

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

2017 NOV -8 AM 9:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

CASE NO.: 2016-CP-10-06605

Stephen G. Brock,

Plaintiff,

vs.

Town of Mt. Pleasant,

Defendant.

ORDER GRANTING SUMMARY  
JUDGMENT TO THE DEFENDANT

RECEIVED

FEB 23 2018

SC Court of Appeals

This action challenges the adoption of amendments to municipal ordinances of the Town of Mount Pleasant. Plaintiff believes the amendments did not receive proper public hearings and/or proper public notices. The documents in this case demonstrate there is no dispute of material fact that proper public notices were made and the meetings were not defective because some were special meetings. For the reasons stated below, the Court grants the Town of Mount Pleasant's motion for summary judgment.

The single ordinance containing the amendments is Ordinance 16082, amending Chapter 155 (Land Development Regulations) and Chapter 156 (Zoning Code), of the Town of Mount Pleasant, South Carolina Code of Ordinances. State statutes<sup>1</sup> and local ordinances<sup>2</sup> govern the process of amendments to the Land Development Regulations and Zoning Code. The steps that must be taken to amend Land Development Regulations differ from the requirements that must be met to amend to Zoning Code ordinances.

<sup>1</sup> See S.C. Code Ann. Section 6-29-760; see also S.C. Code Ann. Section 6-29-1130(B).

<sup>2</sup> See Mt. Pleasant, South Carolina Code of Ordinances section 156.031; see also Mt. Pleasant, South Carolina Code of Ordinances, Section 155.087.

### Legal Standard

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRPC. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C 509, 595 S.E.2d 817 (Ct. App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).

### Law/Analysis


There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application. Bob Jones Univ., Inc. v. Greenville, 243 S.C. 351, 360, (1963). A municipal ordinance is presumably valid. Id.; citing Momeier v. John McAlister, Inc., 231 S.C. 526, 99 S.E.2d 177; City of Florence v. Turbeville, 239 S.C. 126, 121 S.E.2d 437, 85 A. L. R. (2d) 1143. Hence, the burden of proof is upon the party attacking the amendment to establish the acts of the city council did not comply with the law. Furthermore, deference is to be given to the decisions of those charged with interpreting and applying local laws. Historic Charleston Found. v. Krawcheck, 313 S.C. 500, 502 (Ct. App. 1994).

Here, the Town of Mount Pleasant had to satisfy the requirements of two paths--- one relating to changes in the Zoning Code and one relating to changes in the Land Development Regulations. The following undisputed facts demonstrate how the requirements were met for each type of change, with some meetings and public hearings being held on the same date.

**I. THE AMENDMENTS TO CHAPTER 155, LAND DEVELOPMENT REGULATIONS, WERE PROPER BECAUSE THE TOWN OF MOUNT PLEASANT SATISFIED THE NOTICE, PUBLIC HEARING, AND SUBMISSION TO THE PLANNING COMMISSION REQUIREMENTS BEFORE ENACTING THE AMENDMENT.**

**A. Notice of Public Hearing was Provided**

S.C. Code Ann. Section 6-29-1130(B), provides, in pertinent part:

The governing authority of the municipality and the governing authority of the county are given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.

On August 11, 2016, Town Council provided thirty days' notice of the public hearing in accordance with S.C. Code Ann. Section 6-29-1130(B).

The time and place of the public hearing were published in The Post and Courier and was explicitly titled, "**NOTICE OF PUBLIC HEARING, TOWN OF MOUNT PLEASANT, AMENDMENT TO LAND DEVELOPMENT REGULATIONS**" that provided, in pertinent part:

The Mount Pleasant Town Council will conduct a public hearing on September 13, 2016 at 6:00 PM, pursuant to the applicable South Carolina State Statutes and Mount Pleasant Code of Ordinances, in Council Chambers, at the Mount Pleasant Municipal Complex, 100 Ann Edwards Lane, Mount Pleasant, SC regarding a proposal to amend the Town of Mount Pleasant Code of Ordinances, Chapter 155, Land Development Regulations.

(See Affidavit of Publication dated August 11, 2016). The specific proposed amendments were further set forth in the notice.

