

THE STATE OF SOUTH CAROLINA

RECEIVED

APPEAL FROM GEORGETOWN COUNTY

OCT 14 2022

Court of Common Pleas

SC Court of Appeals

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowners Association, Inc., and Keep It Green, Inc., Respondents,

v.

Georgetown County and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, Defendants,

Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the Appellant.

APPENDIX TO MEMORANDUM OF LAW IN OPPOSITION
TO RESPONDENTS' MOTION TO DISMISS APPEAL

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
(781) 986-0635 (Tel)
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Pro Se for Appellant

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<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF GEORGETOWN</p> <p>Ernest F. Middleton, III <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>Georgetown County and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004,</p> <p style="text-align: center;">Defendants</p>	<p>: IN THE COURT OF COMMON PLEAS</p> <p>: FIFTEEN JUDICIAL CIRCUIT</p> <p>: </p> <p>: CASE NO. 2022 CP 2200032</p> <p>: </p> <p>: ORDER DENYING</p> <p>: MOTION TO DISMISS OF</p> <p>: DEFENDANT GOFF TRUST</p> <p>: </p> <p>: </p> <p>: </p> <p>: </p> <p>: </p>
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On May 19, 2022, the court heard a Motion to Dismiss filed by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff Trust." Benjamin F. Goff, Trustee, appeared *pro se* on behalf of Defendant Goff Trust and Cynthia R. Person, Esquire appeared as attorney for Plaintiffs.

I. BACKGROUND & PROCEDURAL HISTORY

Plaintiffs filed a Declaratory Judgment Complaint on January 7, 2022, against Defendants Georgetown County and Goff Trust challenging the validity of two zoning ordinances changing the zoning on property owned by Defendant Goff Trust. Goff Trust filed a Motion to Dismiss and a Memorandum of Law in Support of Motion to Dismiss on January 25, 2022, requesting dismissal of Plaintiffs' Complaint pursuant to Rule 12(b)(5) and (6), SCRCP, raising insufficient service of process, lack of standing, failure to state a cause of action, and other matters relating to the underlying merits of the claim.

On February 25, 2022, Plaintiffs filed a Memorandum of Law in Opposition to Defendant Goff Trust's Motion to Dismiss. Thereafter, on February 28, 2022, Defendant Goff Trust filed a

Reply to Plaintiffs' Unfiled Response to Motion to Dismiss Benjamin F. Goff, Sr., Trustee, as a Defendant, and on March 14, 2022, a Reply to Plaintiffs' Opposition to Motion to Dismiss Benjamin F. Goff, Sr., Trustee, as a Defendant.

II. STANDARD OF REVIEW

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint" Doe v. Marion, 373 S.C. 390, 398, 645 S.E.2d 245, 247-248 (2007). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. at 247-248 (citations omitted). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Id. at 247. See also Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

The purpose of a Motion to Dismiss is for "the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). Accordingly, the court's review in this case is limited to the face of the complaint and whether it properly states any cause of action. Any matters raised in the Motion to Dismiss that relate to the underlying merits of the case or questions of fact may not be considered by the court.

III. FINDINGS

A. Service of Process

Defendant Goff Trust raises insufficient service of process under Rule 4, SCRCF, as a basis for dismissal pursuant to Rule 12(b)(5), SCRCF. Plaintiffs filed a Proof of Service on

February 25, 2022, certifying that service of the Summons and Complaint was accepted by the South Carolina Secretary of State on February 16, 2022, on behalf of Defendant Benjamin F. Goff, Sr., Trustee, pursuant to S.C. Code Ann., Section 15-9-440(3), which authorizes service of process upon the Secretary of State when there is no resident trustee of an *inter vivos* trust that owns real property in South Carolina that is the subject matter of a proceeding. A letter from the Secretary of State was attached to the Proof of Service confirming the acceptance of service and the date.

