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Local Zoning and Land Development Issues for Industry and Developers in South Carolina

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Disclaimer

This presentation will not cover State and federal environmental permitting, including air and water discharge permits and wetlands determinations, Army Corps of Engineers permitting, the impact of the State Coastal Management Act, and similar development and permitting issues over which local governments have little or no control.

The image features a central white rectangular area containing the word "Introduction" in a dark grey, sans-serif font. This central area is flanked by two horizontal bands of a blue abstract pattern. The pattern consists of overlapping, semi-transparent geometric shapes, primarily triangles and polygons, in various shades of blue, creating a dynamic, layered effect.

Introduction

Introduction

Quick overview of land use regulations and procedures in South Carolina.

Focus will be on ways to meet challenges from resistance to new development in fast-growing areas

Some practical pointers

Selected zoning issues

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State Comprehensive Planning Act

State Enabling Legislation

- Zoning and land development regulations have been around for 100 years
- Prior to 1994, there was a mishmash of State enabling acts granting authority to local governments to enact zoning and land development regulations and procedures
- South Carolina Local Government Comprehensive Planning Act of 1994, S. C. Code, Title 6, Chapter 29 (the“ Planning Act”)
- Use this link to access:
<https://www.scstatehouse.gov/code/t06c029.php>

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Requirements for Localities to Adopt Zoning and Land Development Regulations

Basic Requirements to Adopt Zoning and Land Development Regulations by Localities

- County or Municipal Governing Body sets zoning and development regulations by adopting ordinances which must comply with the Planning Act.
- Per the Planning Act, governing body must approve by ordinance a Comprehensive Plan which requires public input and must be re-evaluated every 5 years and updated at least every 10 years. Section 6-29-510
- Per pertinent S. C. Code provisions, County Council adoption of an ordinance requires 3 readings and a public hearing; municipal governing body adoption of an ordinance requires only 2 readings and a public hearing.

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Implementation of Zoning and Land Development Regulations

Implementation of Zoning and Land Development Regulations per Planning Act

Most Counties and Municipalities have adopted a unified development ordinance (“UDO”); and if not, separate ordinances for zoning, subdivision and other land use regulations, which must comply with the Planning Act, as follows:

- Zoning Code, containing districts or classifications, permitted uses and a Zoning Map (Sections 6-29-710 & -710)
- Subdivision of land requirements for roads and landscaping requirements (Section 6-29-340)
- Architectural review and control regulations, including those for Overlay Districts (Sections 6-29-880 & -1540)

Implementation of Zoning and Land Development Regulations per Planning Act

Creation of Boards and Commissions

- Planning Commission
 - Function is to give advice to Governing Body on planning matters, prepare and review plans, studies and planning related ordinances, Act allows (1) creation of a joint municipal and county planning commission and (2) applying to only certain defined areas of the jurisdiction (Section 6-29-310 et seq.)
- Board of Zoning Appeals or Adjustments (“BZA”)
 - Function is to hear appeals from administrative determinations, approve or deny requests for variances, and approve or deny requests for special exceptions as provided under Zoning Code (Section 6-29-780 et seq.)
- Architectural Review Commission
 - Function is to approve architectural plans and to hear appeals from adverse administrative decisions of Planning Department (Section 6-29-870 et seq.)

Implementation of Zoning and Land Development Regulations per Planning Act

Creation of Departments and Staffing for Administration of Ordinances

- Authorization to appoint professionals; educational requirements (Section 6-29-1310 et seq.)
- The Act does not define their functions, allowing the local jurisdiction to do that by adoption of ordinances
- Zoning Department and Administrator
- Planning Department and Director
- Subdivision Department and Administrator
- Utilities and Storm Water Drainage Department and Director
- Transportation Department and Director
- Building Inspection Department
- Fire Marshall Liaison, as applicable
- The above Departments are all together called the “Technical Review Committee” or “TRC”

Implementation of Zoning and Land Development Regulations per Planning Act

Zoning/Rezoning Procedures

- Applicant meets informally with Planning Department; then presents sketch or preliminary site plan, which receives input from TRC
- Recommendation from Planning Commission on application for rezoning or text amendment is required in most instances
- Planning Commission approves both subdivisions and site plans, after each meets all TRC's comments and requirements (Section 6-29-1150)
- Traffic Impact Study ("TIA") and Traffic Mitigation Agreement ("TMA")
 - County or municipal transportation department have initial review authority
 - SCDOT must review and approve
- Zoning or rezoning must be approved by governing body of County or municipality, as applicable, by adoption of ordinance, with a finding that it complies with the Comprehensive Plan (6-29-760)

