THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge

Appellate Case No. 2019-001037

Case No. 2018-CP-07-02402

Stafford Bluffton Land, LLC, ... Appellant,

v.

Beaufort County Planning Commission and the
Crescent Property Owners' Association, Inc., ... Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

Whether Stafford Bluffton Land, LLC's appeal of the Beaufort County Planning Commission's decision was timely when the Planning Commission indicated after a vote at a public meeting that a written order was forthcoming and Stafford appealed within thirty days of receiving the Commission's written order.

INTRODUCTION

This appeal presents a specific, yet unanswered, question under South Carolina law: What constitutes a "decision" by a planning commission under S.C. Code § 6-29-1150(D)(1) when the commission indicates that a written order will follow an oral vote?

Both the plain language of § 6-29-1150(D)(1) and public policy support the conclusion that the written order is the Commission's "decision." As for the plain language, a decision is a formal act that, in a context like this, ends the dispute. The Commission's formal act here was issuing the written order, which the Commission said it would issue and would explain the basis of its vote, as required by sections 7.3.70(C)(6) and 7.4.90(B)(3) of the Beaufort County Community Development Code.

Public policy also supports treating the written order as the Commission's "decision." Using the written order gives litigants a bright-line rule to follow in calculating when a deadline to appeal begins to run. Having a bright-line rule will reduce confusion, thereby avoiding piecemeal appeals and promoting judicial efficiency.

The circuit court therefore erred in treating the oral vote as the "decision" and dismissing Stafford's appeal of the Planning Commission's decision. The circuit court's decision should be reversed, and this case should be remanded for further proceedings.

STATEMENT OF THE CASE

Stafford seeks to approval to develop property in Bluffton.

More than a decade ago, Stafford Rhodes, LLC purchased a piece of property along U.S. 278 near The Crescent, a neighborhood in Bluffton, and developed a large shopping center. After the shopping center was completed, a piece of that property remained undeveloped for a future project. In 2017, Stafford Bluffton Land, LLC (a related entity, referred to here simply as "Stafford") began plans to build apartments on that undeveloped piece of the property. (Am. Mot. to Dismiss, Ex. C, pp. 2, 5).

As part of this new development, Stafford sought approval from the Beaufort County Planning Commission. (Am. Mot. to Dismiss, Ex. B). The Crescent Property Owners' Association (CPOA) opposed Stafford's application for the permit. (Am. Mot. to Dismiss, Ex. C). That opposition was based on a 2005 Easement Agreement and Consent to Improvements, signed by Stafford Rhodes and CPOA during the earlier development of the shopping center. (Am. Mot. to Dismiss, Ex. A).

That 2005 Easement Agreement is at the center of multiple ongoing disputes, including two other lawsuits in Beaufort County. *See Crescent Property Owners Ass'n, Inc. v. Stafford Rhodes, LLC*, No. 2018-CP-07-1314; *Stafford Bluffton Land, LLC v. Nastoff*, 2019-CP-07-116. The easement agreement required Stafford Rhodes make certain "Required Improvements" during the initial development, including fencing, lighting, landscaping, and drainage, and to obtain CPOA's approval for any material changes to permitting modifications. (Am. Mot. to Dismiss, Ex. A, pp. 2–3). CPOA claims that this agreement gave CPOA the right to object to apartments being

built as part of Stafford's new development because the easement agreement is actually, according to CPOA, a restrictive covenant. (Notice of Appeal, Ex. C).

Stafford's application to the Planning Commission was conditionally approved by the Commission's Staff Review Team in April 2018. (Notice of Appeal 2). CPOA challenged that approval, and in July 2018, the Planning Commission remanded the application back to the Staff Review Team. (Am. Mot. to Dismiss, Ex. C, p. 10).

In its second consideration of Stafford's application, the Staff Review Team again approved the application. (Notice of Appeal 2). And CPOA again appealed to the Commission. (Am. Mot. to Dismiss, Ex. C, p. 4). The appeal challenged the Staff Review Team's decision on myriad grounds, including whether Stafford actually owned the property, the validity of the property being subdivided, the 2005 Easement Agreement, the completeness of Stafford's application, CPOA's detrimental reliance, the preclusive effect of the Commission's decision in the first appeal, and the County's Community Development Code. (Am. Mot. to Dismiss, Ex. C, pp. 16–32).

The Planning Commission hears CPOA's second appeal.

