



ALAN WILSON
ATTORNEY GENERAL

August 24, 2011

Amelia R. Linder, Esquire
Planning and Development Services Department
2020 Hampton Street, First Floor
Columbia, SC 29204

Dear Ms. Linder:

We received your letter requesting an opinion of this Office concerning the Planning Commission's role in reviewing public school projects. Specifically, you asked "whether a school district must submit [its] plans to construct a school to the Planning Commission after they have been approved to move forward."

As a way of background, you explained that Lexington-Richland School District Five received site plan approval from the Richland County Planning and Development Services Department to construct a new school. After construction had begun, a County Council member suggested to the Planning Director that public schools were to bring their plans before the Planning Commission to ensure that the School District's plans were consistent with Richland County's Comprehensive Plan.

Law/Analysis

Title 6, Chapter 29, Article 3 governs the Comprehensive Planning Process for Local Governments. Specifically, S.C. Code § 6-29-540 states:

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community. . . .

S.C. Code § 6-29-540 (emphasis added). “A local **comprehensive plan must include**, but not be limited to . . . a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the **projects for expenditure of those funds during the next ten years for needed** public infrastructure and facilities such as water, sewer, roads, and **schools.**” S.C. Code § 6-29-510(D)(9) (emphasis added). Chapter 29 also states that “**zoning ordinances must be made with reasonable consideration of** [facilitating] the adequate provision or availability of transportation, police and fire protection, water, sewage, **schools**, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements.” S.C. Code § 6-29-710 (emphasis added).

“If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute’s operation.” Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007). S.C. Code § 6-29-540 is clear that no structure should be constructed until the Planning Commission has received the proposal and had the opportunity to review the plans to determine whether the plans are compatible with the comprehensive plan of the community. Richland County has adopted a Land Development ordinance pursuant to its authority under chapter 29 of title 6 of the South Carolina Code. Richland County Code, Section 26-3.¹ Therefore, before constructing a new school, the school district must share its plans with the Planning Commission.

S.C. Code § 6-29-340 describes the functions, powers and duties of local planning commissions:

- (A) It is the function and **duty of the local planning commission**, when created by an ordinance passed by the municipal council or the county council, or both, **to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area** within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction. . . .

¹ “This chapter has been adopted pursuant to the authority conferred by the South Carolina Code of Laws, as amended. Specifically, authorization comes in Title 6, Chapter 29, of the South Carolina Code of Laws (South Carolina Local Government Comprehensive Planning Enabling Act of 1994). The Land Development Code of Richland County, South Carolina also uses powers granted in other sections of the South Carolina Code of Laws relating to particular types of development or particular development issues.” Richland County Code, Section 26-3.

S.C. Code § 6-29-340 (emphasis added). In this instance, the Planning Commission's role is to determine whether or not the school is compatible with the County's Comprehensive Plan; however, there is no indication that the Planning Commission has authority to stop construction.

In fact, S.C. Code § 6-29-540 further explains:

. . . In the event the **planning commission finds the proposal to be in conflict with the comprehensive plan**, the commission shall **transmit its findings and the particulars of the nonconformity to the entity proposing the facility**. If the entity proposing the facility **determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention** to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community **at least thirty days prior to awarding a contract or beginning construction**. **Telephone, sewer and gas utilities, or electric suppliers, utilities and providers**, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right pursuant to Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33 **are exempt from this provision**. These utilities must submit construction information to the appropriate local planning commission.

S.C. Code § 6-29-540 (emphasis added). In other words, if the Planning Commission finds that a new school proposal conflicts with the comprehensive plan, the school district can nevertheless go forward with its plan by following the notification procedures outlined in S.C. Code § 6-29-540.

Your request letter mentions that the Richland County Planning and Development Services Department approved Lexington-Richland School District Five's site plan to construct a new school. The Richland County Code governs the County Planning and Development Services Department in Section 26-35:

- (a) *General powers and duties pursuant to this chapter*. The Richland County Planning and Development Services Department, under the direction of the Richland County Planning Director,² shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:

² The Richland County Planning Director, in addition to having such additional powers and duties as may be assigned or as are set forth elsewhere in this Code of Ordinances, shall serve on and coordinate the activities of the Richland County Development Review Team as established in Section 26-34 of this chapter. Richland County Code, Section 26-35(b)(1)

- (1) To **review all applications for land development**, subdivision, and planned development approval for compliance with the terms of this chapter and to facilitate any necessary formal review of such applications . . .
- (4) To **provide the Richland County Council, the Richland County Planning Commission, and the Richland County Board of Zoning Appeals with reports and recommendations regarding matters** before these bodies, either as required by this chapter, other laws and regulations, or upon the request of the body

Richland County Code, Section 26-35 (emphasis added). It is our understanding from your letter that while the Richland County Planning and Development Services Department provided approval to the school district, no report was given to the Richland County Planning Commission.

