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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

May 31, 2001

William R. Sims, Esquire
Lancaster County Attorney
Box 1809
Lancaster, South Carolina 29721

RE: Informal Opinion

Dear Mr. Sims,

By your letter of May 15, 2001, you have requested an opinion of this Office concerning an interpretation of South Carolina Code of Laws Section 6-29-760(A). By way of background, you have provided the following information:

In Lancaster County, the Planning Commission holds the public hearings on rezoning requests and changes to text amendments of the county's zoning ordinance. The Planning Commission votes on the request or change and sends it to County Council. County Council then either approves or denies the recommendation of the Planning Commission.

From the materials you have provided us, it appears that the members of the Planning Commission seek clarification as to the role of the Planning Commission in reviewing any changes made by County Council before enacting a zoning regulation.

For a number of years, local planning in South Carolina was governed by a myriad of statutes including Section 6-7-10 et seq. of the South Carolina Code of Laws. In 1994, the General Assembly enacted the South Carolina Local Government Comprehensive Planning Enabling Act (codified as Section 6-29-310 et seq.). The purpose of the Act was to consolidate and update the existing planning enabling legislation. Pursuant to this Act, "it is the function and duty of the local planning commission, when created by an ordinance passed by county council, to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction." S.C. CODE ANN. §6-29-340. Thus, the planning commission plays a significant role in ensuring that zoning regulations for a given area are consistent with the overall plan designed for the county's welfare.

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Turning to your specific question, S. C. Code Section 6-29-760 provides in great detail the procedures that must be followed by the County when altering the recommendations of the Planning Commission. That provision reads, in part:

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. *No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation.* The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

S.C. Code Ann. § 6-29-760 (emphasis added).

In interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The Court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Applying these rules of statutory construction to the question at hand, the critical language appears to be the sentence emphasized in the quoted provision above: No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. In other words, the plain language of the statute requires that the County Council submit *any* changes made to the recommendations of the Planning Commission back to the Commission for its review. Note that the statute does not require that changes be substantial before the County returns them to the Commission. The statute appears to prohibit *all* changes without first

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an opportunity for the Commission to review and make its recommendations to the County. As a practical matter, however, when the changes are inconsequential, the Commission may elect not to submit a report on the changes to the County, in which case the changes are deemed approved.

As a final note, and as you indicated in your discussion at the meeting, although the County must submit its changes to the Planning Commission for its review and recommendations, the Commission must only be given the opportunity to make its recommendations. Nowhere in the Local Government Comprehensive Planning Enabling Act does it require that the County accept the recommendations of the Commission. That decision-making authority remains vested in the local governing body.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General