

October 22, 2007

Stephen G. Brock, Chairman
Mt. Pleasant Planning Commission
34 Hopetown Road
Mount Pleasant, SC 29464

Dear Mr. Brock:

We received your letter requesting an opinion on behalf of the Mount Pleasant Planning Commission (the “Commission”) concerning the South Carolina Local Government Planning Enabling Act of 1994. You state your question as follows: “The question is whether a comprehensive plan and amendments to a comprehensive plan require affirmative recommendation by the jurisdiction’s planning commission before adoption.”

Law/Analysis

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Act”) is contained in chapter 29 of title 6 of the South Carolina Code. Section 6-29-320 of the South Carolina Code (2004), incorporated among these provisions, allows local governing bodies, including municipalities, to create local planning commissions. The primary function of local planning commissions is to develop and revise plans and programs “for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction.” S.C. Code Ann. § 6-29-340 (2004). Article 3 under the Act, describes the comprehensive planning process undertaken by local governments. This process includes the development and maintenance of a comprehensive plan by the local planning commission including “elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.” S.C. Code Ann. § 6-29-510(A) (2004). Section 6-29-510 provides a list of planning elements that a local comprehensive plan must include. S.C. Code Ann. § 6-29-510(D) (2004).

In asking whether or not the local planning commission must recommend a plan or a revision to an existing plan prior to its adoption by a local governing body, you refer us to three particular statutory provisions. The first is section 6-29-510 of the South Carolina Code (2004), contained among the provisions explaining the planning process. Subsection (E) of this provision states:

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies

with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.

S.C. Code Ann. § 6-29-510(E). Next, you point out a provision in section 6-29-520 of the South Carolina Code (2004) stating as follows:

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

Finally, you alert us to section 6-29-530 of the South Carolina Code (2004):

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

In McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002), the Supreme Court considered an action challenging the procedures by which Richland County Council adopted Richland County's comprehensive use plan. The appellant argued because the County's

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planning commission failed to recommend the plan prior to County Council's first and second readings of the plan, Richland County Council illegally adopted the plan. Id. The Court looked to provisions contained in section 6-29-510, as referenced above, and interpreted these provisions as follows: "Because the Plan *must* include the enumerated planning elements and the planning elements *must* be an expression of the Commission's recommendations to the Council, the Council cannot approve the plan until the Commission has recommended the plan." Id. at 438-39, 567 S.E.2d at 242. However, the Court determined Richland County Council properly adopted the plan because the planning commission recommended it prior to the Council's first reading. Id. at 440, 567 S.E.2d at 243.

In addition, the Court in McClanahan addressed the appellant's arguments that Richland County Council violated section 6-29-520(B) in a footnote. Id. at 439 n.8, 567 S.E.2d at 243 n.8. In responding to this argument, the Court stated "this statute is for the purpose of stating that the Plan can be recommended only *if* the resolution to recommend is carried by the affirmative votes of at least a majority of the members of the Commission. This statute is not concerned with whether the Council can give first reading to a plan without the Commission's recommendation." Id.

Based on the Court's interpretation of the provisions of the Act, we gather that the local planning commission must recommend the comprehensive plan or the changes thereto in order for the local governing body to adopt such a plan or revisions to a plan. Furthermore, according to section 6-29-520(B), the planning commission's recommendation must be "by the affirmative votes of at least a majority of the entire membership" of the planning commission.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General