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SC Court of Appeals

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.

FINAL BRIEF OF APPELLANT

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INTRODUCTION

This appeal arises from the denial of an application for a subdivision development plan. The property owner and developer—AJC-101 Holdings, LLC ("AJC-101")—applied for a preliminary plat. The Greenville County Planning Commission held a public hearing on April 23, 2025, and voted 3-to-5 against the application. A week later, county staff sent a letter to AJC-101's agent notifying her the application had been denied and stating that an appeal of the denial "must be made within thirty (30) days from the date of this letter." AJC-101 appealed 28 days later. Nevertheless, the Planning Commission argued to the circuit court that the appeal was untimely because AJC-101 had "actual notice" on April 23 of the Commission's vote and thus (in the Commission's view) should have filed its appeal within 30 days of *that* date. The circuit court agreed and, rather than dismissing the appeal, affirmed the denial of AJC-101's application. This Court should reverse for multiple reasons.

First, the circuit court's ruling is contrary to the text and meaning of the statute containing the relevant appeal deadline. When S.C. Code § 6-29-1150 is read as a whole, the intent of the General Assembly is clear: written notice is necessary to notify the applicant of the approval or disapproval of a preliminary plan. That conclusion finds support in well-established canons of interpretation and analogous cases. While our Supreme Court has not previously interpreted this Code section, it has, in analogous cases interpreting statutory appeal deadlines from administrative decisions, concluded that "notice" of a decision means written notice. The circuit court's contrary ruling failed to harmonize the statutory subsections and would yield chaotic, inconsistent results.

Second, the circuit court's ruling is contrary to this Court's precedent interpreting this same statute. Just six years ago, in a case against the Greenville County Planning Commission, the Court held that the deadline for an interested party to appeal from a decision of the Planning Commission

was 30 days after "*receiving*" notice from the county, and that this deadline (the same deadline and statutory subsection at issue in this appeal) was "*more liberal*" than the alternative deadline under which a property owner can file a combined appeal and request for mediation within 30 days "after the decision of the Board is mailed." *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). The ruling in that case can't be squared with the circuit court's ruling in this case. The Court should reverse.

Third, the circuit court erred by failing to recognize that the Planning Commission's vote at the April 23, 2025 meeting *recommended* action but did not render a final, appealable decision. That's because Greenville County has not delegated that decision-making authority to the Planning Commission. Not until county staff sent a letter notifying AJC-101's agent of the decision did AJC-101 receive actual notice of an appealable decision. The appeal filed 28 days later was timely.

Fourth, even setting aside the statutory text and precedent, the circuit court's ruling should be reversed because the county, having told AJC-101 that it had 30 days from the date of the letter to appeal, should be equitably estopped from arguing on appeal that a different, earlier deadline should apply.

Finally, with the timing issue out of the way, the circuit court should have ruled for AJC-101 on the merits or, alternatively, concluded that the Planning Commission's and County's reasonless denial of the application violates the takings clause of the South Carolina Constitution by effectively depriving AJC-101 of its legally cognizable right in the property. The Court should reverse and remand with instructions to reverse the denial of the application or, alternatively, to determine damages for the improper taking.

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in concluding that AJC-101's appeal was untimely?

II. Did the trial court err in affirming the denial of AJC-101's application for a preliminary subdivision plat or, alternatively, by failing to determine appropriate damages for a taking of the property?

STATEMENT OF THE CASE

Appellant AJC Holdings-101, LLC ("AJC-101") filed its Notice of Appeal and Petition from the denial of its Preliminary Subdivision Application on May 28, 2025, in the Court of Common Pleas for the Thirteenth Judicial District. *See* Notice of Appeal & Petition (R. pp. 11 to 15). The Honorable William C. McMaster, III heard arguments on September 17, 2025, and affirmed the denial of the application on September 26, 2025, because, in the court's view, AJC-101's appeal was untimely. *See* Order of Sep. 26 (R. p. 1). AJC-101 filed a motion for reconsideration on October 6, 2025 (R. p. 121), which was denied on October 30, 2025 (R. p. 4). The October 30 Order was subsequently rescinded to correct a scrivener's error, and the court issued another order on November 5, 2025 also denying AJC-101's motion for reconsideration. (R. p. 7). This appeal followed.

