STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

The Altamont Road Safety Alliance, Sussane Beattie, Brenda Cale, Elaine Carter, Ron And Ava Chitty, Aaron & Heather Collins, Margaret & Robert Degiorgio, Elliot & Jennifer Earle, Laura Edge, Travis Elmore, Marilyn Endler, John Fields, Jim Hambright, Leah Hunter, Lauren Johnson, Cynthia Kinghorn, Alex Kiriakides, Jason Kraning, Elaine & Bill Landreth, Robert & Patricia Lanning, Frank &Barbara League, Louis & Ann Leblanc, Frank Lewkowicz, Forrest & Jane Long, George & Fain McDaniel, Brian Mcsharry, Ronald And Kathy Mercer, Steven & Anna Mickle, Helen & Fred Moorhead, John Parker, Audrey Pasin, Jim Sheets, Matthew Phillips, Shannon Pierce, Michael Rawls, Ronald & Tommie Reece, Daniel And Kimberly Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden,

Plaintiffs-Petitioners,

v.

Greenville County Board of Zoning Appeals,

Defendant-Respondent.

Civil Action No. 2023-CP-23-6416

ORDER AFFIRMING FINAL DECISION AND ORDER OF THE GREENVILLE COUNTY BOARD OF ZONING APPEALS

This matter is before this Court on the Petition for Zoning Appeal filed by the Petitioners Altamont Road Safety Alliance and multiple residents of the Paris Mountain area in the vicinity of Altamont Road. A hearing was held on April 9, 2024, with all counsel of record present. After

a review of the pleadings, the written submissions by the parties, and the oral arguments of counsel, the Court affirms the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023, which upheld the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance.

BACKGROUND

On July 6, 2023, the Petitioners submitted to the Greenville County Planning Department a proposed text amendment to the Greenville County Zoning Ordinance to amend Section 8.5 (ESD-PM Environmentally Sensitive District-Paris Mountain) regarding the district intent (Section 8:5.1) and park access to Altamont Road (Section 8:5.8). On August 14, 2023, the Petitioners appealed to the Greenville County Board of Zoning Appeals ("BZA") from the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance as to the steps to be taken in processing the Petitioners' citizen-initiated text amendment request. On August 15, 2023, Joshua T. Henderson as the Zoning Administrator issued an official interpretation of Section 3:2, which is included in the Record on Appeal.

On October 11, 2023, the appeal was heard by the BZA. By a unanimous vote of 6-0, the BZA upheld the Zoning Administrator's interpretation of Section 3:2, which was memorialized in the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023.

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a Circuit Court shall apply when considering an appeal from a local zoning board. Under that standard of review, "the court

must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840. Accordingly, an "[a]ppeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law." *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004). Moreover, "issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, 329 (2009). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id*. "The determination of legislative intent is a matter of law." *Id*.

LEGAL ANALYSIS

This appeal challenges the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance. In particular, the Petitioners challenge the Zoning Administrator's determination as to the process to be followed with respect to a citizen-initiated text amendment request. Section 3:2.3 provides:

> County Council, County Planning Commission, or Board of Zoning Appeals may initiate proposed changes or amendments to the ordinance text. *Petitions for text changes or amendments by any interested property owner or resident of Greenville County must first be presented to the Public Service, Planning and Development Committee of County Council.* In the event County Council recommends approval of the text change or amendment for public hearing, the text change or amendment shall be scheduled for public hearing, and considered for adoption.

Greenville County Zoning Ordinance, § 3:2.3. (Emphasis added). As the Respondent correctly argues, the highlighted language is the only reference in the ordinances to a citizen-initiated text

amendment request. Section 3:2.3 requires that a petition for a citizen-initiated text amendment must first be presented to the Public Service, Planning and Development Committee of the Greenville County Council. That committee has since been renamed the "Planning and Development Committee."[1] The Petitioners, however, contend that the Greenville County Planning Commission must be the first body to review a citizen-initiated text amendment request. The Petitioners argue that state law dictates that a citizen-initiated text amendment request be first submitted to a planning commission and that the Greenville County Zoning Ordinance also requires that process. After careful review of the applicable law, the Court disagrees with the Petitioners as to both points.

