



Oconee County Planning Commission

415 S. Pine Street, Walhalla, SC

29691

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Minutes

Planning Commission Meeting

July 14, 2008

The Oconee County Planning Commission held their regularly scheduled monthly meeting at 7:00 p.m. on July 14, 2008 in the Council Chambers of the Oconee County Administrative Offices, 413 S. Pine St., Walhalla, SC 29691.

Members Present: Tommy Abbott, (Chairman)
Ryan Honea, (Vice Chairman)
Howard Moore
Rex Ramsay
Randy Abbott
Bill Nelson
Bill Evatt

Art Holbrooks (Planning Director)
Aaron Gadsby (County Planner)

Media Present:
Brett McLaughlin (Daily Journal)
Ashton Hester (Keowee Courier)

Item 1: Chairman Abbott called the meeting to order.

Item 2: Approval of Minutes- Mr. Honea made a motion to approve the June 8, 2008 meeting minutes as written; Mr. Ramsay seconded the motion. The motion was approved unanimously

Item 3: Public Comment Session-

Mr. Larry Linsin stated that the current Council is a lame duck Council and it appears they have a lack of patience. The Planning Commission however is in no need to hurry. Mr. Linsin also, asked the Commission not to rush but to following through with the seventeen meetings prior to sending anything forward to Council. Mr. Linsin also stated that the public meetings needed to preceded the Zoning Enabling Ordinance and the meeting only needed to focus on zoning.

Mr. John Little thanked the Commission and asked that the Planning Commission respectfully rescind their recommendations to County Council in regards to the Zoning Enabling Ordinance. Mr. Little also stated that the need to protect the waters of Lake Keowee has already been addressed in the shoreline management plan Duke produces to regulate the shoreline. Other lakes are part of the County so why aren't we protecting them? Mr. Little also had concern about the 30% recommendation for citizen initiated zoning and wondered what happened to the majority wins. Mr. Little asked the Commission not to waste their time with zoning.

Ms. Susie Cornelius stated that every time this county gets a new administrator the citizens have to get them trained and that they we just starting to get that done with the current administrator. Ms. Cornelius asked the Commission to continue to represent the people because lots of doors have been shut for public input. Ms. Cornelius also stated that the Planning Commission was suppose to represent all Oconee County and the Commission needs to have women on serving on it and that if the current Commission does not have a strong enough backbone, Ms. Cornelius knows some women who do. Ms. Cornelius also stated that the state mandates that the County update the Comprehensive Plan which she understands to be currently underway. Also we are currently under a lame duck County Council that needs to be pulled back so that planning out in the districts can make recommendations for the Comprehensive Plan. Ms. Cornelius urged the Commission not to send anything forward before January.

Mr. Bo Richards thanked the Commission for the opportunity to speak and informed them that he is a property owner who lives in a subdivision called Scatterwood in the West Union area. Mr. Richards stated that he is in agreement that the County needs to do something to help plan for growth but he does not agree with any of the overlays. Mr. Richards suggested that the Planning Commission recommend that another planning district be created around the lakes so that if the people around Lake Keowee they can have it. Mr. Richards also agreed that the property owners should have a say in the zoning process in any particular planning district regardless of where they live.

Item 4: Presentation on Citizen Initiated Zoning by Mr. Tom Markovich – Mr. Markovich stated the purpose of the presentation was to take a closer look at the Zoning Enabling Ordinance in view of state law, specifically the Comprehensive Planning Act so that a good zoning program can be created. Mr. Markovich informed the Commission that the draft ordinance as it is currently drafted is not a valid document and will not hold up under state law. However, citizen initiated zoning can be valid under South Carolina Law if it is properly written. The primary problem with the current draft is that the ZEO zones the entire county as an ‘unzoned district.’ Therefore, the citizens are not implementing zoning they are merely rezoning. Mr. Markovich stated that the County should not regulate any property in the zoning ordinance so that County Council can hold advisory referenda on zoning by planning area, because the Planning Act grants the County the ability to enact zoning in certain areas or county wide. Only County Council can decide the mechanism to initiate an advisory referendum. It is important that to keep in mind that nothing can be done that ties the hands of County Council—only they have the power to zone. Mr. Markovich recommended that the Planning Commission let County Council know that the ordinance as currently drafted will not hold up in court, change the jurisdictional area to state: “nothing is zoned unless a specific zoning designation has been assigned on the parcel and shown on the official zoning map, and get rid of the ‘unzoned district’.” (See attached documents)