Rule 4(e), SCRPC, states that “[w]hen a statute ... provides for service of a summons and complaint ... upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute ...” S.C. Code Ann., Section 15-9-440(3), states that

when there is no resident trustee, the nonresident trustee of an *inter vivos* trust shall be deemed to have consented to the service of any summons, notice or other legal process in connection with any proceeding in the courts of this State involving such trust, directly or indirectly, when served upon the Secretary of State, when the trust was created under the laws of this State or, in the case of a foreign trust, when part of the trust property is situated in this State.

Plaintiffs’ Complaint alleges that Defendant Goff Trust owns real estate in South Carolina that is the subject matter of this action (Complaint, pars. 23 & 24), and that Benjamin F. Goff, Sr., is the nonresident trustee of this trust. (Complaint, par. 23).

The court finds that service of process was made on Defendant Goff Trust in accordance with Rule 4, SCRPC, and S.C. Code Ann., Section 15-9-440(3).

B. Standing

The Motion to Dismiss raises lack of standing as a basis for dismissal of Plaintiffs’ Complaint. “Standing refers to a party’s right to make a legal claim or seek judicial enforcement

of a duty or right ... and may be acquired (1) by statute, (2) under the principle of constitutional standing, or (3) via the public importance exception to general standing requirements.”

Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020) (citations omitted).

C. Failure to State a Cause of Action

1. Justiciability

Defendant Goff Trust claims that Plaintiffs’ Complaint should be dismissed for failure to state a cause of action due to the lack of a justiciable controversy. “A cause of action under the S.C. Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination.” Farmer v. CAGC Insurance Company, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (2018) (citations omitted). See also Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 354 815 S.E.2d 446, 452 (2018). “The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (2013) (citations omitted).

The court finds that Plaintiffs’ Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment.

2. Necessary Parties

Defendant Goff Trust contends that it should not be a defendant in this action. The Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-80, requires that “all persons shall be made parties who have or claim any interest which would be affected by the

declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.”

Plaintiffs’ Complaint alleges that as owner of the land in question, Defendant Goff Trust has a claim or interest that would be affected by a declaration. The court finds that Defendant Goff Trust was properly named as a defendant in this declaratory judgment action.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, adjudged and decreed that the Motion to Dismiss filed on January 25, 2022, by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, is DENIED for the reasons set forth above.

Steven H. John
Resident Judge
Fifteenth Judicial Circuit

_____, 2022

At Chambers, South Carolina



Georgetown Common Pleas

Case Caption: Ernest F Middleton III, plaintiff, et al VS. Georgetown County, defendant, et al
Case Number: 2022CP2200032
Type: Order/Other

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2022-06-03 12:06:10 page 6 of 6

ELECTRONICALLY FILED - 2022 Jun 03 12:19 PM - GEORGETOWN - COMMON PLEAS - CASE#2022CP2200032

JUNO Message Center

From: "John, Steven H. Law Clerk (Madeline Bowers)" <SJohnLC@sccourts.org>

To: "crperson@aol.com" <crperson@aol.com>, "goff-chem@juno.com" <goff-chem@juno.com>

Sent: Wed, May 25, 2022 01:55 PM

Subject: 2022CP2200032 - Ernest F Middleton III, plaintiff, et al v. Georgetown County, defendant, et al

Dear All,

The Motion to Dismiss is denied. A fair reading of the pleadings establishes a cause of action as against this Defendant. This is based solely on the contents of the pleadings as required by a motion under 12(b)(6). This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant. That remains to be decided. Defendant Goff is free to file a Motion for Summary Judgment at any stage, should he believe that is warranted.

Attorney Persons, please draft a proposed order based on the above and e-file it to Judge John's attention. Please let me know if you have any questions or whether I can be of assistance. Thank you!

Respectfully,

Madeline

Madeline A. Bowers
Law Clerk to the Honorable Steven H. John
Resident Circuit Court Judge, Fifteenth Judicial Circuit Chief Administrative Judge, Court of Common Pleas
1301 2nd Avenue
Conway, SC 29526
Phone: (843) 915-6697
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**JUNO** Message Center

From: KIG Advocacy <kig.advocacy@gmail.com>

To: SJohnLC@sccourts.org

Cc: goff-chem@juno.com

Sent: Thu, May 26, 2022 10:48 AM

Subject: Fwd: 2022CP2200032 - Ernest F Middleton III, plaintiff, et al v. Georgetown County, defendant, et al

---

Thank you, Ms. Bowers. I will take care of preparing the proposed order for the judge's review.

