

The State of South Carolina



Office of the Attorney General

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March 5, 1990

Jack M. Scoville, Jr., Esquire  
Georgetown County Attorney  
Post Office Box 1250  
Georgetown, South Carolina 29442

Dear Mr. Scoville:

By your letter of January 16, 1990, you have asked for the opinion of this Office as to the roles of the county planning commission and county council under Section 6-7-730 of the South Carolina Code of Laws (1976) relative to amending zoning regulations. We appreciate your thorough research and, as noted below, concur with your conclusions.

Section 6-7-730 provides the following:

Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing thereon, which shall 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 such public hearing shall be given in a newspaper of general circulation in the municipality or county. No change in or departure from the text or maps as certified by the local planning commission shall be made pursuant to such hearing unless such change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have thirty days within which to submit its report to the governing authority. If the planning commission fails to submit a report within the thirty-day period, it shall be deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority shall be required before amending the zoning ordinance or resolution or maps. ...[Emphasis added.]

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You have advised that in Georgetown County, the County Council has delegated the holding of the public hearing to the Georgetown County Planning Commission. You have asked when the thirty-day period, by which the Planning Commission must submit its report, begins to run.

A careful reading of the plain language of Section 6-7-730 mandates several steps to be followed in adopting or amending zoning regulations. These steps include:

1. Receipt of a request to rezone.
2. Notice of public hearing published as required.
3. Public hearing held by county council or planning commission if authorized by council to do so.
4. Submission of the change or departure from the present zoning map to the planning commission.
5. Report by the planning commission to county council.
6. Amending the zoning ordinance by county council (if it desires to do so).

As you point out in your letter, the public hearing and the submission of the matter to the planning commission for its review and recommendations are separate actions. We concur with your conclusion that if the planning commission is holding the public hearing, such is a separate function from its later task of reviewing the zoning request to make a recommendation to county council.

As a practical matter, either entity which holds the public hearing is facilitating the process of permitting citizen input into the decision - making process. If the planning commission holds the hearing, presumably that body makes a report to county council as to the input provided by those appearing at the hearing. Based on the results of the public hearing, county council may decide to proceed with the rezoning request; or council may realize that the sentiments of the public expressed at the hearing are such that further action by the council would not be advisable. Thus, the matter might be dropped and not referred to the planning commission.

The language of Section 6-7-730 to be focused on is emphasized above. Amendment of the zoning map cannot be made "pursuant to such hearing" until the change is submitted to the planning commission for review and recommendation. The statute grants the planning commission thirty days to submit its report to county council; failure to submit a report within the thirty-day period is deemed to result in a favorable report. If county council holds the required

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public hearing, clearly the thirty-day period does not begin to run until council submits the proposed amendment to the planning commission for review and recommendation. There is no identifiable reason to treat differently the situation in which the planning commission holds the hearing instead of council; indeed, depending on the outcome of the public hearing, the planning commission may not receive the proposed amendment to review and make its recommendations. Thus, the separate functions of the planning commission in holding the required public hearing and subsequently reviewing and making recommendations relative to the proposed zoning amendments must be recognized.

Based on the foregoing, we concur with your opinion as Georgetown County Attorney that the thirty-day period allotted to a county planning commission to review and make recommendations as to proposed zoning amendments, pursuant to Section 6-7-730, would begin to run when the county council submits such proposed change to the planning commission subsequent to the required public hearing, regardless of which entity holds the public hearing.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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Executive Assistant for Opinions