



HENRY McMASTER  
ATTORNEY GENERAL

February 17, 2009

The Honorable John Wade  
Mayor, Town of Six Mile  
Post Office Box 429  
Six Mile, South Carolina 29682

Dear Mayor Wade:

We understand from your letter to Attorney General Henry McMaster that you desire an opinion of this Office concerning appeals of decisions made by Six Mile's Zoning Administrator (the "Zoning Administrator"). You state as follows in your request for an opinion:

I would like to request the Attorney General's Office provide the Town of Six Mile with an opinion on WHO may appeal the Zoning Administrator's interpretation of our ordinance to the Zoning Board of Appeals.

The question is can an individual Town Council Member or Mayor make the appeal; can the Council as a whole make the appeal? Who is considered to be an "officer" and can the Mayor be the "aggrieved" party?

Additionally, once the Zoning Administrator renders an interpretation and there is an absence of an appeal how does that interpretation affect the Zoning Ordinance?

Can the Zoning Administrator interpretation be made, which in effect is an amendment, without involving the Planning Commission?

### **Law/Analysis**

With your request, you included a copy of the Official Zoning Ordinance (the "Zoning Ordinance") for the Town of Six Mile (the "Town"). According to section 800 of the Zoning Ordinance, the Zoning Administrator is charged with "the authority and responsibility to administer and enforce the provisions of this Ordinance." However, pursuant to section 808, decisions by the Zoning Administrator may be appealed to the Town's Zoning Board of Appeals. Furthermore, as you indicated in your letter, section 903 states: "Appeals to the Board may be taken by any person

aggrieved or by any officer, department, board, or bureau of the municipality.” This provision appears consistent with section 6-29-800 of the South Carolina Code (Supp. 2008), pertaining to the powers afforded to boards of appeal under State law. This statute provides: “Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality . . . .” S.C. Code Ann. § 6-29-800.

Given both the language contained in the Town’s ordinance and the identical language provided under State law stating who may appeal a decision to the Zoning Board of Appeals, you question who is considered an officer of the Town and would this include the Town’s Mayor, Council members, as well as the Town’s Council as a whole.

In order to answer your question, we must consider the rules of statutory interpretation to determine what is meant by the terms “officer, department, board, or bureau” found in both the ordinance and the statute. Thus, we must adhere to the cardinal rule of statutory construction, which is “to ascertain and effectuate the intent of the Legislature.” Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). “The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation.” Auto Owners Ins. Co., 378 S.C. at 609, 663 S.E.2d 484 at 488.

Neither the Zoning Ordinance nor section 6-29-800 define the term “officer.” Thus, we look to the plain and ordinary meaning of this term. Black’s Law Dictionary defines “officer” as “A person who holds an office of trust, authority, or command.” Black’s Law Dictionary 1117 (8th ed. 2004). Moreover, Black’s defines “municipal officer” as “[a] person who occupies a municipal office -- usu. mandated by statute or charter -- and who may be required to take an oath and exercise sovereign authority in carrying out public duties, with compensation incident to the office irrespective of the actual services rendered.” Black’s Law Dictionary at 1118. Furthermore, on numerous occasions, this Office concluded that both of these positions are offices with respect to the prohibition on dual office holding found in our Constitution because they exercise a portion of the sovereign power of the State. Ops. S.C. Atty. Gen., May 6, 2005 (mayor); June 11, 2008 (town council). Given the common and ordinary meaning of the term officer, we believe that the Mayor and a member of the Town’s Council are most certainly officers for purposes of the Zoning Ordinance and section 6-29-800.

The Zoning Ordinance and section 6-29-800 also do not define the term “board.” However, the common and ordinary meaning of this term is “[a] group of persons having managerial, supervisory, or advisory powers.” Black’s Law Dictionary at 184. As such we believe a court would conclude that the Town’s Council is a board for purposes of the Zoning Ordinance and section 6-29-800, as it is the governing board for the town. Thus, we are of the opinion that the Mayor, a member of Town Council, or Town Council itself may appeal a decision made by the Zoning Administrator.

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You also ask whether the Mayor can be an "aggrieved party." An "aggrieved party" generally refers to "a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment." Black's Law Dictionary at 1154. Considering the context in which this term is used, we believe the aggrieved party is the person whose property is affected by a decision by the Zoning Administrator. Thus, unless the Mayor's own property or property belong to the town is affected by the Zoning Administrator's decision, we do not believe he or she would be considered the aggrieved party pursuant to the Zoning Ordinance or section 6-29-800.

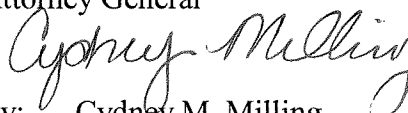
Next, you ask once the Zoning Administrator renders an interpretation, which is not appealed, how that interpretation affects the Zoning Ordinance. Per the Zoning Ordinance, the Zoning Administrator's authority is limited to administering and enforcing the provisions of the Zoning Ordinance. Moreover, only the Town's Council has the ability to amend the Zoning Ordinance. S.C. Code Ann. § 6-29-760 (2004). Thus, the Zoning Ordinance is not affected by a decision made by the Zoning Administrator.

### Conclusion

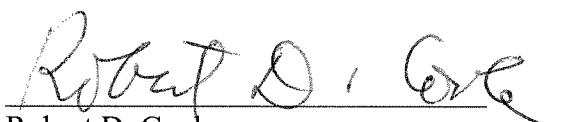
Based on our interpretation of the language used in both the Zoning Ordinance and section 6-29-800 of the South Carolina Code, we believe the Mayor or a member of the Town's Council, as officers of the Town, may appeal a decision by the Zoning Administrator to the Zoning Appeals Board. Moreover, we believe the Town's Council as a whole may appeal a decision by the Zoning Administrator as a board of the Town. In addition, we find an unappealed decision by the Zoning Administrator has no impact on the Zoning Ordinance.

Very truly yours,

Henry McMaster  
Attorney General

  
By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General