As for state law, the Petitioners correctly focus on the enabling legislation for local zoning which is the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310, *et seq*. However, the Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests. In fact, based on the Court's review, there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request. S.C. Code Ann. § 6-29-760 governs the procedures for the enactment or amendment of zoning regulations and zoning maps. S.C. Code Ann. § 6-29-760 does not, however, address citizen-initiated text amendment requests. As for amendments in general, S.C. Code Ann. § 6-29-760 does not set forth an established process or procedure that

[1] The Petitioners contend that there is no committee named the "Public Service, Planning and Development Committee." The Court recognizes, however, that the committee's name was changed to the Planning and Development Committee. It appears to the Court that Section 3:2.3 simply contains a clerical error that was apparently overlooked and not amended when the committee's name was changed to the "Planning and Development Committee." The Court notes that there are other references to the Planning and Development Committee within Section 3:2, such as Section 3.2.7. There is no confusion as to the identity of the committee that is referenced in Section 3:2.3.

must be followed. Instead, it sets forth certain procedures that must be included by municipalities and counties when developing local zoning ordinances, but it does not establish or provide for a set or mandated procedure.[2] In particular, S.C. Code Ann. § 6-29-760 requires (1) that a public hearing be held by either the planning commission or the governing authority (in this case County Council) prior to enactment and (2) that the new regulation or amendment must be submitted to the planning commission for review and recommendation before it may be adopted as law by the governing body. The Petitioners argue that the submission to the planning commission must be the *first step* in the process, but the Court finds no support for that interpretation or for any specific timing of the planning commission review in the overall legislative process. S.C. Code Ann. § 6-29-760 only requires that "[n]o change in or departure from the text or maps" be made unless it is first presented to the planning commission; however, the timing of planning commission involvement is left to the local body to determine and establish by ordinance.

In the case at bar, the Petitioners have proposed a citizen-initiated text amendment to Section 8.5 of the Greenville County Zoning Ordinance. As indicated, state law does not require that such a text amendment be presented to the planning commission as the initial step in the process. State law only requires, before the text amendment is adopted as an ordinance, that the amendment be presented to the planning commission for review and recommendation. The process outlined in Section 3:2, as interpreted by the Zoning Administrator and as upheld by the BZA, includes a review by the planning commission as a second step in the process for a citizen-initiated text amendment request. Therefore, this Court finds that under current procedures in

[2] As a result, it is common for the zoning processes and procedures to differ from jurisdiction or jurisdiction. Consistent with Home Rule, the General Assembly allowed municipalities and counties to develop their own processes and procedures.

Greenville County a text amendment will be considered by the planning commission before being enacted as an ordinance, which satisfies S.C. Code Ann. § 6-29-760.

The Petitioners place substantial weight on the case of *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), in which the Supreme Court speaks generally about the purpose of the Planning Enabling Act as codified in Chapter 29 of Title 6 of the South Carolina Code. The Petitioners focus on the Supreme Court's general view that "zoning matters must be decided only in the manner specified in [the Planning Enabling Act]." 526 S.E.2d at 721. The Petitioners also stress that the General Assembly intended that "zoning decisions should be made by a cross-section of unbiased officials after careful deliberation." *Id*. Notably, in *I'On*, the Supreme Court held that a zoning regulation cannot be enacted by initiative and referendum, and instead, the proper method is based on the Planning Enabling Act. However, for the reasons already stated, this Court does not find that Section 3:2, as interpreted by the Zoning Administrator and as upheld by the BZA, is at odds with the principles outlined in the *I'On* decision.

The Petitioners also cite case law holding that "[z]oning ordinances may not override state law and policy; enabling legislation is not merely precatory, but prescribes the parameters of conferred authority." *Bostic v. City of West Columbia*, 268 S.C. 386, 234 S.E.2d 224, 226 (1977). However, if that is applied as strictly as the Petitioners suggest, such that the Planning Enabling Act controls the timing as to when planning commission review takes place in the overall process, the Petitioners appear to overlook the fact that Planning Enabling Act does not even authorize a citizen-initiated text amendment request. In effect, if the Planning Enabling Act provides for no discretion in the procedures permitted, which this Court finds not to be the case, then the Court would not even be able to reach the issue presented because the Planning Enabling Act does not even expressly allow for a citizen-initiated text amendment request in the first place.

