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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Patrick C. Fant III, Circuit Court Judge

Appellate Case No. 2024-001138

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 Kimberley Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden, ...Appellants,

v.

Greenville County Board of Zoning Appeals, ...Respondent.

RECORD ON APPEAL
VOLUME III

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VVV.

PET.EXH000635



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Zoning Search

New Search

ID	Owner(s) Name	Year	Docket Number	Parcel ID	Lot	Record Number	Street / PIN
113	AVERY WOOD ASSOC.	1971	CZ-1971-039			1/1	TEXT AMENDMENT
134	BOARD OF ZONING APPEALS	1971	CZ-1971-060			1/1	TEXT AMENDMENT
186	WATSON, MAX	1972	CZ-1972-031			1/1	TEXT AMENDMENT
229	ZONING ADMINISTRATOR	1972	CZ-1972-074			1/1	TEXT AMENDMENT
230	BOARD OF ZONING APPEALS	1972	CZ-1972-075			1/1	TEXT AMENDMENT
231	BOARD OF ZONING APPEALS	1972	CZ-1972-076			1/1	TEXT AMENDMENT
232	ZONING ADMINISTRATOR	1972	CZ-1972-077			1/1	TEXT AMENDMENT
2413	COUNTY COUNCIL	1989	CZ-1989-138	--	--	1/1	TEXT AMENDMENT
2420	COUNTY COUNCIL	1990	CZ-1990-005			1/1	TEXT AMENDMENT
2432	COUNTY COUNCIL	1990	CZ-1990-017	--	--	1/1	TEXT AMENDMENT
2495	COUNTY COUNCIL	1990	CZ-1990-081	--	--	1/1	TEXT AMENDMENT
3237	VECCELLIO,AMY(BELLSOUTH)	1997	CZ-1997-020			1/1	TEXT AMENDMENT
328	ZONING ADMINISTRATOR	1973	CZ-1973-022			1/1	TEXT AMENDMENT
355	ZONING ADMINISTRATOR	1973	CZ-1973-045			1/1	TEXT AMENDMENT

PET.EXH000636

www.

PET.EXH000637

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New Search

Month/Year:	August 2012
Docket Number:	CZ-2012-035
Record Number:	1/1
PIN:	
Tax Sheet:	TEXT
Block:	
Lot:	
Number of Lots:	
Owner(s):	GREENVILLE COUNTY COUNCIL
Frontage:	
Jurisdiction:	GREENVILLE COUNTY
Zoned:	
Requested Zone:	TEXT
Tract:	0.00
New Taz:	
Planning Area:	
Verified:	Yes
Planning Recommendation:	DENIED
Committee Recommendation:	DENIED
Council Action:	DENIED
Council District:	
Council District:	
Final Date:	11/06/2012
Staff Report:	

ELECTRONICALLY FILED - 2024 Apr 02 1:01 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2306416

PET.EXH000638

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

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)

C.A.: 2023-CP-23-06416

BRIEF OF PLAINTIFFS/APPELLANTS

Plaintiffs/Petitioners)

v.)

Greenville County Board of Zoning Appeals)

Defendants/Respondents.)

**TO: HONORABLE PATRICK CLEBURNE FANT III & ANDREW LINDEMAN, ATTORNEY
FOR DEFENDANTS/RESPONDENTS**

SUMMARY

This is an appeal of the decision of Greenville County Board of Zoning Appeals to uphold the decisions of the Greenville County Zoning Administrator that proposed text amendments to the Greenville County Zoning Ordinance must go before the “Public Service, Planning and Development

Committee of County Council” before being considered by the Planning Commission and before being heard at Public Hearing.

CONCISE ARGUMENT

Section 3:2 through the first paragraph of Section 3:2.3 of the Greenville County Zoning Ordinance states:

Section 3:2 Zoning Ordinance Text and Map Amendments

The regulations, restrictions, and boundaries set forth in this Zoning Ordinance may from time to time be amended, supplemented, changed, or repealed by the County Council. Prior to final action by County Council under this article, the Planning Commission shall review the amendment and offer any comments or recommendations as appropriate. All actions taken under this Article shall be done in accordance with the procedures outlined below.

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.

3:2.2 Action by the Applicant

Action shall be taken by applicants for amendments to the ordinance text or any map adopted hereunder in accordance with the provisions of this Article.

3:2.3 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. (Emphasis added)

The provision of 3:2.3 that “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” conflicts with numerous other sections of the Zoning Ordinance including 3:2.1 which states ‘Such application shall be filed with the Greenville County Planning Commission staff in accordance with the published schedule of rezoning deadline and meeting dates.” and the Comprehensive Planning Act which makes no distinction between text amendments and map amendments. Furthermore, there has been no “Public Service, Planning and Development Committee of County Council” since 2006.

THE PLAINTIFF/APPELLANTS

The Plaintiff/Appellants consist of numerous residents of Paris Mountain who live on Altamont Road and a non-profit corporation they created known as the Altamont Road Safety Alliance.

BACKGROUND

The Environmentally Sensitive District Paris Mountain (“ESD-PM”) was adopted as a text amendment on November 15, 1988. (Docket No. CZ-88-95, Minutes of County Council dated November 15, 1988.). “The purpose of this district is to establish a land use pattern to protect the environmentally sensitive nature of Paris Mountain by encouraging the proper and safe placement of structures in conformance with the natural landform, landscape, and existing plant life.” (Section 8:4:1 of the Greenville County Zoning Ordinance.). Section 8:5.9 of the Zoning Ordinance states:

At any time that a property owner can demonstrate that the property can be developed by providing vehicular access from **another source and not utilizing Altamont Road**, the property will be removed from the ESD-P.M. classification and will revert back to the original zoning. The development must maintain the required setbacks from Altamont Road as buffer zones, and along the frontage of Altamont Road there shall be no points of ingress or egress. (Emphasis Added.)

Paris Mountain State Park is adjacent to the ESD-PM district and is zoned R-S, residential suburban. Both R-S and ESD-PM provide for Governmental Facilities and Operations, to be Special Exceptions. Both R-S and ESD-PM provide for Community Centers and Recreation (community area), to be Conditional Uses and Private/Public/nonprofit and Recreation (private/public/nonprofit)

to be a Special Exception in R-S District. There are no roads directly connecting the State Park to Altamont Rd. (Exhibit “A” from Board of Zoning Appeals submissions.)

Altamont Road traverses the entire ESD-PM district as shown on Exhibit “B” of Board of Zoning Appeals submissions. Altamont Road is a two-lane, narrow, dangerous, windy, low or no shouldered state road which has been the site of numerous car accidents as shown on Exhibit “C” of Board of Zoning Appeals submissions. Altamont Road is the lifeline for over 300 homes and the Highway Patrol data indicates a total of 289 accidents over 4 years amounting to one reported accident every 5 days. It is too narrow for bike lanes and barely has enough room for large trucks to pass. Additional right of way cannot be dug out of the side of the mountain or hung over the edge of the drop-offs. Additional traffic and use of Altamont Rd. by vehicles, bicyclists, pedestrians, and the like will destroy the sensitive nature of the area and will be hazardous to the residents and the traveling public.

As set forth above, the County Council determined that Altamont Rd.’s relationship to the ESD-PM district was of such importance that once a property in the district no longer had access to Altamont Rd. it will be removed from the ESD-PM district.

Paris Mountain itself has a unique and unpredictable Micro-Climate with a 777 feet average elevation increase from the base to its highest point. Conditions vary vastly from surrounding areas and can change abruptly. The Applicants were keenly aware that additional traffic greatly reduces the safety of their community and property.

Unknown to the appellants, in 2021 the Greenville County Historic and Natural Resources trust received an application identified as “Application 13” for the expenditure of \$400,000.00 (HNRT minutes dated 8/29/22 Exhibit “D” of Board of Zoning Appeals submissions)

<http://www.naturalandtrust.org/shiloh-ridge>. It is believed that the application occurred in 2021. That application was approved on August 29, 2022.

On September 12, 2022, the Greenville County Committee on Finance after going into executive session to “discuss contractual matter” approved an ordinance authorizing the funding for a project known to the County as “HNRT Project Legacy” (Exhibit “E” of Board of Zoning Appeals submissions).

On September 20, 2022, Greenville County Council considered an ordinance at first reading to authorize the Greenville County Historic and Natural Resources Trust to provide funding for the Shiloh Ridge Mountain Project (Exhibit “F” of Board of Zoning Appeals submissions). There was no mention that the project involved Paris Mountain.

On September 27, 2022, Natural and Trust and the South Carolina Conservation Bank executed a Grant Agreement in the amount of \$750,000.00 that had been approved by the Board on September 21, 2022. Still the residents of Paris Mountain had no idea the Altamont Road was being subject to a devastating influx of traffic if the expansion of Paris Mountain State Park was accessed through Altamont Road.

On October 4, 2022, a public hearing was held by Greenville County Council that a public hearing would be held “FOR THE PURPOSE OF RECEIVING COMMENTS FROM THE PUBLIC REGARDING AN ORDINANCE AUTHORIZING THE GREENVILLE COUNTY HISTORIC AND NATURAL RESOURCES TRUST (HNRT) TO PROVIDE FUNDING IN THE AMOUNT OF \$400,000.00 FOR THE SHILOH RIDGE AT PARIS MOUNTAIN PROJECT.” (Exhibit “G” of Board of Zoning Appeals submissions) This was the first mention that a project involving Paris Mountain was being considered.

While supporting the project to further protect Paris Mountain from private development the citizens of Altamont Rd. became concerned about several issues related to the project. The references by the State Park representatives about connections to other parts of Paris Mountain made the citizens concerned about traffic flooding onto Altamont Rd. The project information provided:

Hughes will provide SCPRT with visitation capacity, **new access** and safe locations for **parking** in one of the most popular parks in the state. By Broadening the boundaries of the Park and **creating new connections to parking areas** that link the ridgelines, waterfalls, rivers and forest of Paris Mountain **we can expand public access to Furman University, the Swamp Rabbit Trail, and across the 'Necklace' of greenspace around Greenville.**" (Emphasis Added) (Exhibit "H" of Board of Zoning Appeals submissions)

While denying claims that they would immediately connect park entrances to Altamont Rd. the project sponsors and SCPRT refused to commit to not connecting the Park Expansion to Altamont Rd. This continues today when most recently an email to County Council cautioned them about limiting access to the Park expansion (Exhibit "I" of Board of Zoning Appeals submissions). On one hand they have said no connections to Altamont Rd. in progress but on the other hand they are concerned that connections to Altamont Road would be prohibited.

As citizens then became extremely concerned about the impact of all the new parking, connections, trails and visitors connecting to Altamont Rd. At third reading on October 18, 2022 Councilor Shaw stated the park was located in his district; he was very excited about the project and totally supported it ...A number of residents on Altamont Road had voiced concerns about the increase in traffic given the fact that the proposal included an additional entrance on Altamont Road....He suggested the County not participate unless the parties agreed to keep the existing entrance to the park and not put an additional entrance on Altamont Road (Exhibit "J" of Board of Zoning Appeals submissions). County Council agreed to hold third reading until November 1, 2022.

On November 1, 2022 Councilor Shaw introduced a resolution concerning traffic issues at Paris Mountain State Park (Exhibit “K” of Board of Zoning Appeals submissions.) County Council unanimously approved the resolution (Exhibit “L” of Board of Zoning Appeals submissions). The resolution stated, “Greenville County Council supports the expansion of the Paris Mountain State Park using the existing entrance and internal network of roads and trails so as to not create public entry or access from Altamont Road or the residences.”

Nevertheless, a third reading of the HNRT Ordinance authorizing the grant to purchase the park expansion Councilor Shaw moved to suspend the rules to amend the Ordinance to require no access to Altamont Road. That motion was denied on a vote of five in favor and seven opposed. The Ordinance passed on a vote of nine in favor and 3 opposed.

