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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

Honorable J.C Nicholson, Jr., Circuit Court Judge

RECEIVED  
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SC Court of Appeals

Appellate Case No. 2018-000332

Stephen G. Brock, .....Appellant

v.

Town of Mount Pleasant .....Respondent

FINAL BRIEF OF APPELLANT

Stephen G. Brock  
Appellant, *pro se*  
34 Hopetown Road  
Mt. Pleasant, SC, 29464  
843-478-3021

January 23, 2019

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## STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT, FAILING TO FIND THAT DEFENDANT PRESENTED EVIDENCE SUFFICIENT TO SATISFY THE SCINTILLA OF EVIDENCE STANDARD TO DEFEAT SUMMARY JUDGMENT.

- I. The amendments to the Mt. Pleasant Zoning Code of Ordinances were improperly enacted because Respondent did not conform to the published, lawful process for amendment.
  - A. Zoning Code
  - B. Land Development Regulations
  
- II. The amendments to the Zoning Code and Land Development Regulations were enacted without sufficient public notice and procedural due process
  
- III. Mt. Pleasant Town Council failed to conform to its published rules of order in amending the Zoning Code and Land Development Regulations.
  - A. Initiation of Ordinances by a Committee
  - B. Special Meeting

## STATEMENT OF THE CASE

The minutes of the July 5, 2016, meeting of the Planning and Development Committee of Mt. Pleasant Town Council (“Mt. Pleasant” or “Town”) record that the “final draft” of the proposed amendments to the Mt. Pleasant Zoning Code (“the Zoning Code”) and Land Development Regulations (“the Regulations) (R.pps.196-235) was presented to the committee by the Planning Director of the Town. After review, the Committee directed staff “to proceed with the public hearings for text amendments...”. (R.p.109)

The minutes of the July 12, 2016, meeting of Town Council, records the committee report of the Planning and Development Committee that “The Committee directed staff to proceed with the text amendments and associated public hearings (sic) for the changes to the submittal and review process”... (R.p.104)

On August 9, 2016, Respondent published notice of a public hearing at a special meeting of the Mt. Pleasant Planning Commission (“the Commission”) for August 24, 2016. (R.pps.66-67) The announced purpose of the public hearing was to hear proposed amendments to the Zoning Code. Included in the notice was mention that Town Council would hold the “required public hearing for the associated amendments to the Land Development Regulations”. Date and time of that public hearing was not provided in that notice.

On August 24, 2016, the Commission convened a special meeting. The agenda for the meeting called for a public hearing on the amendments to the Zoning Code and Land Use Regulations – the latter not noticed for public hearing. (R.p.89) Following the public hearing, the Planning Commission approved a motion to “approve the proposal” as submitted. (R.p.91)

At its regular monthly meeting on September 16, 2016, Town Council opened a public hearing on the Land Development Regulations at which Appellant spoke. (R.pps.101-102) Following that public hearing, Town Council voted to approve the amendments to both the Zoning Code and the Land Development regulations. The minutes of that meeting report a motion for first reading approval of the proposed ordinance - 16082. (R.P.103) to amend the Zoning Code and Land Development Regulations. (R.pps.196-235) The Amendments received final reading October 11, 2016.

On December 9, 2016, Stephen G. Brock (“Plaintiff or “Appellant”) filed a complaint for declaratory judgment, injunction, and mandamus alleging violations of S.C. Code Ann 6-29-310, the South Carolina Comprehensive Enabling Act of 1994 (“the Act”); and Chapters 155 (Land Use Regulations) and Chapter 156 (Zoning Code) Mt. Pleasant Code of Ordinances); and Town Council Rules of Order, Chapter 30, Mt. Pleasant Code of Ordinances. An Amended Complaint (R.pps.12-22) was filed on December 14, 2016. Defendant’s Answer was filed on February 13, 2017. (R.pps.24-35)

Defendant filed a Motion for Summary Judgment on June 6, 2017. (R.p.29.) The motion was accompanied by an affidavit of the Zoning Administrator. (“the Affidavit”) (R.pps.66-67)

Plaintiff responded with a Memorandum in Opposition to Summary Judgment on July 27, 2017. (R.pps. 245-262) Defendant’s Memorandum in Support of the Motion for Summary Judgment followed on September 18, 2017. (R.pps.236-243)

A hearing on Defendant’s Motion for Summary Judgment was held before the Honorable J. C. Nicholson, Jr., on September 20, 2017. (R.pps.36-65) An order granting summary judgment for Defendant was issued on November 8, 2017. (R.p.2)

Plaintiff timely filed a Motion to Alter or Amend Judgment on December 18,

2017, (R.pps.30-35) which was denied without hearing with the order filed on February 9, 2018.