Implementation of Zoning and Land Development Regulations per Planning Act

Process to Obtain a Variance from UDO

- Application to Planning Department
- BZA hears the variance request
- If variance is denied, an appeal must be brought directly to the County Court of Common Pleas (Sections 6-29-800 & -820)
- A landowner appealing a decision of the BZA can request a pre-litigation mediation (Section 6-29-825)
- BZA is considered a quasi-judicial body. Thus, standard of review by Court is high for the appellant

Implementation of Zoning and Land Development Regulations per Planning Act

Process to Appeal an Administrative Interpretation by Planning or Zoning Department

- Application filed with Zoning or Planning Department which is then submitted to the BZA for a hearing
- Thereafter, process is similar to appealing a variance denial

Process to Appeal a Denial of Rezoning Application or Other Adverse Action of Governing Body Decision

- Appeal must be brought in the County Court of Common Pleas
- Standard of unreasonable, arbitrary and capricious decision (see Section 6 below)
- A 2023 amendment to the Planning Act provides for optional mediation regarding appeals

Implementation of Zoning and Land Development Regulations per Planning Act

Vested Property Rights

- Most UDOs provide for a 2-year period for vesting of a permit, such as approval of a site plan or a grading permit (Section 6-29-1510 et seq.)
- Most UDOs, in compliance with the applicable provisions of the Planning Act, provide for up to five (5) annual extensions of the vested rights if timely request is made in writing by the applicant
- If the local jurisdiction did not provide for vested property rights at the time of the amendment of the Planning Act on vested rights in 2004, the Planning Act provides for 2 years of vested property rights with 5 automatic annual extensions
- S. C. General Assembly has adopted 3 Resolutions extending vested property rights in development permits
(https://www.scstatehouse.gov/sess118_2009-2010/bills/4445.htm,
https://www.scstatehouse.gov/sess120_2013-2014/bills/3774.htm,
https://www.scstatehouse.gov/sess125_2023-2024/bills/3209.htm,
<https://www.scag.gov/wp-content/uploads/2014/04/00292218.pdf>)

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State Local Government Development Agreement Act

State Local Government Development Agreement Act

- State Local Government Development Agreement Act, S. C. Code Section 6-31-10 et seq. (<https://www.scstatehouse.gov/code/t06c031.php>) (the “Development Agreement Act”)
 - Applies to both Counties and Municipalities
 - Must be approved by adoption of ordinance by governing body, with at least 2 public hearings
 - Basic Features:
 - Term based on acreage of “highland”
 - Minimum of 25 acres
 - 25 acres but no more than 250 acres - Term of 5 years or less
 - 250 acres but no more than 1,000 acres - Term of 10 years or less
 - 1,000 acres but no more than 2,000 acres -Term of 20 years or less
 - Over 2,000 acres – No limit on Term
 - Benefits
 - Promotes comprehensive, orderly planning and development
 - Encourages agreements between local governments and developers to ensure adequate public facilities
 - Assures developers that the affected property is “vested” with zoning and other land development entitlements that will not change during the Term of the Agreement

State Local Government Development Agreement Act

Most address the following:

- Legal description of the affected property
- Highland acreage and Term of the Agreement
- Infrastructure required in connection with development and allocation of responsibility therefor between developer and County or others
- Current zoning and proposed rezoning of the affected property, including permitted uses and densities
- Description of all local development permits to be approved
- Finding that the proposed development is consistent with the County's Comprehensive plan
- Provisions for periodic review
- Listing of all current land development ordinances
- There are other requirements in addition to the above

Can address the following:

- Commitment to consider adoption of MIDs or County Financing Improvement Districts as applicable
- Phasing in of development and conditions for expanding affected area

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Some Practical Pointers

Some Practical Pointers

Neighborhood Meetings for Rezoning

- May not be required by Zoning Ordinance but Planning Department encourages them
- Take questions and concerns and be prepared to address them at a subsequent neighborhood meeting
- Successful neighborhood meetings will generate support from some neighbors who will speak in favor of the rezoning