At the next Council meeting on December 6, 2022, Councilor Shaw introduced a proposed text amendment to the Zoning Ordinance to amend the ESD-PM District to prohibit vehicular access to and parking for Paris Mountain State Park on new or existing roads via Altamont Rd. That Ordinance was referred to the Planning and Development Committee.

After 4 months the residents became concerned that the Ordinance wasn’t going to be heard since the Planning and Development Committee hadn’t taken the text amendment up on their agenda. On March 14, 2023, Councilor Shaw requested that the text amendment be taken up citing Greenville County Council Rule (V)(F)(2) which requires “All zoning matters properly referred to Planning and Development Committee must be reported to full Council in a timely manner with a recommendation for approval, denial, approval as modified, or ‘no recommendation’.” (Exhibit “M” of Board of Zoning Appeals submissions.).

Eventually, the citizens became convinced that the Chairman of the Planning and Development Committee would not allow Councilors Shaw’s text amendment to be heard. After first being told

that there was no right for citizens to file for text amendments (Exhibit “N” of Board of Zoning Appeals submissions), they filed the present petition for a text amendment with the Planning Commission (Exhibit “O” of Board of Zoning Appeals submissions.) On July 7, 2023, the Applicants filed their petition for a text amendment citing 3:2.3 of the Zoning Ordinance and state law provisions that require the process of rezoning requests and text amendments to follow the same process which in Greenville County’s case is first Public Hearings, then First Reading, then Planning Commission, then Planning and Development Committee, then Second Reading and then Third Reading.

The Petitioners were then advised that they had to go through the Planning and Development Committee first, the same committee that never heard Councilor Shaw’s text amendment the Petitioners appealed to the Board of Zoning Appeals contending that they had the right to pursue the same process as rezoning requests.

THE ROLE OF THE BOARD OF ZONING APPEALS

S.C. Code§ 6-29-780 of the Comprehensive Planning Act provides:

(A) As a part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

S.C. Code§ 6-29-800(A) also provides that one of the powers of the Board of Zoning Appeals is

- (1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance; . . .

and

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

As set forth in the Greenville County Zoning Ordinance 2:32;

The Board of Zoning Appeals shall have final (local) decision-making authority on the following matters:

- A. Special Exceptions (see Article 3, Section 3.3)
- B. Variances (see Article 3, Section 3.4)
- C. **Appeals of Administrative Decisions (see Article 3, Section 3.5)**
- D. Interpretation of district boundaries where boundaries on the ground are at variance with those shown on the Official Zoning Map

Boards of Zoning Appeals are quasi-judicial. *Vulcan Materials v. Greenville Cty. Bd.* 342 S.C. 480, 536 S.E.2d 892 (S.C. App. 2000). This means that it has a partial judicial character by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts. (Merriam Webster definition of Quasi-Judicial)

ISSUE PRESENTED

MUST TEXT AMENDMENTS PROPOSED BY CITIZENS GO THROUGH THE PLANNING AND DEVELOPMENT COMMITTEE FIRST?

LEGAL ANALYSIS

THIS REQUIREMENT CONFLICTS WITH THE UNIFORMITY OF STATE LAW, WITH OTHER PROVISIONS OF THE ZONING ORDINANCE AND EXISTING PRACTICES OF GREENVILLE COUNTY.

The “South Carolina Local Government Comprehensive Planning and Enabling Act of 1994” repealed existing zoning and planning provisions in Title 5 and Title 6 as of May 3, 1999. Act No. 355, 1994 Acts 4010. The 1994 Act combined the provisions into a single, comprehensive set of provisions available to local governments. S.C. Code Ann. §§ 6-29-710 to -960 (Supp.1998) (codifying portions of 1994 Act).

Under Title 6, “[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.” S.C. Code Ann. §6-29-710(A)

(Supp.1998). Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents. *Id.*

Zoning regulations must address numerous factors, including building size, density of development, parking, and buffer areas. A local governing body may use a variety of zoning techniques, including planned development districts such as the one at issue in this case. S.C. Code Ann. § 6-29-720 and 740 (Supp.1998). 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)

As this Court well knows, zoning often is one of the most controversial activities undertaken by a local government. Some citizens view zoning as a requisite in today's world, necessary to control disparate uses of land, promote orderly development, and conserve valuable resources. To others, zoning raises the specter of an overbearing government bent on destroying individual property rights and independent spirits. As aptly expressed by the New Jersey Supreme Court and cited by the South Carolina Supreme Court:

In municipal government, few issues generate as much public interest as the control of land-use development. Zoning ordinances touch people where they live. Sensitive to the intense public interest in local land-use development, the Legislature has developed an orderly structure for public participation in the process. That process also contemplates the rational development of land use, free from undue political influence. *Great Atlantic & Pacific Tea Co. v. Borough of Point Pleasant*, 137 N.J. 136, 644 A.2d 598, 600 (1994).
Id.

Similarly, the comprehensive and detailed nature of the Title 6 provisions briefly outlined above reveals our Legislature's intent that zoning decisions should be made by a cross section of unbiased officials after careful deliberation. Whether the zoning decisions involve the development of an overall

zoning system or master plan, or the application of established rules in a particular case, Title 6 is designed to allow ample planning and ensure due process for all interested parties.

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)

One must admit that the Greenville County Zoning Ordinance section cited by the Zoning Administrator conflicts with state law provisions that map, or text amendments must go to the Planning Commission **first** and if the Planning Commission takes no action within a certain period of time, it is deemed approved.

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. The Zoning Ordinance is void to the extent that it 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).

Additionally, this provision conflicts with other provisions about the initiation of text amendments. Indeed, the practice of Greenville County also conflicts with the position of the County in that numerous text amendments initiated by the County don't go through the Planning and

Development Committee first. (Exhibit “P” of Board of Zoning Appeals submissions and Supplemental Exhibits Submitted on April 2, 2024)

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. (Emphasis added.)

Of course, the published schedule conflicts with submission to the Planning and Development Committee first.

The Administrator states that the clear language of 3:2.3 of the Zoning Ordinance requires this text amendment to go to the Planning and Development Committee first.

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.” (Emphasis added. This provision was last amended on March 3, 2009).

However, this provision not only 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.” 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.” (Emphasis added). This provision was amended on August 21, 2012 to reflect this language.

3:2.3 also conflicts with 3:2.6 which 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. This provision was amended August 21, 2012).

3:2.3 also conflicts with the section describing action by County Council in 3:2.7 which 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.

Therefore, it is apparent that 3:2.3 of the Zoning Ordinance conflicts with several other sections that describe a different process. Of course, state law makes no distinction between the process of rezoning and text amendments and requires the Planning Commission to review and for a public hearing **first**.

But why is there a distinction and what did County Council mean by these conflicting provisions. In *Eagle Container v. County of Newberry* 622 S.E.2d 733, 366 S.C. 611 (S.C. 2005) the Supreme Court analyzed conflicting provision of the Newberry County Zoning Ordinance using the following analysis of statutes and applying that to Ordinances. It stated;

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature." *Garvin v. State*, 365 S.C. 16, 21, 615 S.E.2d 451, 453 (2005); *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct.App.2003); *Knotts v. S.C. Dept. of Natural Resources*, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002). "The primary purpose in construing a statute is to ascertain legislative intent." *Gordon v. Phillips Utils., Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Knotts*, 348 S.C. at 10, 558 S.E.2d at 516 (quoting Norman J. Singer, *Sutherland Statutory Construction*, § 46.03 at 94 (5th Ed.1992)); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct.App.2001). "The legislature's intent should be ascertained primarily from the plain language of the statute." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct.App.2004); *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct.App.2002); *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 338, 478 S.E.2d 74, 76 (Ct.App.1996).

"The first question of statutory interpretation is whether the statute's meaning is clear on its face." *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citing *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the Court has no right to impose another meaning." *Vaughn v. Bernhardt*, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001) (citing *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (citing *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). "The terms must be construed in context and their meaning determined by looking at the other terms used in the statute." *Morgan*, 352 S.C. at 366, 574 S.E.2d at 206 (Ct.App.2002) (citing

Southern Mut. Church Ins. Co. v. South Carolina Windstorm Hail Underwriting Ass'n, 306 S.C. 339, 412 S.E.2d 377 (1991)). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct.App.2005) (citing *Hodges*, 341 S.C. 79, 533 S.E.2d 578; *Bayle*, 344 S.C. at 122, 542 S.E.2d at 739). "When the terms of a statute are clear, the court must apply those terms according to their literal meaning." *Georgia-Carolina Bail Bonds*, 354 S.C. at 24, 579 S.E.2d at 337 (citing *Cooper v. Moore*, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002); *Holley v. Mount Vernon Mills, Inc.*, 312 S.C. 320, 440 S.E.2d 373 (1994); *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, Regulation*, 337 S.C. 476, 523 S.E.2d 795 (Ct.App.1999); see also *Parsons v. Georgetown Steel*, 318 S.C. 63, 65, 456 S.E.2d 366, 367 (1995) ("Where the terms of a relevant statute are clear, there is no room for construction.")).

...
 "There is a presumption that the legislature has knowledge of previous legislation. . . when later statutes are enacted concerning related subjects." *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 174 (2003) (citing *State v. Corey D.*, 339 S.C. 107, 529 S.E.2d 20 (2000); *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993)).

The last expression of County Council's intent are the amendments to the zoning ordinance in 2012 that expressly set forth the procedures contrary to 3:2.3. That makes it clear that County Council in that section merely intended to address the question of whether an individual County Councilor can initiate a text amendment on behalf of County Council by introducing an Ordinance at first reading for a text amendment. County Council's answer, conforming that answer with other parts of the zoning ordinance, is that individual Councilors cannot by themselves cause planning commission review and a public hearing because they don't speak for County Council as a whole. Therefore, any text amendment proposed by a County Councilor must first go to the Planning and Development Committee. That is the only fair reading the statutes and ordinances together. Certainly, an application for text amendment to the zoning ordinance by those in the ESD-PM district should be treated no differently than a rezoning request by them.

CONCLUSION

The Legislature encourages that ability of citizens to participate thoroughly in the zoning process. Affected citizens must be notified along with the public when either a rezoning request or text amendment is initiated. The idea that affected citizens should be muzzled by going through a committee that has already taken no action on a similar text amendment is contrary to that intent. The process for a text amendment requests, like those of a rezoning request requires planning commission review, public hearing, committee review and the whole council review for ALL APPLICATIONS. The process does not allow a committee to screen requests for text amendments and then kill the request by taking no further action.

The old practice of allowing rezoning requests or text amendments to be permanently held in committee or on Council floor because the politicians were unwilling to make a decision on the request due to politics was abolished by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310 et seq. (Supp.2001) ("Comprehensive Planning Act"). *Greenville County v. Kenwood Enterprises*, 353 S.C. 157, 577 S.E.2d 428 (S.C. 2003)

The *I'On, supra* Court was faced with the issue of whether zoning by initiative and referendum is allowed in South Carolina. The Court concluded that the detailed nature of zoning acts like the Comprehensive Planning Act "indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts." Id. at 415, 526 S.E.2d at 721. *I'On* held that by passing the Comprehensive Planning Act, the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum. Significantly, the Court stated the following:

[T]he comprehensive and detailed nature of [the Comprehensive Planning Act's] provisions ... reveals our **Legislature's intent** that zoning decisions should be made by

a **cross-section of unbiased officials** after careful deliberation. Whether the zoning decisions involve the development of an overall zoning system or master plan, **or the application of established rules in a particular case**, [the Comprehensive Planning Act] is designed to allow ample planning and **ensure due process for all interested parties**.