**B. Public Hearing was Held by Governing Authority**

Before adopting the amendment and after review by the Planning Commission, Town Council conducted its public hearing on September 13, 2016, at 6:00 p.m. regarding the proposed amendments to the Land Development Regulations in further accordance with S.C. Code Ann. Section 6-29-1130(B).

The official minutes from the Mount Pleasant Town Council hearing, which are also public record, confirm a public hearing was held to receive input on the proposed amendments regarding Land Development Regulations. The official minutes list comments made by Plaintiff Brock at the public hearing. Brock explained his opposition to the changes. Following comments by Plaintiff, Mayor Page asked if anyone else would like to speak on the issue. Hearing none, the public hearing was closed. (MOUNT PLEASANT TOWN COUNCIL MINUTES, Tuesday, September 13, 2016 at 6:00 p.m., p. 3).

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Following the public hearing, Town Council voted all in favor of the amendments for a first reading. Final reading was held at the next City Council meeting in October 2016.

**C. Proposals to Amend were Submitted to the Planning Commission**

Town Code also provides that amendment to the Land Development ordinances will be submitted to the Planning Commission prior to adoption. Code of Ordinances section 155.087(A). The Planning Commission reviewed the proposals at its meeting held on August 24, 2016. (Town of Mount Pleasant, South Carolina, Special Planning

Commission, August 24 2016, Minutes). After discussion of the amendments and review by the Commission, all voted in favor. (Id., p. 3). The unanimous vote in favor of the proposal as submitted was recorded in the official Minutes of the Planning Commission, which are public record. (Id., p. 5).

**II. THE AMENDMENTS TO CHAPTER 156, ZONING CODE, WERE PROPER BECAUSE THE TOWN OF MOUNT PLEASANT SATISFIED THE NOTICE, PUBLIC HEARING, AND RECOMMENDATION REQUIREMENTS BEFORE ENACTING THE AMENDMENT.**

**A. Planning Commission Advertised Notice of Public Hearing**

Pursuant to S.C. Code Ann. Section 6-29-720(A), the governing body of a municipality may adopt a zoning ordinance to help implement the comprehensive plan.

S.C. Code Section 6-29-760(A) then provides, in pertinent part:

**Before enacting or amending any zoning regulations . . . 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.**

(emphasis added).

On August 9, 2016, the Planning Commission provided fifteen days' notice of the public hearing in accordance with S.C. Code Ann. Section 6-29-760(A) to receive public input on the proposals to amend Chapter 156, Zoning Code.

The time and place of the hearing were published in the Post and Courier, which provided:

The Planning Commission will hold a special meeting at 3pm on Wednesday, August 24, 2016, Council Chambers, Mount Pleasant Municipal Complex, 100

Ann Edwards Lane, to consider public hearing items #1 and #2:

1. Proposal to amend Zoning Code Section 156.201 (C) by adding a new division (6) providing that the quantity of bufferyard plantings on properties adjacent to areas where existing vegetation may be present and will not be removed in the future shall be determined during the Design Review Process.
2. Proposal to amend Zoning Code Sections 156.007, 156.049, 156.054, 156.224, 156.305, 156.318, and 156.319 by adding new definitions . . . .

(See Affidavit of Publication dated August 9, 2016). The notice went on to list the specific Zoning Code sections that were proposed to be amended.

**B. Planning Commission Conducted its Public Hearing**

The Planning Commission called its meeting to order on August 24, 2016. As was previously advertised and in further accordance with S.C. Code Ann. Section 6-29-720(A), the Commission held the public hearing regarding amendments at the beginning of the meeting as recorded in the official minutes of the Special Planning Commission from August 24, 2016. (See Town of Mount Pleasant, South Carolina, Special Planning Commission, August 24, 2016, Minutes, p. 3). The public hearing was closed before any votes were cast. Id.

**C. Planning Commission Recommended Approval of the Amendments to the Town Council prior to Town Council Giving First and Second Reading to the Ordinance.**

Following the advertised public hearing, a majority of the Planning Commission in attendance voted in favor of approving the amendments to the Zoning Code as further documented in the minutes from the meeting, which are public record (See Town of Mount Pleasant, South Carolina, Special Planning Commission, August 24, 2016, Minutes, p. 3).

