THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, Thirteenth Judicial Circuit
Hon. William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-03365
Appellate Case No. 2025-002385

AJC-101 Holdings, LLC,..... Appellant,

v.

Greenville County Planning Commission ..... Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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Appellant AJC-101 explained in its primary brief why its appeal from the denial of its application for a subdivision development was timely, and it preemptively responded to most of the arguments that the Planning Commission raised in its response brief. Nothing in that response brief changes the conclusion: AJC-101's appeal to the circuit court was timely, and the circuit court erred by denying the appeal. The Court should reverse.

ARGUMENT

I. The trial court's analysis and conclusion diverged from the plain language and legislative intent of S.C. Code Ann. § 6-29-1150.

In its initial brief, AJC-101 explained why the plain meaning of the relevant statute, read as a whole and harmonized to determine the legislature's intent, shows that AJC-101's appeal to the circuit court was timely. *See* App. Br. at 6–11. Nothing in the Planning Commission's responsive brief substantively challenges that conclusion, and AJC-101 won't repeat its arguments here. A few points from the Planning Commission's brief, however, warrant response and illustrate the errors in its view.

The Planning Commission's brief tries to distract the Court from the real issue on appeal, which is the question of when AJC-101 received sufficient notice of a final decision for the "clock" to begin to run on its time to file an appeal pursuant to S.C. Code Ann. § 6-29-1150. The Planning Commission fails to overcome AJC-101's reading of the at-issue statute. Instead, the Planning Commission acknowledges that Section 6-29-1150 contemplates written notice of decisions but insists that written notice only starts the clock for one particular *subset* of interested parties, namely property owners who request pre-litigation mediation under subsection -1150(D)(2). AJC-101 did not request pre-litigation mediation pursuant to subsection -1150(D)(2), but that is immaterial to the question before the Court. What matters is that, as AJC-101 has shown in its prior briefing, subsection -1150(D)(2) is not the *only* provision entitling an appellant to notice greater than mere

presence at a meeting. Rather, subsection -1150 *as a whole* entitles an appellant—particularly a property owner, whose rights are more significantly impacted by a decision on a development application—to a greater form of notice, such as written notice.

The Planning Commission misapprehends AJC-101's argument, implying that AJC-101 contends that *only* written notice could *ever* be sufficient. Yet, the Planning Commission directly quotes the portion of AJC-101's brief where AJC-101 indicates that other forms of notice could be sufficient depending on the circumstances, as long as the notice (which could include but is not limited to written notice) was something more than merely attending the meeting. *See* Resp. Br. at 6–7 ("Section 6-29-1150(D)(1) requires some greater degree of notice, such as written notification of the planning commission's vote and/or final decision on an application.") (quoting App. Br. at 7). The Planning Commission insists that written notice cannot be the universal standard for appeals under subsection -1150(D)(1) because other interested parties—say, the neighbors or other community members—may never receive written notice from the Planning Commission. This may be true. But that's not the question before the Court. More importantly, even if it were, it doesn't undercut AJC-101's argument. That's because in those cases, even though the requisite notice may be satisfied by something *other than* receiving written notice of decision, that "something"—a written public record—is *still something greater* than merely attending a Planning Commission meeting. *See* S.C. Code Ann. § 6-29-1150 (mandating that a written record of all actions on all land development and subdivision plans "must be maintained as a public record").

The question here is whether subsection -1150(D)(1) requires a *greater form of notice* than mere presence at a meeting, and as AJC-101 has explained in its prior briefing, it *does*—particularly as applied to property owners whose property rights are greatly impacted by such decisions. The County seems implicitly to recognize the need to provide property owners (and

potential appellants) with greater notice.[1] Pursuant to Section 1.6.1(B) of the Greenville County Land Development Regulations, staff is directed to "*issue a letter* outlining the action taken and procedures for appeal or reconsideration" when any plan or plat is approved or denied by the Planning Commission." Greenville Cnty., S.C., LAND DEV. REGUL. § 1.6.1(B) (2024) (emphasis added). If having a representative present at the Planning Commission's meeting really was sufficient notice of a decision, why would the County have a policy requiring written notice of the decision and the mechanisms for appeal? If AJC-101 really had sufficient notice by its mere presence at the Planning Commission meeting, why would the County waste the paper and the postage sending written confirmation?

