# Impact of Recent Supreme Court Cases on Planned Development Zoning

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Sinkler v. County of Charleston, 387 S. C. 67, 690 S.E.2d 777 (S. C. 2010)

Mikell v. County of Charleston, 386 S.C. 153, 687 S.E.2d 326 (S.C. 2010)

**SECTION 6-29-340.** Functions, powers, and duties of local planning commissions.

(A) It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or the county council, or both, 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, or the general welfare as well as the efficiency and economy of its area of jurisdiction.

**SECTION 6-29-510.** Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.
. . .

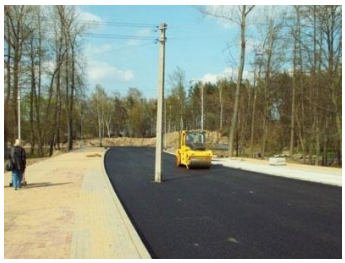
(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.

**SECTION 6-29-710.** Zoning ordinances; purposes.

(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable:
(1) to provide for adequate light, air, and open space;
(2) to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;
(3) to facilitate the creation of a convenient, attractive, and harmonious community;
(4) to protect and preserve scenic, historic, or ecologically sensitive areas;
(5) to regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;
(6) to facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements. "Other public requirements" which the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;
(7) to secure safety from fire, flood, and other dangers; and
(8) to further the public welfare in any other regard specified by a local governing body.

**Planning Is Important**

The Perception No. 1



The Perception No. 2

The Perception No. 3


The Perception No. 4

A Reality We Don't Want No. 1

A Reality We Don't Want No. 2


A Reality We Don't Want No. 3

A Reality We Have Achieved No. 1

A Reality We Have Achieved No. 2

A Reality We Have Achieved No. 3

A Reality We Have Achieved No. 4

Sinkler v. County of Charleston, 387 S. C. 67, 690 S.E.2d 777 (S. C. 2010)

What the Court did not do:

It did not change the "fairly debatable" standard for reviewing the actions of a local government with respect to the adoption of a local zoning ordinance.

"A court should practice judicial restraint and not supplant its judgment for the local governing body's judgment."

See: *Bob Jones University v. City of Greenville*, 243 S. C. 351, 133 S.E.2d 843 (S.C. 1963)

What the Court did do:

The Court found that the change in the zoning classification from an agricultural classification to a "PD" classification violated the State Enabling Act, specifically, S. C. Code Ann. § 6-29-720 (Supp. 2010).

What the Court did do:

S. C. Code Ann. § 6-29-720 (Supp. 2010):

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

. . .

(4) "planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

The Property in question:

1. Was residential under the AG classification;
2. Was residential under the PD classification.

The Property in question:

1. Did not have mixed uses under the AG classification;
2. Did not have mixed uses under the PD classification;
   - No commercial/retail;
   - No office space;
   - No unified site design.

The only thing that the change from the AG classification to the PD classification accomplished was to reduce the minimum lot size.

County argued that the Zoning Act does not limit zoning classifications to those enumerated in S. C. Code Ann. § 6-29-720 (Supp. 2010).

The Court did not take issue with this issue. But, since the County chose to utilize the PD classification, then the County had to follow the rules that it set for itself:

We agree with the Circuit Court that County Council clearly chose to employ the PD process for the Walpole's property, and once having invoked that technique, it could not fail to meet the requirements for a Planned Development.

Mikell v. County of Charleston, 386 S.C. 153, 687 S.E.2d 326 (S.C. 2010)

In general, the factual scenario is the same as in the *Sinker v. County of Charleston* case, being a rezoning from an agricultural use classification to a Planned Development classification.

County Ordinance included an "Agricultural Preservation (AG-10) Classification.

1 dwelling per 10 acres to 1 dwelling per 5 acres.

Code was written to require 1 dwelling per 10 acres, which could be increased to 1 dwelling per 5 acres through the PD process.

As a result of the change in this case, what happened was that the density was increased to 1 dwelling per 3.8 acres.

Zoning Ordinance included the following language, though:

Unless expressly stated in this section or approved at time of Planned Development Approval, all applicable standards shall apply. . . Planned Developments may provide for variations from other ordinances and regulations of other established zoning districts concerning use, setbacks, lot area, density, bulk, and other requirements for the general purpose of protecting the public health, safety and general welfare.

Court held:

Specific requirements of the AG-10 classification could not be undone through reliance on the general language elsewhere in the ordinance. Court did not say that the County could not accomplish such a result, but had County intended to do so: . . . the ordinance would have permitted higher density to be approved without restricting the AG-10 to a "highest approved density of 1 unit per 5 acres."