Item 5: Continued Discussion of Draft Zoning Ordinance- Mr. Holbrooks presented the Commission with a draft of the Citizen Initiated Process to Amend the Zoning Map, noting that it contained language reflecting where the Commission was at the June meeting. Mr. Holbrooks also stated that the process to hire a consultant was underway and that the Commission would be able to ask them questions also. The changes were primarily contained in sections 1, 6, and 10 of the document. Mr. Nelson asked if it was clear that the Commission was recommending property owners, not registered voters. Mr. Holbrooks informed the Commission that this draft clarified that property owners would be used. Mr. Honea asked that the County legal representation be consulted based on the presentation by Mr. Markovich before moving forward. Mr. Holbrooks stated that he would do all he could to have the County’s Attorney at the next meeting. Mr. Abbott and Mr. Moore stated that they needed more time to look over the document. Mr. Honea

stated they will holding this up until the next meeting. Mr. Nelson stated that the Commission needed to get the legality issues resolved before moving forward.

Item 6: Old Business—Mr. Holbrooks informed the Commission that the legal opinion they had asked for was being drafted by the County Attorney and he would do all he could to have him at the next meeting. Mr. Holbrooks also passed out a schedule for the Community Meetings the staff would be undertaking (see attached schedule). Chairman Abbott asked if it would be better to wait until the legal questions were resolved. Mr. Holbrooks stated the meetings will update the citizens on zoning and then ask for input on the Comprehensive Plan and land use maps. Mr. Evatt stated he had concerns about the volume of meetings in such a short time and he thought the meetings were getting ahead of where the Commission was at. Chairman Abbott raised concerns about not being able to answer everyone's questions because we don't know yet. Mr. Honea had concerns about having both zoning and land use discussed at the same meeting. Mr. Holbrooks stated that the meeting would be conducted by the staff as informational meetings on zoning and the comprehensive plan, with opportunities to have questions answered and get input.

Item 8: New Business- None

Item 9: Adjourn

Zoning By Citizen's Initiative in South Carolina by Tom Markovich

The purpose of this presentation is to shed some light on the concept of zoning by citizen's initiative in this state and more specifically the method being considered by Oconee County. Hopefully, the ordinance ultimately enacted will strengthen the ability of Oconee County to achieve the goals set out in the Comprehensive Plan, for in the end there is no greater reason to carryout this exercise. Any attempt to forge through some of the confusing concepts here requires that we compare Oconee's draft ZEO to what outwardly "appears" to be a similar method being used in Anderson County. Furthermore, any examination of these methods requires that they be viewed in light of the SC Home Rule Act, SC Comprehensive Planning Act and case law from the SC Supreme Court that specifically addresses the issue of zoning by initiative. I sincerely hope that this attempt to clear some confusion will be viewed as trying to help strengthen an important planning tool and not as an attempt to derail zoning in Oconee County.

The ultimate question we hope to answer is this, **is the method currently being considered by the county valid under SC Law and why?** In addition we need to ask, **how the process differs from Anderson County and further why the Anderson method seems to hold up.**

The short answer to the first question is no, the current version of the ZEO is not valid. While the concept of zoning by initiative is somewhat controversial and has been determined to be not valid in South Carolina, I believe the concept of using advisory referenda is within the powers granted through Home Rule. In the case of the ZEO being considered in Oconee County, zoning adoption of the county will zone the entire county as one district. After this initial adoption, amendment or "**rezoning**" will be accomplished in specified planning areas by a citizen's initiative. The method employed in Anderson County looks similar but is very different. Anderson uses the power granted in **6-29-330 (A)** to zone specific parts without zoning the entire county. Anderson initiates the process by means of a referendum but only on an advisory basis for specific parts of the county. The Home Rule Act specifically empowers County Council to use advisory referenda, SC Code **4-9-30 (16)**. This power of referenda is different than the process described in Article 13 of the Home Rule Act; which grants citizens the ability to create ordinances by initiative and referendum and specifically is the method of zoning that the SC Supreme Court ruled against.

It is very important to re-emphasize that with adoption of the ZEO, Oconee County will be zoned as one entire district and any subsequent change or amendment will be "rezoning" and is not the same as enactment of zoning regulations in "specific parts". Rezoning must follow the specific procedures outlined in **6-29-760**. In Anderson, the zoning language specifically does not regulate those areas that are not zoned by the specifically defined zoning districts. When the Anderson County Council determines to zone a "specific part" it is not rezoning because no zoning exist on those parcels, therefore it is not required to post every parcel and fulfill some of the other measures of **6-29-760**. The Anderson process is relatively simple.

The primary obstacle in the Comprehensive Planning Act causing Oconee a problem is described in **6-29-760**. This is further compounded by the limits imposed on counties through Home Rule that planning ordinance must comply with Title 6, Chapter 7 and ultimately Chapter 29.