AJC-101 has shown that the trial court incorrectly dismissed its appeal as untimely due to a misinterpretation of Section 6-29-1150, and the Planning Commission's brief does not alter that conclusion. This Court should reverse the trial court's order denying AJC-101's appeal.

II. The trial court's interpretation of S.C. Code § 6-29-1150 is contrary to precedent.

As explained in AJC-101's prior briefing, the trial court's interpretation of Section 6-29-1150 is contrary to this Court's precedent in *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 106–07, 825 S.E.2d 721, 726 (Ct. App. 2019). *See* App. Br. at 11–14. In the interest of judicial economy, AJC-101 will not repeat that argument, but will reply to a few items in the Planning Commission's brief that merit rebuttal.

According to the Planning Commission, the trial court's interpretation of Section 6-29-1150 is consistent with *Citizens* because the relevant consideration is whether the appellant is a

[1] The Planning Commission claims that AJC-101 inconsistently refers to the "Planning Commission" and the "County" as the Respondent in different places in its brief. *See* Resp. Br. at 3 n.1. But, upon review of its Initial Brief, and this Reply, AJC-101 believes it has only referenced the specific entity it intends to discuss and has not used these names interchangeably.

property owner or an interested party. *See generally* Resp. Br. at 8–9. It appears the Planning Commission misunderstands the proposition for which AJC-101 cites *Citizens*, and the Planning Commission tries to redirect the Court to an issue not raised by AJC-101. It's true that *Citizens* recognized (and AJC-101 has never denied) that the relevant statutory scheme treated property owners seeking pre-litigation differently than other appellants. But it does not follow that, because this one subset of property owners is treated differently in terms of the triggering *moment* (date sent vs. date received), all other appellants are somehow entitled to a lesser *type* of notice. This is plain from the text of *Citizens*. The critical inquiry is when the appellant has received *sufficient* notice, and *Citizens* indicates that, for non-owner-mediators, the notice requirement is satisfied once it is "receiv[ed]." *See* App. Br. at 11–14 (quoting *Citizens for Quality Rural Living*, 426 S.C. at 106–07, 825 S.E.2d at 726). *Receiving* notice is something altogether different than merely watching a Planning Commission vote on an issue. To satisfy this requirement, there must be something greater than mere attendance, such as written notice confirming any decision, to start the clock on the appeal deadline.

Because the trial court's interpretation of Section 6-29-1150 is contrary to precedent, this Court should reverse the trial court's order denying AJC-101's appeal.

III. The Planning Commission's vote was not an appealable final order under the governing ordinance, and the government—not AJC-101—should bear the cost of any purported typographical error in the ordinance.

As explained in AJC-101's prior brief, Planning Commission's vote was not an appealable final order because the County has not delegated final decision-making authority to the Planning Commission. *See* App. Br. 14–17. To the contrary, the relevant zoning ordinance expressly says that the Planning Commission "acts in a review and recommending capacity on . . . Preliminary Subdivision Plats." *See* GCZO § 2:2.2 (R.___). The Planning Commission argues that this is a

"clerical error" in the ordinance and that AJC-101 should have known to disregard this portion of the Greenville County Zoning Ordinance. Such an argument is plainly contrary to the text of the ordinance and, to put it mildly, is a suboptimal perspective on how the public should understand and interact with the law. Neither AJC-101 nor this Court should assume that the ordinance's language is a typo merely because it supports the Planning Commission's position in this appeal.

AJC-101 (and the public at large) should be justified in believing that an ordinance says what it means and means what it says. Any uncertainty or alleged typo should be construed to the detriment of the County and its Planning Commission, not the public governed thereunder. The Supreme Court of the United States has echoed this sentiment, writing that a "scrivener's error" should only be presumed in "exceptional circumstances." *See Niz-Chavez v. Garland*, 593 U.S. 155, 161 n.1 (2021); *see also Lamie v. U.S. Tr.*, 540 U.S. 526, 541 (2004) ("It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think ... is the preferred result.") (quoting *United States v. Granderson*, 511 U.S. 39, 68 (1994) (J. Kennedy, concurring)) (alteration in original). In that case, the Court observed that, "[i]f men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." *Niz-Chavez*, 593 U.S. at 172.