Id. at 416, 526 S.E.2d at 721 (emphasis added).

See also, Greenville County v. Kenwood Enterprises, 353 S.C. 157, 577 S.E.2d 428 (S.C. 2003). The Greenville County Planning and Development Committee is not a “cross-section of unbiased officials” and does not “ensure due process for all interested parties.”

While my clients praise the Zoning Administrator and County Attorney for acknowledging that private citizens may initiate a text amendment, they are not different than any other citizens requesting a zoning change and should not be required to go to the Planning and Development Committee first.

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Date: April 3, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

The Altamont Road Safety Alliance,)
Sussane Beattie, Brenda Cale, Elaine Carter,) Civil Action No. 2023-CP-23-6416
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 and)
Caleb Vanwingerden,)
)
Plaintiffs-Petitioners,)
)
v.)
)
Greenville County Board of)
Zoning Appeals,)
)
Defendant-Respondent.)
_____)

**BRIEF OF DEFENDANT-RESPONDENT
GREENVILLE COUNTY BOARD
OF ZONING APPEALS**

The Defendant-Respondent Greenville County Board of Zoning Appeals (“BZA”) submits this memorandum of law in opposition to the appeal filed by the Plaintiffs-Petitioners. Notwithstanding the detailed factual history offered by the Petitioners in their Petition for Zoning Appeal filed December 6, 2023, and their brief filed April 3, 2024, it is important for the Court to

understand from the outset that this appeal from the BZA to the Circuit Court raises purely an issue of law.¹

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 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. Importantly, this appeal does not address the merits of the citizen-initiated text amendment request which to date has not proceeded through the established process.

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

¹ In their brief, the Petitioners provide a detailed factual and procedural history in the "Background" section of the brief. The BZA disputes the accuracy of aspects of that history, but it is not necessary to burden the Court with a full discussion of that background information because the appeal involves a purely legal question pertaining to the interpretation of Section 3:2 of the Greenville County Zoning Ordinance and not the merits of the Petitioners' citizen-initiated text amendment request.

must determine only whether the decision of the board is correct as a matter of law.” S.C. Code Ann. § 6-29-840.

This appeal to the BZA did not involve factual matters. Nonetheless, in the event this Court determines that there are facts at issue, the findings of fact by the BZA "must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840. Thus, the findings of fact by the Board of Zoning Appeals must be affirmed if they are supported by any evidence.

In essence, an “[a]ppel 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). "It is important to note that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004) .

EVIDENTIARY MATTERS

As a threshold issue, the Respondent objects to the Petitioners’ submission of Exhibits A through WWW to the extent those exhibits are not included in the certified Record on Appeal from the BZA as filed on January 19, 2024. As indicated above, S.C. Code Ann. § 6-29-840 definitively states that “the court may not take additional evidence.” S.C. Code Ann. § 6-29-840. Therefore, the Court may only consider what was submitted into evidence at the BZA. The exhibits not included in the Record on Appeal – which are many -- should be stricken.

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). 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."² 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. The Petitioners are incorrect in both respects.

² To the extent that the Petitioners contend that there is no such committee, they are incorrect. Section 3:2.3 simply contains a clerical error that was not amended when the committee's name was changed to the Planning and Development Committee.

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.*³ However, the Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests. In fact, 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 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 must be followed. Instead, it sets forth certain procedures that must be included by municipalities and counties in developing local zoning ordinances, but it does not establish or provide for a set or mandated procedure.⁴ 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 there is no support for that interpretation or for any specific timing of the planning commission review in the overall legislative process. In fact, it is common that a first reading of a zoning ordinance be made by a governing body before

³ The Petitioners' apparent reliance on the case of *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), is misplaced. In that case, the Supreme Court only held that a zoning regulation cannot be enacted by initiative and referendum, and instead, the proper method is based on the Planning Enabling Act as codified in Chapter 29 of Title 6 of the South Carolina Code.

⁴ As a result, the zoning processes and procedures do differ from jurisdiction to jurisdiction. Consistent with Home Rule, the General Assembly allowed municipalities and counties to develop their own processes and procedures.

submission to the planning commission. 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. 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 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, under current procedures a text amendment will be considered by the planning commission before being enacted as an ordinance.

Ironically, the Petitioners 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 is not the case), then the Court will not even 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 reality, it is the Respondent's position that Greenville County Council is authorized to provide for zoning procedures that do not conflict with the parameters set by state law. That includes the enactment of a citizen-initiated text amendment process, which 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). In short, 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 -- is not in conflict with state law and falls within the prerogative of County Council to establish.

As mentioned, the Petitioners also argue that there are inconsistencies in the various provisions of Section 3:2. That is not the case. 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 that 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. Undoubtedly, 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.

In sum, as upheld by the BZA, the interpretation of the Section 3:2 of the Greenville County Zoning Ordinance 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 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, should be upheld by this Court just as they were upheld by the BZA.

CONCLUSION

Based on the foregoing discussion, the Defendant-Respondent respectfully requests that the Court affirm 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.

Respectfully submitted,

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*Counsel for Defendant-Respondent
Greenville County Board of Zoning Appeals*

April 4, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

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)

C.A.: 2023-CP-23-06416

**MOTION TO ALTER/AMEND AND/OR
RECONSIDER**

Plaintiffs/Petitioners)

v.)

Greenville County Board of Zoning Appeals)

Defendant/Respondent.)

**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
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 864-242-9997
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Date: 06/17/2024
 Greenville, South Carolina

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,)

Civil Action No. 2023-CP-23-6416

**DEFENDANT-RESPONDENT'S
MEMORANDUM IN OPPOSITION TO
PETITIONERS' MOTION TO
ALTER/AMEND AND/OR RECONSIDER**

Plaintiffs-Petitioners,)

V.)

Greenville County Board of
Zoning Appeals,

Defendant-Respondent.)

On June 11, 2024, the Court issued an Order Affirming Final Decision and Order of the Greenville County Board of Zoning Appeals. The Court upheld the decision of the Greenville County Board of Zoning Appeals dated November 8, 2023, which in turn upheld the Zoning

Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance. The Court's rulings are summarized as follows:

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.

The Defendant-Respondent Greenville County Board of Zoning Appeals ("BZA") submits that the Motion to Alter/Amend and/or Reconsider has no merit and should be denied for both procedural and substantive reasons.

As a general comment, the Respondent submits that the Petitioners have not raised any issue relating to the proper interpretation of Section 3:2 that is new or was not already argued to this Court. In addition, the Court's Order has correctly addressed each of those issues, and further reconsideration is simply not warranted.

In particular, the Respondent points out that several of the Petitioners' statements of purported error are duplicative and repetitive. Specifically, the Petitioners take exception several times in Sections "D" through "H" of their motion that the Court found that "there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request." *See*, Order, p. 4. The Court further noted that "the Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests." *See*, Order, p. 4. In response, the Petitioners point to S.C. Code Ann. §§ 6-29-340(B)(2) and 6-

29-760. However, S.C. Code Ann. §§ 6-29-340(B)(2) merely describes the powers delegated to a local planning commission and includes no reference to citizen-initiated text amendment requests. As for the other statute, this Court has already ruled that “S.C. Code Ann. § 6-29-760 does not ... address citizen-initiated text amendment requests.” *See*, Order, p. 4. That ruling is absolutely correct. There is no mention of citizen-initiated text amendment requests in S.C. Code Ann. § 6-29-760. As further proof that that is a correct ruling, it should be noted that S.C. Code Ann. § 6-29-760 explains that there is only limited statutory standing even for zoning amendment requests, i.e., rezonings. In fact, S.C. Code Ann. § 6-29-760 limits standing to owners of adjoining properties and not to all citizens. *See*, S.C. Code Ann. § 6-29-760(B) (“[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment”). *See also*, *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337, 339 (2008) (“[b]ecause ATC is a nonadjoining landowner, it may not assert statutory standing”). Yet, even an adjoining property owner cannot initiate a rezoning of someone else’s property; he/she may only contest a rezoning. In short, this Court correctly ruled that “there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request.” That ruling should not be reconsidered.

Finally, the Court is reminded that the appeal from the BZA, as pled by the Petitioners, challenges only the Zoning Administrator’s interpretation of Section 3:2 of the Greenville County Zoning Ordinance – which presents purely a legal question for the Court to decide. Several of the Petitioners’ arguments in their current motion, however, appear to address the *merits* of the Petitioners’ citizen-initiated text amendment request. The merits of that request, however, were not appealed, and thus, are not properly before the Court at this time. It is well settled that “a party cannot use a Rule 59(e) motion to advance an issue the party could have

raised to the circuit court prior to judgment, but did not.” *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (2014). *See also, Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). Thus, to the extent that the Petitioners now ask this Court to address the merits of their proposed text amendment, those issues would be improperly raised for the first time by way of a Rule 59(e) motion. To reiterate, the issue before this Court is purely a procedural question – whether the Zoning Administrator’s interpretation of Section 3:2 is correct – and not the merits of the Petitioners’ citizen-initiated text amendment request.

Based on the procedural and substantive reasons discussed above, the Court is respectfully requested to deny the Petitioners’ Motion to Alter/Amend and/or Reconsider.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

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*Counsel for Defendant-Respondent
 Greenville County Board of Zoning Appeals*

June 26, 2024

GREENVILLE COUNTY BOARD OF ZONING APPEALS
PUBLIC HEARING

DOCKET #CB-2023-092

DATE: October 11, 2023

TRANSCRIBED AUDIO OF PUBLIC HEARING

KIRA L. FERGUSON
113 CHERRY PLUM WAY
PELZER, SOUTH CAROLINA 29669
864-356-4582
K.FERGUSONREPORTING@GMAIL.COM

1 **(27:22 - 1:07:45)**

2 THE COMMISSIONER:

3 All right. Next up is Case CB-2023-092, a Robert Childs
4 of Childs Law Firm, LLC for Altamont Road Safety
5 Alliance. Is the applicant present?

6 MR. CHILDS:

7 Yes, sir.

8 THE COMMISSIONER:

9 Okay, wonderful. And this case is the -- an appeal of
10 the zoning administrator's decision.

11 MR. CHILDS:

12 That's correct.

13 THE COMMISSIONER:

14 And on these cases, I don't think we call out -- well,
15 no, we have called out opposition in the past.

16 SPEAKER:

17 I think so yeah.

18 THE COMMISSIONER:

19 -- on theses. Yeah. So is there anybody with any
20 interest in this particular case? No? Hearing none and
21 seeing none?

22 SPEAKER:

23 (Unable to decipher)

24 THE COMMISSIONER:

25 Okay, well, neato. I have been handed a recusal notice

1 by Ms. Schuman. This is noted. Ms. Schuman, if you want
2 to step outside, go hang out for a minute or two. Okay,
3 we still have plenty of people. All right, are you Mr.
4 Childs?

5 MR. CHILDS:

6 I am.

7 THE COMMISSIONER:

8 Wonderful. And we don't have anybody in opposition or
9 questions this particular case, so let's go ahead and
10 get you sworn in.