The Planning Commission heard the second appeal of Stafford's application on September 6, 2018. (Am. Mot. to Dismiss, Ex. D). The Commission heard arguments from CPOA's counsel, the community development director for Beaufort County, and Stafford's counsel. At that point, the Commission moved into executive session for almost half an hour. When it came out of executive session, it heard final arguments from CPOA, Stafford, the County staff attorney, and the County community development director. (Am. Mot. to Dismiss, Ex. D, pp. 3–7).

A member of the Commission then moved "to approve the appeal as submitted," and another member seconded the motion. (Am. Mot. to Dismiss, Ex. D, p. 7). That motion failed by a vote of 4-4. (Am. Mot. to Dismiss, Ex. D, p. 7).

Immediately following this vote, the same member moved "to grant the appeal as submitted." (Am. Mot. to Dismiss, Ex. D, p. 7). This motion was also seconded, and then it was approved by a vote of 5-3. (Am. Mot. to Dismiss, Ex. D, p. 7).

What happened next is critical. According to the Commission's minutes, "[f]urther discussion occurred with the Commissioners regarding clarification of their earlier actions with the Administrative Appeal," and the County's community development director indicated that the Commission's "staff will expect some Findings of Fact to be filed with them timely so that staff can make their decision as what to do with [the Commission's] action." (Am. Mot. to Dismiss, Ex. D, p. 7). The Commission needed to explain "what the basis for the reversal of [the Staff Review Team's] decision" was. (Am. Mot. to Dismiss, Ex. D, p. 7).

Following this discussion, the chair of the Commission "reminded the Commissioners that he needed input from them on why the vote went the way it did." (Am. Mot. to Dismiss, Ex. D, p. 7). And the Commissioner who had moved to "grant" the appeal "encouraged the Commissioners to fill out the available form." (Am. Mot. to Dismiss, Ex. D, p. 7). This is the last thing in the minutes about the appeal.

The Commission issued a two-paragraph written order dated November 1, 2018. (Notice of Appeal, Ex. A). This order contains no explanation of the Commission's decision. (Notice of Appeal, Ex. A).

The circuit court dismisses the appeal as untimely.

Stafford received a copy of this order on November 14, 2018. (Notice of Appeal Ex. A). Twenty-three days later, Stafford filed a notice of appeal in circuit court. (Notice of Appeal). CPOA moved to dismiss the appeal, asserting that the appeal was untimely under S.C. Code § 6-29-1150(D)(1). (Am. Mot. to Dismiss). The Planning Commission also moved to dismiss the appeal based on its alleged untimeliness under that statute (although the Commission eventually dismissed that motion before the circuit court heard it because it was filed after the hearing on CPOA's motion arguing the same thing). (Mot. to Dismiss; June 21, 2019 Order).

The circuit court heard CPOA's motion on March 11, 2019, and nine days later, the circuit court granted that motion in a single sentence, "pursuant to the ruling" in *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005). (Mar. 20, 2019 Order).

Stafford moved to reconsider that order six days later. (Mot. to Reconsider). After a hearing on Stafford's motion to reconsider, the circuit court denied the motion in a Form 4 order, stating simply that "[a]fter hearing from the parties and reviewing of the file," the motion was denied. (June 13, 2019 Order).

Stafford timely appealed. (Notice of Appeal to Court of Appeals).

STANDARD OF REVIEW

This Court reviews the grant of a motion to dismiss *de novo*, applying the same standard as the circuit court. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014). Such a motion should be granted only if the plaintiff is not

entitled to relief under any theory. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

A motion to reconsider is reviewed for abuse of discretion. *Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997). A circuit court abuses its discretion whenever it lacks evidentiary support for its decision or makes an error of law. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). On questions of law, this Court reviews them *de novo*. *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 198, 821 S.E.2d 667, 669 (2018).

ARGUMENT

Stafford's appeal of the Planning Commission's decision was timely.

A party has a right to appeal the decision of a planning commission to the circuit court. That appeal must be filed within thirty days of "actual notice of the *decision*" of the planning commission. S.C. Code § 6-29-1150(D)(1) (emphasis added).

The critical question here is when the Planning Commission made its "decision." The "decision" is what triggered Stafford's thirty-day clock to file a timely notice of appeal.

To answer this question, the Court must look first to the plain language of the statute. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). If that "language is plain and unambiguous, and conveys a clear and definite meaning," then the Court need go no further and must give the statute that plain meaning. *Id.*

But if that language is not so clear, the Court must consider "the word and its meaning in conjunction with the purpose of the whole statute and the policy of the

law." *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). In other words, "the language of the statute must be construed in a sense which harmonizes with its subject matter and accords with its general purpose." *Id.*; *see also TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) ("Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.").