Cindy Person

**Cynthia Ranck Person, Esquire**  
**Chief Counsel & Executive Director**

**KEEP IT GREEN ADVOCACY, INC.**

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795

KIG.Advocacy@gmail.com

[www.KeepItGreenInSC.com/kiga](http://www.KeepItGreenInSC.com/kiga)

-----Original Message-----

From: John, Steven H. Law Clerk (Madeline Bowers) <SJohnLC@sccourts.org>

To: crperson@aol.com <crperson@aol.com>; goff-chem@juno.com <goff-chem@juno.com>

Sent: Wed, May 25, 2022 1:55 pm

Subject: 2022CP2200032 - Ernest F Middleton III, plaintiff, et al v. Georgetown County, defendant, et al

Dear All,

Å  
The Motion to Dismiss is denied. Å A fair reading of the pleadings establishes a cause of action as against this Defendant. Å This is based solely on the contents of the pleadings as required by a motion under 12(b)(6). Å This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant. Å That remains to be decided. Defendant Goff is free to file a Motion for Summary Judgment at any stage, should he believe that is warranted.

Å  
Attorney Persons, please draft a proposed order based on the above and e-file it to Judge John's™ attention. Å Please let me know if you have any questions or whether I can be of assistance. Å Thank you!

Å  
Respectfully,

Å  
Madeline

Å  
Madeline A. Bowers  
Law Clerk to the Honorable Steven H. John  
Resident Circuit Court Judge, Fifteenth Judicial Circuit Chief Administrative Judge, Court of Common Pleas  
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Å  
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STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN : FIFTEENTH JUDICIAL CIRCUIT

Ernest F. Middleton, III, and Joyce J. Middleton, :  
Michael J. Farrar and Diana Farrar, Robert E. Hunt :  
and Jeane M. Sullivan, The Colony Homeowners : CASE NO.:  
Association, Inc., and Keep It Green, Inc., :

Plaintiffs, :

v. :

SUMMONS

Georgetown County, Georgetown County Council, :  
Louis Morant, Lillie Jean Johnson, Raymond :  
Newton, Steve Goggans, Everett Carolina, John :  
Thomas and Bob Anderson, in their capacities as :  
elected members of Georgetown County Council, :  
Benjamin F. Goff, Sr., Trustee of the Benjamin F. :  
Goff 2004 Revocable Trust dated June 18, 2004, :

Declaratory Judgment

JURY TRIAL DEMANDED

Defendants :

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at P.O. Box 1922, Pawleys Island, SC 29585, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully submitted,

/s/ Cynthia Ranck Person  
Cynthia Ranck Person, Esquire (SC Bar #105126)

KEEP IT GREEN ADVOCACY, INC.  
P.O. Box 1922  
Pawleys Island, SC 29585  
(570) 971-8636  
kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

January 6, 2022  
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

: IN THE COURT OF COMMON PLEAS  
: FIFTEENTH JUDICIAL CIRCUIT

Ernest F. Middleton, III, and Joyce J. Middleton,  
Michael J. Farrar and Diana Farrar, Robert E. Hunt  
and Jeane M. Sullivan, The Colony Homeowners  
Association, Inc., and Keep It Green, Inc.,

:  
:  
: CASE NO.:

Plaintiffs,

v.