(R.p11)

Notice of Appeal was filed with the Charleston County Clerk of Court on February 26, 2018.

### **STATEMENT OF FACTS**

Appellant, Stephen G. Brock, is a 45-year resident of Mt. Pleasant. He holds a degree in journalism from the University of South Carolina and was president of WCIV-TV in Charleston at the time of his retirement in 2001. Brock is also a retired United States Army officer with service in Vietnam. Brock served two terms on the Mt. Pleasant Planning Commission and participated in the creation of the current (2009-2019) Mt. Pleasant Comprehensive Plan. He chaired the first Shem Creek Management Committee. As chair of the Planning Commission, Brock served on the board which created the Coleman Boulevard Revitalization Plan - a plan for revitalization of downtown Mt. Pleasant.

The Comprehensive Planning Enabling Act of 1994 ("the Planning Act") (R.pps.68-78) established a unified, statewide mechanism for planning and development. In a 2000 case, involving Mt. Pleasant, our Supreme Court described the Planning Act as ... "an orderly structure for public participation" and "land use development" which "contemplates the rational development of land use, free from undue political influence" and that... "zoning decisions be should be made by a cross-section of unbiased officials after careful deliberation.." noting further, "...haphazard or thoughtless decisions are the antithesis of meaningful zoning." (I'On v. Town of Mt. Pleasant 526 S.E.2d, 716 (S.C. 2000)

The references to zoning decisions made by unbiased officials after careful deliberation and free of undue political influence” can be deduced to refer to planning commissions. Article 1 of the Planning Act describes the “function, power and duties” of planning commissions to:

...undertake a continuing planning program for the...physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, general welfare as well as the efficiency and economy of its area of jurisdiction. All public officials shall, upon request furnish to the planning commission...such available information as it may be require for its work. (§6-29-340(A) (R.p.68)

Among the specific functions and powers granted planning commissions that are applicable to this case, planning commissions are charged to:

...prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in the area...zoning regulations to include district maps and appropriate revisions...and...regulations for the subdivision or development of land and appropriate revisions thereof, as provided in this chapter. (§6-29-340)(B)(1); (B)(2) a-e (R.pps.68-69)

Municipal authority for zoning is derived from the Planning Act with an appointed planning commission a pre-condition for that authority.

When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan...the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. (§6-29-720 (A) (R.pps.71-72)

The Land Development Regulations are also the product of the jurisdiction’s planning commission as referenced in the functions and powers of the commission.

When at least the community facilities element, the housing element and the priority investment element of the comprehensive plan has been adopted by the local planning commission and the local governing body, the local planning commission may prepare and recommend to the governing body...for adoption of regulations governing the development of land within the jurisdiction. (§6-29-1130(A) (R.p.76)

The Planning Act provides minimum standards for public notice of amendments to the text or maps of the Zoning Code and Land Development Regulations. Jurisdictions are tasked to create additional local policies and procedures. The Mt. Pleasant Zoning Code contains a mandatory local process for amendment. It is those local standards that were violated in the process of amendment for the Zoning Code. Notice and public hearing were not challenged.

Amendments to Zoning and Land Development Ordinances may be proposed by Council Members or the Planning Commission. The specific process for ordinance initiation is described in the Mt. Pleasant Code of Ordinances §30.51 (R.p.115) Proposed ordinances or any matter brought to Town Council may be referred to the appropriate committee.(§30.68) (R.p.116) Committees may recommend ordinances, but are not authorized to independently initiate ordinances. (R.pps113)

Roberts Rules of Order, Newly Revised (“RRO”) is the parliamentary authority of Mt. Pleasant Town Council adopted by ordinance. (id §30.34(A) (R.p.112)

While the allegations in the case are each individually addressed, they are all part of the chain that is the process for amendment of zoning and land development regulations which are similarly connected both by statute and purpose.

