



August 27, 2021

Greenville County Council  
301 University Ridge, Suite 2400  
Greenville, South Carolina 29601

RE: Reconsideration of Adoption of Article 3.1 Replacement

Dear Members of Greenville County Council:

My name is Michael Martinez, and I am an attorney with the South Carolina Environmental Law Project. I am writing to alert you to violations of both South Carolina’s Freedom of Information Act and Greenville County Council’s own procedural rules that occurred during Council’s August 17, 2021 consideration of the replacement ordinance to Article 3.1 of the Land Development Regulations. Because of these violations, I am also writing to insist that County Council pursue a motion to reconsider at its next meeting on August 31, 2021.

On Tuesday, August 17, 2021, Council voted 7-5 to adopt Amendment 1 to the proposed Article 3.1 replacement ordinance. This amendment significantly altered the version of the replacement ordinance presented to the public during earlier readings. Specifically, Amendment 1 reshaped the roadway improvement and mitigation requirements and drastically changed the open space standards contained in the ordinance passed at second reading. Furthermore, while Amendment 1 is dated June 2, 2021, no public meeting with discussion of this amendment was held prior to the final vote on August 17. Indeed, no member of the public has ever had any opportunity to address Council regarding the amendment that was ultimately adopted and became a part of the land development regulations for the County. The amendment was submitted by a seven-member bloc of Council, meaning that a majority of Council had endorsed the amendment before it was ever publicly introduced. In adopting the replacement ordinance in this manner, Council committed unlawful procedural errors.

First, Amendment 1 was jointly proposed by seven councilmembers, which constitutes a quorum of Council. *See* S.C. Code Ann. § 30-4-20(e) (defining “quorum” as a “simple majority of the constituent membership of a public body”); *Greenville County Council Rules*, Section III(C) (noting seven members of Council “shall constitute a quorum for the transaction of business”). The joint sponsorship of this amendment by seven councilmembers demonstrates that these seven councilmembers met or communicated in advance of August 17 regarding the proposed amendment. However, the Freedom of Information Act (FOIA) specifically prohibits such private discussions by a quorum of a public body. The Act unequivocally requires that all meetings of a quorum be public and publicly noticed. *See* S.C. Code Ann. § 30-4-20(d) (defining “meeting” as “the convening of a quorum of the constituent membership of a public body,

*Our Mission To protect the natural environment of South Carolina by providing legal services and advice to environmental organizations and concerned citizens and by improving the state’s system of environmental regulation.*

whether corporal or by means of electronic equipment, to *discuss or act* upon a matter over which the public body has supervision, control, jurisdiction or advisory power” (emphasis added)); *id.* at § 30-4-60 (“Every meeting of all public bodies shall be open to the public unless closed pursuant to [section] 30-4-70 of this chapter.”); *id.* at § 30-4-80(A) (requiring the posting of public notice of all called, special, or rescheduled meetings).

The seven co-sponsors of Amendment 1 clearly “convened”—whether by email, telephone, or in-person—to discuss the amendment they offered and approved at the August 17, 2021 meeting. This unmistakable conclusion is reinforced by the complete lack of discussion or debate of Amendment 1 at the Council meeting. The pro forma adoption of the amendment by the seven joint sponsors, only moments after it was first formally introduced at the meeting, reflects that these councilmembers “reached a consensus” in advance of the public meeting. *See Business License Opposition Comm. v. Sumter Cnty.*, 311 S.C. 24, 26, 426 S.E.2d 745, 746-47 (1992) (affirming the invalidation of an ordinance for violations of the FOIA’s public meeting requirements when the Council “reached a consensus” on an amendment that was “illegally adopted at the closed meeting”). The law forbids a majority of Council from secretly coordinating on a matter in order to formally vote together based on discussions taking place out of the public’s view. Yet, the circumstances surrounding the proposal and adoption of Amendment 1 demonstrate this is precisely what occurred here.

This unlawful procedure must be voluntarily resolved by Council in order to avoid further legal action. Section III(D)(9) of Council rules authorizes a member who voted on the prevailing side of a question “at the *next consecutive regular meeting* of the Council, [to] move for reconsideration.” (emphasis added). The approval of a motion to reconsider at the next meeting on Tuesday, August 31, 2021, and subsequent debate among Council is critical to compliance with the public meeting requirements that apply to Greenville County Council under state law.

