



LEGAL UPDATE

FALL 2021 CONFERENCE

SC CHAPTER OF THE AMERICAN PLANNING ASSOCIATION

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Municipal Parking

- Act 89/S40, S.C. Code §§ 57-5-840 and -845, clarifies that alteration of parking facilities on state highways must receive prior approval from the SC Department of Transportation through an encroachment permit. It also requires beach communities to offer free public beach parking, allows them to offer paid public beach parking, and allows the SC Department of Transportation to restrict parking only if circumstances necessitate restrictions. The bill allows beach community parking fees to be used for maintenance of parking facilities; beach access, maintenance, and renourishment; traffic and parking enforcement; first responders; and sanitation and litter control.

Billboards

- Act 34/S667, S.C. Code § 57-25-190, provides options and parameters to adjust or relocate outdoor advertising signs to restore visibility.

“Workshops” under FOIA

- FACTS: “[T]he Developer held a series of ‘workshops’ with members of the Board [of Architectural Review] to discuss the Project. In an email to the Board, a Town employee reminded members that two members [and, later, three members] would meet with the Developer at a time so there would be ‘no possibility of it looking like a quorum.’”
- COURT OF APPEALS: “We acknowledge the problematic nature of these emails and note that ‘workshops’ should not be used to circumvent FOIA requirements. However, we find these workshops between Board members and the Developer did not constitute ‘meetings’ under the plain language of our FOIA statutes.” *Croft v. Summerville*, 837 S.E.2d 219, 227–28 (Ct. App. 2019).
- ATTORNEY GENERAL: “This Office disagrees with the conclusion in *Croft*, and instead finds that the General Assembly did not intend the S.C. FOIA to require such a formulaic construction of quorum requirements and the prohibition of violations of the open meeting requirements.” 2021 WL 1832297, at *8 (S.C.A.G. Feb. 18, 2021)
- SUPREME COURT: “[T]his appeal is now moot.... [t]his controversy ended when the Developer decided not to build the Project.... we vacate the court of appeals' decision and dismiss this appeal as moot.” *Croft v. Summerville*, 860 S.E.2d 352 (S.C. 2021).

Phases of Development

- In December 1996, a church in Beaufort County applied for a permit to develop its property in accordance with a plat that depicted the church and a fellowship hall. Application described the development of a 15,872 square foot church and an 11,250 square foot building. Development permit issued in January 1997 and provided, “All permits expire two (2) years from the date of approval unless substantial improvement has occurred or final subdivision plat has been recorded.” *Grays Hill Baptist Church v. Beaufort Cty.*, 850 S.E.2d 29, 30 (2020).
- One month later, the Church received a construction permit to build the church. In December 1997, the Church completed construction of the church.
- In December 2006, the Beaufort County Council adopted an ordinance creating an airport overlay district. Shortly thereafter, the Church requested a construction permit to complete development of its property and build the fellowship hall. County denied the permit under the overlay.
- Did the original 1997 development permit include the construction of the fellowship hall? Did it expire?
- Court holds that (a) original development permit included the fellowship hall, and (b) work on church was “substantial improvement” that prevented expiration.

Tree Ordinance (6th Circuit Case)

- “[T]he Tree Ordinance requires tree owners in Canton[, Michigan] to get a permit before removing certain trees or undergrowth from their properties.... a tree owner can replace removed trees on its own property, replace them on someone else’s property, or pay a designated amount into Canton’s tree fund.... For every landmark tree cut down, a tree owner must replant three trees or pay about \$450 into the tree fund. For every non-landmark tree cut down as part of a larger-scale tree removal, a tree owner must replant one tree or pay about \$300 into the tree fund.” *F.P. Dev., LLC v. Canton*, 2021 WL 4771734 (6th Cir. Oct. 13, 2021).
- “[C]ertain permitting schemes should be subject to analysis under the unconstitutional conditions doctrine. *See Nollan, Dolan, Koontz*. Our analysis begins and ends there.”
- “[T]here is an ‘essential nexus’ between Canton’s ‘legitimate’ interest in forest and natural resource preservation and the permit conditions. Therefore, we need only address the ‘rough proportionality’ prong of *Nollan* and *Dolan*. That prong requires us to determine whether the degree of the exactions demanded by the township’s permit conditions bears the required relationship to the projected impact of the proposed development.... Canton fails to carry its burden to show that it made the required individualized determination.”
- Also see H3989, still live in 2021-22 session.

Heritage Act

- S.C. Code § 10-1-165, Protection of Certain Monuments and Memorials:
 - (A) No Revolutionary War ... War Between the States ... Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated....
 - (B) The provisions of this section may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.
- Supermajority requirement is unconstitutional but severable. The Act is otherwise constitutional. See *Pinckney v. Peeler*, 2021 WL 4305219 (S.C. Sept. 22, 2021).