11 MR. CHILDS:

12 All right.

13 (Duly sworn)

14 THE COMMISSIONER:

15 Wonderful. Have a seat. Staff, go ahead and --

16 MR. HENDERSON:

17 I also need to be sworn in.

18 (Duly sworn)

19 THE COMMISSIONER:

20 Do you want to go to the podium, Josh?

21 MR. HENDERSON:

22 I'm all right.

23 THE COMMISSIONER:

24 All right.

25 MR. HENDERSON:

1 I'm all right. This chair is comfortable. All right, go
2 ahead.

3 THE COMMISSIONER:

4 All right. So staff, give us the background on this.

5 MR. HENDERSON:

6 All right. Thank you, Mr. Chairman. Our next docket is
7 CB-2023-092. The applicant is Robert Childs of Childs
8 Law Firm, LLC, for Altamont Road Safety Alliance,
9 requesting to appeal the zoning administrator's
10 decision. Here's the section from which the zoning
11 ordinance outlined the provisions for an appeal for the
12 zoning administrator's determination. This is Section
13 352, the zoning ordinance, that is in your packets.
14 Next slide is the scope of the appeal. The applicant is
15 appealing the zoning administrator's interpretation of
16 section 323, initiation of amendments, where the zoning
17 administrator stated that interested citizens cannot
18 initiate a text amendment to the zoning ordinance.
19 Section three -- and I want to go through section 323
20 here on my next few slides. Section 323 states that
21 County Council, County Planning Commission, or the
22 Board of Zoning Appeals may initiate proposed changes
23 or amendments to the ordinance text. This section
24 strictly refers to text and not zoning map amendments.
25 Citizens can submit map amendments as outlined in this

1 section, but this subsection specifically limits the
2 initiation of text amendments to County Council, the
3 Planning Commission, or the Board of Zoning Appeals.
4 The second sentence in Section 323 goes on to say that
5 petitions for text changes or amendments by any
6 interested property owner or resident of Greenville
7 County must first be presented to the Public Service
8 Planning and Development, PSPD, Committee of County
9 Council. This committee was reformed by County Council
10 several years ago, and the council committee that
11 retained the zoning responsibility of PSPD is now known
12 as the Planning and Development Committee. The third
13 sentence of Section 323 states in the event County
14 Council recommends approval of the text change or
15 amendment for public hearing, the text change or
16 amendment shall be scheduled for public hearing and
17 considered for adoption. I interpret this provision of
18 the zoning ordinance to require County Council to act
19 to approve initiation of a petition for a text change
20 or amendment in order for it to receive a zoning docket
21 number and proceed to public hearing and go through the
22 regular zoning amendment adoption process. This
23 requires proposed text amendment to be procedurally
24 reported out of the Planning and Development Committee
25 and on to the whole County Council first consideration

1 and approval. All right, the next slide is section 324.
2 After County Council has approved the initiation of a
3 text amendment, Section 324 provides the layout for the
4 approval process. After staff has received a completed
5 application, the request is then placed on the agenda
6 for the next scheduled public hearing. Section 326,
7 after planning -- after a public hearing and first
8 reading by council, section 326 requires staff to
9 provide the Planning Commission with a recommendation
10 for any text or map amendment. The Planning Commission
11 then is required to make a recommendation concerning
12 the amendment to County Council. After a zoning
13 amendment has received a recommendation from the
14 Planning Commission, it then goes before the Planning
15 and Development Committee for the committee
16 recommendation to County Council concerning the zoning
17 change.

18 So in summation, therefore, it is my
19 interpretation, as the zoning administrator of
20 Greenville County, that a citizen petition for a zoning
21 text amendment must be approved for initiation by
22 Greenville County Council in compliance with Section
23 323 of the zoning ordinance. If approved for
24 initiation, the zoning text amendment is then given a
25 docket number and sent to a public hearing before

1 consideration by staff, the Planning Commission, and
2 County Council.

3 So these next few slides here are a couple of
4 examples. So these -- this is for a text amendment that
5 went before the Planning and Development Committee on
6 May 1st, 2023. This was for changes to the BTB
7 district. As you can see, there's no docket number or
8 anything associated with this because it had not
9 received a docket number yet, because we're in that
10 first stage of requesting the Planning and Development
11 Committee the ability to initiate this text amendment.
12 The next slide is another example. This is a text
13 amendment staff requested of the Planning and
14 Development Committee in February of 2023 to initiate
15 for the Scuffletown Rural Conservation District. Same
16 thing, no docket number because this was the initiation
17 request. And then the last one here's an example of the
18 -- actually, there's two more. Example of text
19 amendment staff requested of the Planning and
20 Development Committee in March 2023 to initiate for the
21 commercial vehicle regulations. And then the last one,
22 an example of the text amendment requesting Planning
23 and Development Committee in May of 2023 to initiate
24 the swimming pool changes that you, as a board,
25 provided. This was -- this one was a little bit

1 different. First examples I gave you, staff went to the
2 Planning and Development Committee, asked the Planning
3 and Development Committee if they would allow staff to
4 initiate this text amendment. In this scenario, staff
5 would before the Planning and Development Committee
6 stating that the Board of Zoning Appeals asked them to
7 initiate a text amendment. So it was same process,
8 little different procedure there on the two.

9 So while it does go through the rezoning process
10 before a text amendment gets to a public hearing, at
11 that point, it has already gone to the Planning and
12 Development Committee. They have blessed it, allowed it
13 to go to full council. Council has blessed it and
14 allowed it to move forward into the public hearing and
15 receive a docket number and go through that rezoning
16 process. I'll be happy to answer any questions.

17 THE COMMISSIONER:

18 I'm sure we will have plenty of this unfolds.

19 MR. HENDERSON:

20 I understand.

21 THE COMMISSIONER:

22 So the process, fairly, fairly murky or fairly clear?

23 We've heard it a bunch. I mean, it seems like it's been
24 consistent. The process has been consistent.

25 MR. HENDERSON:

1 That's correct. Since my time as zoning administrator,
2 it has been consistent, yes, sir.

3 THE COMMISSIONER:

4 All right. Anybody have questions for staff before we
5 move to the applicant? Yeah, Mr. Roth, go ahead.

6 BOARD MEMBER:

7 Yeah, Josh, I guess -- I'm guessing, so in the event
8 that someone from County Council wanted to initiate an
9 amendment or a text amendment, it would go through this
10 same process.

11 MR. HENDERSON:

12 That's correct.

13 BOARD MEMBER:

14 They would submit a memorandum, or ask you to draft
15 one, to submit to the committee.

16 MR. HENDERSON:

17 That's correct. They could ask staff, staff would be
18 happy to help that -- you know, help them out and do
19 that. Or they could request it at County Council, at
20 their regular scheduled County Council meeting, during
21 one of the sections on their agenda where they have
22 ability to do that. And then it just falls to the
23 Chairman of the Planning and Development Committee
24 whether or not it's to be taken up on the floor.

25 BOARD MEMBER:

1 And the chairman specifically sets that agenda for the
2 P and D, the committee chair?

3 MR. HENDERSON:

4 Technically, yes. We draft up the agenda with the
5 upcoming rezoning cases and any items that are going on
6 there provided to him, for him or her to, you know,
7 say, yes, this is the agenda we're moving forward with.

8 BOARD MEMBER:

9 Okay.

10 THE COMMISSIONER:

11 Any additional questions? All right, Mr. Childs.

12 MR. CHILDS:

13 Yes, sir. A couple of things I want to clarify that I
14 heard. Initially, I want to thank Mr. Henderson for
15 actually recognizing that citizens actually can
16 petition for text amendment. That was something that
17 was in question earlier through this process, and I
18 think that's a good decision, and we're not --
19 certainly not dealing the fact that citizens get
20 petitions protect. What we're concerned about is the
21 allegation that citizens have to go to the Planning and
22 Development Committee first, because this has already
23 happened in a similar text to them. Councilman Shaw, we
24 introduced concerning the Altamont Road Safety Alliance
25 concerned their issues about Altamont Road from the

1 Paris Mountain Environmentally Sensitive District, and
2 that Councilman Shaw introduced an ordinance to amend
3 the text amendment, pretty much like we have, and that
4 got referred to the Planning and Development Committee.
5 It did nothing. It's never been published. It's never
6 been put on an agenda. Basically that was back in
7 December. Hasn't occurred since, even though there's
8 actually a [unable to decipher] and council ruled that
9 require the -- that all zoning matters, that the
10 Planning and Development Committee must be reported to
11 full council in a reasonably timely manner, in a timely
12 manner. So that's a problem with sending these to the P
13 and D committee. But that's not the only problem.

14 The main problem is that it's contrary to statute.
15 Six nine -- 629-760, is our main statute as it
16 addresses what state law requires. I'm going to read
17 some of it, but not most of it. Now, if you want to
18 look at my agenda packet, it's in the record there.
19 There are those citations for all the statutes and also
20 for the ordinances that address this issue, also about
21 the datedness of this section that they're cited that
22 directs it to the Planning and Development Committee.
23 It actually says the Public Service Planning and
24 Development Committee, and that tells you how old that
25 provision is. The state law, as you're aware, under the

1 Comprehensive Planning Act, provides how text
2 amendments are done, and they're done just like zoning,
3 just like a rezoning map amendment. As a matter of
4 fact, the statute is just the same for both. It
5 includes both. It says before enacting or amending any
6 zoning regulation or map, and so amending any zoning
7 regulation, that's the first language in there, the
8 governing authority, the Planning Commission, if
9 authorized by the governing authority, shall hold a
10 public hearing on it, doesn't say it goes to a
11 committee first, which must be advertised and conducted
12 according to lawfully prescribed procedures. If no
13 established procedures exist, then at least 15 days
14 notice of the time and place of the public hearing must
15 be given in a newspaper of general circulation in
16 municipality or county. And I'm going to skip over a
17 section that talks about rezoning, because we're not
18 here about that. The next section of that statute says
19 no change or departure from text or maps as recommended
20 by the local Planning Commission may be made pursuant
21 to the hearing, unless the change or departure be first
22 submitted to the Planning Commission for review and
23 recommendation. Says also, the Planning Commission
24 shall have a time prescribed in the ordinance, which
25 may not be more than 30 days within which to submit its

1 report and recommendations on the change to the
2 governing authority. If the Planning Commission fails
3 to submit a report within the prescribed time period,
4 in this case it's 30 days, it is deemed to have
5 approved the change or departure. When the required
6 public hearing is held by the Planning Commission, no
7 public hearing by the governing authority is required
8 before amending the zoning ordinance text or maps. So
9 state law lays out the exact same procedures for a map
10 amendment as a text amendment. It's pretty clear. It
11 requires a text amendment must be first submitted to
12 the Planning Commission, not a Planning and Development
13 Committee. That's the plain language of the statute.

14 But in addition to that, you should also look at
15 the other provisions of the statute that -- and the
16 ordinances of Greenville County, because the process
17 has been used for numerous text amendments before, and
18 I've got that submitted in our submissions. We've got a
19 zoning docket that shows that text amendments have gone
20 that way. They've gone from public hearing, first
21 reading, Planning Commission recommendation, Planning
22 and Development Committee second reading and third
23 reading. So on one hand, the opinion says it has to go
24 to the Planning and Development Committee first, but it
25 also -- the ordinance is required to go to Planning and

1 Development Committee after the Planning Commission
2 recommendation. So you really shouldn't be having to go
3 to the Planning and Development Committee twice on the
4 same subject, but that's what the interpretation by the
5 administrator would require.

6 But also, as cited by the administrator, there's
7 other ordinance sections, 2:1, it says the Planning
8 Commission action review and recommended capacity only
9 in the following manner: A, comprehensive plan
10 amendments; B, zoning text amendments; C, zoning map
11 amendments; and D, major PD changes to concept plans
12 and statement of intent. So clearly, the Planning
13 Commission has authority over a text amendment, just
14 like they do over a zoning map amendment. And matter of
15 fact, it's actually quoted by the ordinance, it --
16 first is B, zoning map amendments are C under the
17 ordinance. And so that's -- that's section three at
18 2.2.1.

19 Also there's section 3:2 of the zoning ordinance
20 which states the regulations, restrictions, and
21 boundaries set forth in the zoning ordinance may from
22 time to time be amended, supplemented, changed, or
23 appealed by county -- by the County Council. Prior to
24 final action by County Council, under this article, the
25 Planning Commission shall review the amendment and

1 offer any comments or recommendations as appropriate.
2 All action taken under this article should have been
3 done in accordance with procedures outlined below. It
4 doesn't state anything about the matter being referred
5 to the Planning and Development Commission -- Committee
6 first.

