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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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FEB 18 2016

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

Appellant,

v.

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

Rule 240(j), SCACR, Petition for Rehearing

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

The appellant submits Petition for Rehearing of the Order dated February 3, 2016, for the reasons set forth below.

I. The Order was entered before the time allowed for the other side to respond.

Because the order was entered before the time allowed under the SCACR for the other side to respond, appellant requests an opportunity to respond. Due process requires notice and an opportunity to respond which is respectfully requested. The relief given raises a question of applicability of state and federal constitutional guarantees and protections. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses)

- II. Pursuant to Rule 263(b), SCACR, the out of time Motion for Extension should have been submitted to the appellate court. Pursuant to Rule 263(b), SCACR, the clerk is not authorized and has no jurisdiction to decide the out of time motion for extension pending before the appellate court.

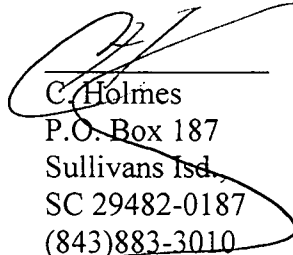
The request for extension should be made "well in advance of the applicable deadlines." Former Chief Justice Toal et al., *Appellate Practice in South Carolina* (2002), p. 263. Once the request is out of time, this Court should rule that a motion must be decided by the appellate court, not the clerk pursuant to Rule 263(b), SCACR. *Id. Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses).

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant panel review of the propriety of the clerk denying opportunity to respond and deciding non-ministerial matters such as out of time motions for extension pending before the appellate court and appellant respectfully requests abeyance with opportunity to respond.

Respectfully submitted,

Dated 2/16/10


C. Holmes
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For Appellant

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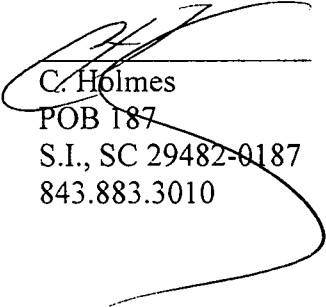
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PROOF OF SERVICE

I certify that I have timely served the foregoing on the Respondents on this date by deposit in the United States Mail, postage prepaid, addressed to Respondents' attorney of record at 16 Charlotte St., Charleston, SC 29403.

Dated 2/17/16



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Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Doe v BZA et al
App. Case No. 2015-002297

Dear Jenny:

Enclosed for filing is the original motion with abeyance request in the above case. Also, enclosed are the following:

- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Respondents' Counsel