1980 WL 120963 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 12, 1980

***1** James R. Bell, Esquire
City Attorney
City of Florence
Post Office Box 5060
Florence, South Carolina 29502

Dear Mr. Bell:
In response to your request for an opinion from this Office as to whether or not the Florence City Council can initiate action to rezone an individual's land from one use to a more restrictive use over the objections of the landowner, my opinion is that it most probably can do so provided that the change is in the public interest as hereinafter discussed.

My understanding of the relevant Florence municipal zoning ordinance is that it authorizes a change in a zoning ordinance to be initiated by the Florence City Council, the Florence City Planning Commission or any property owner. Certain procedural requirements such as a Planning Commission report and a public hearing after notice are set out before a change can be effected but the ordinance is silent as to any substantive restrictions upon the Florence City Council's power to amend the zoning ordinance. Although there appears to be no South Carolina authority precisely on point, the general rule is that:
Since the purpose of zoning is stabilization of existing conditions subject to an orderly development and improvement of a zoned area and since property may be purchased and uses undertaken in reliance on an existing zoning ordinance, an amendatory, subsequent or repealing zoning ordinance must clearly be related to the accomplishment of a proper purpose within the police power.

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In short, a zoning ordinance can be amended only to subserve the public interest. It has, however, been observed that an amendment need not affirmatively advance or promote the public interest, if the amendment conforms with the comprehensive zoning plan and is not contrary to the public interest, since, theoretically, a comprehensive zoning plan is a determination of the public interest. But the determination of when the public interest does require an amendment is within the legislative discretion of the municipality. 8 McQUILLIN MUNICIPAL CORPORATIONS § 25.68 at 170-171.

As to opposing rights and interests to the amendment of zoning ordinances:
Property owners acquire no vested rights under zoning ordinances, and hence they are deprived of no legal rights by the lawful amendment or repeal of such ordinances. There is nothing immutable in zoning ordinances and regulations, and they do not partake of the nature of a contract protected against impairment. Moreover, an attempt by statute to make the amendatory power of the municipal authorities dependent upon the consent of property owners in the affected zone has been regarded as an unlawful delegation of legislative authority. Consequently, an amendment of the zoning ordinances is not objectionable merely because it brings about a depreciation or diminution of property values. Nevertheless, a zoning ordinance cannot be amended to the prejudice of those who have purchased property or made other changes of position in reliance on it unless the amendment is substantially related to the public good. In other words, an amendatory or subsequent zoning ordinance cannot divest rights acquired by property owners under a prior zoning ordinance, unless in doing so it reasonably tends to promote the public health, safety, welfare or morals and, hence, constitutes a proper exercise of the police power to zone. However, an owner has no vested

rights in a use against a zoning amendment unless substantial expenditures have been made, obligations have been incurred or other change of position has taken place so that the amendment would be to his prejudice. And an amendment of zoning laws has been considered not prejudicial to a property owner who made expenditures while he was aware that the amendment was pending. Id., § 25.66 at 162. [Emphasis added.]

***2** The authorities also seem to agree that:

The validity of an amendment of the zoning ordinances is determined according to the same rules applicable to the zoning ordinances as adopted. Accordingly, the validity of a zoning amendment depends upon the circumstances of each case. Thus, an amendment which has the effect of influencing the valuation of property in the zoned area is not ordinarily for that reason invalid, although the effect of an amendment on property valuations may be a factor in determining what the public interest requires. However, an amendment ordinarily is invalid where it is designed to permit or require a change in property uses for the sole purpose of increasing or decreasing the value of property. Similarly, the amendment of a zoning ordinance solely for the purpose of preventing, forestalling or thwarting a particular use may be regarded as an unreasonable and discriminatory interference with property rights, and invalid. . . .. But if the public interest is served or protected by an amendment, the mere fact that a particular parcel of land, or a particular individual owner may be affected by the amendment either favorably or adversely is immaterial. Id., § 25.67a at 167. [Emphasis added.]

Accordingly, if the proposed change is in the public interest as determined by the Florence City Council, it is authorized provided that the affected landowner has not changed his position and incurred obligations or made substantial expenditures in reliance on the original ordinance. Moreover, the public good should not be merely remotely served inasmuch as several jurisdictions have held that '[a]n amendment to accommodate or favor a certain property owner, or a limited group of owners, when there has been no change of conditions since the enactment of a zoning ordinance, deprives other property owners in the district of their property without due process and is invalid.' Id., § 25.69 at 172-173, citing, inter alia, Trust Co. of Chicago v. Chicago, 96 N.E.2d 499.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

ATTACHMENT

NOTE: On the issue of 'spot zoning,' see State, By Rochester Association of Neighborhoods v. Rochester, 268 N.W.2d 885, where it was held that rezoning a 1.18 acre tract from single family or low-density residential to high-density residential was not illegal 'spot zoning.'

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