7 The next thing is also 3:2.1 which says basically
8 an application for any change or amendment to the text
9 or map of the ordinance shall contain a description or
10 statement of the present and proposed zoning regulation
11 or district boundary to be changed in the names and
12 addresses of the owners of the property. Same way map
13 amendments. This is applicable to map amendments, but
14 it also refers to text amendments. It said such
15 application shall be filed with the Greenville County
16 Planning Commission staff in accordance with the
17 published schedule of rezoning deadline and meeting
18 dates. That's important. In order for an application be
19 processed by the Planning Commission staff, all
20 required information and forms must be completed.
21 Planning Commission staff may return any incomplete
22 forms of the applicant. So that's important that this
23 ordinance, this particular provision, 3:2.1 talks about
24 the application for the amendment to the text or the
25 map of the ordinance, and it requires it to follow the

1 published schedule of rezoning deadlines and meeting
2 dates. And as y'all know, that does not involve --
3 there's no public schedule that says Planning and
4 Development Committee hears anything in advance of the
5 Planning Commission or in advance of the public
6 hearing. If you look at the calendar, which we're
7 familiar with, the zoning calendar, it should answer
8 your questions about that. So that particular provision
9 specifically says text amendments follow the same
10 published schedule as rezoning matters.

11 In addition to that, so you've got the zoning
12 calendar, there's also the zoning brochure, which also
13 follows the same process. And also you have 3:2.4 of
14 the zoning ordinance, which says, upon receipt of a
15 completed application from the Planning Commission
16 staff, that's where we submitted our application, for
17 an amendment to the zoning ordinance text or map, the
18 request shall be placed on the agenda for the next
19 scheduled public hearing. No amendment to the zoning
20 ordinance, text or map, shall be eligible for reading
21 by County Council until after a public notice and
22 hearing by County Council. The planning department
23 shall present the facts regarding the request for the
24 amendment at the public hearing. This presentation
25 shall be made part of the hearing record. That's

1 another example in this case. Our application was July
2 6th. The next public hearing was August 14th. The next
3 P and D committee would have been July 17th. That's
4 where they attempted to send us, the public -- the
5 Planning and Development Committee.

6 But I want you to also look at 3:2.6, another
7 section of the ordinance, which says action by planning
8 staff and Planning Commission. The planning staff
9 shall, upon receive a request for an amendment of the
10 zoning ordinance text or map review and make
11 recommendations to the Planning Commission concerning
12 the request. The Planning Commission shall have 30 days
13 in which to support its report and its recommendation
14 to County Council, and it says a little bit of other
15 language, but those apply to text and map provision. So
16 again, Planning Commission first after public hearing.

17 So there's also another provision in 3:2.7 which
18 says action by County Council. The Planning and
19 Development Committee, you'll note that that is not
20 called the Public Service Planning and Development
21 Committee in this section like it is in the ordinance
22 that was quoted earlier, shall consider information
23 presented at the public hearing and the staff review
24 and recommendation received from the County --
25 Greenville County Planning Commission before making a

1 recommendation to County Council. So what that's saying
2 is the Planning and Development Committee considers the
3 information already presented at the public hearing
4 before it makes a recommendation to County Council. It
5 can't do that if it goes to them first. And it says in
6 its recommendation, the Planning Commission may request
7 an additional comment session. The Planning and
8 Development Committee may return the zoning docket,
9 return the zoning docket, to the Planning Commission
10 and require additional public comment. And there's some
11 other language there, but that clearly puts text
12 amendments in the same process as reasonable requests.
13 It also says that the County Council may reject the
14 recommendation of the Planning Commission by favorable
15 vote of two thirds of the members of council. And that
16 also applies to text amendments as well. There's also a
17 table of application fees that applies, \$100
18 application fee for text amendment. I don't think the
19 County Council or, you know, planning staff are going
20 to be paying \$100 application fee. That applies to
21 persons applying for text amendments themselves, or
22 committees or a whole neighborhood in this case.

23 So there's seven ordinance references in there.
24 There's the state law, and the county relies upon one
25 solitary provision that you need to read the entire

1 section of, it's 3:2.3, which first states, County
2 Council, County Planning Commission, or Board of Zoning
3 Appeals may initiate post changes or amendments to the
4 to the ordinance text. It doesn't say anything about
5 citizen text amendments in that first sentence. Second
6 sentence, it says petitions for text changes or
7 amendments by any interested property owner or resident
8 must first be submitted to the Public Service Planning
9 and Development Committee of County Council. Now, it
10 doesn't describe the requirement that the public
11 hearing be held first, that Planning Commission have to
12 review it first. If you look further, it says that in
13 the event County Council recommends approval of the
14 text amendment or amendment for public hearing, the
15 text change or amendment shall be scheduled for public
16 hearing and considered for adoption. I think I misread
17 that, but let me say this --

18 THE COMMISSIONER:

19 Well, let me -- let me stop you right there --

20 MR. CHILDS:

21 Yeah.

22 THE COMMISSIONER:

23 -- Mr. Childs, because you -- I'm afraid you will talk
24 all night if I let you keep going.

25 MR. CHILDS:

1 No, I'm getting close to the end, but you got to
2 understand a different version. But let me try to cut
3 this a little shorter for you. This section that
4 they're referring to is also -- is a section that has
5 initiative and referendum provisions for zoning, and
6 also a petition method of zoning. And it is from an
7 older version of previously adopted ordinance. And let
8 me make you aware, Town of -- I'on versus Town of Mt.
9 Pleasant made that unconstitutional. It did so in 2000.
10 And when the Supreme Court invalidated zoning by
11 referendum, for some reason that's still in the
12 ordinance, I don't know why, but that was what that
13 section is talking about, zoning by referendum and
14 zoning by petition. There's lengthy sections below
15 that, so take a look at that section.

16 But what the Supreme Court said, they cited exactly
17 the provision I'm talking about, which is 629-760 in
18 that case, and it said the local Planning Commission or
19 governing body must hold a public hearing before
20 enacting or amending zoning regulations, and must
21 follow detailed procedures in conducting that hearing.
22 So there's the numerous -- there's a state law that
23 governs, there's several provisions of the zoning
24 ordinance that governs, but the prior version, the --
25 this version of the ordinance is -- was adopted in

1 April of 2008, I think, and these other ordinance
2 sections were amended in August the 21st of 2012. So
3 the latest expression of legislative intent also
4 prevails over conflicting provisions. So I'll tell you
5 that there's a case about it, how that's addressed, but
6 if you've got two ordinance provisions that conflict,
7 the most recent expression by the legislature, or the
8 County Council prevails over that conflict. And the
9 most latest expression is the ones that provide for the
10 public hearing first, for the Planning Commission, and
11 so on, and not to the B and D -- P and D Committee
12 first. And again, that section is so old, it calls it
13 the Public Works Planning and Development Committee.

14 So that's the conflict, and that ordinance
15 provision also conflicts with state law. If it
16 conflicts with state law, then state law prevails and
17 that provision is invalid. So I know it's a lengthy
18 talk -- lengthy discussion about it. We briefed it in
19 our submissions, but there's numerous provisions that
20 uphold our authority to go through the regular process,
21 but -- that everybody follows. I think your question
22 earlier was really good about what happens with text
23 amendments proposed by county councilman, they go
24 nowhere if they're not -- if there's not the political
25 will. The idea behind what we have today is anybody

1 should be able to come forward and ask for a rezoning
2 request. Nobody's going to refuse you. You're going to
3 get a public hearing on that, and you know, people are
4 going to come out and either oppose it or favor it, and
5 that's the -- that's the beauty of zoning. It creates a
6 broad spectrum of input. And the same thing applies to
7 text amendments, and there's no reason or distinction
8 between the two and state law. And really there's only
9 one distinction between the two and an older version of
10 the ordinance that refers back to zoning by initiative
11 and referendum, which is also unlawful at this stage.

12 And so I would ask you to overturn the decision of
13 the zoning administrator and let us go the normal
14 process.

15 THE COMMISSIONER:

16 Thank you. Okay, so where do we go from here? As a
17 board, we have a couple of decisions to make. We either
18 stay the interpretation that Josh has presented to us
19 initially, or we try to tackle the true issue at hand,
20 which sounds like there might be some ordinances that
21 are in conflict with state law, according to the
22 applicant or the appellant. What's the legal term for -

23 -

24 SPEAKER:

25 Mr. Childs. And -- we'll use that.

1 THE COMMISSIONER:

2 So I'm going to -- I'm going to try to -- I'm going to
3 try to ask a couple questions, and hopefully the board
4 will fall in behind me and help navigate this, because
5 this is definitely a unique beast, and I don't think we
6 as a Board have had one of these ever. Well, at least
7 not in my almost six years of being on the board.

8 Normally, as people come up and they want to argue a
9 definition of something. And so this one, this one's
10 going to be a little bit tricky. Obviously, if we -- if
11 we stay your interpretation, the citizens are going to
12 whatever they're -- whatever they're trying to get
13 passed or approved or changed is going to be cut off
14 unless they take some other legal course of action.

15 MR. HENDERSON:

16 That's depending on whether or not County Council or
17 Planning and Development Committee would like to bring
18 that to the floor.

19 THE COMMISSIONER:

20 Yeah. On the other hand, we could go against your
21 interpretation, and that would open up avenues for
22 anybody that has a hundred-dollar bill and wants a tax
23 -- or a text amendment gets in front of the council.

24 MR. HENDERSON:

25 That's correct.

1 THE COMMISSIONER:

2 So --

3 MR. CHILDS:

4 Anybody that wants to rezone gets in front of council.

5 THE COMMISSIONER:

6 Is that true?

7 MR. HENDERSON:

8 That is true. But the difference between that is that
9 the rezoning is only affecting that one parcel. It's
10 only affecting that one specific property owner. A text
11 amendment would be changing the ordinance and affecting
12 all properties, making properties, existing properties
13 non conforming, and could be making, you know, some
14 other -- some other issues. So that's -- that's why the
15 process has always been to allow, since I've been here,
16 and this is explained to me, to allow these good to go
17 to the Planning and Development Committee first. And at
18 that point, if the -- if County Council and that group,
19 that committee wants to allow that text amendment to go
20 through and to go to a public hearing, and not -- not
21 to be adopted, not to be approved, but allow it to go
22 through for public hearing and discussion, that that
23 takes place. And there's been times that we have taken
24 proposed text amendments to the Planning and
25 Development Committee and we were denied. We weren't

1 allowed to move forward, and they stopped right there.

2 There have been times where other council members,
3 not the -- not the instance Mr. Childs has referenced,
4 but another situation that was brought up, and it
5 didn't go beyond Planning and Development Committee. So
6 there -- there are instances where both council, staff
7 have brought those to that committee, and that
8 committee has said, no, we would -- we do not want this
9 to move forward. And that's where it ends.

10 BOARD MEMBER:

11 Purview of the chairman to schedule and not schedule
12 the --

13 MR. HENDERSON:

14 That's correct. That is correct.

15 BOARD MEMBER:

16 I have a couple --

17 THE COMMISSIONER:

18 Yeah, Mr. Roth, go ahead.

19 BOARD MEMBER:

20 I appreciate your testimony. I guess I have a -- based
21 off what I heard, it almost sounds like the method of
22 which going through a rezone is also conflicting with
23 state law, or did I -- did I hear that incorrectly?