STATEMENT OF THE FACTS

AJC-101 is the owner of real property located in Greenville County, identified as Tax Map Numbers 0601020100802, 0409000100113, and 0601020100901 (collectively, the "Property"). Notice of Appeal & Petition p. 1 (R. p. 11). The property, which is zoned as Residential Suburban ("RS"), is already subdivided and developed into the O'Neal Farms subdivision. *See* Preliminary Subdivision Data Sheet (R. p. 42). On February 19, 2025, AJC-101 filed an application for approval of a preliminary plan to develop Phase II of O'Neal Farms. *Id.* (R. p. 42). The application was submitted as an Open Space Residential Development (Option #1) pursuant to the Greenville County Zoning Ordinance ("GCZO") and assigned Subdivision File Number PP-2025-029 (the

"Application"). *Id.* (R. p. 42); Preliminary Plat (R. pp. 31 to 34); Greenville County Planning Commission Meeting Minutes for April 23, 2025 ("April 23 Meeting Minutes"), p. 9 (R. p. 65); Greenville County Zoning Ordinances ("GCZO") § 7:2. (R. pp. 88 to 92). The Application requested approval for a preliminary plat consisting of 92.82 acres, and AJC-101 requested to build 147 lots on this acreage for a density of 1.58 lots per acre. Preliminary Subdivision Data Sheet (R. p. 42); April 23 Meeting Minutes, p. 9 (R. p. 65).

On April 23, 2025, the Planning Commission held a public hearing on the Application. April 23 Meeting Minutes, pp. 9–11 (R. pp. 65 to 67). Despite County Staff recommending the Application be approved with minor conditions, the Planning Commission voted 3-to-5 against the Application. *Id.* (R. pp. 65 to 67). The Planning Commission did not provide a reason for its denial during the public hearing. *Id.* (R. pp. 65 to 67).

During the meeting, two members of the Planning Commission expressed concerns about traffic from AJC-101's intended development, despite no provision of the Land Development Regulations permitting such considerations beyond requiring applicants to complete a traffic study, which AJC-101 did. *Id.* at p. 10 (R. p. 66); Traffic Impact Study (R. pp. 43 to 56). Two other members of the Planning Commission acknowledged that the Commission is not responsible for enforcing requirements regarding traffic improvements. April 23 Meeting Minutes, pp. 10–11 (R. pp. 66 to 67). County staff stated they had reviewed the Application and did not request any additional traffic calming measures. *Id.* at p. 10 (R. p. 66). Another member of the Planning Commission asked if the open space had any meaningful proportions. *Id.* at p. 11 (R. p. 67). This was presumably a reference to GCZO § 7:2.4–6 ("Land dedicated as open space shall be of meaningful proportions and dimensions so as to be consistent with the purpose and intent of this section. The open space shall be contiguous to the extent practicable."). GCZO §§ 7:2.4-6. (R. p.

90). AJC-101's Application complied with the proportions specifically defined in Table 7.2 of the GCZO. GCZO Table 7.2. (R. p. 92); Preliminary Plat (R. pp. 31 to 34). The Application also complied with the requirement that residents have sufficient access to open space. Greenville County Land Development Regulations ("LDR") § 11.4 (R. p. 82); Preliminary Plat (R. pp. 31 to 34). No other statements about the Application's compliance with the zoning ordinance or Land Development Regulations were voiced by members of the Planning Commission. April 23 Meeting Minutes, pp. 10–11 (R. 66 to 67).

One week after the hearing, the Subdivision Administrator, an employee of Greenville County, sent a letter to AJC-101's engineer, notifying her of the denial. Subdivision Administrator's Letter of April 30, 2025 (R. p. 74). Again, this letter did not include a reason for denial. *Id.* (R. p. 74). The letter stated that an appeal of the denial "must be made *within thirty (30) days* ***from the date of this letter*** in accordance with Section 6-29-1155 of the South Carolina Code of Laws." *Id.* (R. p. 74) (emphasis added).

Twenty-eight days after the date of that letter, on May 28, 2025, AJC-101 filed its Notice of Appeal and Petition with the Court of Common Pleas for the Thirteenth Judicial Circuit, seeking review of the denial of AJC-101's Application. *See* Notice of Appeal & Petition (R. pp. 11 to 15).

STANDARD OF REVIEW

Statutory interpretation. "An issue regarding statutory interpretation is a question of law." *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005)). The Court reviews questions of law *de novo*. *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

Equitable estoppel. "[E]stoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as equities between the parties may preponderate." *Pitts v. N.Y. Life Ins.*

Co., 247 S.C. 545, 552, 148 S.E.2d 369, 372 (1966). In equitable actions, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

Merits. A planning commission's decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying zoning board standards to a planning commission decision) (citing *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997)).