Second, the previously described procedures employed by County Council also improperly denied the opportunity for public comment on Amendment 1. The version of the replacement ordinance that was passed by Council on August 17 is significantly different from the one that had previously been presented to the public for comment. The prior iteration of the ordinance took shape during Council’s second reading on July 20, 2021. During that meeting and public hearing, considerable community input persuaded Council to advance staff’s proposed ordinance. However, following this final opportunity for public input on the replacement ordinance, Amendment 1 was submitted as a means to materially change the publicly-favored version of the replacement ordinance. Effectively, Council advanced a version of the replacement ordinance supported by the public and then—once the public could no longer provide input—substantially reworked the replacement ordinance. Such an approach bypassing public input and scrutiny is contrary to law.

Section 4-9-110 of the South Carolina Code establishes certain requirements for county governments, mandating at least one regular meeting each month after public notice and authorizing special meetings after twenty-four hours’ notice. In addition, “[p]ublic hearings, after reasonable public notice, must be held before final council action is taken to . . . adopt zoning and subdivision regulations.” S.C. Code Ann. § 4-9-130(4). Beyond these requirements, the rules

require Council to “determine its own rules and order of business.” *Id.* at 110. Greenville County Council most recently adopted its rules on February 16, 2021. The rules provide members of the public an opportunity to register to address Council on a matter of County business for thirty minutes prior to each regularly scheduled meeting. *County Council Rules*, Section III(E). However, “no person may address the Council about any matter Council has previously heard at a duly called public hearing, as long as Council or a Committee of Council has the item on its agenda, including tabled or held items.” *Id.* at Section III(G).

The rules provide an exception, allowing a person to “address a matter appearing on an agenda previously heard at a duly called public hearing if . . . that matter has been materially amended after the public hearing.” *Id.* These circumstances present a troubling issue: a public hearing is held, the matter is “materially amended”, and Council enacts at final reading the now-materially amended ordinance without any opportunity for the public to address Council. Prior to Council’s August 17 meeting when the agenda included third reading on the ordinance that was adopted after the public hearing, no person was permitted to register to address Council because the matter had already had a public hearing. However, when the matter came up for third reading, Council “materially amended” the ordinance, which then significantly differed from what the public had the opportunity to address Council about during the public hearing.

As a result, Council effectively evaded public comment on the ordinance now containing the amendments proposed on August 13, 2021. Council’s failure to allow for public comment violated the intent and spirit of the exception. An interpretation of the Rules allowing Council to adhere to this process encourages proposing uncontroversial legislation, drastically altering it after the public hearing, and adopting the final ordinance at third reading, thereby circumventing public participation in the democratic process. Although the rules do not require the application of the exception in every instance when an ordinance is amended after public hearing, the changes contained in Amendment 1 (and by extension, Amendments 2 through 4), constitute a “material” amendment implicating the public input requirement. Amendment 1 altered—among other provisions—the open space section such that instead of all parcels requiring 30 percent open space preserved, the Amendment permits developers to not set aside *any* open space or up to a required 25 percent depending on the average lot size. The open space provision, as a component of the conservation subdivision design standards, represented a substantial, critical part of the overall ordinance.

Significantly, the open space provision applies to only unzoned areas of the County, which is where development has predominantly been focused and where sprawl prompted the process to replace Article 3.1 in the first place. The open space protections were thus a central portion of the ordinance considered at the public hearing, and the alterations in Amendment 1 constitute a “material” change, which should permit the public the opportunity to address Council regarding the matter. The fact that a quorum of Council “reached a consensus” on the amendment in an illegal, closed, and secret meeting exacerbated the lack of opportunity for the public to comment. *See Lambries v. Saluda Cnty.*, 409 S.C. 1, 17, 760 S.E.2d 785, 793 (noting the purpose of the public notice provisions of the FOIA “is to prevent government business from

taking place in secret”). Council’s failure to allow public comment following the amendment violated the purpose and spirit of the exception in the Council Rules, and the Council should propose and approve a motion to reconsider at its next meeting, provide a publicly noticed opportunity for the public to address Council regarding the changes in the Amendment adopted, and ensure compliance with all requirements for public bodies and Council’s own rules.

Thank you for your time and consideration regarding this matter.

Sincerely,

Michael G. Martinez, Esq.  
Upstate Staff Attorney