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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
William C. McMaster, III, Circuit Court Judge

Appellate Case No. 2025-002385
Case No. 2025-CP-23-3365

AJC 101 Holdings, LLC, ... Appellant,

v.

Greenville County Planning Commission, ... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from a decision by the Respondent Greenville County Planning Commission. The Appellant AJC-101 Holdings, LLC, which is the owner of the real property at issue, submitted a Preliminary Subdivision Application to subdivide the subject property. That Preliminary Subdivision Application came before the Planning Commission for review at its April 23, 2025 meeting. The Planning Commission, by a 5-3 vote, denied the application and preliminary plat at that meeting. The Appellant was present and received actual notice of that denial on April 23, 2025. The Appellant subsequently filed a Notice of Appeal and Petition on May 28, 2025.

The appeal was heard by Circuit Court Judge William C. McMaster, III on September 17, 2025. This Court issued a Form Order on September 26, 2025, with the finding that "the Defendant issued its decision on April 23, 2025, of which Plaintiff had actual notice on that date. Subsequently, Plaintiff filed its Appeal of the Defendant's decision 35 days later on May 28, 2025. Therefore, based on the applicable case law and S.C. Code Ann. Section 6-29-1150, the Decision of the Greenville Planning Commission is AFFIRMED." (Form Order I).

The Appellant subsequently filed a Motion to Alter or Amend Judgment on October 6, 2025. In that motion, the Appellant addressed the lower court's ruling that Appellant's Notice of Appeal and Petition were not timely filed as required by S.C. Code Ann. § 6-29-1150(D)(1). The Appellant made three arguments: (1) that the Appellant is an "interested party" and should not be treated as a "property owner"; (2) that the Court's ruling is contrary to the decision of the Court of Appeals in *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019); and (3) that the Planning Commission does not make a decision on Preliminary Subdivision Application bur rather made a

recommendation to the Greenville County planning staff. The lower court issued a Form Order on November 5, 2025, denying the Rule 59(e) motion. (Form Order III).

The Appellant subsequently filed a timely appeal to this Court.

STANDARD OF REVIEW

Section 6-29-840 prescribes the standard of review a court shall apply when considering an appeal from a local planning commission. In *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008), the South Carolina Supreme Court cited Section 6-29-840 in holding that the reviewing court "must uphold the Commission decision unless there is no evidence to support it." 656 S.E.2d at 351. The Supreme Court further explained:

> We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area. Furthermore, this standard of review does not violate the Kurschner's due process rights.

Id. The Supreme Court concluded that the "any evidence" standard had been "consistently utilized in these types of cases." *Id*. Thus, under the prevailing standard of review, the findings of fact by the Planning Commission "must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840.

The articulation of the applicable standard of review was reaffirmed five years after *Kurschner* in the case of *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and defined the standard of review as follows: "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." 744 S.E.2d at 166. (Citation omitted). Further, "[i]t is important to note that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004).

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning,* 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

In *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993), this Court explained that "[t]he question of subject matter jurisdiction is a question of law for the court." 431 S.E.2d at 631. This Court reaffirmed the long-standing principle that "every court has the power and duty to determine whether it has jurisdiction which includes the power to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." 431 S.E.2d at 632.

ARGUMENTS

I. The lower court correctly ruled that the Appellant's Notice of Appeal and Petition are jurisdictionally barred because they were not timely filed as required by Section 6-29-1150(D)(1).

The lower court correctly ruled that the Appellant's Notice of Appeal and Petition are jurisdictionally barred because they were not timely filed as required by Section 6-29-1150(D)(1). In *Vulcan Materials Co. v. Greenville County Board of Adjustment,* 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), this Court held that "the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement." 536 S.E.2d at 896, n.7. The timeliness of an appeal from a planning commission is no different.

In *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005), this Court held that Section 6-29-900(A) "mandates an appeal to the circuit court must be made 'within thirty days after the affected party receives *actual notice* of the decision. Thus, the triggering mechanism for filing an appeal is actual notice of the adverse decision, not receipt of the written notice." 621 S.E.2d at 362-363. (Emphasis in original). This Court further explained that "[a]ctual notice is synonymous with knowledge," and as a result, "[n]otice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him." 621 S.E.2d at 363. In *Blind Tiger*, the appealing party was present at the meeting of the Charleston County Board of Architectural Review when the decision on appeal was rendered, and this Court found that the thirty-day deadline to file an appeal ran from the date of the Board's meeting. *Id*.