Dealing with Administrative Staff

Primary Reasons for Delays in Approval of Site Plans

- TIA and TMA approvals
- Storm water management approvals

Zoning Due Diligence

- Hire a consultant to produce a Zoning Report



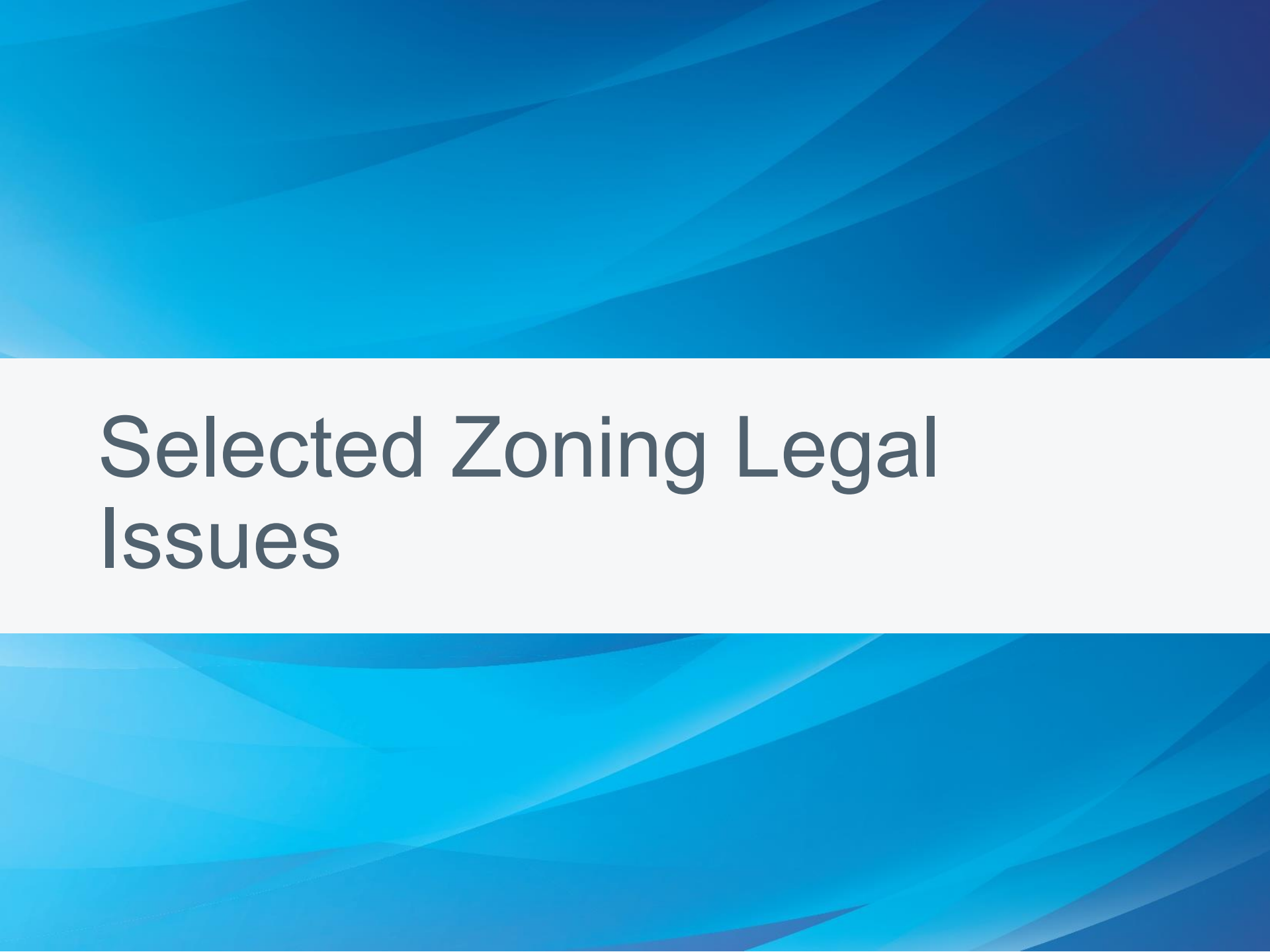
Some Practical Pointers



Be prepared for delays because of requirement of Planning and Zoning Staff to insist upon FOIA requests to obtain permitting information on a specific property



Consider retaining local counsel who might have personal connection with Administrative Staff

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Selected Zoning Legal Issues

Selected Zoning Legal Issues



- Spot Zoning
 - Not inherently illegal in South Carolina, but it must be consistent with a comprehensive plan and benefit the public good, not just private interests (see *Ani Creation, Inc. v. City of Myrtle Beach Bd. Of Zoning Appeals*, 440 S.C. 266 (2023) and *Talbot v. Myrtle Beach Bd. Of Adjustment*, 222 S.C. 165, 175, 72 S.E.2d, 66, 71 (1952))
- Pending Ordinance Doctrine
 - Allows municipalities to deny development permits based on proposed, but not yet enacted, zoning ordinances to prevent circumventing of new regulations (see *Sherman v. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1979))

Selected Zoning Legal Issues

- Moratorium and Adequate Public Facilities Ordinance (APFO)
 - Unless a statute grants specific express or implied authority, a temporary moratorium is usually void if not enacted through an ordinance (see *Simpkins v. Gaffney*, 315 S.C. 26 (1989))
 - Municipalities can enact moratoriums by ordinance to pause development while considering or adopting a new zoning plan (see *Stratos v. Ravenel*, 297 S.C. 309 (1989))
 - There is no statewide AFPO, but municipalities and counties can adopt local ordinances that function like APFOs
- Remedies for Bad Actions of Localities
 - If a permit is denied, the developer can appeal the zoning administrator's decision, in accordance with the Planning Act, or compel an official to perform a mandatory, non-discretionary duty by way of a writ of mandamus

Questions

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