ARGUMENT

I. The trial court's ruling was contrary to the text of S.C. Code Ann. § 6-29-1150.

The sole reason given by the trial court for affirming the denial of AJC-101's Application is that, in the court's view, AJC-101's appeal of the decision was untimely. *See* Order of Sep. 26, p. 1 (R. p. 1). The court cited S.C. Code Ann. § 6-29-1150, which reads in relevant part:

> (D)(1) An appeal from the decision of the planning commission must be taken to the circuit court **within thirty days after actual notice** of the decision.
>
> (2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.
>
> 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) (emphasis added); Order of Sep. 26, p. 1 (R. p. 1). In applying this statute, the circuit court reasoned that, under subsection -1150(D)(1), AJC-101 "had actual notice" of the Planning Commission's vote on April 23, 2025, but waited until "35 days later" to file its appeal. Order of Sep. 26, p. 1 (R. p. 1). The court thus concluded the appeal was untimely

and it was unnecessary to evaluate or rule on the merits of AJC-101's arguments. *See id.* (R. p. 1).

That interpretation, however, is contrary to the text and context of the statute and differs from the way in which our Supreme Court has interpreted analogous statutes. The text of Section 6-29-1150 and the structure of the surrounding statutory scheme indicate that the legislature's intent was not for an interested party to be deemed to have "actual notice" of a county's land-use decision merely by attending a planning commission meeting. When read in harmony with the entire scheme, 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 the final decision on an application. Had the legislature intended for notice to coincide with the decision itself, the legislature easily could have written the statute in that way. The trial court's interpretation of the statute violated the legislature's intent and, thus, was in error.

A. The trial court's interpretation is contrary to established principles of statutory interpretation.

"Questions of statutory interpretation are questions of law, which [appellate courts] are free to decide without any deference to the court below." *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011). The court's primary function in interpreting a statute is to determine and give effect to the intent of the General Assembly. *Joiner v. Rivas*, 342 S.C. 102, 108, 536 S.E.2d 372, 375 (2000); *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). The language must be read to harmonize with its subject matter and in accord with its general purpose. *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (2005). "[C]ivil procedure and appellate court rules should not be . . . interpreted to create a trap for the unwary lawyer . . . ." *Swing v. Swing*, 445 S.C. 340, 345, 914 S.E.2d 158, 161 (2025) (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004)).

Courts will reject statutory interpretations that lead to results so plainly absurd they could not have been intended by the legislature or that defeat the plain legislative intention. *Jones*, 364 S.C. at 232, 612 S.E.2d at 724 (citations omitted). A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law. *Hinton v. South Carolina Dep't of Prob., Parole, and Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); *Doe v. Roe*, 353 S.C. 576, 580, 578 S.E.2d 733, 735–36 (Ct. App. 2003). Statutes should be interpreted such "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (internal citation omitted).

When Section 6-29-1150 is read as a whole, the General Assembly's intent is plain: written notice, or something akin to written notice, is necessary to notify the applicant of either approval or disapproval of a preliminary plan. The statute notes, for example, that a "developer *must be issued a letter* of approval and authorization to proceed based on the plans or plats and supporting documents presented." S.C. Code Ann. § 6-29-1150(A) (emphasis added). "In addition, the developer *must be notified in writing* of the actions taken." *Id.* at -1150(B) (emphasis added). It is nonsensical to assume that a developer is entitled to written confirmation of the planning commission's actions but that, under the same statutory section, the developer's appeal deadline of that action would begin to run when the action occurred, not when the developer received that written notice. Similarly, in subsection (D), a letter is the triggering mechanism for the time frame to file an appeal. Subsection (D)(1) sets out that the time period to appeal is thirty days, and Section (D)(2) reiterates that a letter must be sent to begin that time period.

Practically, it would be extremely difficult to enforce the trial court's interpretation that "actual notice" occurs when *any* individual associated with a developer is present at—or even hears second-hand about—a meeting where a vote is taken. Say, for example, that a developer's

employee attended a meeting but did not identify themselves such that they were named on the official meeting minutes. Would the developer be charged with notice? Would it matter what type of employee was present at the meeting? Where would a lower court draw the line, and what would they use to guide that decision aside from an intuition of what notice felt sufficiently "actual"? Under Greenville County's Land Development Regulations ("LDR"), developers are directed to appoint an authorized representative who can address any questions from the planning commission. *See* LDR, Article 3.2.2. Would the Court find notice only when that representative witnessed a vote? Would that notice be imputed to the property owner, too?

Instead of bringing harmony and finality to any decision regarding a preliminary plan application, reading each section individually would create multiple deadlines to appeal based on the contents of the notice of appeal. If accepted, Respondent's argument that requesting pre-litigation mediation changes the deadline would mean that an appellant could breathe new jurisdiction into an appeal based on the format of the notice. Conceivably, these different deadlines could be months apart depending on when a letter stating the action taken is mailed to the developer and property owner. The chaos caused by such an interpretation could not have been what the General Assembly intended when it drafted this statute.

