

Local Leaders.
Statewide
Strength.®

SCAC Institute of Government Planning and Land Use



SOUTH CAROLINA
ASSOCIATION OF COUNTIES

Saturday
August 1,
2020
Hilton Head
Island, SC

Presenters

Michael Conley

Director

Planning and Zoning

803.425.7233, x. 7

michael.conley@kershaw.sc.gov



Alison Simmons, AICP

Director

Planning and Zoning

843.719.4164

Alison.Simmons@BerkeleyCountySC.Gov



BERKELEY
COUNTY SC

John K. DeLoache

Senior Staff Attorney

803.252.7255 X 337

JDeLoache@scac.sc



SOUTH CAROLINA
ASSOCIATION OF COUNTIES

What Is Planning?

- ▶ Objective of maximizing public health, safety, and well-being for all.
- ▶ Consideration of how and where we move around our community, provide public services, recreational opportunities, housing, commercial services and retail, attract and retain employment opportunities, protect open space, and preserve character
- ▶ Perpetuate growth objectives through implementation of the tools statute enables local governments to use.

Authority

- Police Powers (Art VIII of S.C. Constitution)
- SC Home Rule Act (4-9-25)
- Local Gov. Comprehensive Land Use Planning Act of 1994 (Planning Act)
- Appellate decisions of State and Federal Courts

Statutory Authority

▶ Actions by General Assembly

- ▶ Authorized municipal planning and zoning in 1924 and county planning in 1942.
- ▶ Counties and municipalities were governed by separate planning statutes.
- ▶ Local governments were not required to consider neighboring communities when undertaking their planning programs.
- ▶ As the state's population grew this led to conflicts between municipalities, counties and regional plans.

South Carolina Legislature

[Home](#) [Senate](#) [House](#) [Committee Postings and Reports](#) [Legislative Council](#) [Citizens' Interest](#) [Publications](#) [Staff Portal](#)

Chamber Video

[Senate](#)
(Audio Only)

[House](#)
(Audio Only)

[Video Schedule](#)

[Video Archives](#)

[How do I...](#)

[Quick Search](#)

[Find Your Legislators](#)

[Contact Your Legislator](#)

[Legislation](#)

[Track Legislation](#)

[Multi-Criteria Search](#)

[Research](#)

[South Carolina Law](#)

[Legislative Manual](#)

[Student Connection](#)

[Visiting the State House](#)

[Archives](#)

[State Agency Websites](#)

[Media Links](#)

[South Carolina Law](#) > [Code of Laws](#) > [Title 6](#)

South Carolina Code of Laws Unannotated

Title 6 - Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions

CHAPTER 29

South Carolina Local Government Comprehensive Planning Enabling Act of 1994

ARTICLE 1

Creation of Local Planning Commission

SECTION 6-29-310. "Local planning commission" defined.

For purposes of this chapter, "local planning commission" means a municipal planning commission, a county planning commission, a joint city-county planning commission, or a consolidated government planning commission.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-320. Bodies authorized to create local planning commissions.

The city council of each municipality may create a municipal planning commission. The county council of each county may create a county planning commission. The governing body of a consolidated government may create a planning commission. Any combination of municipal councils and a county council or any combination of municipal councils may create a joint planning commission.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-330. Areas of jurisdiction; agreement for county planning commission to act as municipal planning commission.

(A) A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits. 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. Unincorporated areas of the county or counties adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this chapter provided that the municipality and county councils involved adopt ordinances establishing the boundaries of the additional areas, the limitations of the authority to be exercised by the municipality, and representation on the boards and commissions provided under this chapter. The agreement must be formally

What are the Roles of Various Government Bodies in the Planning Process?

Council,
Planning Commission,
Board of Zoning Appeals



**SOUTH CAROLINA
ASSOCIATION OF COUNTIES**

Role of County Council

- ▶ Legislative Body
- ▶ Creates and appoints members of boards and commissions
- ▶ Adopts Comprehensive Plan and related ordinances and regulations
 - ▶ Advice and recommendation of the Planning Commission
- ▶ Authority over the zoning and rezoning of property subject to the zoning ordinance
 - ▶ Court has held that this is a duty that can not be delegated
- ▶ Does not have appellate review of Board/Commission quasi-judicial decisions
 - ▶ Circuit Court

Role of Planning Commission

- ▶ Primarily an advisory body to council
- ▶ Provides advice & recommendations to Council on planning issues (6-29-340)
 - ▶ Develops & recommends the comprehensive plan, zoning ordinance, & land development regulations
 - ▶ Does not administer the zoning ordinance or grant special exceptions or variances
 - ▶ Council may delegate its duty to hold rezoning public hearings to the Commission
- ▶ Administration of land development/subdivision regulations

Role of Board of Zoning Appeals

- ▶ A quasi-judicial body
 - ▶ Decisions must be based on applicant's due process and equal protection rights provided in the US and SC Constitutions
- ▶ Administrative review of Zoning Administrator's decisions
- ▶ Grants of Variances and Special Exceptions

Role of Board of Zoning Appeals

Variance:

- ▶ Relief from the strict application of zoning regulations intended to relieve an owner from denial of all beneficial use of property in unique cases of hardship imposed by the zoning ordinance.
- ▶ It is not used to allow a use that is not permitted.
- ▶ The board of zoning appeals may impose reasonable conditions related to the variance.