Nowhere does Title 6, Chapter 29 define what constitutes a "decision." Thus, the Court should look to a dictionary to define the term. *See, e.g., Estate of Nicholson ex rel. Nicholson v. S.C. Dep't of Health & Human Servs.*, 377 S.C. 590, 596, 660 S.E.2d 303, 305 (Ct. App. 2008). A leading dictionary defines a "decision" as a "final or definite result of examining a question" or a "conclusion [or] judgment, especially one *formally pronounced* in a court of law." *Compact Edition of the Oxford English Dictionary* 661 (1971) (emphasis added). Legal dictionaries define "decision" similarly. *See, e.g., Black's Law Dictionary* 467 (9th ed. 2009) (defining "decision" as a "judicial or agency determination after consideration of the facts and the law; especially a ruling, order, or judgment pronounced by a court when considering or disposing of a case").

Both the plain meaning of this word and public policy support the conclusion that the Commission's decision in this case was its written order issued in November 2018, not the announced vote count at the meeting in September 2018.

A. The Commission's "decision" was the November written order.

1. The announcement at the September meeting does not fit within the plain meaning of "decision."

In light of the definition of decision as the "final" result and a "formally pronounced" conclusion, the announcement at the September meeting that the Commission "granted the appeal as submitted" did not constitute the Commission's "decision" under § 6-29-1150(D)(1). For at least two reasons, that announcement does not meet the plain meaning of this word.

First, the Commission made clear that a written order was forthcoming. Thus, the announcement at the meeting could not have been "final" if something more was to follow. After the vote, the Commission had a "[f]urther discussion" about the decision (the minutes do not state exactly what was said here), but after this discussion, the County's community development director made clear that "staff will expect some Findings of Fact to be filed with them timely so that staff can make their decision as what to do with [the Commission's] action." (Am. Mot. to Dismiss, Ex. D, p. 7). The chair of the Commission indicated that the Commission would provide those findings by soliciting "input" from the Commissioners on why the Commission voted the way it did. (Am. Mot. to Dismiss, Ex. D, p. 7). With nothing further in the minutes, the logical conclusion at the end of this exchange is that the Commission would be issuing a written order that would serve as its decision.

What happened at the end of the meeting on the CPOA's appeal to the Planning Commission was tantamount to a judge saying at the end of a hearing, "I'm going to grant the motion. You can expect an order soon." All of the attorneys would

understand that the judge may have made up his mind but the actual "decision" was still to come.

And so here. The parties expected that the CPOA would prevail before the Planning Commission. But they all anticipated a formal decision with findings of fact and conclusions of law in compliance with the County's Community Development Code. *See* Beaufort Cty. Community Dev. Code § 7.4.90(B)(3) ("the decision-making body's decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision"), *available at* https://library.municode.com/sc/beaufort_county/codes/community_development_code?nodeId=CODECOBECOSOCA; *see also id.* § 7.3.70(C)(6).

Second, the announcement at the September meeting was not a "formal pronouncement" that met the requirements of the County's Community Development Code. Indeed, nothing about the announcement that the appeal was "granted" actually attempted to show that the Commission had applied the code. That code specifically limits the Planning Commission, when acting as an appellate body as it did in this case, to overturning a decision for only one of three reasons: (1) an error was made "in determining whether a standard was met," (2) a decision was "based on a standard not contained" in county regulations or ordinances, or (3) an error was made "in applying a standard or measuring a standard." Beaufort Cty. Community Dev. Code § 7.3.70(D). It also requires a reasoned decision with findings of facts and an explanation of why the Commission decided the way it did. *See id.* § 7.40.90(B)(3). Given these codified limitations on an appeal and the statement from the chair of the

Commission about needing an explanation for the Commission's vote, the vote itself cannot be interpreted as the final decision but rather only the result and that the formal pronouncement (that explained the basis of the Commission's vote) would be forthcoming.

CPOA contended below that granting the appeal "as submitted" meant that the Commission "adopt[ed the] arguments" in CPOA's appeal. (Opp'n to Mot. to Reconsider 9). This assertion, however, ignores what followed the vote to grant CPOA's appeal. Had the Commission actually adopted all of CPOA's arguments, it would have had no need for the written order that the chair said would come, and the member who moved to grant the appeal would not have needed to encourage his colleagues to "fill out the available form." (Am. Mot. to Dismiss, Ex. D, p. 7). Furthermore, the mere adoption of CPOA's arguments does not identify on which of the three bases for reversing a decision found in § 7.3.70(D) the Commission was relying, nor does it "clearly state the factors considered in making the decision and the basis or rationale for the decision" that a decision must under § 7.4.90(B)(3). *See* Beaufort Cty. Community Dev. Code §§ 7.3.70(D), 7.4.90(B)(3).

