STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)) 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.)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A.: 2023-CP-23-06416 **MOTION TO ALTER/AMEND AND/OR RECONSIDER** RECEIVED **Jul 09 2024** S.C. SUPREME COURT

TO: HONORABLE PATRICK FANT III, AND DEFENDANTS ABOVE NAMED BY AND THROUGH THEIR ATTORNEY ANDREW LINDEMANN:

Having been served with this Honorable Court's Order on June 11, 2024, the Plaintiffs pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure do hereby move to reconsider, alter, amend and/or clarify its June 11, 2024 order affirming the final decision of the Board of Zoning Appeals as follows:

STANDARD OF REVIEW

Although similar, a Rule 59 Motion under the South Carolina Rules of Civil Procedure differs significantly from its federal counterpart. "First, it is proper to view a Rule 59(e) motion [under South Carolina law] not only as a vehicle to request the Hearing Court 'alter or amend the judgment, but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." Id.

A party can ask the Court to reconsider its ruling, "even if it means rehashing all or part of an argument previously presented." Id. (citing *Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) ("The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits.")); *Curcio v. Caterpillar, Inc*., 355 S.C. 316,585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration."); James Flanagan, South Carolina Civil Procedure 474-75 (2d ed.1996). After all, "there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." *Elam*, 361 S.C. at 22, 602 S.E.2d at 779.

ISSUES AND DISCUSSION

A. THE HEARING COURT'S DECISION INAPPROPRIATELY CONSIDERED AN ARGUMENT BY THE COUNTY THAT IT IS COMMON FOR ZONING PROCESSES AND PROCEDURES TO BE DIFFERENT BY JURISDICTION AS THAT FINDING IS OUTSIDE THE RECORD OF THE BOARD OF ZONING APPEALS AND IS UNSUPPORTED BY ACTUAL EVIDENCE.

The Hearing Court is entirely erroneous in finding it is common for zoning processes and procedures to be different than jurisdiction or jurisdiction when there was no evidence to support that

finding in the record or otherwise. In fact, the local planning commission or governing body must hold a public hearing before enacting or amending zoning regulations or maps and must follow detailed procedures in conducting that hearing. S.C. Code Ann. § 6-29-760(A) (Supp.1998). *I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000). The Legislature has indeed recognized by its enactment of detailed procedures in Title 6 that haphazard or thoughtless decisions are the antithesis of meaningful zoning. The Legislature has not condoned a process by which interested citizens are dealt with differently. Such a system ultimately could nullify a carefully established zoning system or master plan developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason. *See I'ON, LLC v. Town of Mt. Pleasant*, *supra.* Zoning ordinances may not override state law and policy; enabling legislation is not merely precatory but prescribes the parameters of conferred authority. *Holler v. Ellisor*, 259 S.C. 283, 191 S.E.2d 509 (1972); 101 C.J.S. Zoning § 17 p. 713. This Zoning Ordinance provision and the court's finding is repugnant to the general law. *Holler v. Ellisor, supra; Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928). *Bostic v. City of West Columbia*, 268 S.C. 386, 234 S.E.2d 224 (S.C. 1977). Further, S.C. Code Ann. §6-29-840(A) provides circuit court may not take additional evidence. *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (S.C. App. 2004).

There was no argument before the Board that different jurisdictions had different procedures and there was no evidence to support that finding. This should be corrected now before an appeal.

B. THE APPELLANTS ARGUED THAT THE PUBLISHED SCHEDULE OF ZONING REQUESTS SUPPORTS ITS ARGUMENT THAT THE REFERENCE OF A TEXT AMENDMENT TO A COMMITTEE IS IMPROPER.

The Hearing Court should have ruled on this argument and erred in failing to find that the published schedule of zoning requests makes reference of a citizen-initiated text amendment to a Council committee improper.

3:2.1 of the Zoning Ordinance states:

> 3:2.1 Application. An application for any change or amendment to the text or map of this Ordinance shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be changed and the names and addresses of the owner or owners of the property. **Such application shall be filed with the Greenville County Planning Commission staff in accordance with the published schedule of rezoning deadline and meeting dates**. In order for an application to be processed by Planning Commission staff, all required information and forms must be completed. Planning Commission staff may return any incomplete forms to the applicant. (Emphasis added.)