Special Exception:

- ▶ A use that is not permitted outright but allowed upon authorization by the BZA. No hardship need exist. Prescribed conditions set forth in the ordinance must be met. When granted, a special exception has the same status as a permitted use as long as the conditions are met, regardless of a change in property ownership.

Other Takeaways:

- ▶ Neither a variance nor an exception can be used as an amendment to the ordinance.
- ▶ Amendment is a legislative function that may be exercised only by the governing body.

Variance Criteria

- ✓ There are extraordinary and exceptional conditions pertaining to the particular piece of property; and
- ✓ These conditions do not generally apply to other property in the vicinity; and
- ✓ Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- ✓ The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

Variance Criteria

- ▶ **The board may not grant a variance to:**
 - ▶ Allow the establishment of a use not otherwise permitted
 - ▶ Extend a nonconforming use of land
 - ▶ Change the zoning district boundaries shown on the official map
 - ▶ Allow for use of land, a building, or a structure that is prohibited in a given district
 - ▶ The fact that property may be utilized more profitably, should a variance be granted
- ▶ * In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

A meme featuring a man in a dark suit, white shirt, and light-colored tie, wearing glasses. He is speaking and looking slightly to the right. The background is a dark blue wall with a textured pattern. The text is overlaid in large, white, bold, sans-serif font with a black outline.

**OOO, I'M SORRY. WHAT WE WERE
LOOKING FOR WAS**

A HARDSHIP

Introduction to the Comprehensive Planning Process



**SOUTH CAROLINA
ASSOCIATION OF COUNTIES**

The Comprehensive Planning Process

- ▶ Not a One-Size Fits All Process
 - ▶ Planning and Zoning programs are not mandated by law
 - ▶ Counties should set their own pace and enact ordinances and regulations that respond to social, cultural, and economic needs and dynamics
 - ▶ BUT...local ordinances/regulations must be consistent with state laws, including the Planning Act.

The Planning Act

The Planning Act encompasses numerous provisions each with its own statutorily defined roles in the planning process

- ▶ Planning Commission
- ▶ Comprehensive Plan
- ▶ Zoning Ordinance
- ▶ Board of Zoning Appeals
- ▶ Board of Architectural Review
- ▶ Land Development/Subdivision Regulations
 - ▶ PUD's, Development Agreements, Impact Fees

Comprehensive Plan Objectives



Identify and communicate the County's collective vision and goals for the future



Provide a blueprint for future land use decisions



Serve as the basis for land use codes, zoning, subdivisions, etc.



Illustrate concepts through combination of text, maps, and graphical displays of data



Provide a menu of implementation strategies and ways to measure success

State Comprehensive Planning Requirements

- ▶ Mandated by the 1994 Act to Include:
 - a) Inventory of existing conditions
 - b) Assessment of nine required “elements”
 - c) Statements of needs, goals and objectives
 - d) Implementation strategies and time frames
- ▶ 5-Year Review and 10-Year Update Requirements
- ▶ No legal enforcement on individual parcels of land – but courts will use as guidance
- ▶ All related land use ordinances & regulations must conform to the plan