This conclusion that the announcement at the meeting was not the Commission's "decision" is supported by case law from other jurisdictions. Notably, the Vermont Supreme Court has "held that the appeal period for site plan review does not commence at the time of the oral decision of the planning commission, but instead at the time of some ministerial act [the court] can regard as a written decision." *In re Miller*, 742 A.2d 1219, 1228 (Vt. 1999) (internal quotation mark

omitted). Similarly, the New Mexico Supreme Court has held that a written decision, rather than the vote at a commission meeting, triggered an appeal deadline to start running. *See Paule v. Santa Fe Cty. Bd. of Cty. Comm'rs*, 117 P.3d 240, 244–45 (N.M. 2005). And the Nevada Supreme Court has opined that "the oral pronouncement of the determination by the Commission was insufficient to constitute a final decision." *Nev., Dep't of Commerce v. Hyt*, 611 P.2d 1096, 1098 (Nev. 1980).

Such a result should not be surprising, even to CPOA. During that meeting, its counsel had called the Planning Commission a "quasi-judicial body . . . making Findings of Fact and Conclusions of Law." (Am. Mot. to Dismiss, Ex. D, p. 5). This statement indicates that CPOA, just like Stafford and the Commission's staff, anticipated something more than just an announcement that the appeal was granted. All of the parties expected a written final decision. And that is what came in the November order, from which Stafford timely appealed under § 6-29-1150(D)(1).

2. Public policy supports the conclusion that the November order was the Commission's "decision."

If the plain meaning of "decision" were somehow not enough, sound public policy supports the conclusion that the announcement at the September meeting was not the Commission's "decision."

A decision from a planning commission (or any other adjudicatory body, for that matter) that can be appealed must necessarily be a formal act that gives the reviewing court a specific conclusion to review. Were it anything less, the reviewing court could not be sure exactly what was being challenged. Waiting for the written order that the Commission said was coming give a court a clearer idea of the decision

that was being challenged. (At least it should in most cases. The written order here ultimately contained no explanation of the Commission's decision, but that argument goes to the merits, not the timeliness, of Stafford's appeal.)

Additionally, treating the written order as the "decision" that a party must appeal pursuant to § 6-29-1150(D)(1) promotes judicial efficiency. *Cf. City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 34, 800 S.E.2d 782, 785 (2017) (recognizing the importance of protecting limited judicial resources). A bright-line rule that a written order is the "decision" will avoid piecemeal appeals. Without such a rule, a party will be forced to appeal an oral announcement, just to be sure that an appeal deadline does not expire. Then either a second appeal or an amended notice of appeal will be required after a written order is issued. This uncertainty will clog dockets with unnecessary filings that can easily be avoided by a bright-line rule: When a written order is forthcoming, that written order, not any announcement during a meeting, is the "decision" from which an appeal may be taken.

3. ***Blind Tiger*** **does not apply here.**

The circuit court relied solely on this Court's decision in *Blind Tiger* in granting the motion to dismiss, without ever explicitly examining the plain language of § 6-29-1150(D)(1). That case, however, is distinguishable from this one.

Blind Tiger involved an appeal under S.C. Code § 6-29-900(A), which includes language similar to § 6-29-1150(D)(1). There, Charleston's Board of Architectural Review provided more than merely saying which side it agreed with. It specifically "order[ed] removal of the window film and tiger design within ten days." 366 S.C. at

185, 621 S.E.2d at 362. At that same time, "a member of the commission placed an 'X' in the box of the application next to 'Denial.'" *Id.* The Board announced this decision at the meeting, but the Blind Tiger did not receive written notice of that decision for more than two months. *Id.* at 186, 621 S.E.2d at 362. Despite filing an appeal in circuit court within thirty days of the written notice, this Court held the appeal was untimely because the Blind Tiger had actual notice of the decision more than thirty days before the appeal was filed. *Id.*

Ultimately, the focus on *Blind Tiger* was on the "actual notice" requirement of § 6-29-900(A).* This Court treated the Board's actions at the meeting in that case as its "decision," without any discussion or analysis. That case therefore does not answer directly the question here, which is whether the vote at the Planning Commission's September meeting was a "decision" under § 6-29-1150(D)(1).