:  
:  
: COMPLAINT  
: (Civil Action)

Georgetown County, Georgetown County Council,  
Louis Morant, Lillie Jean Johnson, Raymond  
Newton, Steve Goggans, Everett Carolina, John  
Thomas and Bob Anderson, in their capacities as  
elected members of Georgetown County Council,  
Benjamin F. Goff, Sr., Trustee of the Benjamin F.  
Goff 2004 Revocable Trust dated June 18, 2004,

:  
: Declaratory Judgment

:  
: JURY TRIAL DEMANDED

Defendants

---

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas, and Bob Anderson, in their official capacities as elected members of Georgetown County Council, and Benjamin F. Goff, Trustee of Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, owner of subject property, as follows:

INTRODUCTION

1. This Complaint involves Ordinances 21-24 and 21-25 (hereinafter collectively "ordinances") purportedly approved and adopted by Georgetown County Council (hereinafter "Council") on November 9, 2021.

2. Ordinance 21-24 purports to amend the Georgetown County Comprehensive Plan, Future Land Use Map (hereinafter FLUM), to redesignate tax map parcel 04-0418-011-00-00, (hereinafter "Goff Parcel,") consisting of 14.77 acres of vacant land located at 3138 Ocean Highway, Pawleys Island, Georgetown County, South Carolina, from Low Density Residential to Medium Density Residential. A copy of said ordinance is attached hereto as Exhibit "1," and incorporated herein by reference.

3. Ordinance 21-25 purports to amend the Georgetown County Zoning Map to change the zoning of the "Goff Parcel," from R-1/2 acre to R-10, doubling existing residential density. A copy of said ordinance is attached hereto as Exhibit "2," and incorporated herein by reference.

4. For the reasons set forth hereinafter, Plaintiffs submit that these ordinances were improperly approved and are null, void and of no force or effect.

PARTIES

Plaintiffs

5. Plaintiff, The Colony Homeowners Association, Inc., (hereinafter "CHA"), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of 7147 Ocean Highway, Pawleys Island, Georgetown County South Carolina.

6. CHA is the homeowners association for the Planned Development neighborhood known as "The Colony," which is located along US Route 17 on the south end of Pawleys Island, Georgetown County, South Carolina, and consists of 21.03 acres that adjoin the Goff Parcel. A Verified Statement signed by the President of CHA is attached hereto as Exhibit "3," and incorporated herein by reference.

7. The Colony was originally approved as a Planned Development District by Georgetown County in 2007, before Georgetown County had a Comprehensive Plan.

8. CHA owns a parcel of common property that adjoins the Goff Parcel.

9. Plaintiffs, Ernest F. Middleton, III and Joyce J. Middleton, husband and wife, (hereinafter "Middletons"), are adult individuals residing at 359 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. The Middletons have signed Affidavits attached hereto as Exhibits "4" and "5," respectively, and incorporated herein by reference.

10. Plaintiffs, Michael J. Farrar and Diana Farrar, husband and wife, (hereinafter "Farrars"), are adult individuals residing at 367 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. The Farrars have signed Affidavits attached hereto as Exhibits "6" and "7," respectively, and incorporated herein by reference.

11. Plaintiffs, Robert E. Hunt and Jeane M. Sullivan, husband and wife, (hereinafter "Hunt/Sullivan"), are adult individuals residing at 351 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. The Hunt/Sullivan Plaintiffs have signed Affidavits attached hereto as Exhibits "8" and "9," respectively, and incorporated herein by reference.

12. Plaintiff, Keep It Green, Inc., (hereinafter "KIG") is a nonprofit corporation, organized and existing under the laws of the State of South Carolina, having an address of P.O. Box 3312, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by an authorized officer of KIG is attached hereto as Exhibit "10," and incorporated herein by reference.

13. KIG is a citizens' organization comprised of more than 2,800 residents of the Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life and other matters of safety and general welfare in the Waccamaw Neck.

14. The Waccamaw Neck is a part of northeast Georgetown County defined by its unique geographic configuration as a long narrow peninsula between the Atlantic Ocean and the Waccamaw River that includes the areas of Pawleys Island, Litchfield and North Litchfield.

15. Part of the mission of KIG involves monitoring county land use decisions, zoning change requests, and proposed development in the Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan, Land Use Element (hereinafter "Comprehensive Plan") for the purpose of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck for the benefit of present and future generations.