## ARGUMENT

The typical municipal zoning case involves an aggrieved or affected property owner affected by application of an existing land use ordinance. The presumption of the validity of municipal ordinances upon enactment and deference to public officials in the interpretation and application of those laws is well-established and has not been contested in this case.

This case is distinguished from those cases. Here, the issue is the process by which zoning and development ordinances and regulations are created. By this measure, the wisdom, knowledge,

and judgment that are credited to exist in application of existing ordinances in the moment are not as relevant. Existing ordinances manage the present; the ordinances in this case guide the future. Ordinances for future zoning require consideration of the town's undeveloped land, drainage, streets, density of population, traffic, police, fire and other public services. These are the considerations that go into the work of the Planning Commission particularly as it prepares a town's ten year comprehensive plan for which public input is sought.

Notice is a primary component of land use regulation. The Planning Act provides notice standards but the language of the statute directs it to those immediately and directly affected by zoning decisions. The Planning Act is silent on challenge to the process of making zoning law. This case involves dozens of amendments and while there is no readily identifiable aggrieved person, the amendments potentially affect future property interests and citizens across the town. Several of the amendments will have immediate effects on the right of the public to be heard and meaningfully participate on matters of consequence in the future development of the Town of Mt. Pleasant. That right of participation is the right of every citizen. Some amendments further limit the Planning Commission - a touchstone in this and many other communities as the public's first glimpse of development plans. Planning Commission duties have been eroded over time by Town Council, its duties passed to the Planning Department, subordinate to Council. There are amendments in this case which continue that pattern, opposing our Supreme Court's expectation of reduction of political influence from the Planning Act.

The Town of Mt. Pleasant has seen its population grow 29% in the years of the current (2009-2019) comprehensive plan, standing now at more than 85,000 making Mt. Pleasant the 4<sup>th</sup> largest municipality in the state. Development and its consequences are top-of-mind issues.

The making of law of any kind demands a high standard of public process. Substantial compliance in a typical zoning application is one thing, but application of that concept in the circumstances of the amendments at issue, is not a sound standard. The Town's own published standards set a threshold for judgment that it failed.

In their interpretation and application, the provisions of these regulations shall be held to be the **minimum requirements** (emphasis added) adopted for the promotion of the public health, safety, and welfare. (Section 156.004(B))

Respondent contends ...there is no disputed material fact here. Either the town did right or it didn't. I didn't see where it did anything wrong...(R.p 45;L25 – p47;L1).

**I. THE AMENDMENTS TO THE ZONING CODE WERE IMPROPERLY ENACTED BECAUSE RESPONDENT DID NOT CONFORM TO THE LAWFUL PROCESS FOR AMENDMENT IN §156.031 OF THE CODE.**

**STANDARD OF REVIEW**

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Humbree , 364 S.C. 316, 613S.S.2d 533 (2005); Montgomery v. CSX Transp., Inc., 362 S.C.529, 608 S.S.2d 440 (Ct.App. 2004); In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. Medical University of South Carolina v. Arnaud, 360 S.C.2d 747 (2004); The non-moving party must come forward with genuine facts showing there is a genuine issue for trial. Rife, 363 S.C. at 214, 609 S.E.2d at 568; “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)

**A. ZONING CODE**

The indisputable fact is that Town Council unlawfully approved amendments to the

Zoning Code as it violated the published, mandatory public process in the Zoning Code. It was not a technical violation, but a wholesale abandonment of the ordinance amendment process.

The trial court erred in finding that amendments to the Zoning Code were proper because before enacting the amendments the Town of Mt. Pleasant followed “the notice, public hearing, and submission to the planning commission requirements...”. (R.p3)The amendments were far from proper.