The same is true in the case at bar. Section 6-29-1150(D)(1) provides that "[a]n appeal from the decision of the planning commission must be *taken* to the circuit court within thirty days after *actual notice* of the decision." *See*, S.C. Code Ann. § 6-29-1150(D)(1). (Emphasis added). Importantly, as in *Blind Tiger*, actual notice of the decision occurs on the date of the hearing where the decision is rendered, which in this case would be April 23, 2025. As the record demonstrates, the Planning Commission issued its decision at the April 23, 2025 meeting. As the lower court determined and is uncontested, the Appellant was present at the meeting and had actual notice of the vote and decision by the Planning Commission on that date. The Appellant, nonetheless, filed its Notice of Appeal and Petition on May 28, 2025, which was untimely.

Of note, Section 6-29-1150(D)(2) does allow for a different appellate filing date where the property owner also makes a request for pre-litigation mediation. In that instance, Section 6-29-1150(D)(2) provides that "[a] notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed." *See*, S.C. Code Ann. § 6-29-1150(D)(2). However, the Appellant did *not* include a request for pre-litigation mediation with its Notice of Appeal. Therefore, as the lower court correctly determined, the timing for the appeal set forth in Section 6-29-1150(D)(2) is not applicable here. In sum, as what occurred in *Blind Tiger,* the service of the Notice of Appeal on May 28, 2025 was late, and as a result, the circuit court lacked appellate jurisdiction, and the court below was correct in denying the appeal on that basis.

The Appellant challenges that decision on appeal by arguing that the designation of "actual notice of the decision" as the triggering event in Section 6-29-1150(D)(1) should be read as requiring "written notice." The Appellant writes: "Section 6-29-1150(D)(1) requires some

greater degree of notice, such as a written notification of the planning commission's vote and/or final decision on an application." *See*, Appellant's Brief, p. 7. However, there is no indication given the plain language of the statute that requires "actual notice" to be construed as "written notice." This argument should be rejected for three principal reasons. First, the Appellant seeks to change the plain meaning of "actual notice" as has already been construed by this Court in *Blind Tiger*. Second, if the General Assembly had intended for the triggering event to be "written notice," it would have certainly said so. Third, in reading the statutory scheme as a whole, it makes no sense for the appeal time under Section 6-29-1150(D)(1) to be triggered by "written notice," where Section 6-29-1150(D)(1) applies to appeals by all "interested parties" and not only the property owner or developer. Yet, Section 6-29-1150(B) requires that only "the developer must be notified in writing of the action taken." *See*, S.C. Code Ann. § 6-29-1150(B). Accordingly, all interested parties such as advocacy groups or affected adjoining property owners, some of whom may not even be known to the Planning Commission, are never provided written notice of the decision. In effect, if "written notice" was the triggering event for an appeal time to begin to run, that would never occur for all "interested parties" other than the developer. Hence, the lower court's interpretation of "actual notice," consistent with this Court's analysis of "actual notice" in *Blind Tiger*, was correct and should be affirmed.

Additionally, despite largely ignoring the *Blind Tiger* decision, the Appellant nonetheless argues that the lower court's dismissal is contrary to this Court's precedent, specifically the decision in *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). The Appellant is mistaken. In reality, the lower court's ruling in this case is fully supported by this Court's decision in *Citizens for Quality Rural Living*. Importantly, the dispute in that appeal was not the jurisdictional timing for the filing of

an appeal from a planning commission. Instead, the issue before this Court was solely a question of whether a citizens' organization had standing to appeal from an adverse decision of a planning commission. In that case, the Planning Commission approved a subdivision proposal by a developer, and a citizens' organization named Citizens for Quality Rural Living filed an appeal from the decision of the Planning Commission to the Circuit Court. The developer subsequently filed a motion to dismiss the appeal for lack of standing (and not based on the timeliness of the appeal), and the Circuit Court granted that motion finding that Section 6-29-1150 does not grant standing to appeal to a citizens' organization. On appeal, this Court reversed and concluded that a citizens' organization does have standing to appeal to the Circuit Court as an "interested party."