Population



**Economic
Development**



**Natural
Resources**



**Cultural
Resources**



**Community
Facilities**



Housing



Land Use



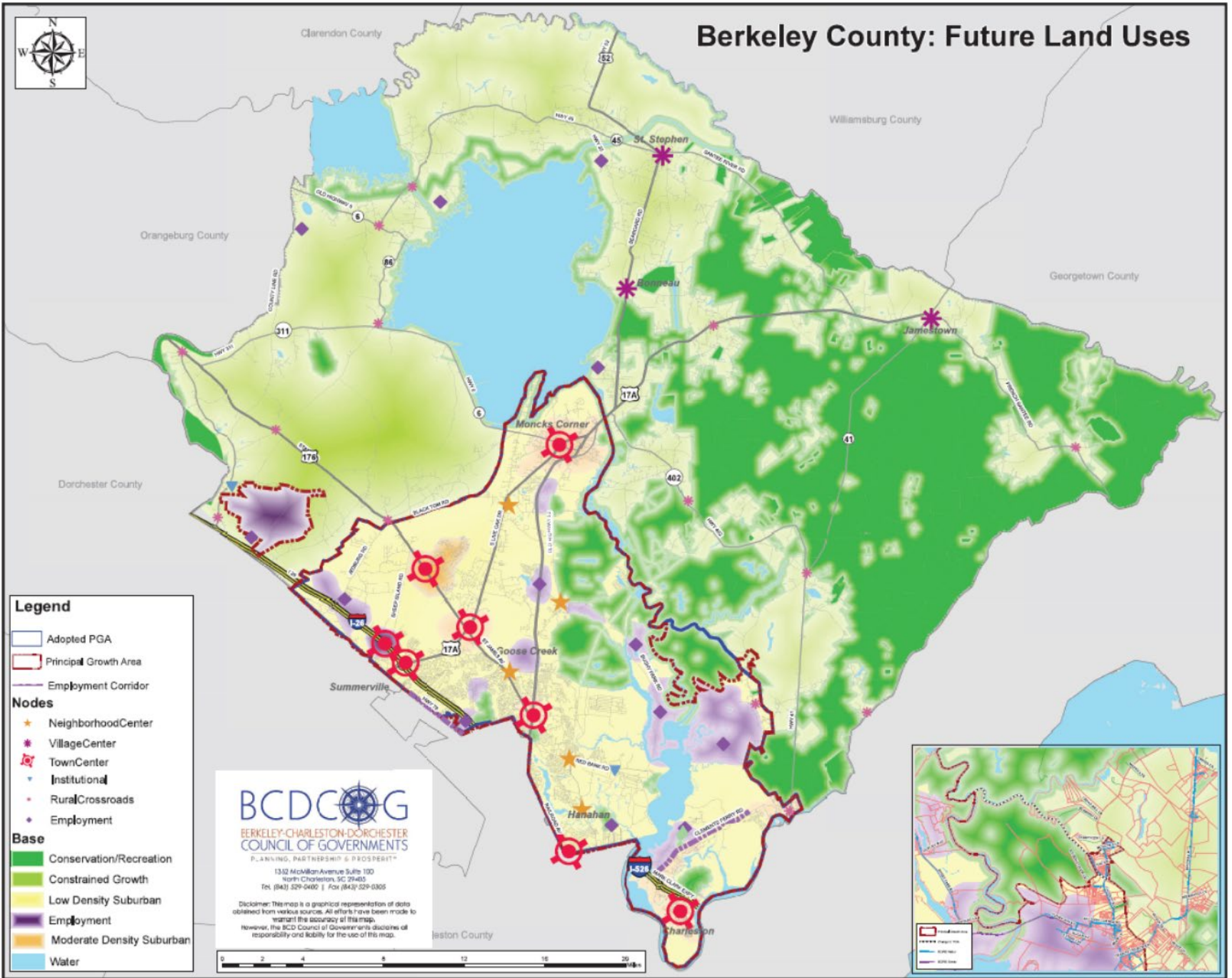
Transportation



**Priority
Investments**

Nine Required Comprehensive Planning Elements

Berkeley County: Future Land Uses



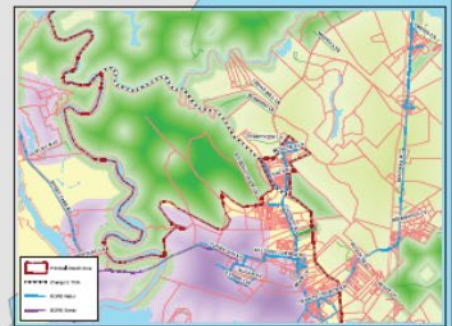
Legend

- Adopted PGA
- Principal Growth Area
- Employment Corridor
- Nodes**
- Neighborhood Center
- Village Center
- Town Center
- Institutional
- Rural Crossroads
- Employment
- Base**
- Conservation/Recreation
- Constrained Growth
- Low Density Suburban
- Employment
- Moderate Density Suburban
- Water

BCDCOG
 BERKELEY-CHARLESTON-DORCHESTER
 COUNCIL OF GOVERNMENTS
 PLANNING, PARTNERSHIP & PROSPERITY™

1332 McMillan Avenue Suite 100
 North Charleston, SC 29405
 Tel: (843) 529-5400 | Fax: (843) 529-0305

Disclaimer: This map is a graphical representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, the BCD Council of Governments disclaims of responsibility and liability for the use of this map.