B. The trial court's interpretation is contrary to or distinguishable from cases interpreting analogous statutes.

Although our Supreme Court has not yet interpreted Section 6-29-1150(D),[1] its approach to analogous statutes supports AJC-101's position here. For example, in *Hamm v. South Carolina Public Service Commission*, the Court interpreted the language of the Administrative Procedures

[1] The Court of Appeals has, and its analysis supports AJC-101's position. *See* Argument II, *infra* (discussing *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019)).

Act, which states in pertinent part that an aggrieved party must file an appeal "within thirty days after the final decision of the agency." 287 S.C.180, 181, 336 S.E.2d 470, 471 (1985). The Court held that "the statute must be read to allow a party thirty days after *notice* of a decision to bring an appeal," and, more specifically, that "a party has thirty days after receiving *written notice* to appeal an agency decision." *Id.* at 182, 336 S.E.2d at 471 (second emphasis added). Similarly, in *Cox v. County of Florence*, , the Supreme Court interpreted the same statute—the one requiring an appeal to be filed "within thirty days after the final decision of the agency"—and concluded that the petitioners' appeal to the circuit court was timely because they filed it within 30 days "after *written notice* of a decision," even though they'd known for *more than four years* that "they had been unsuccessful" in their requests to the county. 337 S.C. 340, 344, 523 S.E.2d 776, 778 (1999) (emphasis in original).

Here, in contrast, the Planning Commission argued (and the trial court took) a different view. Specifically, the Planning Commission's argument to the circuit court relied heavily on the idea that a different section of Title 6—namely, Section 6-29-900, which governs appeals from a board of architectural review—is the proper analog to Section 6-29-1150. The Planning Commission argues that statute has already been interpreted in *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005), and that *Blind Tiger* was, at the trial court stage, controlling precedent. In *Blind Tiger*, the presence of a party's representative at the architectural review board meeting was deemed "actual notice" of a decision. *Id.* at 185, 621 S.E.2d at 363.

The problem with the Planning Commission's argument, however, is that Section 6-29-900 differs from Section 6-29-1150 in an important way. Section 6-29-900 does not *require* any written notice to be sent stating the action taken by the board (though it contemplates that there

may be instances where a decision may be "postmarked"). The General Assembly's reason for this distinction is that it recognized that, while the decision of a board of architectural review generally affects primarily (and sometimes only) the individual property owner, there are multiple individuals or entities directly involved when a property is proposed to be subdivided including, at least, a developer and a property owner. And each of these individuals or entities could have statutory or constitutionally protected rights regarding the decision to approve or deny a preliminary plan application. As such, in Section 6-29-1150, the General Assembly required clear communication through written notice of the action taken.

II. The trial court's ruling was contrary to this Court's precedent.

The trial court's interpretation of Section 6-29-1150 is not only contrary to the text of the statute, general rules of statutory interpretation, and the Supreme Court's reasoning in analogous cases—it is also contrary to this Court's precedent. Six years ago, in an appeal that, like this one, was brought against the Greenville County Planning Commission, this Court examined the statutory deadline to file an appeal Section 6-29-1150(D) and reached conclusion different than the trial court reached here. *See 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). In that case, the Commission had voted in favor of a developer's application for preliminary approval. *Id.* at 101, 825 S.E.2d at 723. A coalition of neighbors who opposed the development appealed to the circuit court. *Id.* The circuit court dismissed their appeal for lack of standing. *Id.* at 102, 825 S.E.2d at 723–24. The coalition appealed that ruling, and this Court reversed, holding the coalition had standing to appeal. *Id.* at 114–15, 825 S.E.2d at 730.

This Court gave particular attention to the statutory subsections that state *when* an appeal must be filed—the same statutory subsections argued here by the Planning Commission before the

trial court and relied upon in the trial court's dismissal of the appeal—namely S.C. Code Ann. § 6-29-1150(D)(1)–(2). *See id.* at 103–07, 825 S.E.2d at 723–26. This Court held that when (as here) an interested party (which includes property owners and developers) appeals from a Planning Commission vote pursuant to subsection (D)(1), the appeal is due within 30 days after "*receiving*" notice of that decision. *Id.* at 106, 825 S.E.2d at 726 (emphasis in original). Notably, this Court also concluded that this deadline was ***longer*** than the deadline for property owners (a subset of interested parties), who can also appeal and seek pre-litigation by filing an appeal "within thirty days after the decision of the board is *mailed*." *Id.*; *see also* S.C. Code Ann. § 6-29-1150(D)(2).

> Further, 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. Under 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; the use of the word "must" indicates that the appellant must file within the designated deadline in order to invoke the circuit court's appellate jurisdiction. On the other hand, subpart (2) uses the word "may" to indicate that a property owner has the option of adding a request for pre-litigation mediation to his notice of appeal, and if he takes advantage of this option, he must file the notice of appeal and the mediation request within thirty days after the Commission's decision is **mailed** in order to invoke the circuit court's appellate jurisdiction. If the owner of the subject property does not opt to request pre-litigation mediation, he would be subject to the **more liberal deadline** in subpart (1).