In analyzing the standing question, including the provisions of Section 6-29-1150, this Court recognized that "property owners" and "interested parties" both have standing to appeal, but there are certain differences in the timing for the filing of an appeal. This Court explained that "subsection (D) as a whole gives different treatment to the larger class of appellants and the subclass of property owners who seek pre-litigation mediation." *Citizens for Quality Rural Living*, 625 S.E.2d 726. Thus, the timing for a property owner who seeks pre-litigation mediation is governed by subsection (D)(2) which provides that "[a] notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed." *See*, S.C. Code Ann. § 6-29-1150(D)(2). However, as this Court readily acknowledged, if a property owner does not seek pre-litigation mediation, then it was subject to the timing deadline in subsection (D)(1), which is the same as for an "interested party." To reiterate, that deadline is stated in Section 6-29-1150(D)(1), which provides that "[a]n appeal from the decision of the planning commission must be *taken* to the circuit court within thirty

days after *actual notice* of the decision." *See*, S.C. Code Ann. § 6-29-1150(D)(1). (Emphasis added).

The Appellant, however, misstates this Court's discussion. The Appellant suggests that in using the term "receiving actual notice," this Court found that the appeal must be filed within thirty days after receiving written notice of a planning commission decision. That is not, however, what this Court stated. Instead, this Court did not veer from the language of subsection (D)(1) and explained that "[u]nder subpart (1), the larger class of appellants have thirty days after receiving actual notice of a commission decision to file an appeal to the circuit court." *Citizens for Quality Rural Living*, 625 S.E.2d 726. The Appellant places undue significance on this Court's use of the term "receiving," and thereby suggests that only "written notice" may be "received" while non-written notice cannot be "received." That is, at best, an immaterial parsing of language given this Court's use of the word "receiving," which is not even a word used in Section 6-29-1150(D). In reality, this Court never held nor suggested that "actual notice" may not be "received" unless it is in writing.

The irony of the Appellant's discussion in his regard is obvious. The holding in *Citizens for Quality Rural Living* is that advocacy groups and other "interested parties" have standing to appeal from a decision of a planning commission; yet, by this Court's own analysis and the plain language of the Section 6-29-1150, an advocacy group or "interested party" would *never* receive written notice of a decision of a planning commission because only the developer receives written notice per Section 6-29-1150(B). In short, if the Appellant's flawed analysis were correct, while the advocacy group and other "interested parties" have standing to appeal, their appeal time would *never be triggered* because only the developer is required to receive written

notice. Thus, contrary to the Appellant's suggestion otherwise, there is no requirement in Section 6-29-1150(D)(1) for the "actual notice" to run from the receipt of *written* notice.

As the lower court correctly ruled in the case at bar, the triggering date for the Appellant (who did not seek pre-litigation mediation) to file a notice of appeal is controlled by subsection (D)(1) and is the date of "actual notice." Moreover, as the lower court correctly found and the Appellant does not dispute either in the lower court or on appeal, the Appellant had actual notice on April 23, 2025 of the Planning Commission's vote and decision. Yet, the Appellant did not file its Notice of Appeal until 35 days later, which was not timely.

Accordingly, the trigger date for appealing under Section 6-29-1150(D)(1) is the date of "actual notice" of the decision by a planning commission. The meaning of that "actual notice" requirement is addressed in *Blind Tiger*, where this Court explicitly ruled that "the triggering mechanism for filing an appeal is actual notice of the adverse decision, not receipt of the written notice." *Blind Tiger*, 621 S.E.2d at 362-363. Of note, this Court in *Citizens for Quality Rural Living* makes no mention of the *Blind Tiger* decision and certainly does not overrule or call it into question. Indeed, the dispositive issue in *Citizens for Quality Rural Living* was the issue of standing and not timeliness, so it makes perfect sense that this Court did not cite, apply, or re-visit its decision in *Blind Tiger*.

In sum, the *Citizens for Quality Rural Living* decision fully supports the lower court's decision in the case at bar. The lower court correctly applied Section 6-29-1150(D)(1) and the *Blind Tiger* precedent in ruling that the Appellant failed to timely appeal from the date that it had actual notice of the decision by the Planning Commission to deny its subdivision application and preliminary plat. That ruling should be affirmed.

II. The Appellant is incorrect in arguing that the Planning Commission was not the decision-maker but rather that the Greenville County planning staff was the decision-maker.

