ALAN WILSON
ATTORNEY GENERAL

April 05, 2021

Andrew C. Marine, Esq.
County Attorney
Edgefield County
P.O. Box 1488
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Dear Mr. Marine:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

> The South Carolina statute (§ 6-29-310 *et. seq.*) delegates to the local planning commission the duty to develop and carry out a planning program, including creating regulations. S.C. Code § 6-29-510(A) mandates the Commission to "develop and maintain a planning process."
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> Once the Commission adopts the Comprehensive Plan by resolution, the matter then goes to the Council. Section 6-29-530, directs that the Commission "may recommend" adoption of the plan as a whole, but the statue does not state if Council can amend the plan as part of their adoption. The County Attorney took the position that since the Comprehensive Plan is a broad document subject Council oversight ("the overriding conceptual idea of planning"), that Council has the power to amend the plan.
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> Although the zoning ordinance (S.C. Code § 6-29-760(A)) is clear that Council cannot change a zoning recommendation of the Planning Commission without submission to the Commission, the LMO statute (S.C. Code § 6-29-1110 *et. seq.*) is vague.
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> Section 6-29-1130(B) states that "the governing authority of the county [is] given the power to adopt and to amend the land development regulations after a public hearing." The question is whether Council has the power to amend the LMO before its adoption (such as on the third reading of the LMO by Council), or if they can only amend it after the final adoption of the LMO by Council (by a separate ordinance).

Law/Analysis

It is this Office's opinion that section 6-29-1130(B) of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "CPA") permits local governing bodies to adopt land development regulations and amendments thereto at the same public hearing. This Office has previously opined regarding the related topic of land development regulation conformity with general state law. See Op. S.C. Att'y Gen., 2012 WL 2364243 (June 12, 2012) (concluding that the Right to Forestry Act, S.C. Code § 48-23-205, limits county and municipal zoning and regulatory authority as to forestry activity). However, we have been unable to locate a prior opinion issued by our state courts or this Office interpreting whether section 6-29-1130(b) permits a county or municipality to amend land development regulations prior to adoption. This opinion, therefore, will analyze the statute according to the principles of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in pari materia and must be construed together, if possible, to produce a single, harmonious result." Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465, 468 (2010).

In broad terms, the CPA authorizes the creation of local planning commissions, and also establishes the process for adopting comprehensive plans, zoning ordinances, and land development regulations. Section 6-29-1130(A) provides that after certain elements of the comprehensive plan have been adopted, "the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction." These regulations are required to "prescribe that no land development plan, including subdivision plats, will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare." Id. Further, the land development regulations may impose requirements addressing "the manner in which streets must be graded, surfaced, and improved, and water, sewers, septic tanks, and other utility mains, piping, connections, or other facilities must be installed as a condition precedent to the approval of the [land development] plan." S.C. Code Ann. § 6-29-1130(B); see also Bradford W. Wyche, An Overview of Land Use Regulation in South Carolina, 11 Southeastern Envtl. L.J. 183, 191–92 (2003) (footnotes omitted) ("These regulations address such issues as setbacks from roads and

adjoining properties, number of parking spaces, landscaping and buffers, height of buildings, and so forth. Where zoning addresses the issue of *whether* the use is allowed, development standards address the issue of *how* the use is established.").

As the request letter notes, the governing bodies of counties and municipalities are authorized "to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county." Id. (emphasis added). The request letter asks whether the emphasized language permits the governing bodies of counties and municipalities to amend a local planning commission's recommended land development regulations in the same ordinance that initially adopts such regulations or whether the amendments must be adopted in a separate ordinance.

Because the text of the statute could reasonably be read in either manner, we turn to the text of a related statute regarding the adoption of zoning ordinances for comparison. See Penman, supra. To enact zoning ordinances, "the governing authority or the planning commission" is similarly required to hold a public hearing and provide notice of such hearings in a newspaper of general circulation. S.C. Code Ann. § 6-29-760(A). However, in contrast to the procedures outlined for the land development regulations, section 6-29-760(A) explicitly prohibits changes from "the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation." Id. (emphasis added). Because the text of section 6-29-1130(B) does not require the governing authority to submit changes from the local planning commission's recommendations back to the commission for land development regulations, this factor supports an interpretation permitting governing authorities to adopt and amend such regulations within the same ordinance. An additional distinction between these procedures is that "the governing authority" is not required to hold a public hearing to amend zoning ordinance or maps "[w]hen the required public hearing is held by the planning commission." S.C. Code Ann. § 6-29-760(A). Because the governing authority is required to hold a public hearing itself when considering land development regulations, the General Assembly provided procedural due process safeguards even if the governing authority amends such regulations in the same public hearing in which they are adopted. Although this interpretation is not free from doubt, it appears the General Assembly intended for the governing authorities of counties and municipalities to consider their respective local planning commission's land development recommendations and to consider public input regarding such regulations at a public hearing when determining whether to adopt them as recommended or with amendments.

Conclusion

It is this Office's opinion that section 6-29-1130(B) of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 permits local governing bodies to adopt land development regulations and amendments thereto at the same public hearing. Although this interpretation is not free from doubt, it appears the General Assembly intended for the governing authorities of counties and municipalities to consider their respective local planning commission's land development recommendations and to consider public input regarding such regulations at a public hearing when determining whether to adopt them as recommended or with amendments. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.").

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General