There is no mention of the Council Committee considering a text amendment first in the published schedule. Therefore, the court should have addressed Plaintiff's argument that the Greenville County published schedule conflicts with submission to the Planning and Development Committee first.

C. THE HEARING COURT WAS IN ERROR WHEN FINDING NO SUPPORT FOR THE ARGUMENT THAT THE PLANNING COMMISSION MUST FIRST REVIEW A TEXT AMENDMENT.

The Hearing Court inappropriately found there was no support for the interpretation that the planning commission must be the first step in process. In fact, state law and county ordinances both require the Planning Commission to be the first step.

State Law is clear on this. S.C. Code Ann. § 6-29-760 provides;

> (A) Before enacting or **amending any zoning regulations** or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. . . No change in or departure 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. **The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure.**\

> (B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property. (Emphasis Added) Further the Hearing Court overlooked the provision that should the planning commission find the act within a certain time frame the opposition is deemed approved by them. (Emphasis Added.)

Additionally, the County Ordinances supported this proposition as well. The Greenville County Zoning Ordinance Provides:

> 3:2.1 Application. An application for any change or amendment to the text or map of this Ordinance shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be changed and the names and addresses of the owner or owners of the property. Such application shall be filed with the Greenville County Planning Commission staff in accordance with the published schedule of rezoning deadline and meeting dates. In order for an application to be processed by Planning Commission staff, all required information and forms must be completed. Planning Commission staff may return any incomplete forms to the applicant.

3:2.3 of the Zoning Ordinance states;

> "Initiation of Amendments 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."

However, this provision also conflicts with 3:2.1 that "Such application shall be filed with the Greenville County Planning Commission staff in accordance with the published schedule of rezoning deadline and meeting dates." (See, argument B. above.) But also with 3:2.4 which states "Upon receipt of a completed application from the Planning Commission staff for an amendment to the Zoning Ordinance text or map, the request shall be placed the request on the agenda for the next scheduled public hearing. No amendment to the Zoning Ordinance text or map shall be eligible for reading by County Council until after a public notice and hearing by County Council."

3:2.3 also states:

> The **Planning staff shall, upon receipt of a request for an amendment to the Zoning Ordinance text or map, review and make written recommendations to the Greenville County Planning Commission concerning the request**. **The Planning Commission shall have 30 days within which to submit its report and recommendation to County Council**. The Planning Commission may allow additional public comment on a zoning docket at its regularly scheduled meeting. If the Planning Commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure from the text or map. (Emphasis added).
>
> 3:2.7 states:
>
> 3:2.7 Action by County Council **The Planning and Development Committee shall consider information presented at the public hearing** and the staff review and recommendation received from the Greenville County Planning Commission before making a recommendation to County Council. In its recommendation, the Planning Commission may request an additional comment session. The Planning and Development Committee may return the zoning docket to the Planning Commission and require an additional public comment session on the zoning docket based on the Committee's determination or based on the request by the Planning Commission. Should the docket be returned to the Planning Commission for comment purposes, the public comment session shall be held at the next regularly scheduled meeting of the Planning Commission. Before County Council approves any map amendment, the Planning Commission and County Council shall be informed of the relation of the application to the provisions of the county's Comprehensive Plan or, in the absence of such information, that one or more of the following should be considered: A. That the original zoning classification given the property was improper or inappropriate. B. That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the county's Comprehensive Plan and which have substantially altered the basic character of such area. If the Planning Commission recommends denial of the request for an amendment, County Council may reject the recommendation of the Planning Commission by a favorable vote of two-thirds of the members of the Council. Greenville County Council or Council's Planning and Development Committee shall have the option to defer action on any rezoning request in order to gain additional facts or to seek the resolution of any disputes surrounding the rezoning case.

The Hearing Court should correct this finding as it is wholly unsupported by the law and the facts.