16. KIG began as a grassroots response by the citizens of the South Waccamaw Neck to a number of zoning changes, approved and/or recommended for approval by the County, that increased residential density in conflict with the Georgetown County Comprehensive Plan and had a negative impact on the safety and general welfare of citizens and surrounding landowners. KIG ultimately became a nonprofit corporation managed by a volunteer Board of Directors and represents the interests of thousands of citizens of the Waccamaw Neck, hundreds of whom reside in the vicinity of the Goff Parcel.

17. Plaintiffs Middletons, Farrars, Hunt/Sullivan, and CHA are members of KIG along with many other residents who live in vicinity of the Goff Parcel.

18. KIG represents the interests of the named Plaintiffs in this matter as well as other residents who are contiguous landowners or reside in the immediate vicinity of the Goff Parcel and would have standing to challenge these ordinances.

Defendants

19. The South Carolina Uniform Declaratory Judgments Act, S.C. Code, Section 15-53-80 requires that

“[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard.”

Accordingly, the following parties are required to be named as Defendants in this action for declaratory relief.

20. Defendant Georgetown County (hereinafter “County”), 129 Screven Street, Georgetown, South Carolina, is one of the forty-six counties of the State of South Carolina and is a body politic incorporated pursuant to the South Carolina Constitution, Article VII, Sec. 9, South Carolina Code Ann. § 4-1-10 (Supp. 2015).

21. Defendant Georgetown County Council, 129 Screven Street, Georgetown, South Carolina, is the governing body of Georgetown County, South Carolina and is a body politic incorporated pursuant to the South Carolina Constitution, Article VII, Sec. 9, South Carolina Code Ann. § 4-1-10 (Supp. 2015).

22. Defendants Louis R. Morant, Chairman of the Georgetown County Council, Lillie Jean Johnson, Vice-Chairman, and John Thomas, Bob Anderson, Everett Carolina, Raymond

Newton, and Steve Goggans, 129 Screven Street, Georgetown, South Carolina, are the seven representatives elected to Council and are named herein in their official capacities.

23. Defendant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 (hereinafter "Goff Trust") pursuant to the terms of a Certificate of Trust dated September 17, 2021, and recorded in Georgetown County Record Book 4231, Page 204, which is incorporated herein by reference, is an adult individual residing at 18 Powers Farm Road, Randolph, Massachusetts. Goff Trust is the owner of the Goff Parcel pursuant to Deed dated July 21, 2005, recorded in Georgetown County Deed Book 1679, Page 229, and incorporated herein by reference.

### BACKGROUND

#### Goff Parcel

24. On or about September 3, 1985, Benjamin F. Goff, purchased the Goff Parcel, which was Heirs' Property, from the Sindab family for Seventeen thousand, seven hundred (\$17,700) and 00/100 Dollars, pursuant to a Deed recorded in Georgetown County Deed Book 229, Page 1237, and incorporated herein by reference. On or about July 21, 2005, Benjamin Goff transferred the Goff Parcel into the Goff Trust.

25. The Goff Parcel is vacant, unimproved land that contains a large area of forested wetlands and lies at a dangerous curve along U.S. Highway Route 17 in South Pawleys Island, on the South Waccamaw Neck.

26. At the time the Goff Parcel was acquired in 1985, and at all times pertinent hereto, it was zoned R-1/2 acre which permits one single-family dwelling on a one-half acre lot for a maximum of 29 homes.

27. At all times pertinent hereto, the Goff Parcel was designated as “Low Density” by the FLUM, which is defined by the Comprehensive Plan as “no more than 2 dwelling units per acre.”

Plaintiffs’ Parcels

28. Plaintiffs Middleton, Farrar, and Hunt/Sullivan reside in The Colony and own homes on lots that adjoin the Goff Parcel.

29. Plaintiffs Middleton, Farrar, and Hunt/Sullivan purchased their respective homes in 2016 and 2017 and paid a combined premium payment of \$91,000 in addition to the cost of their homes, for the right and privilege of owning large lots that adjoin land (Goff Parcel) that was zoned for single family homes on similarly sized lots, no less than 1/2 acre.