The Zoning Ordinance

▶ Purpose

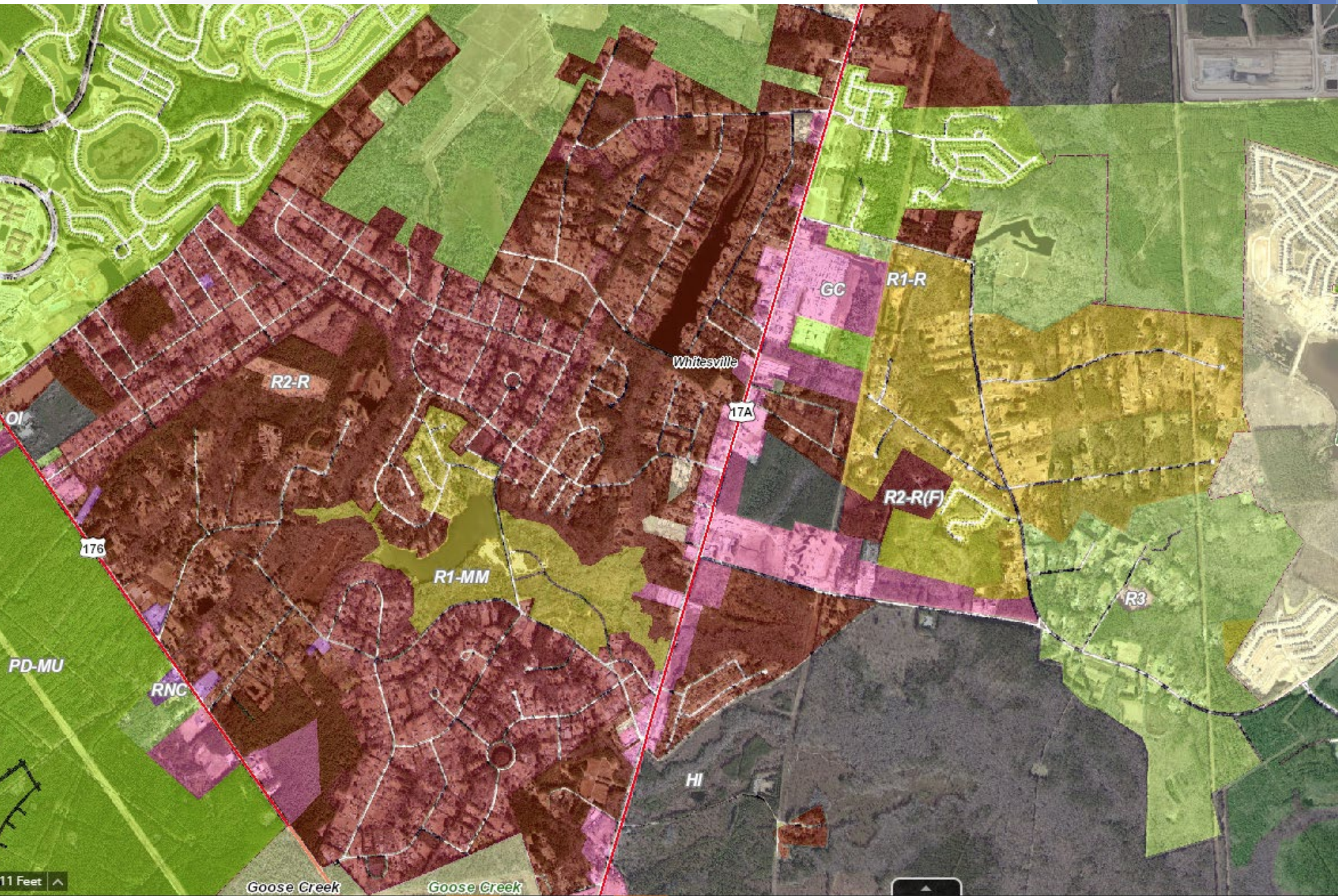
- ▶ Guiding development in accordance with existing and future needs
- ▶ Promote the public health, safety, convenience, appearance, prosperity and welfare

▶ Zoning Ordinance

- ▶ County must adopt Land Use Element of the Comprehensive Plan prior to adoption of zoning ordinance.
 - ▶ Governs land use types within the political subdivision
 - ▶ Legally enforceable on individual parcels
- ▶ Zoning Techniques – the Act lists 7 specific types of zones that can be included in an ordinance, but does not limit jurisdictions to those 7