SC Code 6-29-760(A) In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. 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. (B) If a landowner whose land is the subject of a proposed 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.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days.

Specifically the SC Supreme Court said;

The Legislature has recognized by its enactment of detailed procedures in Title 6 that haphazard or thoughtless decisions are the antithesis of meaningful zoning. We agree with Developer that the Legislature has not condoned - and we should not approve - a process by which voters could circumvent this deliberative process by deciding zoning matters in an initiative and referendum process. 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.

The SC Supreme Court also gave special mention and concurred with a passage from the New Jersey Supreme Court that is extremely apt;

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.

Aside from the ruling by the Court, additional problems occur. First, in Oconee County, if and when the citizens petition to begin the process of rezoning a planning area, it would require posting a notice on each parcel in the planning area. This would involve thousands of parcels and be an overwhelming task, not to mention extremely expensive. Second, allotting time for oral or written comment could consume months, or longer. It becomes quite evident why the process that is currently being considered is not what was envisioned by the legislature.

The case the South Carolina Supreme Court ruled on was I'On v. Town of Mt Pleasant. Interestingly, I'On has since become a primary example that is pointed to as a model for Neo Traditional Development which is now considered leading edge in current planning strategy.

So why does the Anderson process hold up? There could be several reasons but most notably it has not been challenged. Also if it were challenged it would in all likelihood hold up because it is not “**rezoning**” and the mechanisms utilized are valid under Home Rule. Additionally and in all likelihood the main reason is because the public generally seems to feel like it is a fair method.

The next question would be if the Anderson method were to be challenged and it were overturned would it undo all the zoning already accomplished and the short answer is no. Zoning must be challenged with in sixty days.

The ultimate question is why Oconee County is so steadfast on its intent to pass this ordinance in its current form; and the answer is because it is the only way to implement Zoning Overlays. The Comprehensive Planning Act is also very explicit that zoning overlays can only be implemented over zoning districts; **no zoning district, no overlays**. If Oconee were to implement the same method as Anderson it could overlay but only in those areas that have zoning.

The greatest challenge for the Planning Commission is to create a Zoning ordinance that will allow for good planning in those areas that it is needed most and not overly regulate those areas that it is not necessary.

SC Home Rule Act Title 4 Chapter 9

4-9-30 (9) to provide for land use and promulgate regulations pursuant thereto subject to the provisions of Chapter 7 of Title 6;

4-9-30 (16) to conduct advisory referenda;

4-9-1210 The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls.

SC Planning Act Title 6 Chapter 29

6-29-330 (A) [A] county may exercise the powers granted under the provisions of this chapter in the total unincorporated area or specific parts of the unincorporated area.

6-29-760 Edited

(A) Before enacting or amending any zoning regulations or maps, the governing authority... shall hold a public hearing on ...at least fifteen days' notice of the time and place of the public hearing must be given..In cases

involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

(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.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

SC Supreme Court, opinion # 25048

The obvious incompatibility between the initiative and referendum process and the comprehensive Title 6 provisions indicates the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum.

SC Supreme Court cont.

The Legislature has recognized...that haphazard or thoughtless decisions are the antithesis of meaningful zoning. We agree with Developer that the Legislature has not condoned - and we should not approve - a process by which voters could circumvent this deliberative process by deciding zoning matters in an initiative and referendum process. 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.

Community Meetings Schedule

Zoning and Comprehensive Plan Briefing Presented by the Planning Department

* All meetings will begin at 6:00 pm and end by 8:00 pm

<u>Planning District</u>	<u>Location</u>	<u>Date</u>
Kickoff Meeting—Walhalla	County Council Chambers	Tuesday, July 29, 2008
Seneca	Seneca High School Cafeteria	Thursday, July 31, 2008
Salem	Salem Community Center	Thursday, August 7, 2008
Westminster	West-Oak Middle School Cafeteria	Thursday, August 14, 2008
Fair Play	Fair Play School / Community Center Cafeteria	Monday, August 18, 2008
Keowee	Not Confirmed	Thursday, August 24, 2008

The following community meetings will be announced once the dates and locations are finalized

Mountain Rest	TBA	TBA
Long Creek	TBA	TBA
Corinth-Shiloh	TBA	TBA
Keowee Ebenezer	TBA	TBA
Oakway	TBA	TBA
West Union	TBA	TBA
South Union	TBA	TBA
Friendship	TBA	TBA
Picket Post / Camp Oak	TBA	TBA
Crossroads	TBA	TBA
Cleveland	TBA	TBA