Citizens for Quality Rural Living, 426 S.C. at 106–07, 825 S.E.2d at 726 (third emphasis added).

The first critical point is that, when an appellant appeals pursuant to subsection -1150(D)(1), his deadline to file that appeal begins to run upon "*receiving* actual notice." *Id.* at 106, 825 S.E.2d at 726. The choice of the word "receiving" is telling. The Court didn't say the clock begins to run upon a party *having* actual knowledge or upon *being* aware of a decision or upon *observing* a hearing. No, the Court said the deadline begins to run upon "*receiving* actual notice." The Court chose that word intentionally—it isn't present in the text of -1150(D)(1)—and the

Court's choice of that word in its interpretation of the statute means something. The Court doesn't pick words willy-nilly; it chooses them deliberately to convey a specific meaning. Here, the Court's use of the word "receiving"—especially in this statute, with its multiple references to written decisions,[2] and in this procedural setting, where appeal deadlines typically run from receipt of written notice[3]—indicates that, when a written notice of the decision is sent, the receipt of that notice starts the appellate clock.

That conclusion is driven home by the second critical point from the Court's ruling in *Citizens*. It expressly states that the deadline to appeal under subsection -1150(D)(1), which begins to run upon "receiving" notice, is "*more liberal*" than the deadline under subsection -1150(D)(2), which begins to run when "the Commission's decision is mailed." *Id.* at 107, 825 S.E.2d at 726. How could the former be more liberal than the latter unless it is a *longer* period? And how could it be longer unless both clocks have a common nexus: the sending and receiving, respectively, of written notice? In other words, how would the Court's deliberate, bolded juxtaposition of "*receiving*" notice and the "decision" being "*mailed*" make any sense unless they refer to two different moments in the same event—namely, the sending of a written decision?

In other words, the deadline to appeal under subsection -1150(D)(1) runs not from the date of the Planning Commission's vote, and not even from the date when the County staff places the actual written notice of the decision into the mail, but from the date when the recipient *receives* the written actual notice.

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[2] S.C. Code Ann. § 6-29-1150(B) (noting that "all actions on all land development plans and subdivision plats . . . must be maintained as a public record"); *id.* ("the developer must be notified in writing of the actions taken"); *id.* at § 6-29-1150(D)(2) (contemplating a deadline "after the decision of the board is mailed").

[3] *See, e.g.*, Rule 203(b)(1), SCACR; *see also* Rule 74, SCRCP.

The application here is plain. Appellant filed its Notice of Appeal within 30 days after receiving notice from the County of the decision. Under *Citizens for Quality Rural Living*, that's the end of the timeliness analysis. The appeal was timely. The trial court erred in concluding AJC-101's appeal was untimely.

The Planning Commission will, one presumes, argue that the primary issue in *Citizens* wasn't the *timeliness* of the neighbors' appeal but whether they had *standing*. Even so, that doesn't diminish the length, specificity, and clarity of the passage quoted above. And even if timeliness wasn't the first or main issue before the Court, that doesn't alter the value of *Citizens*' analysis of timeliness, nor does it diminish the *stare decisis* values of maintaining stability, consistency, and predictability with prior opinions of this Court. The circuit court's decision in this case can't be squared with this Court's analysis in *Citizens*. The circuit court's ruling should be reversed.

III. The trial court erred in denying AJC-101's appeal as untimely because the Planning Commission's vote was not an appealable final order, and any clock began to run when the County delivered its decision.

A planning commission is an administrative body created by and granted powers by a governing authority. Here, the governing authority is Greenville County Council, and the Planning Commission is the administrative body. The governing authority is authorized by statute to grant authority to approve or disapprove a preliminary plat to "the planning commission *or designated staff*." S.C. Code Ann. § 6-29-1150(A) (emphasis added). The County has not delegated that final decision-making authority to the Planning Commission. Rather, the County's zoning ordinances expressly state that "[t]he Planning Commission *acts in a review and recommending capacity* on the following matters: Preliminary Subdivision Plats." *See* GCZO § 2:2.2 (emphasis added).[4]

[4] Curiously, in its briefing to the circuit court, the Planning Commission cited (without quoting) this ordinance for the opposite proposition, which is unsupported by the ordinance's plain language. *See* Planning Comm'n Resp. to the Mot. to Alter or Amend at p. 6 n.1 (R. p. 137).