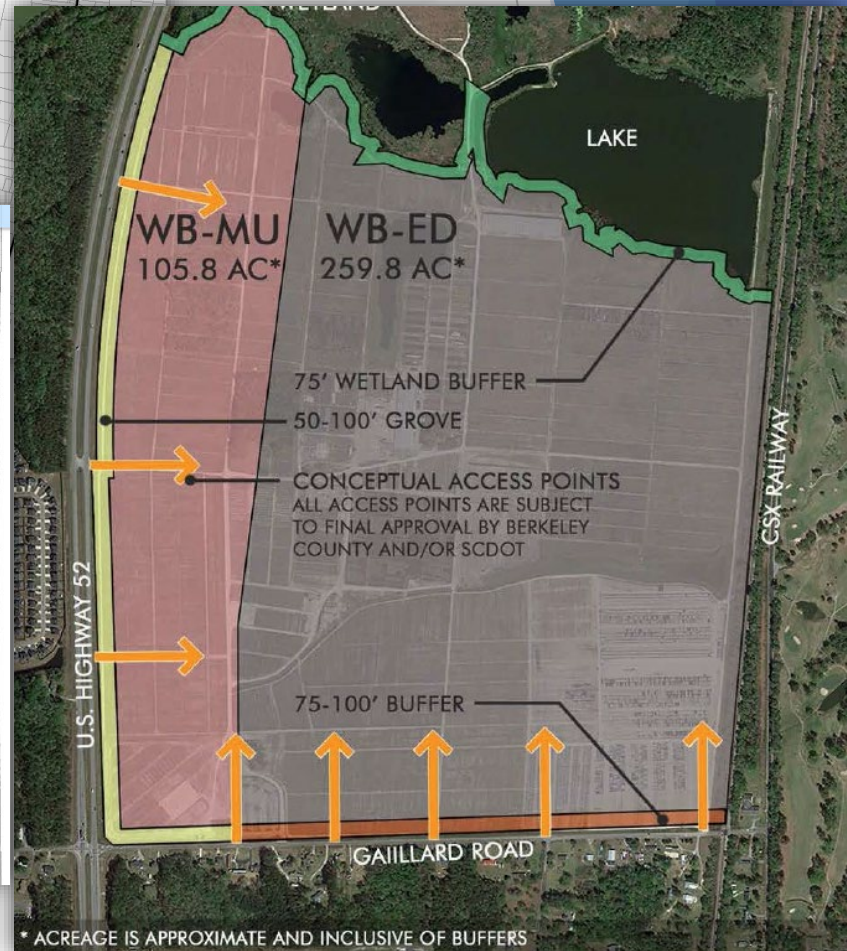
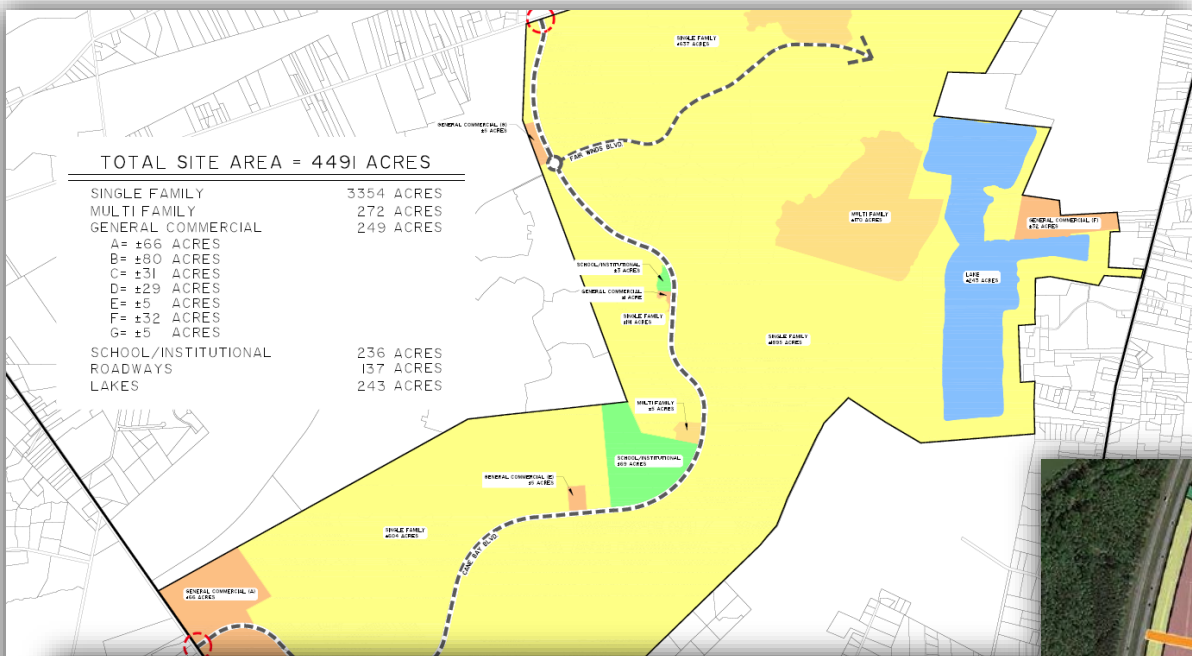
The Zoning Ordinance

- ▶ Examples of Zoning Techniques
 - ▶ Traditional Euclidean Zoning
 - ▶ Planned Development Districts - PUD
 - ▶ Overlay Zoning
 - ▶ Cluster Development
 - ▶ Form-Based Zoning



TOTAL SITE AREA = 4491 ACRES

SINGLE FAMILY	3354 ACRES
MULTI FAMILY	272 ACRES
GENERAL COMMERCIAL	249 ACRES
A=	±66 ACRES
B=	±80 ACRES
C=	±31 ACRES
D=	±29 ACRES
E=	±5 ACRES
F=	±32 ACRES
G=	±5 ACRES
SCHOOL/INSTITUTIONAL	236 ACRES
ROADWAYS	137 ACRES
LAKES	243 ACRES



Zoning Administration

Administration of a zoning program is generally done first by staff of the jurisdiction, with appellate review by the Zoning Board of Appeals.