24 MR. CHILDS:

25 Yeah, that's not correct. Rezoning is -- the process

1 Greenville County uses doesn't conflict with state law
2 because it goes, public hearing, Planning Commission.
3 It's got a process as laid out, you know, in our
4 ordinance, and also state law. State law says you got
5 to go to the Planning Commission. You got to have a
6 public hearing first. That's what it says. State law
7 doesn't recognize zoning committee meeting. All
8 rezoning requests go that way. Our contention is that
9 the text amendment goes the same way as a rezoning
10 request. I mean, I can ask for rezone a residential
11 property, I want industrial and, you know, that's about
12 as ludicrous as you can imagine, but I still get to go
13 up there and get a public hearing. And so you know the
14 same comes true with what -- what you're wanting to get
15 to do is get a cross section of the community to
16 provide input to council, Planning Commission, you
17 know, staff and everybody else about what zoning is
18 doing for them, not doing for them, what needs to be
19 fixed or what [unable to decipher]. And so text
20 amendments aren't anymore dangerous than rezoning
21 request out of a residential district to an industrial.
22 I mean, there's no difference.

23 BOARD MEMBER:

24 So I was looking back at one of the South Carolina
25 codes you mentioned, I guess, 629-760, and it says the

1 governing authority for the Planning Commission, if
2 authorized by the governing authority. So who would be
3 the governing authority in your position?

4 MR. CHILDS:

5 County Council authorized the Planning Commission.
6 That's who the -- basically holds the public meeting on
7 rezoning.

8 MR. HENDERSON:

9 County Council holds the public hearing for rezoning
10 requests.

11 MR. CHILDS:

12 Right. They're held in advance of the Planning
13 Commission.

14 BOARD MEMBER:

15 Right, the Planning Commission. Right.

16 THE COMMISSIONER:

17 We got Godfrey, and then Barber. Go ahead.

18 BOARD MEMBER:

19 Just a point of clarification. I noticed Mr. Childs has
20 prepared a lot of information drawing from the state
21 codes. But we have no authority, obviously, over the
22 state codes, nor actually the zoning code as it stands.
23 So if there's conflict, that resolution has to be
24 outside of this body. Is that correct, Mr. Henderson?

25 MR. HENDERSON:

1 Let me make sure I --

2 BOARD MEMBER:

3 Conflict with state law --

4 THE COMMISSIONER:

5 Correct.

6 MR. HENDERSON:

7 Correct, yes.

8 BOARD MEMBER:

9 [Unable to decipher].

10 MR. HENDERSON:

11 Correct. And I have -- I have and our legal staff has
12 reviewed all of the items that you have also received.
13 They've reviewed it as well. They do not see any
14 conflict with the state law. They believe, and have
15 instructed me that we are following the Planning
16 Enabling Act.

17 BOARD MEMBER:

18 So just narrowing down. And I know there's a lot of
19 material Mr. Childs prepared, but narrowing down, we're
20 really talking about the procedure and did our staff
21 follow the correct procedure as in -- as in our zoning
22 --

23 MR. HENDERSON:

24 That's correct.

25 BOARD MEMBER:

1 -- the text amendments.

2 MR. HENDERSON:

3 Yes, ma'am.

4 BOARD MEMBER:

5 Really focused, I think on --

6 THE COMMISSIONER:

7 On the --

8 MR. CHILDS:

9 I would disagree with that to the point that the zoning
10 board enforces a lot of state laws, and state law
11 clearly has a uniform approach to text amendment and
12 these other requests. And this particular section that
13 the administrator's citing conflicts with the other six
14 odd sections I can play to you. So your job is to
15 determine what's the legislative intent of council. I
16 think the ordinance -- the statute, if you don't think
17 you can interpret the statute, the statute provides
18 some guidance because it's what council considers when
19 it enacts the ordinance. That's to comply with state
20 law.

21 THE COMMISSIONER:

22 All right. Ms. Barber, you had a question.

23 BOARD MEMBER:

24 Not necessarily [unable to decipher] regardless of the
25 fact whether it is a zoning text amendment or a zoning

1 change or request for a zoning change, everything has
2 to go, as I understand it, to Planning and Development
3 Committee first, despite the ordinance that we propose
4 to change to. When they're first, they approved to have
5 a docket, so it's no different.

6 SPEAKER:

7 I'm sorry, I can't hear you.

8 THE COMMISSIONER:

9 Mr. Shaw, don't worry, I'll talk plenty loud. All
10 right, Josh, can you bring up -- Because I think in my
11 manual, I actually might even have an older copy of the
12 ordinance. Can you bring up the -- that section 3:2.3
13 again?

14 MR. HENDERSON:

15 Yes.

16 THE COMMISSIONER:

17 Initiation of amendments.

18 MR. CHILDS:

19 That's just the first paragraph. That's not --

20 THE COMMISSIONER:

21 No, I just want that opening paragraph. In rereading
22 this and hearing testimony, I mean that first -- that
23 first sentence is, my -- must -- my book must be old
24 because it doesn't match exactly what that says. Josh,
25 scroll it so you highlight the second sentence. I mean

1 that statement -- in essence, what we're here to
2 determine is, did you interpret that sentence
3 correctly.

4 MR. HENDERSON:

5 Correct.

6 THE COMMISSIONER:

7 And in my mind, my fellow board members might not share
8 my opinion, but it is very clear, very clear, what that
9 is requiring, where a text amendment proposal goes to
10 first, how the process starts. I hear this case, and I
11 understand the need and the desire to -- for the
12 appeal, but I don't know that we as a board with the
13 language that is there -- I mean, we can't change the
14 ordinance. That's not what this board does. We can
15 change an interpretation if there's some gray room
16 there. And, I mean, my fellow board members, tell me,
17 are you seeing where the -- where we have wiggle room
18 in this one? Ms. Barber, please comment.

19 BOARD MEMBER:

20 Mr. Chairman, I do not see wiggle room. As I stated
21 before, it's very clear in the ordinance the process to
22 be followed. However, rezoning or zoning a larger group
23 of properties goes through a total separate process,
24 but amendments to the zoning ordinance follows this
25 specific --

1 THE COMMISSIONER:

2 Yes. Mr. Roff, go ahead.

3 BOARD MEMBER:

4 And I'd like to follow up on that. I mean, the next
5 paragraph in Section 323 is proposed changes or
6 amendments to the zoning district map may be initiated
7 by County Council, County Planning Commission, Board of
8 Zoning Appeals, or petitioned by an interested party --
9 interested property owner with a property interest in
10 the parcel of property being petitioned for a map
11 change. And so I agree. I think it's pretty clear that,
12 again, in what Ms. Godfrey mentioned earlier, whether
13 that conflicts with state law, I don't think that's in
14 our --

15 THE COMMISSIONER:

16 Not on us.

17 BOARD MEMBER:

18 -- purview at all.

19 THE COMMISSIONER:

20 It's not on us.

21 BOARD MEMBER:

22 I think we're meant to read the document that we have
23 before us, the current ordinance, and make a decision
24 based on that.

25 THE COMMISSIONER:

1 Okay. Anybody else? Anybody else have additional
2 questions for staff or the applicant? Okay. Somebody
3 want to throw something out there? So these -- these
4 are -- these are tricky. These are tricky ones because
5 we don't get these very often. So we're going -- we're
6 going to bumble through this a little bit. Josh, remind
7 me, our options on this one are to uphold your
8 interpretation --

9 MR. HENDERSON:

10 I think Ms. Barber --

11 THE COMMISSIONER:

12 Oh, jump on it. Ms. Barber, proceed.

13 BOARD MEMBER:

14 In the case of CB-2023-092, Robert Childs of Childs Law
15 Firm, for Altamont Road Safety Alliance, appeal of the
16 zoning administrator's decision, we've heard lots of
17 testimony today about this situation, and I move that
18 we uphold the zoning administrator's decision, that he
19 is correct in his interpretation.

20 THE COMMISSIONER:

21 So we have a motion, motion to uphold. Do they need to
22 -- for the record, Josh, does the motion maker need to
23 state any additional -- or is it just --

24 MR. HENDERSON:

25 I don't think we have -- the motion's that --

1 THE COMMISSIONER:

2 Any requirements?

3 MR. HENDERSON:

4 -- have happened in the past -- no.

5 THE COMMISSIONER:

6 Okay. All right. So we got a motion to uphold the
7 decision of the zoning administrator, or interpretation
8 of the zoning administrator. Do I have a second? Was
9 that Ms. Godfrey on the second? All right, so
10 discussion on the motion. This -- this one -- this
11 one's a tricky one. So, we as a board, we've initiated
12 text amendments before, and it's a long process, and it
13 takes a minute. I know there -- if you -- you're
14 obviously representing some citizens out there, Mr.
15 Childs, and depending on how this vote goes, it's
16 probably going to be disappointing to y'all. But that's
17 not the end of it. You know, these citizens do have --
18 do have alternatives to try to get their matter in
19 front of County Council. Obviously, you know, they get
20 back -- they try to get back in front of Planning
21 Commission to get -- get a little bit of teeth into it.
22 You know, it's unfortunate that every time they do that
23 they have to drop \$100 to try to make something happen.
24 But --

25 SPEAKER:

1 [Unable to decipher]

2 MR. HENDERSON:

3 The hundred dollars was returned. Yes, sir.

4 THE COMMISSIONER:

5 But here at this board, at this level, I think there's
6 a -- you know, that the language in the -- in the
7 ordinance is -- is fairly, fairly tight from our
8 perspective. So before we take the vote, any other
9 comments? Hearing none, all those in favor of -- with
10 upholding the zoning administrator's interpretation;
11 show of hands. Six-zero, the motion carries. I wish you
12 guys the best of luck in getting --

13 MR. CHILDS:

14 Thank you for your time and --

15 THE COMMISSIONER:

16 -- this in front of council.

17 MR. CHILDS:

18 Thank you.

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF GREENVILLE) CASE NO. 2023-CP-23-06416

April 9, 2024

BEFORE: The Honorable Judge Patrick C. Fant, III

Altamont Road Safety Alliance, et al.,

Plaintiffs,

VS.

Greenville County Board of Zoning Appeals,

Defendants.

APPEARANCES :

Robert Childs, Esq.
Attorney for Plaintiffs.

Andrew Lindemann, Esq.
Attorney for the Defendants.

Official Court Reporter/Transcriber
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: Let's see the next case is Altamont
7 Road versus Board of Zoning Appeals, Greenville,
8 2023-CP-23-06416. Mr. Childs, Mr. Lindemann, there you are,
9 it's been quite a while since I've seen both of y'all.

10 All right. I'll be right back. Okay.

11 (WHEREUPON, a brief pause held.)

12 THE COURT: Okay. Mr. Childs, I guess we're here
13 on your appeal?

14 MR. CHILDS: Yes, sir.

15 THE COURT: On the decision of the Greenville
16 County Board of Zoning Appeals. I have, I would not say
17 I've thoroughly digested, but I have had a chance to look at
18 both of your well-written briefs and I know that there is a,
19 I guess, a limited scope of review for the circuit court,
20 but I look forward to hearing both of your arguments and if
21 you wish to proceed.

22 MR. CHILDS: Thank you, Your Honor.

23 Basically, this is an appeal by the -- most people
24 that live on Altamont Road here in Paris Mountain had filed
25 an application for text amendment to the Greenville County

1 Planning Department. They wanted to amend the
2 environmentally sensitive Paris Mountain District
3 definitions of access to Altamont Road. In particular, they
4 wanted to limit access that was concerning them based upon a
5 recent planned expansion of the Paris Mountain State Park
6 and they were concerned about additional traffic and traffic
7 flow on Altamont. It really doesn't matter what their
8 intentions were or what the text amendment was what matters
9 is what happened to that application.