In contrast, the Respondent BZA contends that the Greenville County Council is authorized to provide for zoning procedures that do not conflict with the parameters set by state law. This Court agrees. That includes the enactment of a citizen-initiated text amendment process, which also includes establishing the different steps in the process and the timing to be followed for each step. As the South Carolina appellate courts have held in the zoning context,

> Where an ordinance is not preempted by State law, the ordinance is valid if there is no conflict with State law. In order for there to be a conflict between a State law and a municipal ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.

McKeown v. Charleston County Bd. of Zoning Appeal, 347 S.C. 203, 553 S.E.2d 484, 486 (Ct. App. 2001). Moreover, "[a]s a general rule, additional regulation to that of the State law does not constitute a conflict therewith." *Id*. Similarly, our Supreme Court has explained that "[i]n order for there to be a conflict between a state statute and a municipal ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict." *Barnhill v. City of North Myrtle Beach*, 333 S.C. 482, 511 S.E.2d 361, 363 (1999). *See also, Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990). Accordingly, this Court concludes that the procedures set forth in Section 3:2.3 -- which allow for a citizen-initiated text amendment request but requires that the first step in the process be a review by the Planning and Development Committee -- are not in conflict with state law and fall within the prerogative of County Council to establish.

The Petitioners also argue that there are inconsistencies in the various provisions of Section 3:2. This Court disagrees. To recap, the only provision that addresses a citizen-initiated text amendment request is Section 3:2:3, which states: "Petitions for text changes or amendments by any interested property owner or resident of Greenville County must first be presented to the Public

Service, Planning and Development Committee of County Council." Greenville County Zoning Ordinance, § 3:2.3. The Petitioners claim that is inconsistent with Section 3:2.1 which dictates that an application for a text amendment (regardless of whether it is citizen-initiated or initiated by staff or Council) is filed with the Greenville County Planning Commission staff. Section 3:2.1 only states with whom the application is filed and not which body will be the first to review the text amendment request. The Petitioners also raise other provisions that merely describe certain procedural steps in the process, but none of those provisions contradict the requirement in Section 3:2:3 that a citizen-initiated text amendment request first be presented to the Planning and Development Committee. Those provisions require submission to the Planning Commission for review and recommendation, but they do not mandate that the Planning Commission review be the first step in the process. The first step in the process, as indicated, is established by Section 3:2.3.

Notwithstanding the foregoing, the Court also recognizes that ordinances are subject to the same rules of construction as statutory law. Thus, it is well established that "[w]hen interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, 330 (2009). "Further, where two provisions deal with the same issue, one in a general and the other in a specific and definite manner, the more specific prevails." *Id.* As a result, to the extent that the Petitioners are correct that there may be inconsistencies in the various provisions of Section 3:2, that is not determinative. The Court focuses on determining the legislative intent, and the Court concludes that Section 3:2:3 is the only provision that addresses a citizen-initiated text amendment request and thus is the specific provision that prevails over more general provisions within Section 3.2.

In sum, after careful consideration, this Court concludes that the interpretation of the Section 3:2 of the Greenville County Zoning Ordinance, as upheld by the BZA, is correct in setting forth the process to be followed with a citizen-initiated text amendment request. It is the prerogative of County Council to establish the steps to be followed in that process. There is no state law mandate requiring that the planning commission be the first to review any zoning amendment, let alone a citizen-initiated text amendment request. State law only requires that the planning commission be part of the process before any new regulation or amendment is enacted. The Court further concludes that the steps in the process established in Section 3:2.3 are not at odds with or in violation of state law, and for these reasons, the decision of the BZA should be affirmed.

IT IS, THEREFORE, ORDERED that the Petitioners' appeal is denied and the Court hereby affirms the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023, which upheld the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance.

AND IT IS SO ORDERED.

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PATRICK C. FANT, III
Circuit Court Judge,
Thirteenth Judicial Circuit

Greenville Common Pleas

Case Caption: Altamont Road Safety Alliance , plaintiff, et al VS Board Of Zoning Appeals Greenville County

Case Number: 2023CP2306416

Type: Order/Other

So Ordered

Patrick C. Fant, III