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ATTORNEY GENERAL

February 3, 2010

Amelia R. Linder, Esquire
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Richland County Planning & Development Services Department
Post Office Box 192
Columbia, South Carolina 29202-0192

Dear Ms. Linder:

We understand you desire an opinion of this Office as to “whether or not Richland County can enforce its zoning regulations related to forestry activities on forestland.”

Law/Analysis

In your letter, you indicate your concern arises from the passage of act 48 in 2009. As you mentioned in your letter, this act added section 48-23-205 to the South Carolina Code, which states:

(A) For purposes of this section:

- (1) “Development” means any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest or nonagricultural use.
- (2) “Forestland” means land supporting a stand or potential stand of trees valuable for timber products, watershed or wildlife protection, recreational uses, or for other purposes.
- (3) “Forest management plan” means a document or documents prepared or approved by a forester registered in this State that defines a landowner’s forest management objectives and describes specific measures to be taken to achieve those objectives. A management plan shall include silvicultural practices, objectives, and measures to achieve them, that relate to a stand or potential stand of trees that may be utilized for timber products, watershed or wildlife protection, recreational uses, or for other purposes.

(4) "Forestry activity" includes, but is not limited to, timber harvest, site preparation, controlled burning, tree planting, applications of fertilizers, herbicides, pesticides, weed control, animal damage control, fire control, insect and disease control, forest road construction, and any other generally accepted forestry practices.

(B) A county or municipality must not adopt or enforce any ordinance, rule, regulation, resolution, or permit related to forestry activities on forestland that is:

(1) taxed on the basis of its present use value as forestland under Section 12-43-220(d);

(2) managed in accordance with a forest management plan;

(3) certified under the Sustainable Forestry Initiative, the Forest Stewardship Council, the American Forest Foundations Tree Farm System, or any other nationally recognized forest certification system;

(4) subject to a legally binding conservation easement under which the owner limits the right to develop or subdivide the land; or

(5) managed and harvested in accordance with the best management practices established by the State Commission of Forestry pursuant to Section 48-36-30.

(C) This section does not limit, expand, or otherwise alter the authority of a county or municipality to:

(1) regulate activities associated with development, provided that a county or municipality requires a deferral of consideration of an application for a building permit, a site disturbance or subdivision plan, or any other approval for development that if implemented would result in a change from forest land to nonforest or nonagricultural use, the deferral may not exceed a period of up to:

(a) one year after the completion of a timber harvest if the harvest results in the removal of all or

substantially all of the trees from the specific area included in a building permit, site disturbance or subdivision plan in item (1), and the removal qualified for an exemption contained in subsection (B); or

(b) five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees from the specific area included in a building permit, site disturbance or subdivision plan in item (1), and the removal qualified for an exemption contained in subsection (B) for which the permit or approval is sought and the harvest was a wilful violation of the county regulations;

(2) regulate trees pursuant to any act of the General Assembly;

(3) adopt ordinances that are necessary to comply with any federal or state law, regulation, or rule; or

(4) exercise its development permitting, planning, or zoning authority as provided by law.

(D) A person whose application for a building permit, a site disturbance or subdivision plan, or any other approval for development is deferred pursuant to the provisions contained in this section may appeal the decision to the appropriate governmental authority.

With your letter, you provided us with a copy of a portion of Richland County's Land Development Code (the "Land Development Code") entitled "Landscaping standards." Richland County Land Development Code § 26-176. This portion of the Land Development Code contains provisions aimed at protecting existing trees during development. Included in these provisions are restrictions on tree removal, requirements that certain trees be replaced if removed, and requirements that developers submit tree protection plans. Id.

In order to determine whether section 48-23-205 restricts Richland County (the "County") from passing the portion of the Land Development Code you provided with your letter, we must first interpret section 48-23-205. As our Supreme Court recently explained in SCANA Corp. v. South Carolina Department of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory

construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

“In construing a statute, it is proper to consider legislation dealing with the same subject matter.” Fidelity and Cas. Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 335, 295 S.E.2d 783, 785 (1982).

Section 48-23-205 is located in chapter 23 of title 48, which includes statutes dealing with forestry in general. Most of the provisions in chapter 23 pertain to the State Forestry Commission and its authority. From the plain language of section 48-23-205, it appears that this provision is aimed specifically at restricting the ability of counties and cities to regulate certain forestry practices. Thus, from reading section 48-23-205 in conjunction with the other provisions contained in chapter 23, we presume that the Legislature intended for this provision to provide uniformity among counties with respect to forestry activities.

From the plain language used in section 48-23-205, we believe the Legislature intended for this provision to be narrowing applied to prohibit only local legislation involving forestry activities conducted on specific types of forestland. While section 48-23-205(B) states that counties are prohibited from adopting and enforcing ordinances related to forestry activities, the Legislature limits this provision by providing a definition for what is meant by forestry activities and forestland. Moreover, the Legislature also indicates that this provision only applies to forestland meeting certain requirements.

The definition of forestry activities provided in section 48-23-205(A)(4) includes such activities as “site preparation” and “tree planting.” The Land Development Code basically restricts tree removal during the site preparation for development. The provisions in the Land Development Code do not address timber production and harvest or forestry practices. In addition, while the Land Development Code calls for certain trees to be replaced, its provisions do not appear to involve tree planting for the production of timber. Thus, we do not believe a court would generally find that the Land Development Code regulates forestry activities.

In addition, as you point out in your letter, section 48-25-205(C) specifically states that this provision does not prohibit counties from certain activities, including a county’s ability to “exercise its development permitting, planning, or zoning authority as provided by law.” In our discussions with you, the aim of the Land Development Code is to provide protection for certain trees during land development and is included as a part of the County’s planning and zoning provisions. Section

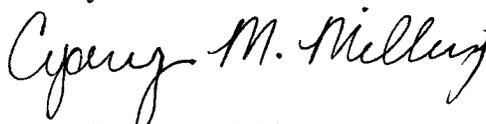
6-29-340 of the South Carolina Code (2004), contained in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, states the powers and authority of local planning commissions. Among the powers given to local planning commissions by the Legislature is the power to recommend landscaping ordinances to their respective local governing body "setting forth required planting, tree preservation, and other aesthetic considerations for land and structures." S.C. Code Ann. § 6-29-340. In addition, section 6-29-720(A)(7) of the South Carolina Code (2004), specifically recognizes a local governing body's authority to regulate "aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting, and curb cuts." Thus, we believe that the portion of the Land Development Code you provided falls well within the County's planning and zoning authority. Thus, even if a court were to determine that the contents of the Land Development Code constitute forestry activities, we do not believe the County would be prohibited from enacting such provisions as they related to the County's exercise of its planning and zoning authority.

Conclusion

Based on our reading of section 48-23-205 and our review of the portion of the Land Development Code you provided, we do not believe the Land Development Code acts to regulate forestry activities. However, even if a court were to find that the Land Development Code regulates such activities, we believe such regulation is within the County's planning and zoning authority pursuant to the Local Government Comprehensive Planning Enabling Act. Therefore, such an ordinance is permitted according to section 48-23-205(C)(4).

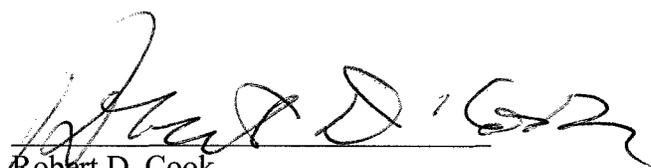
Very truly yours,

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