The language of Section 2:2.2 of the Greenville County Zoning Ordinance is clear and unambiguous. The Planning Commission has not shown any reason why AJC-101 should have known not to rely on it or should bear the cost of the County's supposed drafting error. Under well-established law, "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language." *City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997); *see also Mikell v. Cnty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) (applying cannons of statutory

interpretation to the interpretation of county ordinances). To the extent they've shown any ambiguity (which they haven't), South Carolina law is clear that statutory ambiguities "should be resolved in favor of a just, equitable, and beneficial operation of the law." *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993). The Planning Commission's interpretation of Section 2:2.2 does not favor justice, equity, or the beneficial operation of the law. Instead, it asks citizens to doubt the express language of an ordinance and allows governmental entities to claim a typographical error whenever they are dissatisfied with the outcomes of their own legal proclamations.

The Planning Commission wrongly implies that AJC-101 conceded this issue by asking "this Court to reverse a decision of the Planning Commission" in its Notice of Appeal. *See* Resp. Br. at 11. But that's not what the Notice of Appeal said. The Notice of Appeal correctly describes the trial court's erroneous order—one of the orders being appealed—as affirming what the trial court construed as a decision of the Planning Commission. Appellant's accurate description of a mistaken order is hardly a waiver of the appellant's arguments.

As an alternative grounds for dismissing AJC-101's pending appeal, the Planning Commission hypothesizes a thought experiment whereby the "logical conclusion" of AJC-101's argument is (supposedly) that this appeal must be dismissed because AJC-101 brought the appeal against the wrong party. Resp. Br. at 13. There is no obvious logic or reason to this conclusion. If the Planning Commission is purporting to exercise authority it never had, the necessary result is that their actions thus far are *ultra vires* and should be reversed on that basis.

Because the Planning Commission's vote was not an appealable final decision, AJC-101's appeal should not have been dismissed as untimely, and this Court should reverse.

IV. The County and its Planning Commission are equitably estopped from retracting the written statement made by a County employee in the letter informing AJC-101 of the denial of its application and stating that AJC-101 had 30 days from the date of the letter to appeal.

As explained in AJC-101's prior briefing, the County is equitably estopped from retracting the written statement made by its employee in the letter informing AJC-101 of the denial of its application that AJC-101 had 30 days from the date of the letter to appeal. App. Br. at 17–22. The Planning Commission is created by, governed by, and afforded all its powers from the County. Therefore, if this Court adopts the trial court's interpretation of Section 6-29-1150 (which it should not), it would be inequitable to allow the Planning Commission to benefit from the County's misrepresentations.

A. AJC-101 properly preserved the issue of equitable estoppel, and it is ripe for review by this Court.

Contrary to the Planning Commission's assertion, AJC-101 has consistently raised equitable estoppel as an issue in this case, and therefore, the issue is ripe for review. At every stage of this proceeding, AJC-101 has stated that its appeal was timely because the letter from County staff explicitly informed AJC-101 that it had *thirty days from the letter* to file its appeal. *See* AJC-101's Memo in Support of Petition for Appeal, at 3 (R.___) (noting that AJC-101 received a letter from County staff confirming the Planning Commission's denial on April 30, 2025 and that AJC-101 filed its Notice of Appeal and Petition on May 28, 2025); AJC-101's Motion for Reconsideration, at 3 (R.___) (citing the County staff's representations in its letter regarding AJC-101's timeline to appeal); *id.* at 4–5 (R.___ to ___) (arguing that AJC-101's Notice of Appeal and Petition was timely because AJC-101 filed within thirty days of receiving the County staff's letter). The Planning Commission cannot credibly contend that this argument is raised for the first time in this appeal.

