THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC 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 & 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 & Kathy Mercer, Steven & Anna Mickle, Helen & Fred Moorhead, John Parker, Audrey Pasin, Jim Sheets, Matthew Phillips, Shannon Pierce, Michael Rawls, Ronald & Tommie Reece, Daniel & Kimberly Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden.

Appellants

v.

Greenville County Board of Zoning Appeals — Respondent

FINAL REPLY BRIEF

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INTRODUCTION

This reply brief addresses the Respondent's arguments regarding the procedural and substantive issues surrounding citizen-initiated text amendments to zoning ordinances in South Carolina. The Appellants contend that the Circuit Court erred in its interpretation and application of the relevant statutory and case law, particularly concerning the procedural requirements for citizen-initiated text amendments and the role of the Planning and Development Committee.

ARGUMENTS

I. The Circuit Court Misinterpreted the Procedural Requirements for Citizen-Initiated Text Amendments

The Respondent argues that the procedures set forth in Section 3:2.3 of the Greenville County Zoning Ordinance, which require a citizen-initiated text amendment request to be reviewed first by the Planning and Development Committee, are consistent with state law. However, this interpretation conflicts with the statutory framework established by S.C. Code § 6-29-760, which mandates that any zoning amendment, regardless of its source, must be reviewed by the planning commission before any changes can be made.

Despite the bold statements made to the contrary by the Respondent, the entirety of state law addresses citizen-initiated text amendment requests. In each and every breath that the legislature mentions amendment of zoning maps it mentions text amendments including S.C. Code § 6-29-760 that provides no change in the texts recommended by the local board may be made unless it is first submitted to the planning commission as follows:

> 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. S.C. Code Ann. § 6-29-760 (emphasis added).

The only variations allowed from the Enabling Act are; the planning commission can be county, joint city county or a consolidated government planning commission (S.C. Code § 6-29-310); planning commission membership must be no less than five nor more than twelve members. (S.C. Code § 6-29-350); the planning commission may adopt its own rules (S.C. Code § 6-29-360); advisory committees to the planning commission are optional (S.C. Code § 6-29-520); adoption of a zoning ordinance is optional (S.C. Code § 6-29-720); amendments to the zoning regulations or maps as public hearing must be held by either the Planning Commission our Council (S.C. Code § 6-29-760); if no procedure exist, then there must at least 15 days' notice of the public hearing but more can be provided (S.C. Code § 6-29-760(A)); the Planning Commission report to Council can be sooner but not later than 30 days from the request (S.C. Code § 6-29-760(B)); there are options for non-conforming uses (S.C. Code § 6-29-730); Board of Zoning appeals ca n have no less than 3 nor more than 9 members (S.C. Code 6-29-780); optional to have an Architectural Review Committee (S.C. Code § 6-29-870) and either Council or the Commission can hold the public hearing (S.C. Code § 6-29-760).

Appellants' reliance on *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) is not misplaced. The *I`On* 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."

The Circuit Court's reliance on the Respondent's interpretation effectively bypasses the planning commission's role, contrary to the statutory requirement that no change in or departure from the text or maps as recommended by the local planning commission may be made unless first submitted to the planning commission for review and recommendation.

II. The Circuit Court Erred in Upholding the Requirement for Initial Review by the Planning and Development Committee

The Respondent's assertion that the initial review by the Planning and Development Committee is not in conflict with state law overlooks the legislative intent behind the Comprehensive Planning Act. The Act emphasizes the planning commission's central role in reviewing zoning amendments to ensure that changes align with the comprehensive plan and public interest.

The Appellants argue that the requirement for initial review by the Planning and Development Committee, as interpreted by the Respondent, creates an unnecessary procedural hurdle that undermines the statutory framework and the planning commission's authority.

III. The Circuit Court's Interpretation Undermines the Legislative Intent of the Comprehensive Planning Act

The Respondent's reliance on home rule and local government discretion fails to account for the specific procedural safeguards established by the Comprehensive Planning Act. The Act's detailed procedures for zoning amendments reflect a legislative intent to ensure that such changes are carefully considered and consistent with the comprehensive plan

The Appellants contend that the Circuit Court's interpretation effectively allows local governments to circumvent these procedural safeguards, contrary to the legislative intent and the statutory framework.

CONCLUSION

For the foregoing reasons, the Appellants respectfully request that this Court reverse the Circuit Court's decision and remand the case with instructions to ensure compliance with the procedural requirements established by the Comprehensive Planning Act.

Respectfully submitted,

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