ALAN WILSON
ATTORNEY GENERAL

October 2, 2013

The Honorable William L. Otis
Mayor, Town of Pawleys Island
321 Myrtle Avenue
Pawleys Island, South Carolina 29585

Dear Mayor Otis:

Attorney General Alan Wilson has referred your letter of September 23, 2013 to the Opinions section for a response. The following is our understanding of your questions presented and the opinion of this Office concerning the issues based on that understanding.

Issues (as quoted from you letter):

1) *Is a County or Municipality required to have an Architectural Board of Appeals if they have Ordinances requiring Architectural Standards? If not, what is the redress of a decision in which a party feels the ordinance standards have not been correctly applied?*
2) *The SC Code of Laws 6-29-840 states that "a person with a substantial interest" may appeal a decision of a Board of Architectural Appeals. Who is "a person of substantial interest?" Would a local group of citizens, or a nearby Municipality interested in upholding the architectural standards in the Overlay Zone, be such a "person?"*
3) *Is a "person of substantial interest" liable for civil action by the appellant for costs incurred because of the appeal, if they pursue an appeal in Circuit Court?*
4) *Does 9-29-840(A) : "In the event that the decision of the Board is reversed by the circuit court, the board is charged with the costs, and the cost must be paid by the governing authority which established the board of appeals." require that the Governing Body pay the costs of a successful appeal of its Board of Appeals or is that up to the Judge?*

Answers:

1) The South Carolina statute authorizing a board of architectural review says a local government "may" have a board of architectural review or similar such board. S.C. Code § 6-29-870 (1976 Code, as amended). Thus, while a county or municipality does not have to have a board of architectural review, they must comply with the statute concerning such boards if they choose to have one. However, just as a county or municipality may choose to have a board of architectural review, they may choose to discontinue one. If the county or municipality discontinues its board of architectural review after they already establish one by ordinance, they must follow their own rules of governance in dissolving the board or complying with any ordinances they have in addition to any statutory requirements. If one feels an ordinance's revocation or implementation was not properly performed by the entity's own rules and ordinances (keeping in mind S.C. Code § 4-9-110 which says "the council shall determine its own rules

and order of business) or pursuant to statutory law, then one with standing could file a suit in circuit court, such as an action for declaratory judgment or could otherwise appeal through statutory channels. See, e.g., Business License Opposition Committee v. Sumter County, 311 S.C. 24, 426 S.E.2d 745 (1992). However, if one desires to appeal an ordinance's standards for architectural review were not followed, then a party with standing should follow the appeal procedures set forth by statute. See S.C. Code § 6-29-890ff.[1]

2) As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Since the statute appears clear and unambiguous in requiring a person to have a substantial interest to appeal, this Office will not look further to determine the meaning of the language in the statute. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006).

The question of "a person with a substantial interest" entails one must have standing in order to appeal a decision of a Board of Architectural appeals. A "person with a substantial interest" has been an issue discussed in a few South Carolina cases. Property owners next to and close by a development were found to have a "substantial interest" and thus had standing to appeal in one South Carolina case. Spanish Wells Property Owners Ass'n v. Board of Adjustment, 292 S.C. 542, 357 S.E.2d 487 (Ct.App. 1987) (reversed on other grounds). However, the artist who painted a mural on private property did not have standing to challenge the constitutionality of a city's historic preservation ordinance, after the city's board of architectural review ordered the mural to be removed. Burke v. City of Charleston, 139 F.3d 401 (1998).[2]

While there is plenty of South Carolina case law on standing, this Office wants to caution you in pursuing a government entity's standing. One South Carolina case between a county and municipality held that "[a]bsent an issue of overriding public concern, a political subdivision must establish it is a real party in interest in order to maintain a suit... It must allege an infringement of its own proprietary interests or statutory rights to establish standing." County of Lexington v. City of Columbia, 303 S.C. 300, 400 S.E.2d 146 (1991) (citing Richland Co. Recreation Dist. v. City of Columbia, 290 S.C. 93, 348 S.E.2d

[1] See Historic Charleston Foundation v. City of Charleston, 400 S.C. 181, 734 S.E.2d 306 (2012), for a case concerning "spot zoning" and zoning ordinances.

[2] For additional board of architectural review appeal cases, see Gurguanious v. City of Beaufort, 317 S.C. 481, 454 S.E.2d 912 (Ct.App. 1995); Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 621 S.E.2d 361 (Ct.App. 2005).

363 (1986)). See also City of Spartanburg v. County of Spartanburg, 303 S.C. 393, 401 S.E.2d 158 (1991).

3) & 4) This Office will presume you are asking about S.C. Code Section 6-29-840, which concerns appeals from zoning boards. It references costs for appeals when it says: "[i]n 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." S.C. Code § 6-29-840. It is this Office's understanding your question involves an appeal of a board of architectural review not a zoning board. An appeal concerning a board of architectural review is found in S.C. Code Sections 6-29-890, 6-29-900ff. S.C. Code Section 6-29-930 lays out the terms for costs of an appeal from the board of architectural review to the circuit court. It says: "[i]n 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." S.C. Code § 6-29-930. This Office can direct you to some of the other court rules to determine liability for court costs. That statute appears to be clear and unambiguous. However, please note the South Carolina Rules of Civil Procedure say "[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State, its officers, and agencies shall be imposed only to the extent permitted by law..." Rule 54(d) SCRCP. The South Carolina Rules of Appellate Procedure say "[u]nless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court." Rule 222(a) SCACR.

As stated above regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Since the statutes appear to be clear and unambiguous, this Office will not look further to determine the meaning of the language in the statute. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). However, since this Office may not be familiar with the particulars of your factual situation, we suggest obtaining the advice of your municipal attorney or checking with the court for further inquiry.

Conclusion: All of the above answers were this Office's attempt to assist you with your legal questions. We encourage you to consult your municipal attorney for additional advice. As you are aware, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General