10 And so, once they've applied for that text
11 amendment, they were informed that their text amendment was
12 going before the Planning and Development Committee of
13 Greenville County Council first. And, so, I said, Well,
14 wait a minute, that doesn't sound proper within what zoning
15 requires, and they said, Yes, it is, that's the way our
16 ordinance in one section says to do it and I said, Well
17 that's not right, so we appealed that to the Board of Zoning
18 Appeals and the Board of Zoning Appeals said that the Zoning
19 Administrator was correct. And so we're here today,
20 basically, on that issue.

21 Now, there's -- this case involves interpretation
22 of S.C. Code 6-29-760 and four sections of the Greenville
23 County Zoning Ordinance in our favor and the published
24 schedule of rezoning requests in our favor versus an
25 antiquated section of the zoning ordinance that references a

1 committee that has been extinct for 12 years.

2 As you are aware the issues involved in the
3 construction of ordinances or reviewed as a matter of law
4 under a broader standard of review and applied and reviewed
5 at issues of facts this is primarily a law issue here. The
6 cardinal rules of statutory interpretation both legislative
7 wise and also County Council wise is to ascertain and
8 effectuate the legislative intent whenever possible.

9 And the preeminent case on this I'ON versus Town
10 of Mount Pleasant, which is a 2000 case, obviously with the
11 Town of Mount Pleasant. And that was a case where the court
12 talked about the initiative and referendum process of the
13 Town of Mount Pleasant. What is good -- what's favorable
14 about that case is it talks about the detailed nature of
15 zoning and the legislative intent and the zoning matters
16 must be decided only in the manner specified by what most of
17 us call the Comprehensive Planning Act of 1994.

18 The court in I'ON said that the legislator did not
19 intend to allow voters to enact more complex zoning measures
20 by initiative of referendum and they said the court -- said
21 there, The comprehensive detailed nature of the
22 Comprehensive Planning Act Provisions reveals our
23 legislature's intent that zoning decisions should be made by
24 a cross section of unbiased officials after careful
25 consideration.

1 Whether the zoning decisions involved the
2 development of overall zoning system or a master plan or an
3 application of established rules in a particular case, the
4 Comprehensive Planning Act is designed to allow ample
5 planning and ensure due process for all interested parties.
6 That is our primary objection to the County's interpretation
7 of that section, which is 3:2.

8 I believe we've all cited in both our briefs the
9 sections of the county ordinances, but if you look further
10 at 3:2, that's also a referendum initiation of zoning by
11 referendum. And the second half of that section, which is
12 interesting because the count -- the State and the Town
13 I'ON, the court said, You can't have zoning by referendum,
14 but we're not contesting in the second half of that
15 ordinance. We are contesting the first half of that
16 ordinance that says essentially that this -- the planning --
17 it's not the Planning and Development Committee, it's
18 another committee entirely, it's called The Public Service
19 Planning and Development Committee has to review text
20 amendments first.

21 So, what that particular provision says to us is
22 that County Council, County Planning Commission, Board of
23 Zoning Appeals may initiate proposed changes or amendments
24 to the zoning text. Petitions for text changes or
25 amendments about any interested property owner or resident

1 must first be presented to Public Service Planning and
2 Development Committee of County Council.

3 THE COURT: Mr. Childs, you're referencing 3:2.3?

4 MR. CHILDS: Yes, sir. I believe so.

5 THE COURT: All right. Sorry for interrupting.

6 MR. CHILDS: That's all right, and I'll make sure
7 that I got that correct for you.

8 THE COURT: Got a lot of numbers and a lot of
9 colons.

10 MR. CHILDS: Yes, sir, it does. It is 3:2.3.

11 And so, like I said, that commission committee
12 hasn't been around for 12 years as far as I can tell.

13 So when the citizens came together they had also
14 read the zoning ordinance with me and their attorney and
15 they were aware of what the provision said and basically
16 there are four -- five sections, basically, that talks about
17 text amendments. First of all, it says, the Greenville
18 County Council, that's in Section 2:1:2.2, says Greenville
19 County Council is the final decision making authority on the
20 following matters, and that includes zoning text amendments
21 in that section 2:1.2.

22 And so we feel like the reference of the text
23 amendment to the nonexistent committee did not allow
24 Greenville County Council to make a decision on anything or
25 would not if they turned it down. And there's a history

1 there that we talk about in our brief, Council errors shall
2 not introduce an ordinance that basically would do the same
3 thing, a text amendment, they went to the Planning and
4 Development Committee and no one's seen it since. That's
5 also contrary to what legislature's intent was an acting
6 zoning. Their idea is, you apply for a zoning either a text
7 amendments or map changes are all the same under state
8 legislature statutes.

9 And so you apply for it, it is read first by
10 County Council, then it goes to the Planning Commission,
11 then it goes to Planning and Development Committee, third in
12 line, according to the normal rezoning process, and then the
13 Planning and Development Committee recommends to Council at
14 second reading whether adopted or denied or modified. And
15 so that's the process that we expected rather than another
16 process.

17 So, also, the planning commission, Section 2:2.1,
18 The Planning Commission acts and they review and recommend a
19 capacity on the following matters, again, zone and text
20 amendments in this respect by sending it to a Committee of
21 County Council, not only there are breaching the I'ON
22 decision and not submitting the text amendment requests to a
23 broad spectrum of officials, as the legislature intended,
24 they're sending it to committee that's already basically
25 took no action on a previous text amendment and didn't show

1 any intention or any like that they would do.

2 So the review by the Planning Commission is
3 critical to any text amendment and according to state law.
4 And so that's contrary to what the County interpreted we had
5 to do in this case. Section 3:2 is also entitled, Zoning
6 Ordinance Text and Map Amendments. And it says that the
7 regulations, restrictions, and boundaries set forth in the
8 zoning ordinance may from time to time be amended,
9 supplemented, changed, or appealed by County Council. The
10 final action by County Council under this article. The
11 Planning Commission shall review the amendment and offer any
12 comments or recommendations as appropriate.

13 So you have your public hearing, you have your
14 Planning Commission, you have a Committee, the whole idea is
15 a broad spectrum of the community should review any text
16 amendments or any rezoning requests what we call map
17 amendments.

18 3:2.1, an application for a change or amendment to
19 the texture map of this ordinance shall contain the
20 description, blah, blah, et cetera, about the application.
21 And it says, then, It shall be filed with the Greenville
22 County Planning Commission staff in accordance with the
23 published schedule of rezoning deadlines and meeting dates.

24 In that case, this text amendment would have gone
25 forward April the 4th, if we wanted to do it then. It would

1 have a public hearing on May 20, it had first reading on May
2 21st, Planning Commission May 22nd, Public Planning and
3 Development Committee on June 3rd, second reading on June
4 18th, and third reading on July the 16th. That's the
5 schedule that that ordinance references.

6 So 3:2.4 on receipt of a completed application The
7 Planning Commission staff for an amendment to the zoning
8 ordinance text or map to replace -- the request should be
9 placed on -- the request shall be placed on the agenda for
10 the next scheduled public hearing. No amendment to the
11 zoning text or map shall be eligible for reading by County
12 Council until after a public hearing notice and hearing by
13 County Council puts a public hearing first, does not put
14 planning -- Public Works Planning and Development Committee.
15 first.

16 3:2.6, upon receipt of a request for an amendment
17 the zoning ordinance text or map review and make written
18 recommendations to Greenville County Planning Commission
19 concerning the request. The Planning Commission shall have
20 30 days within which to submit its report and recommendation
21 to County Council. There's also another provision in there
22 that says, basically, if The planning Commission fails to
23 approve or deny the request within 30 days, it's deemed
24 approved. And so that's another section of the Greenville
25 County Zoning Ordinance that supports our right to go

1 through the standard procedures as if we were doing a map
2 amendment, as opposed to a text amendment.

3 3:2.7, this is even better, Your Honor, The
4 Planning and Development Committee shall consider
5 information presented at the public hearing and the staff
6 review and recommendation received from the Greenville
7 County Planning Commission before making a recommendation to
8 County Council. Again, that is a different procedure than
9 what the County tried to direct us toward.

10 So, the statute that we're dealing with, as I told
11 you is 629-760, which basically in the long and short of it
12 says, Before acting or amending any zoning regulation or
13 maps, the governing authority or the Planning Commission, if
14 authorized by the governing authority -- that's the case
15 here in Greenville County, it's The Planning Commission --
16 shall hold a public hearing on it which must be advertised
17 and conducted according to lawfully prescribed procedures.
18 If no established procedure exists then at least 15 days,
19 notice time and place of the public hearing must put it in
20 the new newspaper of regular circulation.

21 In cases involving rezoning, which is not
22 applicable to this, this is not a rezoning, this is a text
23 amendment, it talks about posting the property. Then it
24 goes on to say, No change in or a departure from the text or
25 maps is recommended by the Planning Commission may be made

1 pursuant to the hearing unless the change or departure be
2 first submitted to The Planning Commission for review and
3 recommendation. The Planning Commission shall have a time
4 prescribed in the ordinance which may not be more than
5 30 days within which to submit its report and recommendation
6 on the change to the governing authority.

7 Again, it has the same procedure there that if you
8 don't do it with a certain period of time, then it's deemed
9 approved. It doesn't mean it's deemed approved by County
10 Council but it means basically The Planning Commission has
11 recommended approval.

12 So it's the, basically sections, of the zoning
13 ordinance that that favors our proposition that we should go
14 through the standard process that map amendments go through
15 as state law will distinguish as neither one of them they
16 say, Text amendments or map amendments, this is how you do
17 it. And then, also, the Zoning Ordinance for Greenville
18 County supports that proposition tremendously, basically,
19 because it has separate fissions that address the separate
20 procedures that we have.

21 I left out one more thing which is a fee schedule,
22 this is attached to the ordinance also, that says we pay a
23 \$100 for a text amendment just like you pay also an amount
24 for other amendments or rezoning requests.

25 So there is no distinction under the law for a

1 text amendment or a map amendment. The County Council has
2 designated numerous provisions that agree with that
3 proposition except the one which says, again, The amendments
4 by any interested in property owner a resident of Greenville
5 County must first be presented to the Public Service
6 Planning and Development Committee. You'll not see a
7 reference to that name anywhere else in the ordinance. I'm
8 kind of puzzled how that stuck in there and it's still
9 there. I've kind of tried to go look back and see when they
10 amended it and I think that they amended some of it in 2012,
11 they skipped right over that section.

12 So, I can't explain it, but I can say that's
13 contrary to state law. That deprives the applicant of the
14 broad section, cross section of officials that state law
15 mandates to consider issues related to zoning and the
16 planning -- the Board of Zoning Appeals decisions should be
17 reversed on that basis.

18 I have copy my brief, I know you've read it, I
19 also have the copy of the full ordinance, if you want to the
20 full ordinance if you want -- the full ordinance as it's
21 laid out, but I can tell you read some of it, but I have
22 that available to you and you can read that your leisure
23 time.

24 THE COURT: I think you have referenced it
25 appropriately in your brief.

1 Mr. Lindemann?

2 MR. LINDEMANN: Thank you, Your Honor. May it
3 please the Court.

4 Andrew Lindemann on behalf of the Respondent, the
5 Greenville County Board of Zoning Appeals.

6 Your Honor, let me start with addressing state
7 law. Obviously, the issue before the Court is strictly an
8 issue of law, it's not an issue of reviewing any type of
9 findings of fact. What's before you is not the merits of
10 this citizen-initiated text amendment request that was made
11 by Mr. Childs's as clients, those merits are not before you.
12 What's solely before you is what is the proper process under
13 state law and under Greenville County Zoning Ordinance for
14 dealing specifically with what is, in this case, a very
15 unique animal, that is a citizen-initiated text amendment,
16 and I'll get to that in a second.