30. Plaintiffs Middleton, Farrar, and Hunt/Sullivan relied on the existing R-1/2 acre zoning of the adjoining Goff Parcel when they purchased their homes and would not have purchased their homes or paid the additional premium of \$91,000 if the zoning on the adjoining Goff Parcel had permitted homes on lots less than 1/2 acre in size.

Goff Zoning Change Application

31. On or about June 2, 2021, Benjamin Goff on behalf of Benjamin F. Goff 2004 Revocable Trust, submitted an application to change the zoning on the Goff Parcel from R-1/2 acre to R-10 which permits one single-family dwelling on 10,000 square foot lots and would allow 4.3 homes per acre, or up to 69 homes, more than twice that permitted under the current R-1/2 acre zoning. A copy of said application is attached as Exhibit “11,” and incorporated herein by reference.

32. The requested R-10 zoning is classified as “Medium Density,” which allows up to 5 dwelling units per acre under the Comprehensive Plan.

33. The zoning change application form states that “the burden of proving the need for the proposed amendment rests with the applicant;” however, no “need” for the proposed amendment is set forth on the completed application form or otherwise.

Georgetown County Comprehensive Land Use Plan  
Severely Restricts Density Increases in South Waccamaw Neck

34. The current version of the Land Use Element of the Comprehensive Plan was adopted in 2015, and states as follows at Page 23 with respect to residential density and Land Use Goals for the South Waccamaw Neck.

“The overriding issue in the Pawleys-Litchfield area is population density. The general concept of allowing higher density to prevent sprawl is no longer applicable in this area. The key now is to limit the number of new residential units that are added so that the impacts of additional development (i.e. increased traffic congestion, increased storm water runoff, greater pressures on our overall infrastructure) are minimized as much as possible.”

A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “12,” and incorporated herein by reference.

35. The Comprehensive Plan further states as follows at Page 25 with respect to goals for the South Waccamaw Neck.

“Density increases in new development should only be allowed if open space is provided by use of planning tools: as part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc.”

A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “13,” and incorporated herein by reference.

36. The Comprehensive Plan states on Page One that it “will serve as a basis for zoning map amendments [and] zoning code revisions . . . [and is provided] so the future growth and development of Georgetown County can occur according to local goals and objectives.” A

copy of this portion of the Comprehensive Plan is attached hereto as Exhibit "14," and incorporated herein by reference.

37. The stated goals and objectives for the South Waccamaw Neck explicitly restrict density increases to four very limited and exceptional circumstances none of which apply to the Goff request.

38. This restrictive language was deliberately included in the Comprehensive Plan because the South Waccamaw Neck was then and is now facing unprecedented population growth resulting in critically overburdened infrastructure, increasing volumes of traffic that exceed road design capacity, increasing numbers of serious and life-threatening motor vehicle accidents, increasing flooding and stormwater problems as a consequence of clear cutting and filling in wetlands, as well as other environmental and safety challenges resulting from overdevelopment of the limited geographic space of the South Waccamaw Neck.

39. This restrictive language was deliberately included to prevent the kinds of arbitrary increases in density requested in the Goff Zoning Change Application which proposes to double residential density without offering any need, reason or plan or otherwise meeting any of the explicit exceptions set forth in the Comprehensive Plan.

40. The Goff zoning and FLUM amendment request is in direct violation of the Comprehensive Plan.

41. A decision to increase density on the Goff parcel in contravention of the Comprehensive Plan would set a precedent for increasing density on many acres of surrounding undeveloped land that is also zoned R-1/2 acre, Low Density. The cumulative incremental impact of even small density increases on the South Waccamaw Neck is having devastating and far-reaching negative consequences.