The Comprehensive Planning Act indeed establishes minimum standards, which were not challenged. However, the statute goes farther as it addresses the planning commission role:

The planning commission shall have a time prescribed in the (local) ordinance which may not be more than thirty days within which to submit its report and recommendations (emphasis added) on the change to the governing authority. (§ 6-29-760(A) (R. p.74)

The Mt. Pleasant Zoning Code mirrors that requirement for a report and recommendation from the Commission. :

Upon receipt of the application, (for amendment) the Commission shall hold a public hearing on it and from the closing date of the public hearing shall have 30 days within which to submit its report and recommendation (sic) to Town Council. (§156.031(B)(5) (R.p.82)

The ordinance goes on to establish standards for the report.

The Commission **shall** prepare its report and recommendations on the proposed change, stating its findings and its evaluation of the request. In making its report, the Commission **shall** (emphasis added) consider the following factors: (§ 156.031(C) (R.p83)

Seven factors are defined for the finding and evaluation of the proposed change, among them, “its relationship to the Comprehensive Plan”; “whether it supports or violates the Comprehensive Plan” and “whether the proposed changes are consistent with the land development regulations of the town”. (§156.031(C)(1)(2) (R.p83) The Comprehensive Plan and

accompanying Land Use Maps are arguably the most important of the Planning Commission's duties as reflected in the stated purpose of the Zoning Code:

This chapter is based, in part, on, and designed to implement, the Comprehensive Plan of the town, as amended from time to time. The Comprehensive Plan is the result of careful consideration of existing and projected conditions in the community. It is designed to help ensure efficient, equitable, and reasoned land use decisions, and is to be used as a guide to the amendment process. (§156.003 Zoning Code) (R.p79)

A final standard in the Zoning Code for the Commission's report to Council is the Zoning Code's "Declaration of Policy":

"As a matter of policy no request to change the text of the Zoning Regulations or the (zoning) map shall be acted upon favorably, except:

1. Where necessary to implement the Comprehensive Plan; or
2. To correct an original mistake, a manifest effort in the regulations or map; or
3. To recognize substantial change or changing conditions or circumstances in a particular locality; or
4. To recognize changes in technology, the style of living, or manner of doing business. (§156.031 (D). (R.p.83)

One of the requirements must be met. Failure to meet at least one of the criteria met constitutes grounds for dismissal of the application for amendment. The Planning Commission produced no finding.

The lower court held that "Following recommendation from the Planning Commission, Town Council voted to adopt the amendments". The Affidavit of the Zoning Administrator states:

After specifically reviewing the Planning Commission's recommendations and minutes from the Planning Commission's prior meeting, Town Council voted to adopt the amendments to the Land Development Regulations and Zoning Code by ordinance. (R.p.67)

There is no basis for these findings and claims. There was no report, there were no findings, there was no evaluation, and there was no recommendation -all local, mandatory requirements of a Zoning Code amendment in the Town of Mt. Pleasant. These components provide defense against legal challenges by providing the rationale for the amendment and its enforcement. These elements provide history of legislation on various zoning issues for the benefit of future councils. With regard to the Land Development Regulations, the report of the Commission identifies changes that may be required in the those regulations to support the proposed change.

Mt. Pleasant Town Council enacted the amendments to the Zoning Code despite the uncontestable fact that it did so outside the published, lawful process for amendment. As the governing body, Town Council is solely responsible. It had responsibility and the authority to remand the amendments to the Planning Commission for compliance with the law. The amendments were not time-sensitive. There were no known development applications pending that would suffer from a brief referral back to the Commission.

#### **A. LAND DEVELOPMENT REGULATIONS**

The Affidavit of the Zoning Administrator states that there were separate paths for amending the Zoning Code and Land Development Regulations. The facts oppose that notion. The Planning Act specifies only a public hearing for amendment of Land Development Regulations. (§6-29-1140) (R.p.77) It does not specify the venue for that public hearing as claimed in the same Affidavit. A public hearing (unnoticed) on the Regulations was held before the Planning Commission on August 24. Since the amendments to the Regulations did not require a report and Council passed Zoning Code

amendments without one, the process of amendment for the Zoning Code and Regulations was identical. The “separate paths” scenario was manufactured Town Council – not by law. Council provided no rationale to explain its actions, the results of which were to avoid and a unified public process for amendments of the companion chapters governing land management in the Town using a pretense of a separate process. The result was two separate public hearings on two different dates – one of them at 3pm in the afternoon on the same day as a regular meeting at 5pm. The actions of Town Council were dismissive of the public’s right to have knowledge of and to participate in land development decisions of Town Council.