As an alternative argument, the Appellant insists that the Planning Commission's vote at its meeting on April 23, 2025 was not "an appealable final order" because the Planning Commission only makes a recommendation and does not issue an appealable decision. The Appellant is frankly in error in arguing that the Planning Commission was not the decision-maker but rather that the Greenville County planning staff was the decision-maker.

The Appellant's position is certainly contrary to the explicit language in Section 6-29-1150(A), which refers to procedures "for submission of sketch plans, preliminary plans and final plats for review and approval or disapproval." *See*, S.C. Code Ann. § 6-29-1150(A). Moreover, Section 6-29-1150(D)(1) refers to "an appeal from the *decision* of the planning commission" and not "an appeal from the *recommendation* of the planning commission." *See*, S.C. Code Ann. § 6-29-1150(D)(1). That is also contrary to the authority granted by ordinance to the Planning Commission. Section 3.3.5 of the Greenville County Land Development Regulations states that "the Planning Commission may approve, deny, amend or hold the proposed subdivision plan." (Ex. 21). That is also contrary to what occurred in *Citizens for Quality Rural Living*, where the appeal was from a decision of the Planning Commission. That is also contrary to the posture of *this appeal* where the Notice of Appeal states "[a]t its April 23, 2025 meeting, the Planning Commission denied the Preliminary Subdivision Application." *See*, Notice of Appeal and Petition, ¶ 5. (R. __). Likewise, in its Notice of Appeal, the Appellant is not asking this Court to reverse a decision of the Greenville County planning staff but rather is asking this Court to reverse a decision of the Planning Commission. Finally, that is contrary to the April 30, 225 letter from the Subdivision Administrator who advised the Appellant as follows: "At their

meeting on April 23, 2025, the Greenville County Planning Commission denied the above-referenced application." (Ex. 20).

As discussed during the hearing before the lower court, the Appellant attempts to rely on an obvious clerical error in Section 2:2 of the Greenville County Zoning Ordinance. (Tr. 14-15). Section 2:2 outlines the types of matters where the Planning Commission has "Review Authority" and where it has "Decision-Making Authority." In Section 2:2.2 under the subtitle "Decision-Making Authority," there is listed "Preliminary Subdivision Plats." However, in both Sections 2:2.1 and 2:2.2, which delineate the two different "authorities," the same language is repeated in error: "The Planning Commission acts in a review and recommending capacity on the following matters." (Ex. 22). Under "Decision-Making Authority" in Section 2:2.2, it should have stated, absent the obvious clerical error, that the Planning Commission has "final decision-making authority" commensurate with the language used to describe the "decision-making authority" of the Board of Zoning Appeals in Section 2:3.2. (Ex. 22). In its brief, the Appellant disregards what is plainly a clerical error. The Appellant further proclaims, without any supporting evidence, that "[t]he Planning Commission routinely reviews and recommends approval or denial of preliminary plans and County staff routinely approves or denies those plans based on the Planning Commission's recommendations." *See*, Appellant's Brief, p. 15. There is no evidence to support that assertion, which as noted above, is contrary to the Appellant's own pleadings in this case. As mentioned above, Section 3.3.5 of the Greenville County Land Development Regulations states that "the Planning Commission may approve, deny, amend or hold the proposed subdivision plan." (Ex. 21). Section 3.3.5 does not state that the Planning Commission makes recommendations to the planning staff which makes the final decision. To the contrary, Section 3.3.5 states the converse -- that the Planning Commission makes the

decision based on the recommendations from the Subdivision Advisory Committee (SAC) and the planning staff. (Ex. 21).

Nonetheless, taking the Appellant's argument to its logical conclusion, if the Planning Commission only made a recommendation, as the Appellant now asserts only to try to salvage its appeal from an untimely filing, that recommendation (as opposed to a final decision) would not even be appealable. Moreover, if that were the case, the Planning Commission would not be the proper party to this appeal. The proper party would have been Greenville County, which is not a party to this appeal either in the lower court or in this Court.[1] Thus, even if the Appellant is correct that the planning staff is the decision-maker (which it is not), then the Appellant brought its appeal *against the wrong party*, and on that basis, the appeal should still be dismissed. But, the reality is that the decision-maker is the Planning Commission, and as the lower court correctly ruled, the Notice of Appeal was filed late. Hence, this appeal was correctly dismissed.

III. The Appellant's untimely reliance on principles of equitable estoppel may not convey appellate jurisdiction on the Circuit Court for what was clearly an untimely appeal under Section 6-29-1150(D)(1).

