

05-6303 *Lebray*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 3, 1998

Lee C. Shortt, Chairman
Marlboro County Planning Commission
111 Market Street
Bennettsville, South Carolina 29512

Re: Informal Opinion

Dear Mr. Shortt:

Your opinion request has been forwarded to me for reply. In your capacity as Chairman of the Marlboro County Planning Commission, you have asked for this Office's opinion on two questions arising under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (hereinafter the "Planning Act"). These questions are as follows:

1. Is the planning commission required by law to develop a comprehensive plan?
2. In the absence of a comprehensive plan can the county council pass ordinances restricting land use such as hog farms or junkyards?

QUESTION 1

The Planning Act is found in Section 6-29-310 et seq. of the South Carolina Code of Laws. For purposes of the Planning Act, "local planning commission" means a municipal planning commission, a county planning commission, a joint city-county planning commission, or a consolidated government planning commission. S.C. Code Ann. § 6-29-310. Section 6-29-340(A) of the Planning Act provides in pertinent part as follows:

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It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or 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. Specific planning elements must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementation. (emphasis added).¹

In the discharge of its responsibilities, the local planning commission has the power and duty to:

- (1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter; and
- (2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:
 - (a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;
 - (b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;
 - (c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political

¹ You have informed me via telephone that the Marlboro County Planning Commission was created by ordinance of the Marlboro County Council pursuant to the Planning Act.

jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.

S.C. Code Ann. § 6-29-340(B).

Under Section 6-29-510(A) of the Planning Act, the local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction. (emphasis added). This Section also lays out the planning elements which must be included in the basis planning process. S.C. Code Ann. § 6-29-510(B). Furthermore, the Section includes those planning elements which must be included in the local comprehensive plan. S.C. Code Ann. § 6-29-510(C). Finally, 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. S.C. Code Ann. § 6-29-510(E). 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. Id. The comprehensive plan, including all elements of it, must be updated at least every ten years. Id.

As far as adoption of the plan, the local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by single ordinance or elements of the plan by successive ordinances. S.C. Code Ann. § 6-29-530. Before adoption of an element or a plan as a whole, the governing authority shall hold a

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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. Id.

To summarize the foregoing, when a local planning commission is created by county council pursuant to the Planning Act, it is the duty of the planning commission to undertake a continuing planning program. The specific planning elements must be based upon careful and comprehensive surveys and studies. Further, it is the local planning commission's duty to prepare and revise plans and programs for development and redevelopment. Finally, the local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation of those elements considered critical, necessary, and desirable to guide the development and redevelopment of the area. Included in this process is the use of a local comprehensive plan.

In interpreting a statute, the primary objective is to ascertain and effectuate the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given the plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Where the terms of a statute are clear and unambiguous, the court must apply those terms according to their literal meaning. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d 890 (1995). Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). Furthermore, the word "duty" is defined as "[l]egal or moral obligation. Obligatory conduct or service. Mandatory obligation to perform." Black's Law Dictionary 505 (6th ed. 1990).

After reviewing the Planning Act as a whole, it is my opinion that a local planning commission created by ordinance by the municipal council or the county council, or both, is required by law to develop a comprehensive plan. This conclusion is supported by the specific language used by the General Assembly in the Planning Act. The use of the words "duty" and "shall" evidence the General Assembly's intent that this is a mandatory requirement of a local planning commission.

QUESTION 2

As previously stated, in the discharge of its responsibilities, the local planning commission has the power and duty to:

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(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means of implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

S.C. Code Ann. § 6-29-340(B)(2)(a).

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, the governing body of a county may adopt a zoning ordinance to help implement the comprehensive plan. S.C. Code Ann. § 6-29-720(A). 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 purpose of the chapter. *Id.* The county's zoning regulations must be made in accordance with the comprehensive plan, and be made with a view to promoting the purposes set forth throughout the chapter. S.C. Code Ann. § 6-29-720(B).

In reviewing the aforementioned provisions, it appears that the adoption of a comprehensive plan, or at least the land use element of the comprehensive plan, is a prerequisite to the promulgation of county zoning regulations. This is evidenced by the language in Section 6-29-720(B) which requires that zoning regulations be made in accordance with the comprehensive plan. Therefore, in my opinion, under the Planning Act, in the absence of a comprehensive plan, a county council would not have the authority to enact land use regulations on such things as hog farms or junkyards.²

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

² I note that this Office has previously concluded that the counties of this State may exercise police powers. *Op. Atty. Gen.* dated May 23, 1988. Health, public safety, and sanitation are among the functions of a county, listed in S.C. Code Ann. § 4-9-30(5), which may be regulated by a county. *Id.* In this opinion, this Office concluded that the abatement of a nuisance, such as unclean lots or junkyards, which affect public health and safety, is generally deemed to be within the police power of a political subdivision. *Op. Atty. Gen.* dated May 23, 1988. Accordingly, depending on the particular facts, the rationale of this opinion may apply to your situation.

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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,

A handwritten signature in dark ink, appearing to read "Paul M. Koch". The signature is written in a cursive style with a large initial "P".

Paul M. Koch
Assistant Attorney General