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OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 15, 1998

Ladson F. Howell, Esquire
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901

Re: Informal Opinion

Dear Mr. Howell:

Your opinion request has been forwarded to me for reply. In your request, you state the following:

> Following the procedures set forth in Section 6-7-30 of the Code of Laws of South Carolina for 1976, as amended, Beaufort County enacted county wide zoning in April of 1990. During the process, there were numerous public hearings, public workshops, meetings, notices, posting of zoning maps, all of which occurred prior to an adoption of zoning county wide. However, the Code did not require nor was it feasible from a practical standpoint to actually post a notice on each of the 80,000 parcels which are located in unincorporated Beaufort County.
>
> Section 6-29-760 was enacted by the General Assembly in 1994 and addresses the procedure for enactment or amendment of zoning regulations or maps in connection with the passage of a new comprehensive plan contained in the chapter.
>
> Beaufort County has adopted a new comprehensive plan and in compliance with the parameters set forth in that plan necessarily feels that all of the zoning districts will be modified, re-named and given more specificity with respect to property usage.

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Request Letter

Section 6-29-760 provides "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."

I would appreciate an interpretation of this particular provision as it affects Beaufort County with its desire to conduct a county wide re-zoning involving 80,000 parcels of property which would have to be individually posted. (emphasis added).

Disregarding man hours necessary for posting and enforcement, the costs of the signs is $4.00 each for a prospective figure of $320,000 on signs alone.

It is my feeling that the legislature did not intend for each parcel of property to be posted with a sign on a county wide wholesale re-zoning. It is also my feeling that Beaufort County has in place an established methodology for county wide re-zoning in which adequate public notices and public hearings have and will be given in the future.

Question

For purposes of this opinion, I will interpret your question to be as follows:

If a county enacts a zoning ordinance pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 which modifies or renames the zoning classifications of property zoned pursuant to Section 6-7-10 et seq. of the South Carolina Code of Laws, would such be considered a rezoning of the property requiring the posting of notice on or adjacent to the property?

Law/Analysis

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. (hereinafter "the 1994 Act"). (codified as Section 6-29-310 et seq.). The purpose of the 1994 Act was to consolidate and update the existing planning enabling legislation. In doing so, the General Assembly repealed legislation relating to the county planning act, zoning and planning by municipalities, planning by local governments, and the Greenville Planning Commission. However, understanding the

immediate repeal of this planning and zoning enabling legislation would create numerous problems at the local level, the General Assembly provided localities a five year window to enact new planning and zoning ordinances which conform to the provisions of the 1994 Act. At any time during that five years, the localities were permitted to enact legislation in compliance with the 1994 Act. However, at the end of this five year period, planning and zoning under these repealed acts will become obsolete. Specifically, Section 2 of the Act provides:

> Chapter 27 of Title 4, Chapter 23 of Title 5, Section 6-7-310 through Section 6-7-1110, and Act 129 of 1963 are repealed, effective five years from the date of approval of this act by the Governor. At the end of five years, all local planning programs must be in conformity with the provisions of this act. During the intervening five years, this act is cumulative and may be implemented at any time.

Section 6-29-720(A) of the Code provides in pertinent part as follows:

> When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter.

This Section also sets forth the types of activities the governing body may regulate in each of these zoning districts.

Found in Section 6-29-720(B) of the Code is the following language:

> The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.

Your question focuses on Section 6-29-760 of the Code which is entitled: "Procedure for enactment or amendment of zoning regulation or map; notice and rights

of landowners; time limit on challenges." This Section provides in pertinent part as follows:

> 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. ...

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). Statutes which are part of the same statutory scheme must be read together, in pari materia. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E.2d 424 (1934).

The language of the 1994 Act leads to the conclusion that when a locality enacts a zoning ordinance in an effort to comply with the provisions of the 1994 Act, the locality is enacting zoning regulations in the first instance and not merely amending an ordinance enacted under the authority of one the repealed statutes. For example, the 1994 Act provides that when the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body may adopt a zoning ordinance to help implement the comprehensive plan. This zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry our the purposes of the chapter. S.C. Code Ann. § 6-29-720.

Therefore, based on the foregoing, if a locality has previously zoned property pursuant to one of the statutes repealed by the 1994 Act and then adopts a zoning ordinance in an effort to comply with the 1994 Act which modifies the zoning classifications found in the prior zoning ordinance, such would not be considered "rezoning" but would actually be considered the an enactment of a zoning ordinance in the first instance for purposes of the 1994 Act. Therefore, the locality would be required

to hold a public hearing on the ordinance, 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. However, after enacting the zoning ordinance under the 1994 Act, any subsequent amendment to such ordinance which rezones property would be subject to the provisions of the 1994 Act requiring the posting of notice on or adjacent to the property affected.

Such a conclusion is consistent, in part, with the law in other states. For example, in Glen Paul Court Neighborhood Association v. Paster, 437 N.W.2d 52 (Minn.1989), the City of Shoreview adopted a comprehensive plan and directed its planning staff to prepare a proposed zoning ordinance to implement the goals and policies of the new comprehensive plan. The City published notice of a public hearing held before the planning commission on the ordinance. The planning commission recommended to the city council that the ordinance be adopted. Approximately one month after the planning commission's recommendation, a property owner requested that the city rezone her property from the designation found in the ordinance recommended by the planning commission. The city council then adopted the recommended zoning ordinance, but included the change requested by the property owner.

The question on appeal was when, if at all, the individual mailed notice required by statute must be given in the course of city-wide comprehensive rezoning. The relevant statute provided:

> Subd. 3. Public Hearings. No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or the governing body. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. ...

The court found that the language of subdivision 3 was clear. The comprehensive plan was a zoning ordinance within the scope of subdivision 3, which could not be adopted without prior notice and a public hearing. Proper notice of the comprehensive zoning ordinance was properly published by the city. No mailed notice was required to property owners adjacent to parcel of less than five acres which would be affected by the comprehensive rezoning. The mailed notice requirement, however, was triggered by the

property owner's request. This request was an amendment to the comprehensive plan to rezone the property owner's land, an amendment neither contemplated nor discussed at the prior public hearing.

The court went on to conclude:

> To hold that mailed notice was required would fulfill the legislative purpose of individual notice, protecting nearby property owners from arbitrary or detrimental "spot zoning" by advising them of proposed changes to small parcels of land. When larger areas of land are rezoned, property owners are expected to determine for themselves, after published notice, whether nearby properties will be affected.

The need for individualized notice in cases of rezoning small parcels of land, rather than comprehensive rezoning, has also been recognized in decisions by other courts. In Tillery v. Meadows Construction Company, 681 S.W.2d 330 (Ark. 1984), the Arkansas Supreme Court concluded, after interpreting the relevant statute, that "[a] reasonable interpretation of the ordinance does not require a city-wide mailing when a comprehensive re-zoning plan is contemplated. We think the language of the ordinance requiring the mailing of notice is intended to apply when a particular tract is being considered for rezoning."

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

Paul M. Koch

Paul M. Koch
Assistant Attorney General