Rather, Greenville County's ordinances specifically distinguish between the entities that have decision-making authority and those that don't. Specifically, the County Council and the Board of Zoning Appeals have decision-making authority, while the Planning Commission only acts in a review and recommending capacity. *Compare* GCZO § 2:1.2 (listing areas in which the "County Council shall have final (local) decision-making authority") *and* § 2:3.2 (listing areas in which the "Board of Zoning Appeals shall have final (local) decision-making authority") *with* GCZO § 2:2.2 ("The Planning Commission *acts in a review and recommending capacity* on the following matters: Preliminary Subdivision Plats.") (emphasis added).

The County withheld the authority to decide on preliminary plans from the Planning Commission and reserved that authority for County staff. The 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. However, it is the *County* and its staff that finalize the decision on preliminary plans—not the Planning Commission. The fact that people speak colloquially about an appeal from a decision of the Planning Commission cannot overcome the black-and-white text of the GCZO, which doesn't give final approval authority to the Planning Commission, nor can even the statutory language speaking of a "decision of the Planning Commission," *see* S.C. Code Ann. § 6-29-1150(D)(1), overcome the express statutory acknowledgment that a county need not—and here *has not*—delegate that authority to a planning commission, *see id.* at -1150(A)):

ARTICLE 2 REVIEW AND DECISION-MAKING BODIES

Section 2:1 County Council

2:1.1 Review Authority

The County Council does not act in a review or recommending capacity.

2:1.2 Decision-Making Authority

The County Council shall have final (local) decision-making authority on the following matters:

A. Comprehensive Plan Amendments

B. Zoning Ordinance Text Amendments (see Article 3, Section 3:2)

C. Zoning Map Amendments (Rezonings) (see Article 3, Section 3:2)

D. Major PD Changes to Concept Plans and Statement of Intent (see Article 8, Section 8:1)

E. Acceptance of public dedications (offered as part of Subdivision Plat process (see Section 6.6 of the Greenville County Land Development Regulations).

Section 2:2 Planning Commission

2:2.1 Review Authority

The Planning Commission acts in a review and recommending capacity on the following matters:

A. Comprehensive Plan Amendments

B. Zoning Ordinance Text Amendments (see Article 3, Section 3.2)

C. Zoning Map Amendments (Rezonings); (see Article 3, Section 3.2)

D. Major PD Changes to Concept Plans and Statement of Intent (see Article 8, Section 8.1)

2:2.2 Decision-Making Authority

The Planning Commission acts in a review and recommending capacity on the following matters:

Preliminary Subdivision Plats (see Section 3.1 of the Greenville County Land Development Regulations)

Section 2:3 Board of Zoning Appeals

2:3.1 Review Authority

The Board of Zoning Appeals does not act in a review or recommending capacity.

2:3.2 Decision-Making Authority

The Board of Zoning Appeals shall have final (local) decision-making authority on the following matters:

A. Special Exceptions (see Article 3, Section 3.3)

B. Variances (see Article 3, Section 3.4)

C. Appeals of Administrative Decisions (see Article 3, Section 3.5)

GCZO §§ 2:1 to 2:3 (highlighting added).

Accordingly, the first actual notice any property owner or applicant can have of the County's action is from the letter sent by County staff approving or denying the application, which is why the letter the County sent to AJC-101 in this case is accurate when it stated that an appeal must be made within thirty days of the letter.

The Planning Commission's lack of final action here can also be viewed in terms of the absence of any final, affirmative memorialization of its vote at the April 23, 2025 meeting. This is contrasted with the authorized action of the architectural review board in *Blind Tiger*, where this Court specifically referred to the board's explicit action at the meeting. *See Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (2005) ("Also, at the time the decision was rendered, a member of the commission placed an 'X' in the box of the application next to 'Denial'"). No such action was taken here by Respondent at its April 23 meeting.

IV. The County is equitably estopped from retracting its written statement that AJC-101 had 30 days from the date of the letter to appeal.

Even setting aside the statutory text and precedent, the circuit court's ruling should be reversed because the County, having told AJC-101 in writing in the letter notifying it of the denial that AJC-101 had 30 days *from the date of the letter* to appeal, should be equitably estopped from arguing on appeal that a different, earlier deadline should apply. *See* Subdivision Administrator's letter of April 30, 2025 (R. p. 74). "The acts of a government agent that are within the proper scope of his authority may give rise to estoppel against a municipality." *Charleston County v. Nat'l Adver. Co.*, 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); *see also Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) ("To allow the city to repudiate its former interpretation of permissible rentals and the statements of its zoning director, based upon a re-assessment of the meaning of an undefined term in the ordinance[,] would be unconscionable.").

