

1975 WL 29266 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 15, 1975

*1 William R. Byars, Jr., Esquire
Kershaw County Attorney
P. O. Box 590
Camden, South Carolina 29020

Dear Mr. Byars:

You have requested an opinion from this Office as to the procedure to be followed in regard to an application for an amendment to a county zoning ordinance for the purpose of rezoning an area after the local planning commission has approved such amendment.

Under provisions of Act No. 881 (Acts and Resolutions, 1966) the County Council was made the governing authority of Kershaw County with broad powers to legislate in matters of local concern. The Local and Regional Comprehensive Planning Programs Act (§ 14-341, et seq. of the CODE OF LAWS OF SOUTH CAROLINA), enacted in 1967, gave the governing authority of each county the power to create a county planning commission. Utilizing this power, the Kershaw County Council created the Kershaw County Planning Commission.

The principal powers of local planning commissions are set forth in § 14-350.3 of the CODE. Under provisions of this Section, the local planning commission upon the authorization of the local governing authority or authorities shall prepare a comprehensive plan and program for the physical, social, and economic growth of its jurisdiction in order to promote the public health, safety, morals, convenience, prosperity, or the general welfare as well as efficiency and economy in the development of its jurisdiction. This section further reads in part:

'In the discharge of its responsibilities, the local planning commission shall have the power to:

(1) Prepare and revise periodically a comprehensive plan and program for the development of its jurisdiction as provided in this chapter.

(2) Prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plan and program:

(a) Zoning ordinances or resolutions . . . '

[Emphasis Added]

As § 14-350.3 indicates it is the function of the local planning commission to prepare and recommend for adoption to the appropriate authority or authorities zoning ordinances or resolutions as a means of implementing the comprehensive plan and program for the area within its jurisdiction. Thus, once the local planning commission recommends a zoning amendment to an existing zoning ordinance, adoption is dependent upon approval by the local governing authority or authorities.

The method of procedure for zoning is set forth in § 14-350.18 of the CODE. This section provides that the planning commission shall have thirty days within which to submit its report to the governing authority following a public hearing

on enacting or amending any zoning regulations or maps. If no report is submitted within this time, the planning commission shall be deemed to have approved the change or departure.

Further, § 14-350.18 provides in part:

‘When the required public hearing is held by the planning commission, no public hearing by the governing authority shall be required before amending the zoning ordinance or resolution or maps.’ [Emphasis Added]

***2** As this section indicates, the final action on amending a zoning ordinance, resolution or map must be taken by the local governing authority even though no further hearings are required for approval or rejection of the prepared amendment if the local planning commission has held a public hearing on the matter. Thus, a proposed amendment to a zoning ordinance remains ineffective until adoption by the local governing authority.

In applying the statutes cited above to your question, it is clear that once the Kershaw Planning Commission makes a recommendation for amendment to county zoning ordinances such recommendations must be submitted to the Kershaw County Council for approval or rejection. Until such time as the County Council approves or rejects the recommendation of the Planning Commission, the action of the Planning Commission remains only a recommendation.

Sincerely,

W. Joseph Isaacs
Legal Assistant

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