- ▶ Zoning Administrator – ordinance must designate an official to administer
- ▶ Zoning Map – the official map indicating every parcel within the jurisdiction and their zoning classification
 - ▶ **Map takes precedent** – check the map against text before advising parties about classification (*Carolina Chloride v. Richland County*)
 - ▶ Developers can not rely on advice of other non-planning county officials (tax assessor) (*Quail Hill v. Richland County*)

Land Use Allowances

Zoning Ordinances typically consist of text and a map

- ▶ Permitted Uses
- ▶ Conditional Uses
- ▶ Special Exception Uses
- ▶ Prohibited Uses

Zoning Administration

Duties:

- ▶ Interpreting and applying the Ordinance
- ▶ Review Plans/Development Proposals for conformance
- ▶ Authorizing permits
- ▶ Processing applications for variances, special exceptions, and appeals.
- ▶ Maintaining the Official Zoning Map
- ▶ Addressing complaints
- ▶ Enforcement
- ▶ Other duties assigned by Administrator, Manager, or Council

Zoning Enforcement

- ▶ Normally the responsibility of the Zoning Administrator
- ▶ Four statutory enforcement mechanisms
 - ▶ *Stop orders*: orders unpermitted work to stop
 - ▶ *Injunctions & mandamus*: injunctions are actions to prohibit/halt contrary land uses; mandamus is a legal action to compel an official to undertake a ministerial duty.
 - ▶ *Ordinance Summons*: code enforcement officers issue a summons and authorizes fines/costs on a violator by the magistrate
 - ▶ *Warrants*: authorizes the issuance of arrest warrants for a zoning ordinance violation – generally a last resort enforcement tool.

Zoning Map Amendments

▶ **Planning and Zoning Staff Review**

- ▶ *Comprehensive Plan Recommendation*
- ▶ *Existing and Intended Uses*
- ▶ *Adjoining Uses and Zoning*
- ▶ *Any known deed restrictions*
- ▶ *Infrastructure and/or Public Facilities Considerations*

▶ **Planning Commission Recommendation**

- ▶ *Consider Staff Recommendation*
- ▶ *Comprehensive Plan*
- ▶ *Public Comment*

▶ **County Council – Final Decision-Making Authority**

Conditional Rezoning Prohibited

SECTION 6 29 720. Zoning districts; matters regulated; uniformity; zoning techniques.

- ▶ *Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.*

Per the MASC 2014 Comprehensive Planning Guide:

- ▶ *Zoning Functions: In the past, some local governments allowed their planning commission to perform zoning functions delegated by law to the board of zoning appeals. The 1994 Act makes it clear the planning commission does not have authority to administer the zoning ordinance. It cannot grant variances, use variances or special exceptions. **The Act does not allow the planning commission or the governing body to grant “special uses,” “conditional uses” or “uses upon review.”** Appeals, variances and special exceptions all come within the exclusive jurisdiction of the board of zoning appeals. Conditional uses require no review because they must be described in the text of the zoning ordinance (Page 4).*

Public Hearings

- ▶ Required before the adoption and amendment of Comp. plan, zoning ordinance, and land development regulations
- ▶ Required before rezoning of property
- ▶ Increased time and notice provisions from the Freedom of Information Act
- ▶ Rules should include public input rules, which are publically announced
 - ▶ Time limits; for/against; number of speakers
- ▶ To receive information only
 - ▶ Members should refrain from personal comments or remarks to speakers

Examples of Public Hearing Sequences

If Council Holds Hearing:

- ▶ Amendment initiated
- ▶ Refer to commission for review;
- ▶ Notices of public hearing;
- ▶ Commission reviews;
- ▶ Commission makes recommendation;
- ▶ Council holds hearing;
- ▶ Council adopts or rejects ordinance in up to 3 readings.

If Commission Holds Hearing:

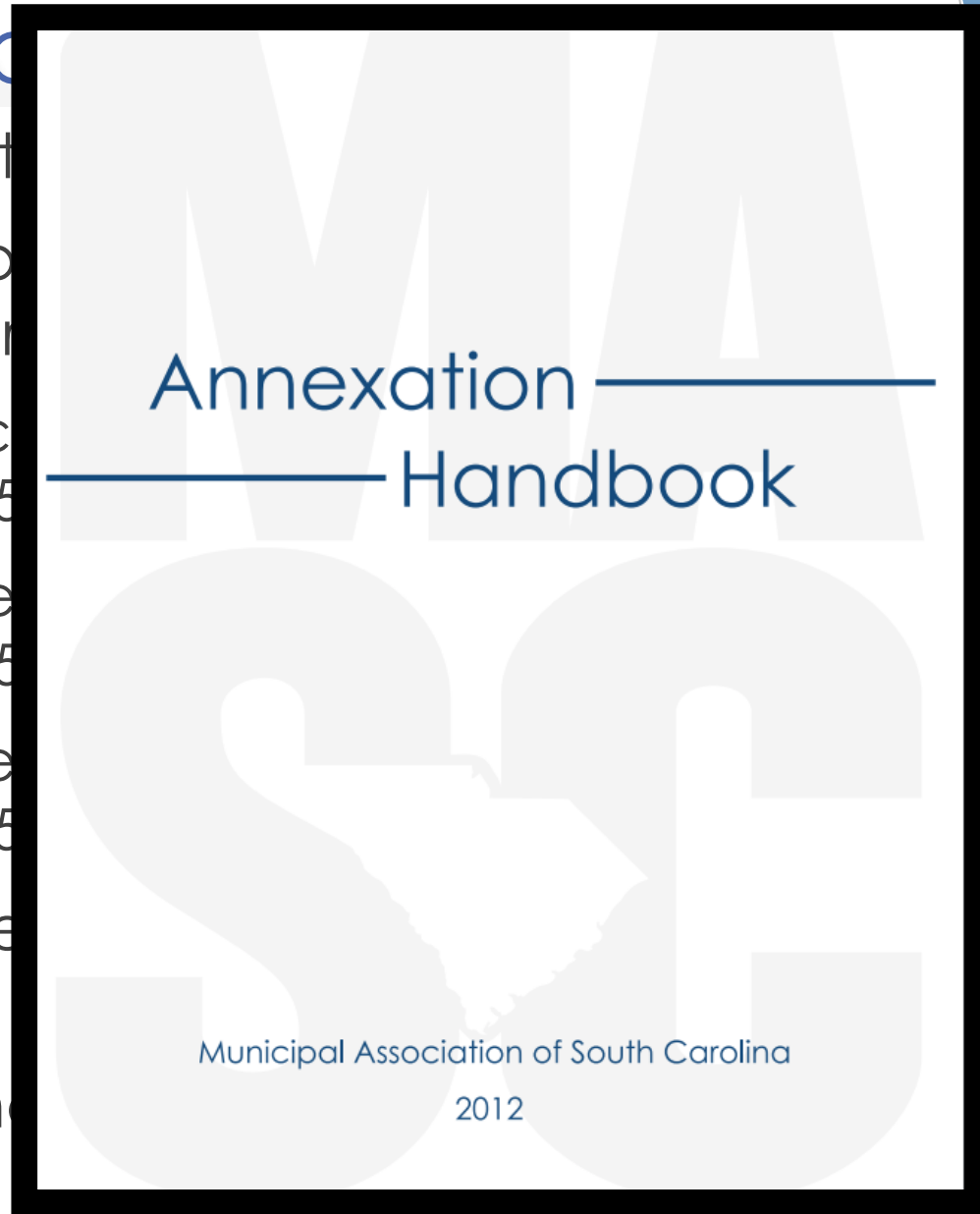
- ▶ Amendment initiated;
- ▶ Refer to commission for hearing and review;
- ▶ Notices of public hearing
- ▶ Notices of public hearing;
- ▶ Commission holds hearing;
- ▶ Commission reviews;
- ▶ Commission makes recommendation;
- ▶ Council adopts or rejects ordinance in up to 3 reading.

Adoption of Ordinances

- ▶ After the required public hearing and Planning Commission review, the ordinance, amendment, or requested rezoning must be adopted by an ordinance.
- ▶ Municipalities may adopt ordinances on two readings with at least six days between each reading. S.C. Code §5-7-270.
- ▶ Counties may adopt ordinances on three readings on separate days with at least seven days between second and third readings. S.C. Code §4-9-120.

Municipal

- ▶ Municipality
- ▶ Property of
through the
- ▶ 100 percent
Section 5
- ▶ 75 percent
Section 5
- ▶ 25 percent
Section 5
- ▶ Upon annexation
millage
- ▶ Development



x property
annexation
ce method
ce method
thod
ct County
nes

Distilling Public Input



NIMBY COWS.

Distilling Public Input

- ▶ Separate Factual Information from Emotional Responses
- ▶ Public Comment Example:
- ▶ “His proposal to rezone his property is a terrible idea. I will never be able to turn out of my driveway. Traffic is already backed up to outer Mongolia. Murder and burglary will run rampant and the world may come to an end.”

Distilling Public Input

- ▶ What do you do when you hear a member of the public say something like this?
- ▶ What is useful?
- ▶ What is not useful?
- ▶ Should you ask follow up questions? If so, give an example.

Objective vs. Subjective Findings

▶ Objective: *adjective*

- ▶ Not influenced by personal feelings or opinions in considering and representing facts.

▶ Subjective: *adjective*

- ▶ Based on or influenced by personal feelings, tastes, or opinions.

Objective Vs. Subjective Findings

Objective Findings

- ▶ Quantifiable Impacts
 - ▶ Noise
 - ▶ Traffic
 - ▶ Utilities, Infrastructure, Public Facilities Adequacy, Capacity, and Availability
- ▶ Quality of Life / Safety
- ▶ Character Preservation
- ▶ Comprehensive Plan
- ▶ Safety

Subjective Findings

- ▶ Discriminatory
- ▶ Exclusionary
- ▶ Unfounded Impacts
 - (e.g. “Crime will increase because of the housing type proposed”)

- What about comments about property value diminution?
 - Valuable or Invaluable?