As an additional issue raised for the first time on appeal, the Appellant argues that the Greenville County Planning Commission (which is wrongly referred to as the "County") is equitably estopped from asserting the untimeliness of the appeal because of the April 30, 2025 letter sent by the Greenville County Subdivision Administrator to the Appellant's engineering firm. In that letter, the Subdivision Administrator wrote: "If desired, an appeal from the

[1] The Appellant inconsistently refers to the "Planning Commission" and the "County" as the Respondent in different places in its brief. Yet, as the caption and the Notice of Appeal and Petition state, the Respondent is the Planning Commission and not Greenville County.

decision of the Planning Commission must be made within thirty (30) days from the date of this letter in accordance with Section 6-29-1155 of South Carolina Code of Laws." (Ex. 20). The Appellant's reliance on equitable estoppel fails for several reasons.

First, the issue of equitable estoppel is raised for the first time on appeal. It was not raised before the lower court either in the memorandum filed prior to the hearing, during the hearing before the Circuit Court, or in the Appellant's Rule 59(e) motion. Thus, the circuit court judge was never given the opportunity to address the application of equitable estoppel. Instead, the issue was raised for the first time on appeal, and as a result, the issue is not preserved. In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by,* the trial court." *Id.* (Emphasis in original).

Second, it is well settled that "the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement." *Vulcan Materials Co. v. Greenville County Board of Adjustment,* 342 S.C. 480, 536 S.E.2d 892, 896, n.7 (Ct. App. 2000). The same is true for an appeal from a planning commission. As the Supreme Court has explained, "subject matter jurisdiction cannot be waived or conferred by agreement of the parties to any action" and similarly, "it cannot be conferred at the direction of a county official." *In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 686 S.E.2d 683, 687 (2009). In short, appellate

jurisdiction is not subject to consent, waiver, or estoppel. Indeed, Rule 6(b), SCRCP, provides that "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." Rule 6(b), SCRCP.

Third, equitable estoppel does not lie against a governmental entity for mistaken statements of law by a governmental official. As the Supreme Court has held, "administrative officers of the state cannot estop the state through mistaken statements of law." *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 692 S.E.2d 499, 506 (2010). Moreover, "estoppel will not lie against a governmental entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law." *Id*. Therefore, even if the information relayed by the Subdivision Administrator was in error (which it was not), the Planning Commission is not estopped from asserting the untimeliness of the Appellant's appeal to the Circuit Court and the lack of appellate jurisdiction.

Fourth, the information conveyed by the Subdivision Administrator was not incorrect. She wrote: "If desired, an appeal from the decision of the Planning Commission must be made within thirty (30) days from the date of this letter in accordance with Section 6-29-1155 of South Carolina Code of Laws." (Ex. 20). Section 6-29-1155 allows for the filing of a notice of appeal with a request for pre-litigation mediation. In that event, the appeal time is governed by Section 6-29-1150(D)(2), which requires that "[a] notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed." S.C. Code Ann. § 6-29-1150(D)(2). Admittedly, the Subdivision Administrator did not further explain that an appeal *without* a request for pre-litigation mediation has a different triggering date for the filing of a notice of appeal. However, that information is clearly available by reference to Section 6-29-1150 and the supporting case law. The Appellant was represented by counsel

experienced in land use matters and has not presented evidence that it was unaware of Section 6-29-1150 and its requirements.

Fifth, as just alluded to, the Appellant has presented no evidence in the lower court to support her untimely assertion of equitable estoppel. "If estoppel is applicable against a government agency, a relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Quail Hill*, 692 S.E.2d at 506. There is no evidence in the record to support any of those elements. Certainly, the Appellant has not shown and quite simply cannot show that it lacked knowledge of the appeal requirements set forth in Section 6-29-1150 or at least the means to learn the appeal requirements. As indicated, the Appellant is represented by counsel well versed in land use matters. There is no evidence from the Appellant nor even argument by counsel during the Circuit Court hearing that it was unaware of the time limits on the filing of a notice of appeal in Section 6-29-1150 or did not have the means of acquiring that knowledge.

For each of the foregoing reasons, the Appellant's untimely reliance on principles of equitable estoppel may not convey appellate jurisdiction on the Circuit Court for what was clearly an untimely appeal under Section 6-29-1150(D)(1).