17 Specifically, Your Honor, the Enabling Act of 1994
18 does not tell various jurisdictions, cities, municipalities,
19 and counties, how specifically they have to tailor their
20 zoning ordinance. It set some parameters, it sets some
21 requirements, but it leaves great discretion, and this is
22 very important to recognize, great discretion to the
23 different municipalities and counties as to how they want to
24 set up their own system. As long as it meets those
25 requirements, and specifically I'm referring to 6-29-760,

1 that's the primary statute that governs in this particular
2 case.

3 But the bottom line is Greenville County has been
4 granted just like every other jurisdiction the ability to
5 mold and form and develop the process that they believe is
6 best for dealing with different types of zoning matters.
7 And what Mr. Childs is arguing to you is that all zoning
8 matters should be handled alone and there's nothing under
9 state law that requires that.

10 The thrust of their argument is that the Planning
11 Commission should be consulted initially with a
12 citizen-initiated text amendment request. There's nothing
13 in state law that requires that. In fact, as we pointed out
14 in our brief, there's nothing in state law that even allows
15 for a text-initiated -- I mean, excuse me, a
16 citizen-initiated text amendment. So that's something
17 that's created totally by ordinance here in Greenville
18 County.

19 So when you look at the ordinances that are at
20 play here -- and before I get to that, let me touch on this
21 the I'ON case, the I'ON versus Mount Pleasant case has
22 absolutely no bearing on this case whatsoever. That dealt
23 simply with the question as to whether zoning regulations
24 could be amended or adopted through initiative and
25 referendum. The South Carolina Supreme said it could not,

1 and that's the holding of that particular case. The South
2 Carolina Supreme Court, just like state law, doesn't
3 establish any set procedure for dealing with any type of
4 zoning amendment. Specifically, what the Court said in I'ON
5 is referred the parties to the Enabling Act and said that
6 governs. Well, again, as I already mentioned, the Enabling
7 Act, number one, doesn't even reference, it says an
8 initiated text amendment request. And, number two,
9 certainly doesn't establish what the proper process or
10 procedure is for such requests and specifically what steps
11 one has to go through.

12 Ultimately, before any type of zoning amendment,
13 text or map is adopted, I would certainly agree that it has
14 to go through the Planning Commission, but it does not
15 establish -- the state law does not establish where the
16 Planning Commission comes in as far as what step they
17 actually take, whether it's the initial step or a step
18 farther down the road after, in this case, after there's
19 County Council consideration.

20 So, again, looking at the Greenville County
21 ordinance itself, and it's section 3:2, as Your Honor is
22 well aware, the specific provision that governs the
23 citizen-initiated text amendments is 3:2.3. And, of course,
24 what the BZA looked at in this case, Your Honor, is the
25 Zoning Administrator's interpretation of these particular

1 ordinances and that's in the record before Your Honor, a
2 memo that was done by the Zoning Administrator, Joshua
3 Henderson, laying out his interpretation of these various
4 provisions and that's what the BZA upheld and that's before
5 Your Honor to determine whether the BZA made the correct
6 legal decision on that.

7 So, again, one of the key issues of statutory
8 construction, which is equally applicable to ordinances,
9 Your Honor, is that the specific section governs over any
10 general provisions. And the specific revision here is quite
11 clearly, as I mentioned 3:2.3, which addresses text changes
12 or amendments that are initiated by interested property
13 owners. And the second sentence of that particular section,
14 I'll read it again to Your Honor, I know Mr. Childs did, it
15 says, Petitions for text changes or amendments by any
16 interested property owner or resident of Greenville County
17 must first be presented to the Public Service Planning and
18 Development Committee of County Council.

19 And let me first address the issue of the name,
20 the actual misnomer there, with the name of the Committee of
21 County Council. The Committee's name was changed in 2012,
22 it's now the Planning and Development Committee, it's
23 actually referenced in other sections of 3:2, and obviously
24 this is one reference that was missed. It's clearly a
25 clerical error, clearly the Committee that is being

1 referenced here in 3:2.3 is the current Planning and
2 Development Committee. To suggest that there's a
3 nonexisting committee is just incorrect. Obviously, there
4 are clerical errors that come up all the time and statutes
5 and ordinances it doesn't rule them invalid. In this
6 particular case I don't think there's any dispute here the
7 Council has a Planning and Development Committee and that's
8 the reference in that particular provision. And if you look
9 at the interpretation by Joshua Henderson that's how he
10 reads that particular provision to apply to the current
11 Committee by its current name.

12 Anyway, with that said, the process for a
13 citizen-initiated text amendment request to go through the
14 approval process starts with 3:2.3. And, again, it very
15 specifically indicates that the first step in the process is
16 a presentation of the application to the Planning and
17 Development Committee of County Council. And then,
18 ultimately, from there, it goes to County Council. And then
19 from there it goes through the process for a public hearing
20 with the Planning Commission first reviewing it, then a
21 public hearing before County Council, and then it goes
22 through three readings for a normal process to be enacted as
23 an ordinance.

24 But the first step in this particular type of
25 request and, again, it's a unique request, and it's totally

1 permissible and lawful for Greenville County to have adopted
2 unique procedures for that particular type of request and
3 that's exactly what we have here. And if you think about
4 that is a unique request, as I indicated, number one,
5 there's no provisions under state law even for citizens to
6 be able to initiate a text amendment. But, ultimately, it
7 makes sense from a practical standpoint for those to go
8 before a Committee of County Council and County Council
9 itself to determine whether there is interest in pursuing
10 that particular text amendment.

11 Obviously, citizens cannot make the law and it's
12 very unique to even allow citizens to, quote, propose a
13 change in the law, and that's what we have here is a very
14 unique situation and ultimately it requires unique
15 procedures. And Greenville County has adopted the
16 procedures it believes are applicable to this type of
17 process. And it starts, as I indicated, and it's very clear
18 in 3:2.3, it starts not by going to the Planning Commission,
19 such as what Mr. Childs and his clients are suggesting, it
20 goes first before a Committee of County Council and then
21 ultimately County Council itself before then being routed
22 through the Planning Commission and then for a public
23 hearing.

24 And that's the interpretation that was provided by
25 the Zoning Administrator who's charged by ordinance with

1 interpreting and enforcing the zoning ordinances themselves.
2 Ultimately, that interpretation went before the BZA and the
3 BZA affirmed his interpretation.

4 There's nothing that is before Your Honor that
5 would suggest that that interpretation is incorrect. And,
6 again, to the extent that the petitioners have suggested
7 that there are other provisions within 3:2 that seem to be
8 inconsistent with 3:2.3. Even if that's the case, You
9 Honor, again, the rule of statutory construction that's
10 applicable here is that the specific governs over the
11 general provisions and the specific provision is quite
12 clearly 3:2.3, which would carry the day and govern exactly
13 how a citizen-initiated text amendment request should be
14 handled through the various steps, including Planning
15 Commission, Committee of Council, and Council itself.

16 So we would ask the Court, Your Honor, to affirm
17 the BZA, which in turn affirmed the interpretation by the
18 Zoning Administrator. I would also point out, and we raised
19 this in our memo, that there's been a number of exhibits
20 that have been submitted by the petitioners. The record on
21 appeal from the BZA as stated in 6-29-840, it is very
22 limited, this Court can't receive new evidence, just as you
23 can't receive testimony, you can't receive evidence that was
24 not submitted before the BZA. And, quite frankly, I don't
25 know that Mr. Childs needs any of that, he didn't reference

1 any of it today in his arguments, but the bottom line, I did
2 want to mention that for the record that the record should
3 be limited to the certified record that was provided by the
4 BZA back on January 19th.

5 So, again, unless Your Honor has any questions we
6 would ask that the Court affirm the legal decision
7 interpretation made by the Zoning Administrator as affirmed
8 by the BZA.

9 THE COURT: Okay. Thank you. And I believe,
10 Mr. Childs, you stated earlier if I heard you correctly, I
11 mean, this is an issue of law, right?

12 MR. CHILDS: Yes, sir. it is. No question about
13 that.

14 THE COURT: And I cannot take on any additional
15 evidence.

16 MR. CHILDS: And the additional evidence I
17 submitted basically was for the argument that he just made,
18 which is unique proceeding, it's not. I mean, the stuff I
19 submitted was just hundreds of text amendments proposed by
20 various people, various methods, which they've dealt with in
21 the past, but I don't need that for our argument, but I kind
22 of anticipated as unique proceeding argument by that
23 submission. But I am really concerned about the argument
24 that I'ON doesn't apply here, Your Honor, because, you know,
25 the Court just specifically said, The comprehensive and

1 detailed nature of the Comprehensive Planning Act Provision
2 reveals our legislature's intent that zoning decisions shall
3 be made by a cross section of unbiased officials after
4 careful deliberation. And it's designed to allow ample
5 planning and insure due process for all interested parties.
6 And I'll refer you further in the case where the court says,
7 The legislative intent that zoning matters must be decided
8 only in the manner specified in those acts. You can read
9 the act, Your Honor, and it says, specifically, There is no
10 distinction and an act between a text amendments or rezoning
11 requests, and why should there be?

12 I can cause as much uproar as I would like by
13 coming to County Council and asking for a rezoning request
14 say I'm in a residential neighborhood and I asked to have it
15 rezoned to industrial. County Council don't want to hear
16 that, but I get to go to first reading of Council to the
17 Planning Commission for a public hearing and then second and
18 third reading before County Council. You know why, because
19 it affects my property and the legislature wanted to give us
20 due process and whether it's a text amendment or a rezoning
21 request it affects your interest and your property if you're
22 interested in that particular issue.

23 So it's a comprehensive approach. Nothing else in
24 the ordinance says anything different other than the text
25 amendments and the map amendments are the same thing.

1 Let me point out one other thing. Mr. Lindemann
2 said that at this section, 3:2.3, later on corrects or
3 cites, I don't know how exactly he said it, however he said
4 it, it's fine, but properly cites the proper committee
5 afterwards and it does not. It goes on -- that whole
6 section goes on talk about the Public Works Planning and
7 Development Committee at least two other times, three other
8 times, in that whole provision that goes all the way, you
9 know, it's three pages long. And so that was from an
10 amendment in 2009 to the zoning ordinance, which predated
11 I'ON, which the county knows is unconstitutional, they can't
12 initiate zoning through that process and it's a legacy of
13 that previous statute as far as I can tell, previous
14 ordinance.

15 So that's not correct that later on they corrected
16 it in the zone ordinance, they did correct it in other
17 sections to properly reflect the fact that text amendments
18 are dealt with the same way as map amendments and that's all
19 and that's why we should prevail.

20 THE COURT: Okay. Thank you both.

21 Do you need to?

22 MR. LINDEMANN: Can I just make one point, Your
23 Honor?

24 If you look at 3:2.7, it refers to the Committee
25 there as Planning and Development Committee, that's the

1 point I was making to Your Honor that later on in 3:2 the
2 correct name of the committee is used. So that's pointing
3 out the fact that it was clearly a clerical error and 3:2.3
4 that it wasn't caught when that committee's name was changed
5 in 2012. And so I was referencing, and I didn't say
6 specifically 3:2.7, but if you look at it there are several
7 references there to be Planning and Development Committee
8 which is the current name for that committee.

9 So I just wanted to point that out to Your Honor.
10 Thank you for the opportunity.

11 THE COURT: Thank you. Okay. Good to see you
12 all. I'll take it under advisement.

13 MR. CHILDS: Thank you.

14 THE COURT: Thank you both.

15 MR. LINDEMANN: Thank you, Your Honor.

16 END OF REQUESTED PROCEEDING
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CERTIFICATE OF TRANSCRIBER

Case Name/Number: Altamont Road Safety Alliance, et al.,
vs. Greenville County Board of Zoning Appeals,
2023-CP-23-06416

Date of Hearing: April 9, 2024

Court Reporter/Monitor: Webex

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 5, 2024

Cynthia D Weaver

Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina