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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

APPELLANTS' PETITION FOR REHEARING AND REHEARING EN BANC

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Appellants, pursuant to Rule 221(a) and 240, SCACR, respectfully petition the Court for rehearing and for rehearing en banc of the Court’s Decision filed July 22, 2026 (the “Decision”). Rehearing is warranted because the Decision overlooks controlling statutory structure and construes S.C. Code Ann. § 6-29-760 in a manner that permits a county legislative committee to function as a gatekeeper that can prevent a proposed zoning text amendment from ever reaching the planning commission and public-hearing process required by the Local Government Comprehensive Planning Enabling Act of 1994 (the “Enabling Act”).

En banc rehearing is additionally warranted because the Decision presents questions of exceptional statewide importance concerning uniform application of the Enabling Act and the permissible scope of county “committee-first” procedures for zoning amendments—issues that will recur across counties and municipalities and affect public participation and the statutory role of planning commissions.

A. SUMMARY OF THE DECISION AND DISPOSITIVE HOLDING

The Decision affirms the zoning administrator’s interpretation that a citizen-initiated text amendment “must first go through the Planning and Development Committee before further consideration,” and holds this local procedure “is not contrary to any state law” and is not an “arbitrary or clearly erroneous” interpretation of the ordinance. The Decision further concludes that S.C. Code Ann. § 6-29-760(A) requires a public hearing before enactment or amendment but does not require a public hearing to be the first step in all amendment processes, and that the statute does not mandate when planning commission review must occur so long as it occurs before a change is made. Having found no conflict between § 6-29-760 and the local ordinance provision the Court deemed controlling, the Decision declines to address remaining issues under *Futch*.

Rehearing is warranted because the Decision’s construction of § 6-29-760 and its conflict analysis overlook mandatory features of the Enabling Act that constrain local sequencing and do not

permit a county council committee to stop a proposal before it is ever docketed for planning commission review and the public-hearing process required for zoning amendments.

B. GROUNDS FOR REHEARING

I. THE DECISION OVERLOOKS CONTROLLING STATUTORY STRUCTURE AND LANGUAGE IN S.C. CODE ANN. § 6-29-760 THAT REQUIRES PLANNING COMMISSION INVOLVEMENT AS A MANDATORY COMPONENT OF THE AMENDMENT PROCESS, NOT AN OPTIONAL STEP THAT CAN BE DELAYED OR NULLIFIED BY COMMITTEE INACTION.

The Decision states “the statute does not mandate when the Planning Commission’s review must take place other than requiring its review before any changes are actually made.” Respectfully, that construction overlooks the statutory scheme’s structure and the role the planning commission plays in the amendment process.

Section 6-29-760 provides, in pertinent part, that before enacting or amending zoning regulations or maps the governing authority must hold a public hearing, and that changes or departures from the planning commission’s recommended text or maps cannot be made unless the change is first submitted to the planning commission for review and recommendation, with the planning commission’s report due within a prescribed time period (not more than thirty (30) days). Appellants preserved and emphasized that this time-bound requirement reflects the Legislature’s intent that zoning amendments proceed through planning commission review within a defined, mandatory framework, and that the Enabling Act does not authorize a preliminary legislative-committee screening step that can prevent the planning commission from performing its statutory function.

The county’s committee-first interpretation—affirmed by the Decision—allows a citizen-initiated text amendment to end at a council committee without any planning commission review, without any scheduled public hearing, and without the process that otherwise applies to zoning text amendments. The record reflects that proposals can be denied at the committee stage and “that’s

where it ends.” That result is incompatible with a statutory scheme that includes planning commission review and a public hearing as essential procedural safeguards for zoning amendments.

Rehearing is necessary so the Court can reconsider whether § 6-29-760’s mandatory planning commission functions (including the time-limited report requirement) can be reconciled with a local ordinance interpretation that permits a committee to stop the proposal before it is ever docketed for the statutory process.

II. THE DECISION’S CONFLICT ANALYSIS IS TOO NARROW BECAUSE IT TREATS “CONFLICT” AS REQUIRING IRRECONCILABLE TEXTUAL CONDITIONS, AND THEREBY OVERLOOKS THAT THE COUNTY’S COMMITTEE-GATEKEEPING PROCEDURE FRUSTRATES AND UNDERMINES THE ENABLING ACT’S REQUIRED AMENDMENT FRAMEWORK.

The Decision applies a conflict-preemption formulation and concludes there is no conflict because § 6-29-760 does not expressly require a public hearing as the “first step” and does not expressly dictate the precise moment when planning commission review must occur. Respectfully, this approach overlooks that conflict with state law is not limited to direct textual contradiction; local procedures that defeat or substantially impair the operation of the state scheme are inconsistent with the Act’s requirements and intent.

Here, the county’s interpretation creates a procedural hurdle that can prevent the statutory process from being triggered at all for a citizen-initiated text amendment. The Enabling Act’s planning commission review and public hearing requirements become contingent upon discretionary committee action that may never occur. That functional incompatibility is the conflict: the statute establishes mandatory procedural safeguards for amendments; the county’s interpretation permits those safeguards to be withheld entirely through committee inaction or refusal to advance the item.

Rehearing is warranted so the Court can address whether the county’s committee-first, committee-gatekeeping procedure—under which proposals can terminate without planning commission review or a public hearing—can be squared with the Enabling Act’s required procedural

protections.

III. THE DECISION APPLIES AN UNDULY DEFERENTIAL STANDARD TO PURE QUESTIONS OF STATUTORY AND ORDINANCE CONSTRUCTION, AND IT EMPLOYS MIXED STANDARDS (“ARBITRARY, CAPRICIOUS” AND “CLEARLY ERRONEOUS”) IN A MANNER THAT RISKS INSULATING LEGAL ERROR.

The Decision emphasizes deference to the zoning administrator’s “reasonable” interpretation and relies on formulations associated with arbitrary/capricious review. But the dispositive question decided by the Court is one of law: whether the local ordinance may be interpreted and applied to require a committee-gatekeeping step that delays or prevents the Enabling Act’s planning commission and hearing requirements for zoning amendments.

While the Court notes that legal correctness is reviewable, the Decision’s rationale repeatedly frames the inquiry as whether the administrator’s interpretation was “reasonable” or not “arbitrary or clearly erroneous.” In doing so, the Decision risks treating legal construction questions as discretionary matters, rather than applying independent judicial review to the meaning and interplay of the statute and the ordinance provisions.

Rehearing is necessary so the Court can apply the correct standard to the controlling legal questions and ensure that deference does not supplant statutory construction.

IV. THE DECISION’S RELIANCE ON ORDINANCE “SPECIFIC-OVER-GENERAL” PRINCIPLES IS MISAPPLIED BECAUSE THE RELEVANT ORDINANCE PROVISIONS CAN AND SHOULD BE HARMONIZED, AND BECAUSE AN ORDINANCE CANNOT BE CONSTRUED TO AUTHORIZE A PROCEDURE INCONSISTENT WITH THE ENABLING ACT’S MANDATORY FRAMEWORK.

The Decision concludes that ordinance section 3:2.3 is the “only provision” mentioning citizen-initiated text amendments and thus controls as the “more specific” provision. Appellants preserved that other ordinance provisions within section 3:2 prescribe the general process for text amendments (including filing with planning commission staff and scheduling for the next public hearing), and that the ordinance must be construed as a coherent whole rather than allowing one

subsection—containing outdated committee nomenclature—to negate the broader amendment procedure and the statutory framework.

Even if section 3:2.3 is “specific,” it must be read consistently with state law. If section 3:2.3 is read to empower a committee to prevent an amendment proposal from being docketed and thereby prevent the statutory process from proceeding, that construction should not be adopted where a harmonious construction is available.

Rehearing is warranted so the Court can reconsider whether section 3:2.3 must be construed in a manner that harmonizes with the remainder of the ordinance and the Enabling Act, rather than as a gatekeeping exception that effectively bypasses mandatory planning commission and public-hearing components.

V. BECAUSE THE DECISION FOUND ONE ISSUE DISPOSITIVE AND DECLINED TO ADDRESS REMAINING ISSUES, CORRECTING THE DISPOSITIVE ERROR REQUIRES REHEARING.

The Decision expressly declined to address remaining issues under Futch. Because the dispositive holding rests on errors of statutory construction, conflict analysis, and standard-of-review application, rehearing is necessary. If the Court corrects these errors and determines the county’s committee-gatekeeping process cannot stand, the disposition changes and the remaining preserved issues may require consideration on remand or otherwise.

C. GROUNDS FOR REHEARING EN BANC

I. THE DECISION PRESENTS AN ISSUE OF EXCEPTIONAL STATEWIDE IMPORTANCE

En banc rehearing is warranted because the Decision presents an issue of exceptional statewide importance and broad precedential effect: whether a county may adopt and enforce a “committee-first” procedure under which a citizen-proposed zoning text amendment may be screened and terminated by a legislative committee before it is docketed for planning commission review and the public-hearing process required by the Enabling Act.

The Enabling Act is a statewide statutory framework intended to provide uniform, mandatory procedural safeguards for zoning enactments and amendments, including the planning commission's required role and the required public hearing before enactment or amendment. The Decision's reading of § 6-29-760 permits local governments to interpose an additional, potentially dispositive step that can prevent the statutory safeguards from operating at all in citizen-initiated proposals. That reading will affect public participation rights and the statutory role of planning commissions statewide, and it will predictably generate repeated litigation in other jurisdictions.

En banc consideration is necessary to ensure uniformity and clarity in the application of the Enabling Act and to prevent inconsistent local practices that effectively allow legislative committees to nullify or delay the state-law framework for zoning amendments.

D. CONCLUSION

Appellants respectfully request that this court grant a rehearing, grant a rehearing en banc, vacate its opinion and file a new opinion reversing the Circuit Court's ruling based on the above arguments.

Respectfully submitted,

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PROOF OF SERVICE

I certify that on August 5th, 2026, I served the *Appellants' Petition for Rehearing and Rehearing En Banc* by emailing a copy of the same by electronic mail addressed to counsel for the Respondent, and others as indicated below:

Respectfully submitted,

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