Nor does *Blind Tiger* implicitly answer the question of what constitutes a "decision." What happened with the Board in that case is differs so much from what happened with the Planning Commission in this case that *Blind Tiger* is of little value here. Although both cases involved an oral announcement at a meeting, that is where the similarities stop. The Board in *Blind Tiger* unequivocally made its decision at that meeting with explicit instructions and a timeframe for the Blind Tiger to comply, and the Board put an "X" put "in the box of the application next to 'Denial,'" so there was a written decision. 366 S.C. at 185, 621 S.E.2d at 362. The Planning Commission

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* Below, CPOA also relied on *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). But that case is also about "actual notice," so it is irrelevant here.

here did no such thing, telling Stafford, CPOA, and its own staff that a formal decision explaining the vote was forthcoming.

That decision finally came in the November order. From that decision, Stafford timely appealed under § 6-29-1150(D)(1).

B. Even if the announcement at the September meeting was a "decision," the November order was also a "decision" from which Stafford could—and did—appeal.

Stafford's appeal is still timely, even if the Court concludes that a "decision" was made at the September meeting. The November written order was a second "decision" from the Planning Commission.

Once again, *Blind Tiger* is distinguishable. Although not discussed by this Court, the circuit court explained why the appellant there could not rely on the written decision. *See* Order, *Blind Tiger, LLC v. City of Charleston*, No. 04-CP-10-428, 2004 WL 5213250 (S.C. Ct. Comm. Pls. Mar. 10, 2004). There, although the written decision was not received until January 30, 2004, it was written at the time of the meeting and mailed the next day. *Id.* at *1. (The order does not discuss why the written decision took almost three months to reach the appellant.) The written decision in that case was contemporaneous with the oral decision at the meeting, making clear that it was simply the documentation of a decision.

By contrast, in this case, the written decision came almost two months after meeting. Based on the statement of the chair of the Planning Commission, the written order that was to follow the meeting was not to be simply a clerical recording of the vote. Instead, it was to be an explanation of the vote. (*See* Am. Mot. to Dismiss,

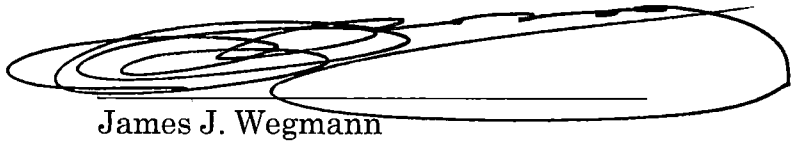
Ex. D, p. 7). At the very least, the written decision here was a new, second decision that reaffirmed a decision (if there was one) at the September meeting. (Once again, that the November order did not actually explain the Commission's decision goes to the merits of Stafford's appeal, not the timeliness of it. After all, Stafford had no way to know that the Commission's November order would be devoid of any explanation required by the Community Development Code.)

As a new decision, the written decision started a new thirty-day window in which Stafford could appeal. And Stafford did appeal within thirty days of when it received this decision. Therefore, its appeal is timely under § 6-29-1150(D)(1).

CONCLUSION

The circuit court's order should be reversed, and the case should be remanded for further proceedings.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
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Court of Common Pleas

Honorable Marvin H. Dukes, III, Master-in-Equity

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Stafford Bluffton Land, LLC, ... Appellant,

v.

Beaufort County Planning Commission and the
Crescent Property Owners' Association, Inc., ... Respondents.

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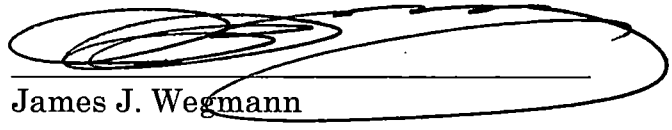

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September 13th, 2019

The Honorable Jenny Abbott Kitchings
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RE: Bluffton Stafford Land, LLC, Appellant v. Beaufort County Planning Commission and The Crescent Property Owners' Association, Inc., Respondents
Appellate Case No.: 2019-001037

Dear Ms. Kitchings:

Enclosed for filing is the Appellant's Initial Brief and Appellants Designation of Matter to be Included in the Record on Appeal. Also enclosed are the following:

1. Proof of service of the Initial Brief on Respondents.

2. Proof of service of Designation of Matter to be Included in the Record on Appeal on Respondents.

With Warmest Regards, I am,

Sincerely,

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