D. THE PROCESS APPROVED BY THE COURT DEPRIVES THE CITIZENS OF A STATE MANDATED RIGHT TO APPLY FOR TEXT AMENDMENTS.

The Hearing Court erred in construing the ordinances and statutes in such a way as to allow a committee of County Council to decide the merits of an application for a text amendment and to basically kill the application without the input of a cross section of the community. The Legislature has recognized by its enactment of detailed procedures in Title 6 that haphazard or thoughtless decisions are the antithesis of meaningful zoning. The Legislature has not condoned, and you should not approve a process by which interested citizens are dealt with differently. Such a system ultimately could nullify a carefully established zoning system or master plan developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason. *See I'ON, LLC v. Town of Mt. Pleasant, supra*

The Legislature has provided the following in S.C. Code §6-29-340;

> §6-29-340 (B)(2).
> (2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:
> **(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;**
> (b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;
> (c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;
> (d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
> (e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and
> (f) policies or procedures to facilitate implementation of planning elements.

S.C. Code Ann. §6-29-760 provides**;**

> (A) Before enacting or **amending any zoning regulations** or maps, the governing authority or **the planning commission**, if authorized by the governing authority, **shall hold a public hearing on it**, which must be advertised and conducted according to

lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. . . **No change in or departure 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.** The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. **If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure.**

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property. (Emphasis Added)

E. THE COURT INCORRECTLY FOUND NO PROVISIONS OF THE PLANNING ENABLING ACT ADDRESSES CITIZEN INITIATED TEXT AMENDMENTS.

A citizen's right to request a text amendment is identical to their right to request a rezoning. There is no distinction. The Hearing Court incorrectly found that Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests. In fact, the Petitioners pointed out that the entirety of state law addresses citizen-initiated text amendment requests the same as citizen -initiated rezoning requests.

F. THE COURT WAS IN ERROR WHEN IT FOUND NO STATE LAW AUTHORIZES CITIZEN INITIATED TEXT AMENDMENTS.

The Hearing Court erred in finding no state law authorizes or prohibits or addresses citizen-initiated text amendment requests. In fact, state law addresses them in the same fashion as rezoning requests and state law specifically addresses that procedure.

S.C. Code Ann. § 6-29-760 provides;

> (A) Before enacting or **amending any zoning regulations** or maps, the governing authority or **the planning commission**, if authorized by the governing authority, **shall hold a public hearing on it**, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. . . **No change in or departure 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.** The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. **If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure.**
>
> (B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property. (Emphasis Added)

G. THE COURT SHOULD NOT HAVE ATTEMPTED TO DISTINGUISH CITIZEN INITIATED TEXT AMENDMENTS FROM TEXT AMENDMENTS IN GENERAL.

The Hearing Court erred in trying to distinguish citizen-initiated text amendments for text amendments in general. State law makes no distinction as established by S.C. Code Ann. §6-29-760 cited above.

H. THE HEARING COURT WAS INCORRECT IN FINDING THE PLANNING ENABLING ACT DID NOT EXPRESSLY ALLOW CITIZEN INITIATED TEXT AMENDMENTS.

Under state law the right to propose text amendments is no different and in fact identical based upon the language cited in the State statutes cited above to a person's right to request a rezoning. Not only is this finding unsupported by the statute, but it purports to take away an invaluable property right of each and every citizen of the State of South Carolina.

I. THE COURT SHOULD NOT HAVE HELD THAT THE REVIEW PROCESS BY THE PLANNING AND DEVELOPMENT COMMITTEE WAS NOT IN CONFLICT WITH STATE LAW.

The Hearing Court erred in finding the review process by the Planning and Development committee not in conflict with state law. In fact, it clearly conflicts with state law that universally requires the Planning Commission to review the application first.

CONCLUSION

Wherefore, the Petitioners request that the court reconsider its order, alter or amend its order and correct its misinterpretations of the facts, county ordinances and state law. The Hearing Court must correct its finding that it is common for zoning processes and procedures to differ from jurisdiction to jurisdiction as there was no evidence to support this finding, correct the finding as to the Planning Commission since it is clear the request had to be submitted to the Planning Commission first, correct the misinterpretation of state law as to allowing County Council to establish procedures outside of the Planning Enabling Act and correct interpretation that allows a County Council Committee to terminate a text amendment without review by the planning commission, without a public hearing, without full county council review and without review by a cross-section of the community.

s/Robert C. Childs III
Robert C. Childs III Esq. #1218
Attorney for Plaintiffs/Petitioners
Childs Law Firm LLC
P.O. Box 1519
Travelers Rest SC 29690
864-242-9997
864-242-9914 Fax
Robert@LawyerChilds.com

Date: 06/17/2024
Greenville, South Carolina