1977 S.C. Op. Atty. Gen. 59 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-61, 1977 WL 24403

Office of the Attorney General

State of South Carolina
Opinion No. 77-61
February 24, 1977

***1** Mr. Jack Erter
City Attorney
Messrs. Lee, Moise, Myers & Erter
Attorneys at Law
210 N. Main Street
Sumter, South Carolina 29150

Dear Mr. Erter:
You have asked our opinion upon the following question:
'Is a zoning ordinance which rezones certain lands from one use to a more restrictive use unconstitutional per se?'

It is my opinion that such an ordinance is not invalid for constitutional reasons per se. I base this conclusion upon consideration of the authority set forth below which reflects the general view that a zoning ordinance will be upheld unless it is found to be arbitrary and unreasonable. The diminution of land values or the loss of profits that may be sustained does not render a zoning ordinance unconstitutional per se. Additionally, the following quote from 1 American Law of Zoning 2d § 3.25 is pertinent:
'An ordinance which rezones certain land from business to residential is not unconstitutional if the land can be profitably used for the permitted purpose, and the burden of proving that it is unreasonable and arbitrary is not sustained by evidence which shows that the business use would yield more profit.'

Specifically, the general principle referred to above and adopted by the Supreme Court of this State is set forth in Talbot v. Myrtle Beach Board of Adjustment, et al., 222 S.C. 165, 72 S.E.2d 66, and cited below:
'One of the most firmly established principles in the field of constitutional law is that the wisdom of legislation is a matter exclusively for legislative determination. This principle has been applied to zoning laws, and courts have been declared to have nothing to do with the question of the wisdom, expediency, propriety, or good policy thereof. The courts may not interfere with the enactment or enforcement of zoning provisions for the sole reason that they may be considered unwise, as long as their requirements may not be classified as unreasonable, or as long as there is an apparent legal reason for the enacted requirements.

'—[I]t has been declared that the municipal governing bodies are better qualified because of their knowledge of the situation to act upon those matters than are the courts, which will not substitute their judgment for that of the legislative body.' (pp. 169, 170.)

Zoning enactments, enacted in a manner not unreasonable or arbitrary in their application, do not, in my opinion, constitute a taking of property without due process of law but are upheld by the courts of this State as lying within the police power granted to municipalities.
Very truly yours,

Daniel R. McLeod

Attorney General

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