councilmember Briatico must be impartial with respect to review of the Application. Councilmember Briatico made the following posts related to such requirements:



Dennis Briatico · Follow
3h ·

What I learned last night.

1. Don't share information from your council packet with the public. That's for council to study separately and review publicly together.

2. We don't put value in social media posting(s) because they aren't representative of the people. But we will read every word you post and adjust the agenda accordingly.

3. We are not to criticize a developer even if their record is horrific. Don't inform the public about that either for fear we'd create a bias when it comes to that developer. All developers should be on an even playing field with the city no matter how many lawsuits they have.

Dennis Briatico · Follow
1h ·

Citizen empowerment post.

Well actually...

When it comes to approving development in local government, it is somewhat true that you have to maintain a non-biased position. You can't criticize a developer with your personal opinion. In doing so you create a situation where tort law may apply, and we in local government could cost our constituents a bunch of taxpayer money. So we must take care in how we proceed. All developers must remain on an even playing field when seeking approval; however, what's absolutely not true is that we are silenced when we see a potential danger facing our community. The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 gives us tools to speak with as long as we follow procedure.

Despite these acknowledgements, Councilmember Briatico *continued* to post about D.R. Horton and the Application, asking in conclusion to his post:

Now where does this developer stand with litigation? You decide.

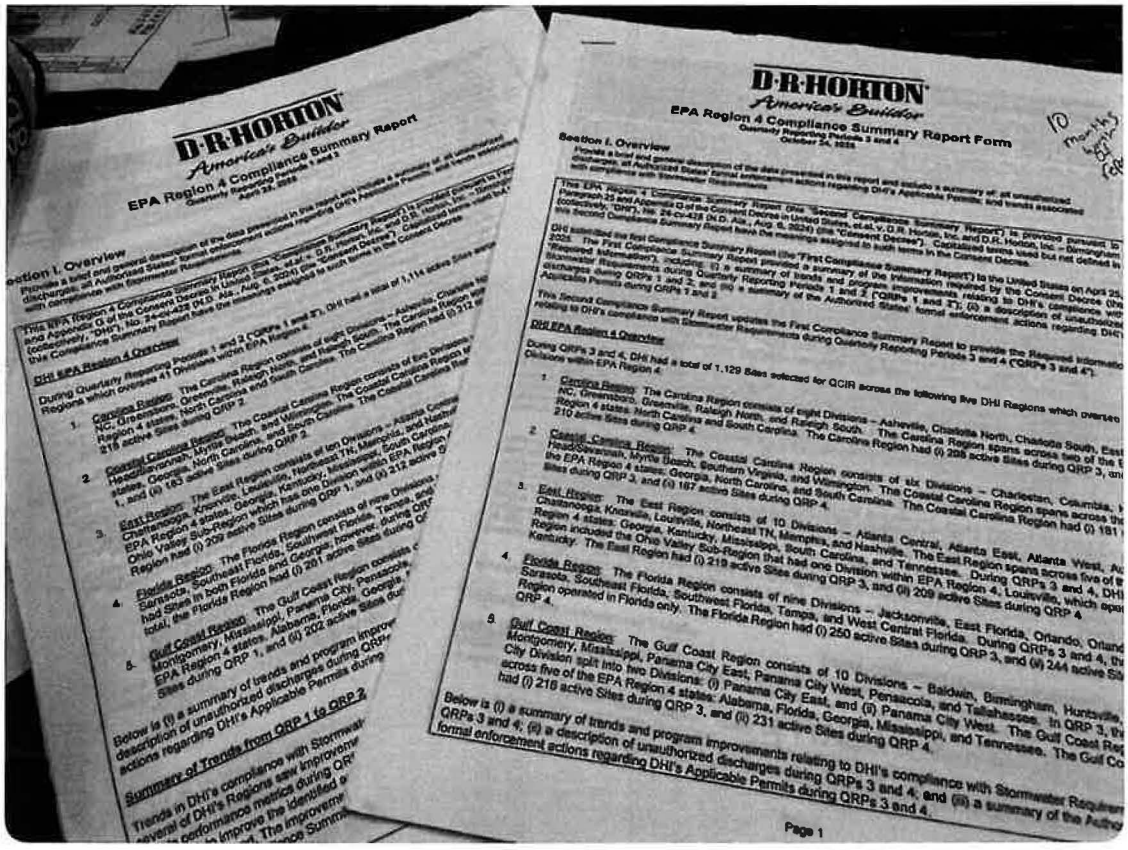
Moreover, at the most recent City Council Work Session on July 27, 2026, Councilmember Briatico again brought up entirely unrelated, irrelevant matters and attempted to inject them into the decision-making process for the Application. He then took to social media, clearly stating his pre-determined intent to deny the Application:

[Image on Following Page]

Dennis Briatico
55m · ♫ The Vampire Lestat · All Fall Down ·

In next weeks meeting will likely take the Kellogg Tract off of the table or we will send it back to planning. If these large developments are an issue that you care about now is the time to speak up. If building around wetlands concerns you now is your time to speak out.

It felt good you pull a developers own compliance records to use them to make a case for not allowing this to go forward.



Because of this continued, applicant-specific conduct by Councilmember Briatico, D.R. Horton respectfully requests that Councilmember Briatico recuse himself from all official deliberation and voting on the Application. Recusal would protect the integrity of the proceedings without restricting his ability to hold or express general policy views outside the decisional process. D.R. Horton respects the legislative process for the City of North Augusta. But the conduct displayed from Councilmember Briatico calls into question the constitutional legitimacy, credibility, and validity of the decision-making process surrounding the Application.

Accordingly:

Refusal of Councilmember Briatico to recuse himself, denial of the Application, rezoning the Property to a category not requested by D.R. Horton, or a denial of the Application founded solely on applicant-specific animus, knowingly false factual premises, or considerations having no rational relationship to legitimate land-use objectives may constitute an arbitrary and capricious deprivation of protected property interests without rational basis, bearing no substantial relationship to the public health, safety, morals, or general welfare, in violation of D.R. Horton's rights to substantive due process under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution.

Refusal of Councilmember Briatico to recuse himself, denial of the Application, rezoning the Property to a category not requested by D.R. Horton, or imposing unreasonable conditions, will prevent D.R. Horton from receiving a fair and adequate hearing, in violation of D.R. Horton's rights to procedural due process under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution.

Refusal of Councilmember Briatico to recuse himself, denial of the Application, rezoning the Property to a category not requested by D.R. Horton, or imposing unreasonable conditions, will treat D.R. Horton differently from similarly situated entities without rational basis, in violation of D.R. Horton's rights to equal protection under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution.

Refusal of Councilmember Briatico to recuse himself, denial of the Application, rezoning the Property to a category not requested by D.R. Horton, or imposing unreasonable conditions, will result in a taking in violation of the Fifth Amendment of the U.S. Constitution and Article I Section 13 of the South Carolina Constitution.

We respectfully request the City's confirmation that Councilmember Briatico will recuse himself from all deliberations and not take any further action concerning the Application.

Sincerely,

BLOOM PARHAM, LLP

/s/ Andrea J. Pearson

Andrea J. Pearson

BUTLER SNOW, LLP

/s/ Benjamin M. McGrey

Benjamin M. McGrey

cc: Kelly F. Zier (via email *KZier@northaugustasc.gov*)