There is also the intent of the Planning Act regarding the Land Development Regulations to consider. Planning commissions are the source of the land development regulations and designated to “oversee the administration of the regulations” (§ 6-29-340(B)(2)(b) (R.p.69) as it does the Zoning Code. With all deference, planning commissions are specialists dealing with a single aspect of government- land use and management. There is no rationale for displacing the Commission from its statutory role. Whether by accident or design, public participation in the making of these amendments was made difficult and opaque as evidenced by associated issues.

**II. THE AMENDMENTS TO THE ZONING CODE AND LAND DEVELOPMENT REGULATIONS WERE ENACTED WITHOUT MEANINGFUL NOTICE AND DUE PROCESS OF LAW**

**STANDARD OF REVIEW**

In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-

moving party. Medical University of South Carolina v. Arnaud, 360 S.C.2d 747 (2004); “The Due Process clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950); Due process is flexible and calls for such procedural protections as the particular situation demands (Kurschner v. City of Camden Planning Comm’n. 376 S.C.165,172,656 S.E.2d 346,350 (2003); Stone River Envth. Protection Ass’t. v South Carolina Dept. of Health and Envth. Control 305 S.C. 90, 406E.E.2d 340(1991); “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner”. (South Carolina Dep’t. of Social Servs. V. Holden, 319 S.C. 72,459 S.E.2d 846 (1995); “Due process principles apply to notice procedures. Notice must fairly and reasonably inform those whose rights may be affected”. (Brown v. County of Charleston, 303 S.C. 245,399 S.E. 2d 784 (Ct.App. 1990); “Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” Cafeteria Workers v. McElroy, 367 U. S. 886, 895 (1961). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” Morrissey v. Brewer, 408 U. S. 471, 481 (1972); “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will”. Gordon v. Phillips Utils., Inc., 262 S.C. 403, 406, 608, S.E.2d 425 (2005); “The words of a statute must be given their plain and ordinary meaning without resorting to without resorting to subtle or forced construction to limit or expand the statutes operation”. Municipal Ass’n. of South Carolina v. AT&T Communications of S. States , Inc.’ 316 S.C.576, 580, 606 S.E.2d 843,846 (1992); “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)

The Lower Court found that the “generic description in this case was sufficient to alter (alert) any interested person to further investigate and to allow those persons to obtain the proposed text of the amendments from the Town physically or through its website”. (R.p.9) Generic notice is not notice of an amendment to any ordinance, let alone amendments of the scope of those challenged in this action.

Respondent minimizes the amendments as “Really more about the procedural requirements of what had to be submitted and who would sign off on those things (TTp3;L15-17) (R..p38;L15-17) Some preliminary approvals and staff approvals of things (Hearing Transcript R.p38;L10-12)

Respondent also claims that available information substitutes for notice:

Let me just say, there was a lot of information that was available, even a lot more than there was ten or twenty years ago...there were links to the document. You could pop up the ordinance. You could pop up the staff report of it. (TTp27-L22-24; p28-L1-2).

Notice for the public hearing of the August 24 public hearing did not include any mention of information available online. The hyperlink to staff notes and additional information was only known to the public on publication of the agenda. The only additional information offered at the time of the public notice required a visit to Town Hall.

It is arguable that it was not necessary for Respondent to include any description of the amendments. It might have noticed only the chapters and sections subject to amendment, however, Respondent chose to provide descriptive language:

Proposal to amend Zoning Code Sections (numbered sections were provided) by adding new definitions, adding to a new Preliminary staff review of Sketch Plans, Preliminary

Plans, Impact Assessment, and Planned Development Districts, and other modifications as needed for conformity with the aforementioned amendments. (R.pps.86-87)

When the Town chose to describe the amendments, it accepted the obligation to be open and forthcoming. Missing from the description is any mention of changes to the approval process and no hint of the reduction of the role of the Planning Commission. The new staff review of preliminary plans involved replacing the Planning Commission with the Town's Planning Department. The reference to Impact Assessment involved taking it from the Planning Commission review at the same time as Sketch Plan approval.

