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115th Session, 2003-2004

**A39, R91, S204**

**STATUS INFORMATION**

General Bill

Sponsors: Senators McConnell, Martin and Knotts

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Introduced in the Senate on January 16, 2003

Introduced in the House on February 25, 2003

Last Amended on May 13, 2003

Passed by the General Assembly on May 15, 2003

Governor's Action: June 2, 2003, Signed

Summary: Land Use Dispute Resolution Act; to settle disputes between private property owners and local governments

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/16/2003	Senate	Introduced and read first time SJ-10
1/16/2003	Senate	Referred to Committee on <b>Judiciary</b> SJ-10
2/12/2003	Senate	Committee report: Favorable with amendment <b>Judiciary</b> SJ-13
2/13/2003		Scrivener's error corrected
2/19/2003	Senate	Amended SJ-25
2/19/2003	Senate	Read second time SJ-25
2/19/2003	Senate	Unanimous consent for third reading on next legislative day SJ-49
2/20/2003	Senate	Read third time and sent to House SJ-10
2/20/2003		Scrivener's error corrected
2/25/2003	House	Introduced and read first time HJ-8
2/25/2003	House	Referred to Committee on <b>Judiciary</b> HJ-10
4/30/2003	House	Committee report: Favorable with amendment <b>Judiciary</b> HJ-83
5/6/2003	House	Debate adjourned until Wednesday, May 7, 2003 HJ-23
5/7/2003	House	Amended HJ-18
5/7/2003	House	Read second time HJ-18
5/8/2003	House	Read third time and returned to Senate with amendments HJ-69
5/13/2003	Senate	House amendment amended SJ-12
5/13/2003	Senate	Returned to House with amendments SJ-12
5/14/2003		Scrivener's error corrected
5/15/2003	House	Concurred in Senate amendment and enrolled HJ-39

5/28/2003	Ratified R 91
6/2/2003	Signed By Governor
6/5/2003	Copies available
6/5/2003	Effective date 06/02/03
6/19/2003	Act No. 39

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#### **VERSIONS OF THIS BILL**

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(A39, R91, S204)

**AN ACT TO AMEND SECTION 1-23-630, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF ADMINISTRATIVE LAW JUDGES, SO AS TO AUTHORIZE AN ADMINISTRATIVE LAW JUDGE TO USE MEDIATION IN A MANNER THAT DOES NOT CONFLICT WITH OTHER PROVISIONS OF LAW AND IS CONSISTENT WITH THE DIVISION'S RULES OF PROCEDURE; TO AMEND SECTION 6-29-800, RELATING TO THE POWERS OF A ZONING BOARD OF APPEALS, SO AS TO PROVIDE A MATTER MAY BE REMANDED TO AN ADMINISTRATIVE OFFICIAL IF THE BOARD DETERMINES THE RECORD IS INSUFFICIENT FOR REVIEW; TO AMEND SECTION 6-29-820, RELATING TO APPEAL FROM A ZONING BOARD OF APPEALS TO A CIRCUIT COURT, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION; BY ADDING SECTION 6-29-825 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A ZONING BOARD OF APPEALS DECISION; TO AMEND SECTION 6-29-830, RELATING TO THE NOTICE OF APPEAL FROM A ZONING BOARD OF APPEALS DECISION, SO AS TO PROVIDE FOR THE PROCEDURE BY DIRECT APPEAL AND BY APPEAL AFTER THE MEDIATION IS NOT SUCCESSFUL OR APPROVED; TO AMEND SECTION 6-29-840, RELATING TO DETERMINATION OF THE APPEAL, SO AS TO PROVIDE WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THAT THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET AND TO PROVIDE IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; TO AMEND SECTION 6-29-890, RELATING TO AN APPEAL TO A BOARD OF ARCHITECTURAL REVIEW, SO AS TO PROVIDE A MATTER MAY BE REMANDED TO AN ADMINISTRATIVE OFFICIAL IF THE BOARD DETERMINES THE RECORD IS INSUFFICIENT FOR REVIEW; TO AMEND SECTION 6-29-900, RELATING TO AN APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW TO THE CIRCUIT COURT, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION; BY ADDING SECTION**