In a prior opinion of this Office, dated April 9, 2001 we explained that school districts are exempt from local building code requirements:

. . . because pursuant to Section 6-9-110(A), the **school district facilities are exempt from certain local ordinances**, the local building inspection officials may perform the inspection service as a courtesy, but cannot require the school facilities to acquire permits or licenses in compliance with local ordinances. Thus, **a school district facility may request an inspection by the local inspection officials, and the local officials may perform the service, despite a facility's option not to comply with local building code requirements.**

Op. S.C. Atty. Gen., April 9, 2001 (emphasis added).

However, school districts are not exempt from S.C. Code § 6-29-540 nor zoning ordinances under S.C. Code § 6-29-770. See also, Op. S.C. Atty. Gen., December 3, 2003 (“all construction of a public school building [must] be inspected by the State Superintendent of Education or her designee for compliance with relevant building codes and standards.”). In fact, S.C. Code § 59-23-210 states in relevant part that:

- (A) All **construction, improvement, and renovation of public school buildings** and property on or after the effective date of this section **shall comply with the latest applicable standards and specifications set forth in the South Carolina School Facilities Planning and Construction Guide** as published by the South Carolina Department of Education. . . .
- (B) All construction, improvement, and renovation of public school buildings and property on or after the effective date of this section **must have plans and specifications submitted to the State Superintendent of Education or the**

superintendent's designee. Approval of the plans and specifications by the State Superintendent of Education or the superintendent's designee must be received before public bidding before the construction can begin. **Plans and specifications must be coordinated with county officials such as traffic engineers and zoning administrators.**

S.C. Code § 59-23-220 (emphasis added).

In a 2003 Southeastern Environmental Law Journal article, attorney Bradford Wyche provided an overview of land use regulations in South Carolina. Specifically, he addressed the placement of public facilities and infrastructure, including schools:

An extremely important factor that affects the patterns of development in an area is the location of public facilities and infrastructure. Developers are understandably attracted to places that have good roads, good schools, and public water and sewer services. Communities, therefore, can make great progress in effectively managing growth by controlling where these facilities and services are located.

The [Local Government Comprehensive Planning Enabling Act of 1994] CPA makes it clear that **local zoning ordinances apply to public agencies and entities that use real property within the locality's jurisdiction.** Thus, **for example, a new school could not be built in the community unless it complied with the zoning ordinance.**

In the many parts of South Carolina that lack zoning but have adopted comprehensive plans, **section 6-29-540 of the CPA sets forth a public process that must be followed before most projects can proceed.** The plan for the **project must be submitted** to the local planning commission to **determine whether it is compatible** with the comprehensive plan. **If the commission finds that the project is not compatible,** the finding must be presented to the project owner or manager. The latter, however, **can still proceed with the project provided a statement of intent to do so and the reasons for the decision are published** in a newspaper of general circulation at least thirty days prior to awarding bids or beginning construction. Thus, **section 6-29-540 does not establish any substantive mandate that major public projects be consistent with local comprehensive plans. Rather, it seeks to ensure public awareness of the fact that a project in conflict with the plan is about to begin.** The public can then decide whether to become involved in the local political process and try to have the project stopped or modified.

Bradford W. Wyche, *An Overview of Land Use Regulation in South Carolina*, 11 Southeastern Envtl. L.J. 183, 192-193 (2003) (emphasis added). Similarly, we agree that based upon the logic used in this article and the statutes and ordinances mentioned above, a new school should not be

built until the school complies with all zoning ordinances and follows the review process set forth under S.C. Code § 6-29-540 to determine whether the new school complies with the comprehensive plan established by the local planning commission. In an opinion of this Office dated February 24, 2010, we explained as follows that the site review may be considered part of the zoning ordinance:

We are of the opinion that **the County's requirement that a development site review be conducted prior to the construction of a new building is a zoning ordinance.** Because the District must comply with zoning ordinances enacted by the County, we believe the County has the authority to require a development site review for the District's facilities.