Even if at some stages of this proceeding AJC-101 made this argument without *calling* it equitable estoppel, the argument is still preserved. South Carolina law is clear—issue preservation does not require the recitation of "magic words." The central question is whether, based on the totality of the circumstances, the lower court considered and ruled on the issue. *See, e.g.*, *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."); *Cone v. State*, 443 S.C. 487, 493, 905 S.E.2d 368 (2024) (holding an issue was preserved where it was "apparent from the record the trial court understood and ruled on [the] objection"); *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551 (2023) ("We are mindful that issue preservation rules should not be applied in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue."); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (noting the doctrine of issue preservation "is not a 'gotcha' game"). While AJC-101 may not have explicitly identified their argument below with the name "equitable estoppel," the record is clear that AJC-101 raised the issue throughout the case, and the lower court had the opportunity to consider the issue.

B. The Planning Commission should not be permitted to benefit from and take a position contrary to the County employee who stated in the letter informing AJC-101 of the denial of its application that AJC-101 had 30 days from the date of the letter to appeal.

As AJC-101 has maintained throughout this case, AJC-101 relied upon the County's representation that AJC-101 could appeal the denial of its application "within *thirty days (30) of [the County's letter]* in accordance with Section 6-29-1150 of the South Carolina Code of Laws," and under well-established South Carolina law, the County is equitably estopped from retracting its position. *See* Subdivision Administrator's Letter of April 30, 2025 (R. ___) (emphasis added); App. Br. 17–21; *see also, e.g.*, AJC-101's Memo in Support of Petition for Appeal, at 3 (R.___)

(discussing the latter and arguing that AJC-101's Notice of Appeal and Petition were timely); AJC-101's Motion for Reconsideration, at 3 (R.___) (same); *id.* at 4–5 (R.___ to ___) (same). In response, the Planning Commission makes a series of arguments that, while meritless, warrant response.

Contrary to the Planning Commission's arguments, well-established South Carolina law makes it clear that equitable estoppel may lie against a governmental entity in cases such as this. *See* App. Br. at 19–22. In an effort to evade this precedent, the Planning Commission insists that the County's letter *actually* intended to inform AJC-101 that, *if AJC-101 sought pre-litigation mediation*, AJC-101 had 30 days from the letter's date to initiate their appeal. Resp. Br. at 15. According to the Planning Commission, even though the County's letter never specified that another filing deadline would apparently apply if AJC-101 failed to request such mediation, AJC-101 should have known that was implied. As shown by the considerable briefing by both parties in this appeal, Section 6-29-1150 and its corresponding case law support AJC-101's reading of its appeal deadline, and that reading was confirmed by the actual language of the County's letter. If the County had a contrary interpretation of Section 6-29-1150, it should have said so explicitly and not assumed that AJC-101 could divine that interpretation through silence. There is no merit to the idea that language *omitted* from a letter can prevent equitable estoppel as applied to this action.

As a last-ditch effort, the Planning Commission argues that, even if AJC-101 is entitled to equitable estoppel (and it is), the appeal deadline set forth in Section 6-29-1150 is a jurisdictional issue to which equitable estoppel would not apply. There are two primary problems with this argument. First, the Planning Commission only cites to authority that "the timeliness of an appeal from a *zoning board*'s decision is a jurisdictional requirement." *Vulcan Materials Company v.*

Greenville County Board of Zoning Appeals, 342 S.C. 480, 489 n.7, 536 S.E.2d 892, 896 n.7 (Ct. App. 2000) (emphasis added). The Planning Commission assumes but does not show that the vote of a planning commission is treated the same way. Second, the Court has recognized that, as a matter of fairness, the Court may recognize unique situations where an untimely notice of appeal is not a bar to jurisdiction. *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 211, 217 and n.4, 810 S.E.2d 856, 859 and n.4 (2018) (noting that "fairness dictates" the appellate courts exercise jurisdiction over Fallon Properties appeal even though it had been filed 31 days after they received an email notifying them of the lower court's decision).