**6-29-915 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW DECISION; TO AMEND SECTION 6-29-920, RELATING TO THE NOTICE OF APPEAL FROM A BOARD OF ARCHITECTURAL REVIEW DECISION, SO AS TO PROVIDE FOR THE PROCEDURE BY DIRECT APPEAL AND BY APPEAL AFTER THE MEDIATION IS NOT SUCCESSFUL OR APPROVED; TO AMEND SECTION 6-29-930, RELATING TO DETERMINATION OF THE APPEAL, SO AS TO PROVIDE WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THAT THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET AND TO PROVIDE IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; TO AMEND SECTION 6-29-1150, RELATING TO AN APPEAL FROM A DECISION OF A PLANNING COMMISSION, SO AS TO PROVIDE THAT A PROPERTY OWNER MAY FILE A NOTICE OF APPEAL ACCOMPANIED BY A REQUEST FOR PRE-LITIGATION MEDIATION THAT, WHEN AN APPEAL INCLUDES NO ISSUES TRIABLE OF RIGHT BY JURY OR WHEN THE PARTIES CONSENT, THE APPEAL MUST BE PLACED ON THE NONJURY DOCKET, AND THAT, IF ANY PARTY SO REQUESTS, THE APPEAL MUST BE GIVEN PRECEDENCE OVER OTHER CIVIL CASES; BY ADDING SECTION 6-29-1155 SO AS TO PROVIDE THE PROCEDURE FOR PRE-LITIGATION MEDIATION IN AN APPEAL FROM A PLANNING COMMISSION DECISION; AND BY ADDING ARTICLE 9 TO CHAPTER 29, TITLE 6 SO AS TO PROVIDE EDUCATIONAL REQUIREMENTS FOR ZONING OFFICIALS AND EMPLOYEES AND TO CREATE AN ADVISORY COMMITTEE TO APPROVE COURSES FOR ORIENTATION AND CONTINUING EDUCATION PROGRAMS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Powers of an administrative law judge**

SECTION 1. Section 1-23-630 of the 1976 Code, as added by Act 181 of 1993, is amended to read:

“Section 1-23-630. (A) Each administrative law judge of the division has the same power at chambers or in open hearing as do

circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure."

### **Powers of board of appeals**

SECTION 2. Section 6-29-800 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

"Section 6-29-800. (A) The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;

(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding

any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen

days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.”

## **Appeal**

SECTION 3. Section 6-29-820 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-820. (A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).”

## **Notice of appeal**

SECTION 4. Chapter 29, Title 6 of the 1976 Code is amended by adding:

“Section 6-29-825. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and

must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F).”

### **Giving notice**

SECTION 5. Section 6-29-830 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-830. (A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.”

### **Hearing of appeal**

SECTION 6. Section 6-29-840 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-840. (A) At the next term of the circuit court or in chambers, upon ten days’ notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.”

### **Procedure for appeal**

SECTION 7. Section 6-29-890 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-890. (A) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken. Upon a motion by a party or the board’s own motion, the board may remand a matter to an administrative official if the board determines the record is insufficient for review. A party’s motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

(C) The board must fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.”

### **Standing to appeal**

SECTION 8. Section 6-29-900 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-900. (A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).”

### **Request for mediation**

SECTION 9. Chapter 29, Title 6 of the 1976 Code is amended by adding:

“Section 6-29-915. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if

the person has a substantial interest in the decision of the board of architectural review.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F).”

### **Notice of appeal**

SECTION 10. Section 6-29-920 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-920. (A) Upon filing of an appeal with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.”

### **Presiding judge must hear**

SECTION 11. Section 6-29-930 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-930. (A) At the next term of the circuit court or in chambers upon ten days’ notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.”

## **Land development regulations**

SECTION 12. Section 6-29-1150 of the 1976 Code, as added by Act 355 of 1994, is amended to read:

“Section 6-29-1150. (A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(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.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.”

### **Request for mediation**

SECTION 13. Chapter 29, Title 6 of the 1976 Code is amended by adding:

“Section 6-29-1155. (A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the planning commission.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully,

and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

(1) in the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) by filing an appeal pursuant to subsection (F).”

### **Education requirements for local government planning or zoning**

SECTION 14. Chapter 29, Title 6 of the 1976 Code is amended by adding:

#### “Article 9

#### Educational Requirements for Local Government Planning or Zoning Officials or Employees

Section 6-29-1310. As used in this article:

(1) ‘Advisory committee’ means the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees;

(2) ‘Appointed official’ means a planning commissioner, board of zoning appeals member, or board of architectural review member;

(3) ‘Clerk’ means the clerk of the local governing body;

(4) ‘Local governing body’ means the legislative governing body of a county or municipality;

(5) ‘Planning or zoning entity’ means a planning commission, board of zoning appeals, or board of architectural review;

(6) ‘Professional employee’ means a planning professional, zoning administrator, zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official.