The Planning Commission's current position—which was adopted by the trial court—is that AJC-101 had to file its appeal within thirty days of the April 23, 2025, meeting during which the Planning Commission voted on AJC-101's Application. This would place AJC-101's deadline to file its appeal on May 23, 2025. Putting aside the statutory and precedential flaws in this reading of S.C. Code Ann. § 6-29-1150 (2003), the Planning Commission's position is contrary to the representations made by the County, which informed AJC-101 in writing that it had until May 30, 2025, to file. As a matter of equity, the County and the Planning Commission should not be able to benefit from AJC-101 detrimentally relying on the representations of a government official, and AJC-101 should not be denied a hearing on the merits because it took the County's word—which also comports with a proper reading of the statute.

As noted in the Factual Background above, one week after the April 23, 2025 meeting, the Subdivision Administrator, a Greenville County employee, sent a letter to AJC-101's engineer notifying her that AJC-101's Application had been denied and that any appeal of this denial "must be made *within thirty (30) days* ***from the date of this letter*** in accordance with Section 6-29-1155 of the South Carolina Code of Laws." *See* Subdivision Administrator's Letter of April 30, 2025 (R. p. 74) (emphasis added). Relying on the County's representation, AJC-101 filed its appeal 28 days after the date of the letter. According to the Planning Commission's position on appeal, AJC-101 should have known better than to trust the governmental body tasked with enforcing the County's regulations and guiding developers through the process.

It is a matter of well-established law that a party may be estopped from asserting the statute of limitations defense when they wrongfully induced the opposing party in a manner that caused them to miss the statutory deadline. *See, e.g., Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372–73, 725 S.E.2d 112, 125 (Ct. App. 2012) ("A defendant will

be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been *induced by the defendant's conduct.* The doctrine is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's intentional misrepresentation; but deceit is not an essential element of estoppel. It is sufficient that the aggrieved party *reasonably relied* on the words and conduct of the person to be estopped in allowing the limitations period to expire.") (emphasis in original) (internal citations omitted). Similarly, courts may equitably toll a statute of limitations in extraordinary circumstances. *See Am. Legion Post 15 v. Horry Cnty.*, 381 S.C. 576, 582–83, 674 S.E.2d 181, 184–85 (Ct. App. 2009) ("Equitable tolling has been deemed available where . . . extraordinary circumstances prevented the plaintiff from filing despite his or her diligence[,] . . . the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass[,] . . . [or] the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.").

Government actors, such as a city or county, are not immune to equitable estoppel. *See, e.g., id.* To the contrary, the Supreme Court of South Carolina has affirmed that, upon the requisite showing, a governmental body may be estopped from asserting a statute of limitations defense. In *American Legion Post 15*, our Supreme Court explained that a party claiming estoppel against the government must prove the following: "(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." *Id.* (citation omitted). "The acts of government agents acting within the scope of their authority can give rise to estoppel against the government." *Town of Sullivans Island v. Byrum*, 306 S.C. 539, 544, 413 S.E.2d 325, 328 (Ct. App. 1992).

In *Abbeville Arms v. City of Abbeville*, the Supreme Court of South Carolina estopped a city from denying a building permit based on the city's previous representations and actions. 273 S.C. 491, 495, 257 S.E.2d 716, 718 (1979). In that case, an applicant wanted to build a multi-family housing project. *Id.* at 493, 257 S.E.2d at 717. Before buying the property, the applicant reviewed the zoning map and contacted the city—both sources confirmed that the property was zoned appropriately for this development. *Id.* After the property purchase, the city denied the applicant's building permit on the basis that the zoning map had mistakenly labeled the property as one designation when it was rightfully another. *Id.* The applicant appealed this denial. *Id.* In applying the test for estoppel against the government, the court found that the applicant lacked knowledge of the truth when the mistake was present on official government documents and a city official confirmed the erroneous zoning designation. *Id.*at 495, 257 S.E.2d at 718.

Similarly, in this case, AJC-101 received written confirmation of the time period under which it could appeal the denial of its Application. The Planning Commission may argue that AJC-101 could have reviewed the Code to find the "proper" date for an appeal. However, as discussed at length in this brief, AJC-101 was correct when it interpreted "actual notice" under S.C. Code Ann. § 6-29-1150(D)(1) as occurring when it received written notice of the decision via the County's letter. Even a review of applicable case law would have revealed judicial opinions espousing this position.

Even if this Court determines that the trial court appropriately interpreted Section 6-29-1150 (which it shouldn't do), there was no way for AJC-101 to know or discover that interpretation *at the time it filed its notice of appeal.* Nor could AJC-101 have known that the County, which shared AJC-101's interpretation of the statute, was apparently incorrect. *See Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 219–20, 329 S.E.2d 423, 424–25 (1985) (estopping a county

from enforcing a zoning ordinance when (i) the at-issue term was not defined in the ordinance, (ii) the practice of the city was generally to allow the type of use contemplated by the property owner, and (iii) the public official tasked with interpreting and enforcing the ordinance represented to the property owner that the use was permitted); *compare Grant v. City of Folly Beach*, 346 S.C. 74, 84, 551 S.E.2d 229, 233 (2001) (refusing to estop the government from excluding property use when the at-issue flood limitations were plainly and easily understood by reviewing the applicable ordinances).