The Courts cannot be in the business of second-guessing every challenged zoning action, but the amendments of most interest to the public were known as evidenced by what was avoided. Submittal requirements for development are of far less interest than changes to approval. The Preliminary Plat which follows the Sketch Plan was previously reviewed reviewed at a public meeting of the Commission. Assignment to the Planning Department ends that public process. The most significant disclosure was buried in "staff notes" which summarize the purpose of the amendments as to "streamline" the process of development approval. It is not second-guessing to propose that disclosure would have riveted attention to the amendments given the explosive growth of the Town and the associated problems. As it was, the most diligent citizen would have had no reason to suspect the consequences of the amendments with so little useful information provided.

Information was readily available to Council. The amendments were available to Council as early as July 5, 2016, when they were presented to the Planning Committee of Council. The public learned of them a month later.

The most significant amendments to the Zoning Code and Regulations are those which further diminished again the open, public process for managing development projects and the further diminishing role of the Planning Commission. For context:

A **Sketch Plan** is the first public step in development and, on approval, the source of vested rights. In 2011, sketch plan approval of commercial developments was taken from the Commission, transferred to the Planning Department, eliminating public disclosure and participation, leaving only residential development approval to the Commission.

Prior to the amendments, the **Impact Assessment** went to the Commission with the Sketch Plan. An impact assessment provides the effects of development on traffic and public services. The current amendments removed it from review simultaneous review with the sketch plan.

**Preliminary plats** are the detailed follow-on the Sketch Plan. Preliminary plats are drawn following Sketch Plan approval and reviewed for conformity with the Sketch Plan. Previous to the amendments, the Planning Commission reviewed them in an open meeting. The public process is now private – the Planning Commission replaced by “staff” for its private approval.

The **Final Plat** is the “as-built”, detailed representation of a development. It is a public document filed with the county, the source document for individual property deeds. While the Final Plat was once reviewed for conformity with the Preliminary Plat by the Commission, that too is removed from public oversight.

Accountability and transparency were further reduced by the more than 20 occasions in which duties of the Planning Director may be delegated “his or her designee” – a person not further defined even by position.

Given the legislative intent of the Act which defines the role of planning commissions as

a jurisdiction's lead planning agency, the amendments oppose that intent. With the Planning Department subordinate to Council, the "*undue political influence*" that our Supreme Court found worth noting in its description of the Planning Act was reinserted even as public participation was diminished.

A decision of our Supreme Court in a Freedom of Information Act case finds a parallel to this case. (Quality Towing, Inc. v. City of Myrtle Beach, et al., 345 S.C. 156, 547 S.E. 2d 862 (S.C. 2001)). The case centered on the requirement that a public body announce the "specific purpose" of any matter to be heard in an executive session. Challenged for not doing so, Respondent claimed that "*everyone knew the City Council was going to discuss the contract*". The Court found that it was not enough that "*citizens might have some idea*" of the subject matter to be discussed.

This case concerns matters more important than a city towing contract in that case, but its findings are relevant to this one. It is not the job of citizens to intuit what is meant in their government's pronouncements such as "other modifications as needed for conformity with the aforementioned amendments" – part of the August 9 public hearing notice. It is the duty of government to communicate with citizens

The right to free expression and redress are constitutionally protected rights. The right to information and meaningful access to government decisions in the making comes from those rights. Any government action to impede those rights should be corrected.

In the end, a fair standard for a jury on the question of sufficiency of notice might be its judgment formed on what public notice disclosed versus the ordinance that followed.