Section 6-29-1320. (A) The local governing body must:

(1) by no later than December 31<sup>st</sup> of each year, identify the appointed officials and professional employees for the jurisdiction and provide a list of those appointed officials and professional employees to the clerk and each planning or zoning entity in the jurisdiction; and

(2) annually inform each planning or zoning entity in the jurisdiction of the requirements of this article.

(B) Appointed officials and professional employees must comply with the provisions of this article according to the following dates and populations based on the population figures of the latest official United States Census:

(1) municipalities and counties with a population above 70,000: by January 1, 2005;

(2) municipalities and counties with a population of 35,000 to 70,000: by January 1, 2006; and

(3) municipalities and counties with a population under 35,000: by January 1, 2007.

Section 6-29-1330. (A) There is created the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees.

(B) The advisory committee consists of five members appointed by the Governor with the advice and consent of the Senate. The advisory committee consists of:

(1) a planner recommended by the South Carolina Chapter of the American Planning Association;

(2) a municipal official or employee recommended by the Municipal Association of South Carolina;

(3) a county official or employee recommended by the South Carolina Association of Counties;

(4) a representative recommended by the University of South Carolina's Institute for Public Service and Policy Research; and

(5) a representative recommended by Clemson University's Department of Planning and Landscape Architecture.

Recommendations must be submitted to the Governor not later than the thirty-first day of December of the year preceding the year in which appointments expire. If the Governor rejects any person recommended for appointment or the Governor's appointment is not confirmed by the Senate, the group or association who recommended the person must submit additional names to the Governor for consideration.

(C) The members of the advisory committee must serve a term of four years and until their successors are appointed and qualify; except that for the members first appointed to the advisory committee, the planner must serve a term of three years; the municipal official or

employee and the county official or employee must each serve a term of two years; and the university representatives must each serve a term of one year. A vacancy on the advisory committee must be filled in the manner of the original appointment for the remainder of the unexpired term. The Governor may remove a member of the advisory committee in accordance with Section 1-3-240(B).

(D) The advisory committee's duties are to:

(1) compile and distribute a list of approved orientation and continuing education programs that satisfy the educational requirements in Section 6-29-1340;

(2) determine categories of persons with advanced degrees, training, or experience, that are eligible for exemption from the educational requirements in Section 6-29-1340; and

(3) make an annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives, no later than April fifteenth of each year, providing a detailed account of the advisory committee's:

(a) activities;

(b) expenses;

(c) fees collected; and

(d) determinations concerning approved education programs and categories of exemption.

(E) A list of approved education programs and categories of exemption by the advisory committee must be available for public distribution through notice in the State Register and posting on the General Assembly's Internet website. This list must be updated by the advisory committee at least annually.

(F) The members of the advisory committee must serve without compensation and must meet at a set location to which members must travel no more frequently than quarterly, at the call of the chairman selected by majority vote of at least a quorum of the members. Nothing in this subsection prohibits the chairman from using discretionary authority to conduct additional meetings by telephone conference if necessary. These telephone conference meetings may be conducted more frequently than quarterly. Three members of the advisory committee constitute a quorum. Decisions concerning the approval of education programs and categories of exemption must be made by majority vote with at least a quorum of members participating.

(G) The advisory committee may assess by majority vote of at least a quorum of the members a nominal fee to each entity applying for approval of an orientation or continuing education program; however, any fees charged must be applied to the operating expenses of the advisory committee and must not result in a net profit to the groups or

associations that recommend the members of the advisory committee. An accounting of any fees collected by the advisory committee must be made in the advisory committee's annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives.

Section 6-29-1340. (A) Unless expressly exempted as provided in Section 6-29-1350, each appointed official and professional employee must:

(1) no earlier than one hundred and eighty days prior to and no later than three hundred and sixty-five days after the initial date of appointment or employment, attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C); and

(2) annually, after the first year of service or employment, but no later than three hundred and sixty-five days after each anniversary of the initial date of appointment or employment, attend no fewer than three hours of continuing education in any of the subjects listed in subsection (C).

(B) An appointed official or professional employee who attended six hours of orientation training for a prior appointment or employment is not required to comply with the orientation requirement for a subsequent appointment or employment after a break in service. However, unless expressly exempted as provided in Section 6-29-1350, upon a subsequent appointment or employment, the appointed official or professional employee must comply with an annual requirement of attending no fewer than three hours of continuing education as provided in this section.