Op. S.C. Atty. Gen., February 24, 2010 (emphasis added). The Comprehensive Planning Act does not lay out a process or remedy if S.C. Code § 6-29-540 is not followed. However, if the required site review is considered a zoning ordinance, both S.C. Code §§ 6-29-730 and 6-29-950 provides guidance. For example, the “governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance . . . of nonconformities . . . [or may provide a period of time] in which the nonconformity is required to cease or be brought into conformance.” S.C. Code § 6-29-730. “[G]overning authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both.” S.C. Code § 6-29-950.

Our Court of Appeals explained in County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (2002) that:

[O]ur supreme court articulated a lesser standard where the injunction sought is specifically authorized by statute and the party seeking the injunction is a governmental entity. “In order for a city to get an injunction [which is specifically authorized by statute] for a zoning violation they must show: (1) that it has an ordinance covering the situation; and (2) that there is a violation of that ordinance.” City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000) (citing 42 Am.Jur.2d *Injunctions* § 38 (1969)). “In such circumstances, no showing of irreparable harm need be made by the party seeking the injunction, nor must the court consider whether the injunction is in the public interest.” 42 Am.Jur.2d *Injunctions* § 23, at 595 (2000). See, Pic-A-Flick, 340 S.C. at 284, 531 S.E.2d at 521 (holding a municipality need not show negative secondary effects in order to enforce adult zoning provisions).

Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 905.

Richland County Code, Section 26-273 outlines its Enforcement Procedures when a violation occurs:

- (a) *Notice of violation.* **When an authorized county official finds violations of this chapter, it shall be the duty of said official to notify** the person alleged to be in violation. Such notice of violation shall be in writing and sent by certified or registered mail or delivered by personal service. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs. **The notice of violation shall include an opportunity to cure the violation within a prescribed period of time.** For violations of the floodplain regulations contained in this chapter, the notice shall also indicate that a hearing will be held before the flood coordinator at a designated place and time. Such place and time shall be no later than twenty (20) days after the date of the notice, at which time the owner or occupant shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (b) *Extension of time to cure.* Upon receipt of a written request from the alleged violator or the property owner for an extension of time to cure or correct the violation, the county official charged with the duty of enforcing the regulation(s) being violated may grant a single extension of time, not to exceed a period of thirty (30) days, in which the alleged violator may cure or correct the violation before the county takes further action.
- (c) *Failure to cure.* If the violator (or land owner if the violator cannot be ascertained) fails to take prompt corrective action in the prescribed time, then the county may pursue the penalties and remedies set forth above.
- (d) *Revocation of permits.* In the event of a violation of any regulation of this chapter, the county official charged with the duty of enforcing the particular regulations, may stop any development of, use of, or activity on property by the revocation of applicable permits.

Richland County Code, Section 26-273 (emphasis added). It is our understanding that County Council member brought to the attention of the Planning Director the school district's violation of failing to submit plans to the Planning Commission. Under Richland County Code, Section 26-273, this "authorized county official" should provide the school district with written notice of the violation and an opportunity to cure.

Conclusion

It is the opinion of this Office that Lexington-Richland School District Five must comply with S.C. Code § 6-29-540. The plans for the new school should have been shared with the Planning Commission to determine whether the new school complies with the community's

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comprehensive plan. However, it is our understanding that construction of the new school has commenced and plans were not shared with the Planning Commission. If the Planning Commission had found the new school to be in compliance, the school district could have proceeded with the plan, or if the Planning Commission found a conflict with the new school, the school district still could have continued to proceed with the plan so long as notification of the school district's intent to continue was provided 30 days prior to beginning construction.

Since it is currently impossible to fully comply with S.C. Code § 6-29-540 because construction has already begun, a county official may consider providing the school district with written notice of the violation according to the process set forth in Richland County Code, Section 26-273(a), including a time to cure the violation. The school district may then consider submitting the plans, albeit tardy, to the Planning Commission in an attempt to cure the violation. Should the Planning Commission find the new school to be in compliance with the comprehensive plan, the school district may proceed with its plan to build the new school and note that, for all future projects, plans must be submitted prior to construction. Should the Planning Commission find the new school to be in conflict with the comprehensive plan, in an attempt to comply with the statute to the extent possible considering the circumstances, the school district should follow the procedures outlined in S.C. Code § 6-29-540 to notify the public of the school district's intent to continue the project.

Sincerely,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General