### III. MT. PLEASANT TOWN COUNCIL FAILED TO COMFORM TO ITS PUBLISHED RULES OF ORDER.

#### STANDARD OF REVIEW

Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwrites Ins. Co., 357 S.C. 631, 594 S.E. 2d 455 (2004); Hawkins v City of Greenville, 358 S.C. 280, 594 S.E. 2d 557 (Ct. App. 2004); In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. Medical University of South Carolina v. Arnaud, 360 S.C.2d 747 (2004); Even when there is no dispute as to evidentiary facts, but only to the conclusions or inferences to be drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks and Recreation Comm'n., 362 S.C. 1, 605 S.E.2d 744 (Ct.App. 2004); If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. President James Madison - Federalist Papers Number 51

#### A. Initiation of Ordinances By a Committee of Council

On July 5, 2016, the agenda of the Planning and Development Committee of Mt. Pleasant Town Council the final item on the agenda was amendments to the Mt. Pleasant Zoning Code and Land Use Regulations by the Planning Director of the Town. Upon review, the Committee provided *de facto* approval as it directed "staff" to forward the amendments to the Planning

Commission for a public hearing. (R.p.109) Having been approved by the four-member Planning Committee, the public hearing became a meaningless gesture, a mockery of public process.

Chapter 30 of the Mt. Pleasant Code defines various aspects of Town Council's activities and includes its rules of procedure including a public process for "Initiation of Ordinances" (§30.51).(R.p.115) There is no record of the amendments challenged by Appellant having been initiated by public process. The amendments appear to have been initiated by the Planning and Development Committee of Council. Committees have no such authority. The problem with such behavior needs little explanation. It is government acting in secret. Combined with managed public notice, it is contrary to any standard of good government.

#### **B. Special Meeting**

The trial court erred in not recognizing the authority of the Towns adopted rules of order - Robert's Rules of Order (RRO)(§30.34(A) (R.p.112) While some of Robert's rules are inconsistent with state law, unless there is such a conflict or the body creates rules that supplant Roberts, the adoption by ordinance makes the Roberts Rules no less binding than local rules adopted by ordinance.

A Planning Commission "special meeting" was noticed on August 9, 2016, to be convened on August 24, 2016, for a public hearing on the Amendments in this action. Special meetings are defined by RRO as meetings "convened to deal with important matters that may arise between regular meetings and that urgently require action before the next regular meeting". (Roberts Rules of Order; Chapter IV – Meetings and Sessions; §8 Particular Types of Meeting; Special Meetings) (R.p.118)

The special meeting of August 24, 2016, was violative of Rules of Order. The special meeting with the public hearing was scheduled at 3pm. A regular meeting of the Planning Commission was scheduled for 5pm that same day. The better opportunity for public participation was inarguably the regular meeting at 5pm. With regard to this meeting, the trial court held, "They're allowed to have those meetings and any governmental body can have their meetings at whatever time of day they want to..."

That finding of the trial court is not disputed, nor is it germane to this case. The question is not whether a council may call a special meeting, rather, it is that such meetings are limited to the conditions under which they may be called. The motive for Council's action is left on the table, but the effect of Council's action served to limit the opportunity for public participation guaranteed by law.

Special meetings are not further defined in state law but the plain meaning of "special" is "distinguished by some unusual quality; being other than usual; designed for a particular purpose or occasion". (Merriam-Webster).

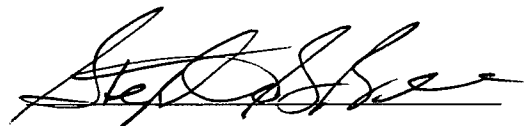
In a 2016 case, our Supreme Court recognized special meetings as defined by RRO:

FOIA does not contain a definition of "special meeting." (See Lambries, 409 S.C. at 14, 760 S.E.2d at 791). However, in Lambries, this Court described special meetings as "meeting[s] called for a special purpose and at which nothing can be done beyond the objects specified for the call." (citing Barile v. City Comptroller, 56 Misc.2d 190, 288 N.Y.S.2d 191, 196 (Sup.Ct.1968))

Aside from the other issues raised, the special meeting at which the public hearing on the Zoning Code amendments and Land Use Regulations was held violated Mt. Pleasant Town Council's Rules of Order. Its use in this case to house a special meeting with a public hearing two hours ahead of a regular meeting provides a foundation for requiring Respondent to follow its own rules.

**CONCLUSION**

Appellant begs the Court to reverse the trial court's Order Granting Summary Judgment for Defendant based on the existence of genuine issues of material fact for a jury and to remand this case for trial.



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