

1978 WL 34954 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 21, 1978

*1 James A. Bell, Esquire
Attorney at Law
Post Office Box 905
St. George, South Carolina 29477

Dear Mr. Bell:

You have requested an opinion from this Office as to whether or not the Dorchester County Council is authorized under the provisions of Act No. 463 of 1967 [55 STAT. 680 (1967)] to disapprove an application for a subdivision if the requirements of that Act and the specifications contained therein are met by the applicant. In my opinion, the Council is so authorized, at least in the conditional approval stage.

Act No. 463 of 1967 establishes the Dorchester County Subdivision Review Board to administer the provisions of the Act and to enforce the regulations therein set forth but specifies that 'no action of the board shall be final unless approved by the governing body of the county.' 55 STAT. at 680. Section 3 of that Act provides in part that:

. . . Before such streets, alleys, roads or subdivisions shall be laid out as aforesaid, they shall be required to have the approval of the governing body of the county.

Section 4 of the Act prescribes the procedure for securing approval of subdivisions by first requiring conditional approval of the proposed subdivision plan from the county governing body. Section 4, II. A.3. states that the governing body of the county 'shall grant conditional approval or shall disapprove the application' and II. A.4. provides that the governing body must furnish to the applicant a detailed list of reasons for disapproval if that action is taken. Clearly, then, the Council is free to accept or reject a proposed subdivision plan subject only to a disclosure of the reasons for any rejection. Section 4, II.B. prescribes the procedure for obtaining approval of the final subdivision plat and, again, the governing body is authorized to approve or disapprove the application (with a list of reasons for disapproval being supplied to the applicant if that action is taken); II.B.5. provides, however, that if the final plat 'conforms to the approved preliminary plat and the requirements of these regulations, final approval shall be granted by the governing body of the county.' [Emphasis added.] I interpret that language to mean that the Council most probably does not have the discretion to disapprove a final plat if it meets the requirements of the Act and if it conforms with the approved preliminary plat; that is to say, while the Council does possess the authority to disapprove a final plat pursuant to II, B.3., it can only do so if it does not meet the requirements of the Act or if it differs from the preliminary plat. The Act, then, provides the Council with the greatest discretion to approve or disapprove a proposed subdivision plan at the conditional approval stage, although the Council can reject a final plat application in the two instances specified therein.

You have also inquired as to whether or not the provisions of Act No. 463 of 1967 have been superseded by [Sections 6-7-1010 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976](#). Those Code provisions relating to subdivision regulations would supersede the provisions of Act No. 463 of 1967 only if Dorchester County had chosen to establish a local planning commission pursuant to [Sections 6-7-310 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976](#), since the provisions of Chapter 7 of Title 6 are permissive rather than mandatory. See also, §§ 6-7-10, 6-7-20 and 6-7-320, CODE OF LAWS OF SOUTH CAROLINA, 1976. My understanding is that Dorchester County has not yet availed itself of the provisions of Chapter 7 of Title 6 and, therefore, it can continue to act pursuant to the provisions of Act No. 463 of 1967.

With kind regards.

***2** Karen LeCraft Henderson
Senior Assistant Attorney General

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