Land Development Regulations

Land Development Regulations

- Regulations setting out requirements for the development of individual parcels of land

Planned Unit Developments

- Must adhere to Planning Act requirements and be consistent with Comp Plan and Zoning Ordinance
- Must contain more than one separate land use – SC Courts have rejected multiple residential densities as separate land uses

Development Agreements

- Agreements between county and developers pursuant to SC Local Government Development Agreement Act - SC Code 6-31-10 et seq.
- Property size and development timeframe thresholds
- Must be adopted by the local governing body

Issues with Increasing Development

SC is among the fastest growing population states in the US. Many counties are having to balance growth with its unintended consequences.

- ▶ Impact Fees and Exactions
 - ▶ Impact fees must comply with State law and tied to Capital Improvement Plans
 - ▶ Exactions are development approvals based on contribution/provision of public facilities – requires “essential nexus” between the approval and the local objectives/facilities
- ▶ Development Moratorium
 - ▶ Places a temporary halt to development – specific types or general
 - ▶ Upheld by US Supreme Court
 - ▶ Watch for vested rights issues if permits have been approved

Berkeley County population growth soars fastest growing in the Charleston area

David Slade dslade@postandcourier.com Mar 23, 2017 Updated Mar 23, 2017 (14)



...y Plantation in Berkeley County already has thousands of residents, and could be home to 25,000 or more when
...ed. It was among the nation's top-selling master-planned communities in 2015, when this aerial photograph was taken.
...e Speed/Staff

Buy Now



Development Issues - Continued

- ▶ Pending Ordinance Doctrine: allows denial of permit application if the use is repugnant to a pending/later enacted ordinance
- ▶ Ordinance must be legally pending - when Council is resolved to consider new or amended scheme and advertised to the public its intention to hold a public hearing
 - ▶ *Sherman v. Reavis*, 273 SC 542, 257 SE2d 735 (1979)

Fundamental Terms/Distinctions





**Legal Issues
Concerning
Land Use
Planning Activity**

Fundamental Bundle of Rights of Property Ownership

- ▶ Use
- ▶ Exclude
- ▶ Enjoy
- ▶ Possess
- ▶ Sell/Transfer

Legal Issues

- ▶ Applicants before Planning bodies must be provided constitutionally protected Due Process and Equal Protection
 - ▶ Treated the same as like property owners
 - ▶ Right to be heard with judicial review
- ▶ Appeals from Decisions of Planning Related Bodies
 - ▶ Appeals go directly to judicial bodies rather than county council
 - ▶ Generally only parties in interest to the decision (impacted by) can appeal
- ▶ Appeals to circuit court – *Citizens for Quality Rural Living v. Greenville County* (2019)
 - ▶ S.C. Court of Appeals – expanded appeal rights to any individual/group with an interest in the decision (not just property owner)

Eminent Domain & Condemnation

- ▶ Eminent Domain – legal authority granted to government to use private property for public purposes – with the payment of “just compensation”
 - ▶ Purchase based on fair market value (willing seller to willing buyer standard)
 - ▶ What is public purpose?
 - ▶ S.C. Constitution - private economic development is not a public purpose
- ▶ Condemnation – statutory procedure to gain ownership of land by eminent domain
- ▶ S.C. Eminent Domain Procedures Act – SC Code Title 28
 - ▶ Process – 28-2-210 et seq.
 - ▶ Appeal of valuation – 28-2-240 et seq.

Takings

- ▶ *What is a taking*: the unconstitutional use of private property without compensation
 - ▶ Two types: physical & regulatory
- ▶ Physical Taking – government physically takes property for public use
 - ▶ Nolan v. California CC: public beach access
 - ▶ Dolan v. Tigard: public bike path
- ▶ Regulatory taking – use of property is eliminated or reduced by regulations
 - ▶ Penn Central v. New York – historic preservation
 - ▶ Partial loss of economic value
 - ▶ Lucas v. S.C. C.C. – beach front construction
 - ▶ Total loss of economic value

Takings & Exactions

Takings - Road/transportation Issues

- ▶ Key question – has the owner lost access to a main road artery
 - ▶ Road closures and reconfigurations may result in the finding that property has been taken
 - ▶ Previous courts have found no taking where left turns prohibited, secondary road access limited.
 - ▶ Leased property is subject to condemnation

Exactions

- ▶ Exactions: set-aside of land for public use or payment of funds to benefit public land in exchange for development approval of private lands
 - ▶ *Koontz v. ST. Johns River Water Management District*

Information Sources

- ▶ SCAC

- ▶ Guide to Land Use Planning

- ▶ SC Chapter of the APA

- ▶ www.scapa.org

- ▶ American Planning Association

- ▶ www.planning.org

- ▶ SC Legislature Online

- ▶ <https://www.scstatehouse.gov/code/statmast.php>