Town Council held a meeting to address the aforementioned amendments to the

Zoning Code, as well as to the Land Development Regulations. Documentation from the official minutes the meeting explicitly state that what was being considered was: "an amendment to the Land Development Regulations as well as the Zoning Code, and was reviewed extensively by the Planning Committee [a committee of City Council] three times. ***The Planning Commission reviewed it at their last meeting and both groups have recommended approval.***" (See MOUNT PLEASANT TOWN COUNCIL MINUTES, Tuesday, September 13, 2016 at 6:00 p.m. p. 3).

Following the review of the recommendation from the Planning Commission, Town Council voted to adopt the amendments to the Land Development Regulations and the Zoning Code by ordinance pursuant to its authority granted in the Town of Mount Pleasant, South Carolina, Code of Ordinances section 156.031. First reading was at the September 2016 City Council meeting and second reading was in October 2016.

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The plaintiff raises the argument special meetings should not have been used for any of the meetings. He claims special meetings should only be used for matters that must be addressed as pressing matter before the next regularly scheduled meetings. Brock claims his prior case against the Town of Mount Pleasant stands for this proposition. *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 785 S.E.2d 198 (2016). That case principally involved use of special meetings to hold executive sessions and then votes were taken on matters without the matter appearing on the agenda. Since that case originally arose, there have been amendments to the Freedom of Information Act limiting amendments to an agenda after a meeting begins. See S.C.Code § 30-4-80 and 2015 Act No. 70. However, in the present case, the agendas for the meetings

of City Council and the Planning Commission included proper notice of consideration of the proposed amendments. Brock does not argue the agendas were not posted 24 hours in advance. Instead, it is Brock's position special meetings should only be used to address business that cannot wait until the next regularly scheduled meeting. However, that proposition is not supported by the Freedom of Information Act, by statute or case law. Brock argues public participation is hampered when items are considered at a special meeting, not at the regular date and time, and potentially during normal work hours. While encouraging public participation is good and should be considered by local lawmakers when setting meeting times, the Court cannot second-guess the time meetings are scheduled. Nor is there any mechanism by which a Court can invalidate an ordinance because of arguments the meeting times were inconvenient to some.

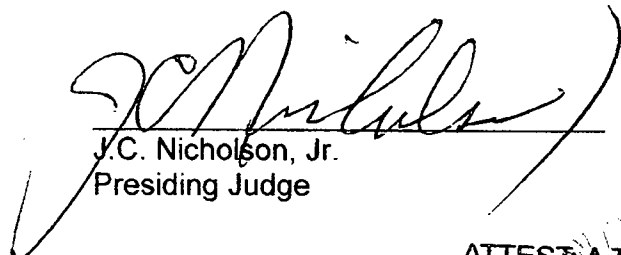


Brock also contends the notices of public hearing were confusing and not sufficient. Again, Brock bases his argument on public participation and contends that it is necessary for the public to have sufficient information to be able to voice an opinion. The newspaper notice for the Planning Commission public hearing provided specific sections numbers of the code to be amended, noted that changes related to adding new definitions and requirements pertaining to Preliminary Staff Review and Planned Development Districts, and further noted that the public hearing for associated modification to the Land Development Regulations would be held by Town Council. Public notice for the Land Development Regulation amendments provided specific section numbers that would be amended, described it would add definitions to certain sections, would modify the submittal process for Sketch Plans described in certain

sections, would modify submittal process for Preliminary Plats as set forth in specific sections. The Court finds these descriptions are legally sufficient for a required public notice. It is not necessary for the public notice to contain the text of the amendments or any detailed explanation of the proposed amendments. The generic description in this case was sufficient to allow any interested person to further investigate and to allow those persons to obtain the proposed text of the amendments from the Town's physically or through its website. The Planning Commission's agenda contained a hyperlink to the text of the amendments and staff comments regarding the amendments.


For all the reasons stated above, the Plaintiff has not demonstrated any defect in the process of the Town passing Ordinance 16082 and therefore judgment is entered in favor of the Town of Mount Pleasant as to the Plaintiff's complaint.

AND IT IS SO ORDERED!



J.C. Nicholson, Jr.  
Presiding Judge

Charleston, South Carolina  
11/9, 2017

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK-C.P., G.S. & F.C.  
By   
DEPUTY CLERK  
on the date of 12/9/17  
at 3:15pm.