In *Wells Fargo Bank*, the Supreme Court of South Carolina considered a case in which a file-stamped copy of an order was sent to parties via electronic *and* regular mail. *Id.* at 214, 810 S.E.2d at 857. The losing party filed a notice of appeal 31 days after receiving the email of the order, which was only 28 days after receiving the mailed copy. *Id.* The Supreme Court of South Carolina ultimately concluded that the appeal was untimely because the appeal deadline began to run when the parties received the emailed order, not the mailed copy. *Id.* at 216, 810 S.E.2d at 858. Nonetheless, as a matter of fairness, the Supreme Court allowed the non-prevailing party to maintain their appeal. *Id.* at 217, 810 S.E.2d at 859. The court cited several factors supporting this exception to the general rule, including the "novelty of the issue, the frequency in which the issue is likely to arise, and the inconsistency in the case law interpreting [the at-issue rule], which creates confusion as to [what act] is sufficient to trigger the time to appeal." *Id.*

Pursuant to the fairness doctrine set forth in *Wells Fargo Bank*, this Court is not bound by the supposedly jurisdictional nature of the land-use appeal deadline due to the novelty of the issue, the lack of case law clearly interpreting the issue, and the likeliness that future appellants may make a similar mistake.

Even if this Court decides to adopt the trial court's interpretation of Section 6-29-1150 (which it shouldn't), this Court should nonetheless find AJC-101's appeal of the Planning Commission's vote to be timely due to equitable estoppel.

V. AJC-101 has consistently maintained that the Planning Commission's reasonless vote to deny its application effectuated an unconstitutional taking.

Throughout this case, AJC-101 has argued that the Planning Commission's reasonless vote (and the County staffs' later ratification) to deny its application deprived AJC-101 of its vital property rights. *See, e.g.*, AJC-101's Notice of Appeal and Petition ¶¶16–18 (R.___) (alleging that the Planning Commission lacked any "legitimate ground for disapproval" of AJC-101's application); AJC-101's Memo in Support of Petition for Appeal at 3–4 (R.___ to ___) (arguing the same); *id.* at 4 ("The Planning Commission's failure to provide any reason for denying the application evidences its true intent, which is to deny any application for developing this property") (R.___); AJC-101's Motion for Reconsideration, at 10–11 (R.___ to ___) (asking the trial court to reverse the denial of AJC-101's application because, *inter alia*, the decision amounted to a taking of AJC-101's property rights). Such deprivation amounted to an unconstitutional taking, and the Court should either remand with instructions to reverse the Planning Commission's reasonless denial or, in the alternative, determine damages for a taking. *See* App. Br. at 22–23.

The Planning Commission wrongly contends that AJC-101 raises this issue for the first time on appeal and thus failed to preserve the issue. Neither is true. First, as noted in the preceding paragraph (with citations to the Record), AJC-101 has always challenged the Planning Commission's denial as a fundamental deprivation of its property rights. If AJC-101 failed to explicitly denote these arguments as those of an unconstitutional taking, the substance and context of these arguments nevertheless raised an unconstitutional taking as part of the lower court proceedings. *See, e.g.*, *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011)

("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."); *Cone v. State*, 443 S.C. 487, 493, 905 S.E.2d 368 (2024) (holding an issue was preserved where it was "apparent from the record the trial court understood and ruled on [the] objection").

In any event, AJC-101 *did* explicitly identify this argument. In its motion for reconsideration (though that was not the first time it argued the concept), AJC-101 explained that the trial court should rule for AJC-101 on the merits because, *inter alia*, "the Planning Commission and County's reasonless denial of the application effectively deprives [AJC-101] of its legally cognizable right in the property in violation of the takings clause of the South Carolina Constitution." AJC-101's Mot. for Reconsideration, 2. (R. ___). In support of this argument, AJC-101 cited existing references on the record where AJC-101 previously raised similar arguments. *Id.* at 10. (R. ___). Thus, the issue of an unconstitutional taking is ripe for review. And, as already explained by AJC-101's prior briefing, AJC-101 has shown that such an improper taking occurred. *See* App. Br. at 22–23.

CONCLUSION

For the foregoing reasons, AJC-101 requests that the Court reverse the trial court's decision and remand for the trial court to reverse the decision below or determine damages for a taking.

Respectfully submitted,

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June 5, 2026
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