As to the second and third elements for governmental estoppel, AJC-101 rightfully relied on the County's representations as to when it could file its appeal. *See* Subdivision Administrator's Letter of April 30, 2025 (R. p. 74); AJC-101's Memo. in Support, p. 3 (R. p. 23) (explaining that AJC-101 filed within thirty days of the date of the subdivision administrator's letter). On the basis of the letter, AJC-101 filed its Notice of Appeal and Petition on May 28, 2025, which was within 30 days of the letter. *See* Notice of Appeal & Petition (R. pp. 11 to 15). When the trial court adopted the County's new-found appellate position on when the appeal could be filed, AJC-101 suffered significant prejudice through the dismissal of its appeal.

True, courts have sometimes declined to apply the equitable estoppel doctrine to government bodies when a government employee gave "erroneous information in contradiction of a statute." *Am. Legion Post 15 v. Horry Cnty.*, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009). Here, the Planning Commission will predictably but erroneously argue that the County's letter was merely a mistake from a government employee and, therefore, was insufficient to warrant equitable tolling or estoppel. Not only would this argument be incorrect (for all the reasons noted above), it would effectively undercut anyone's ability ever to trust a government official's assertions. The letter from the County was not merely a government employee casually but

mistakenly describing the law in conversation. This letter was an official communication bearing the County's seal sent according to a statutory obligation. *See* S.C. Code Ann. § 6-29-1150(A) (requiring a developer be issued written notice of actions taken by the planning commission); *see* Subdivision Administrator's Letter of April 30, 2025 (R. p. 74). If AJC-101 can't trust this letter, when could anyone ever trust official, formal, written communications from the County?

Whether through mistake, malign intent, or a genuine opinion on the proper interpretation of Section 6-29-1150, the County assured AJC-101 that it could file its appeal by May 30, 2025. *Id.* (R. p. 74). Now, on appeal, the Planning Commission has effectively pulled the rug out from under AJC-101 by claiming AJC-101 never had a right to rely on this date. If this Court concludes that Section 6-29-1150's deadline for AJC-101's notice of appeal really expired on May 23, 2025, it is a matter of equity that AJC-101's time to appeal should have been equitably tolled or that the Planning Commission and County should be equitably estopped from raising the defense.

V. The Court should remand with instructions to reverse the county's conclusory denial of AJC-101's application or, in the alternative, determine damages for a taking.

With the threshold issue of the timeliness of the appeal out of the way, the Court should remand with instructions to reverse the County's conclusory denial of AJC-101's application. Alternatively, the circuit court should set a schedule to determine the damages for an uncompensated taking. That's because the effect of the Planning Commission's and County's reasonless denial of the application is to deny *any* application for developing the property.

"[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Regulatory action that "denies all economically beneficial or productive use of land" is a *per se* taking for which no further case-specific inquiry is necessary. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015–16 (1992); *see also Sea Cabins on Ocean IV Homeowners Ass'n, Inc. v. City of N. Myrtle*

Beach, 345 S.C. 418, 430, 548 S.E.2d 595, 601 (2001) (elaborating on the procedural effect of a *per se* taking).

The Planning Commission's and, later, the County's failure to provide any reason for denying AJC-101's Application reveals its true intent, which is to deny *any* application by AJC-101 to develop the property. Such a denial deprives AJC-101, as the owner and/or developer of the at-issue property, of all economic use of the land and requires the property remain "economically idle," effectuating a regulatory taking of the property. *Lucas*, 505 U.S. at 1015–16. Even if the Court fails to find a *per se* taking under *Lucas*, AJC-101 has nonetheless suffered a regulatory taking under the *Penn Central* balancing test. *See, e.g.*, *Braden's Folly, LLC,* 439 S.C. 171, 192–93; 886 S.E.2d 674, 685–86 (2023) (stating that the *Penn Central* balancing test considers the following: "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.") (internal citations omitted).

Because neither the Planning Commission nor the County provided any explanation for the denial of AJC-101's application, and because that denial effectively denies any profitable use of the property, the Court should remand with instructions to reverse that denial or, alternatively, to determine damages for a taking.

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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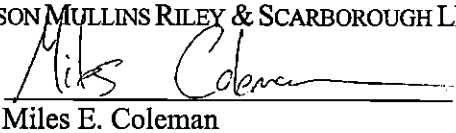
By: 

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