(C) The subjects for the education required by subsection (A) may include, but not be limited to, the following:

- (1) land use planning;
- (2) zoning;
- (3) floodplains;
- (4) transportation;
- (5) community facilities;
- (6) ethics;
- (7) public utilities;
- (8) wireless telecommunications facilities;
- (9) parliamentary procedure;
- (10) public hearing procedure;
- (11) administrative law;
- (12) economic development;
- (13) housing;
- (14) public buildings;

- (15) building construction;
- (16) land subdivision; and
- (17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

(D) In order to meet the educational requirements of subsection (A), an educational program must be approved by the advisory committee.

Section 6-29-1350.(A) An appointed official or professional employee who has one or more of the following qualifications is exempt from the educational requirements of Section 6-29-1340:

- (1) certification by the American Institute of Certified Planners;
- (2) a masters or doctorate degree in planning from an accredited college or university;
- (3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;
- (4) a license to practice law in South Carolina.

(B) An appointed official or professional employee who is exempt from the educational requirements of Section 6-29-1340 must file a certification form and documentation of his exemption as required in Section 6-29-1360 by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation.

Section 6-29-1360.(A) An appointed official or professional employee must certify that he has satisfied the educational requirements in Section 6-29-1340 by filing a certification form and documentation with the clerk no later than the anniversary date of the appointed official's appointment or professional employee's employment each year.

(B) Each certification form must substantially conform to the following form and all applicable portions of the form must be completed:

EDUCATIONAL REQUIREMENTS  
CERTIFICATION FORM  
FOR LOCAL GOVERNMENT PLANNING OR ZONING  
OFFICIALS OR EMPLOYEES

**To report compliance with the educational requirements, please complete and file this form each year with the clerk of the local**

**governing body no later than the anniversary date of your appointment or employment. To report an exemption from the educational requirements, please complete and file this form with the clerk of the local governing body by no later than the first anniversary of your current appointment or employment. Failure to timely file this form may subject an appointed official to removal for cause and an employee to dismissal.**

Name of Appointed Official or Employee: \_\_\_\_\_

Position: \_\_\_\_\_

Initial Date of Appointment or Employment: \_\_\_\_\_

Filing Date: \_\_\_\_\_

I have attended the following orientation or continuing education program(s) within the last three hundred and sixty-five days. **(Please note that a program completed more than one hundred and eighty days prior to the date of your initial appointment or employment may not be used to satisfy this requirement.):**

Program Name	Sponsor	Location	Date Held	Hours of Instruction
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Also attached with this form is documentation that I attended the program(s).

OR

I am exempt from the orientation and continuing education requirements because **(Please initial the applicable response on the line provided):**

\_\_\_\_\_ I am certified by the American Institute of Certified Planners.

\_\_\_\_\_ I hold a masters or doctorate degree in planning from an accredited college or university.

\_\_\_\_\_ I hold a masters or doctorate degree or have specialized training or experience in a field related to planning as determined by the State Advisory Committee on Educational Requirements for Local

Government Planning or Zoning Officials and Employees. **(Please describe your advanced degree or specialty on the line provided.)**

\_\_\_\_\_ I am licensed to practice law in South Carolina.

Also attached with this form is documentation to confirm my exemption.

I certify that I have satisfied or am exempt from the educational requirements for local planning or zoning officials or employees.

Signature: \_\_\_\_\_

(C) Each appointed official and professional employee is responsible for obtaining written documentation that either:

(1) is signed by a representative of the sponsor of any approved orientation or continuing education program for which credit is claimed and acknowledges that the filer attended the program for which credit is claimed; or

(2) establishes the filer's exemption.

The documentation must be filed with the clerk as required by this section.

Section 6-29-1370. (A) The local governing body is responsible for:

(1) sponsoring and providing approved education programs; or

(2) funding approved education programs provided by a sponsor other than the local governing body for the appointed officials and professional employees in the jurisdiction.

(B) The clerk must keep in the official public records originals of:

(1) all filed forms and documentation that certify compliance with educational requirements for three years after the calendar year in which each form is filed; and

(2) all filed forms and documentation that certify an exemption for the tenure of the appointed official or professional employee.

Section 6-29-1380. (A) An appointed official is subject to removal from office for cause as provided in Section 6-29-350, 6-29-780, or 6-29-870 if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(B) A professional employee is subject to suspension or dismissal from employment relating to planning or zoning by the local governing body or planning or zoning entity if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(C) A local governing body must not appoint a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of an appointed official.

(D) A local governing body or planning or zoning entity must not employ a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of a professional employee.”

### **Severability**

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

### **Time effective**

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 28<sup>th</sup> day of May, 2003.

Approved the 2<sup>nd</sup> day of June, 2003.