IV. The Appellant is without legal basis to seek a reversal of the Planning Commission's decision on the merits or to seek a remand for "damages for an uncompensated taking," where the Appellant never pled a takings claim nor sought damages in its Notice of Appeal and Petition.

As its final ground for appeal, the Appellant seeks relief on appeal which is not preserved for appellate review and which was not even sought in the Circuit Court. The Appellant asks this

Court to reverse the Planning Commission's denial of the subdivision application *on its merits* although the lower court never reached the merits and the Appellant raise the merits in its Rule 59(e) motion. *See, Gleaton v. Orangeburg County*, 440 S.C. 350, 891 S.E.2d 390, 395 (Ct. App. 2023) (observing that "[a] bedrock part of error preservation is that an issue must have been ruled upon in the trial court in order for it to be preserved for appellate review. Without a ruling, there is nothing for us to review"). Even if this Court could review the Planning Commission's decision on the merits, the Appellant has presented no argument as to the merits. The only arguments made pertain to an alleged unconstitutional taking. *See*, Appellant's Brief, pp. 22-23. It is well settled that an issue is deemed abandoned "if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (same).

Moreover, the Appellant quite remarkably asks this Court to remand for a determination of "damages for an uncompensated taking." *See*, Appellant's Brief, p. 22. A review of the Notice of Appeal and Petition shows that the Appellant never asserted any allegations of an unconstitutional taking nor did the Appellant include a claim for damages in its prayer. (Notice of Appeal and Petition). Hence, the request for a remand to determine damages is wholly inappropriate and a huge overreach.

Finally, to the extent that the Court addresses the merits of the Appellant's appeal, the record demonstrates that there was sufficient evidence to support the Planning Commission's decision denying the preliminary subdivision plat for the O'Neal Farms (Phase II) subdivision. The evidence must only satisfy the "any evidence" standard of review. As the minutes as well as the video recording of the April 23, 2025 meeting reflect, the Planning Commission received

testimony and additional information from the Appellant and those opposing the development to support its ultimate decision to deny the preliminary plat.

For starters, the Appellant fully conceded during the meeting that a current Traffic Impact Study had not been submitted. The Traffic Impact Study in the record was dated July 2023, and in bold red letters is described only as a "Draft." (Ex. 18). The Appellant's representative from Gray Engineering conceded during the meeting that the Traffic Impact Study needed to be "updated" and submitted. Thus, the Planning Commission, as one member pointed out in her questions, did not even have complete information with which to evaluate the preliminary plat. LRD Article 9.1 states that a Traffic Impact Study (TIS) "helps identify significant impacts on safety, traffic and transportation operations," and "[u]ltimately, the TIS can be used to assess if the scale of the development is appropriate for a particular site." *See*, LDR Article 9.1. The O'Neal Farms (Phase II) development is intended to be built behind the O'Neal Farms (Phase I), and the new development is designed to utilize an existing County road, namely O'Neal Farms Way, for ingress and egress. Based thereon, there were concerns expressed by the citizen participants at the meeting regarding the impact on safety of the additional traffic generated by the sheer scope of the 147 additional homes using O'Neal Farms Way, through an existing subdivision. The Planning Commission was certainly acting within its discretion, based on the admitted failure to submit an updated Traffic Impact Study, to deny the preliminary plat.

Additionally, as the discussion during the meeting reflects, there were also concerns expressed with whether the Appellant fully complied with the "open space" requirements under the LDR Article 11. In fact, LDR 11.3.2 states: "The Planning Commission shall determine the appropriateness of the dimensions of the required open space. The open space on the preliminary plan should have meaningful dimensions, proportions, and placement." *See*, LDR

11.3.2. On appeal to the Circuit Court, the Appellant can point to no evidence that such concerns have no basis in the record. In fact, that issue is not even raised in the Notice of Appeal.

In sum, the decision-making by the Planning Commission is subject to a very deferential standard of review. The courts are not permitted to substitute their judgment for that of the Planning Commission. The record demonstrates nonetheless that there was sufficient evidence before the Planning Commission to support its decision to deny the Appellant's preliminary subdivision application and plat as decided at the April 23, 2025 meeting.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Greenville County Planning Commission respectfully requests that the Court affirm the orders issued by Circuit Court Judge William C. McMaster, III, dismissing the Appellant's appeal as untimely.

Respectfully submitted,

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