Zoning and Density of Land Surrounding Goff Parcel

42. There is no other R-10 zoning that adjoins or is in the immediate vicinity of the Goff Parcel.
43. The majority of contiguous land is zoned R-1/2 acre or Conservation Easement as follows based on the perimeter of the Goff Parcel:
- a. Sixty-three (63%) percent is R-1/2 acre, Low Density, all of which is undeveloped.
  - b. Eleven (11%) percent is Conservation Easement, zero density.
  - c. Sixteen (16%) percent is Heirs' Property lying along U.S. Highway 17, and is General Commercial, Transitional.
  - d. Seven (7%) percent is Planned Development District comprised of the three homes owned by Plaintiffs Middletons, Farrars, and Hunt/Sullivan, and the vacant lot owned by Plaintiff CHA, each of which is a large lot consistent with the current R-1/2 acre, Low Density zoning of the Goff Parcel.
  - e. Approximately Three (3%) percent is highway frontage.

Georgetown County Requirements for Zoning Amendments

44. Georgetown County Zoning Ordinance 1701 requires as follows with respect to amending zoning ordinances:

“When the public necessity, convenience, general welfare or good zoning practice justifies such action and after the required review and report of the Planning Commission, the County Council may undertake the necessary steps to amend the Zoning Ordinance.”

A copy of Ordinance 1701 is attached hereto as Exhibit “15,” and incorporated herein by reference.

45. In addition to adhering to the requirements of the Comprehensive Plan, the proposed Goff amendments must necessarily be justified by public necessity, convenience, general welfare or good zoning practice before County Council has the discretion to approve.

46. The Goff zoning and density amendments neither conform to the Comprehensive Plan nor are they justified by public necessity, convenience, general welfare or good zoning practice. On the contrary, the Goff amendments would have a negative effect on general welfare.

47. The "required review and report of the Planning Commission" is set forth in the Georgetown County Planning Commission by-laws which state in Article V, Section 2:

"All zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan. Conflicts with the comprehensive plan shall be noted in any report to the County Council on a proposed amendment."

A copy of this bylaw is attached hereto as Exhibit "16," and incorporated herein by reference.

48. In addition to the substantive requirements set forth above, the proposed Goff amendments were required to be reviewed by the Planning Commission first for conformity with the Comprehensive Plan and then any conflicts were required to be noted in a report to Council before Council had the discretion to approve them.

#### South Carolina State Law Requirements

49. The South Carolina Comprehensive Planning Enabling Act, S.C. Code, Section 6-29-720(B), specifically requires that zoning regulations

"must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter."

50. The South Carolina Comprehensive Planning Enabling Act, Section 6-29-710 sets forth those purposes to include:

“promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare . . . to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets . . . to protect and preserve scenic, historic, or ecologically sensitive areas . . . to regulate the density and distribution of populations . . . to further the public welfare in any other regard . . . .”

51. Under South Carolina state law, the proposed Goff amendments must be in accordance with the Comprehensive Plan. In fact, the Goff amendment requests are in direct conflict with the explicit and unambiguous language of the Comprehensive Plan.

52. Under South Carolina state law, the proposed Goff amendments must have the purpose of promoting general public welfare and not just the interest of a single landowner before they can be considered for approval. In fact, the Goff amendments negatively affect public welfare and serve only to promote the interests of the single landowner applicant.

#### Planning Commission Public Hearing

53. The Georgetown County Planning Commission is appointed by Council to serve in an advisory capacity, to hold public hearings on requests for zoning and FLUM density amendments and make recommendations for denial or approval to Council.

54. Proposed Ordinances 21-24 and 21-25 were advertised and noticed for Public Hearing before the Planning Commission on July 15, 2021.

55. Prior to the public hearing, the County received numerous letters from residents of the South Waccamaw Neck expressing opposition to the proposed Goff amendments, including a detailed letter from Plaintiff KIG dated July 14, 2021, outlining the legal objections that form the basis of this complaint. There were no letters in support other than from the applicant. A copy of the KIG letter is attached hereto as Exhibit “17,” and incorporated herein by reference.

56. Numerous residents attended the public hearing to express their opposition, and 6 spoke on the record, including contiguous landowners and representatives of KIG who spoke on behalf of its members and neighborhood residents. No one spoke in favor of the zoning change other than the applicant's agent.

57. The Georgetown County Planning Department submitted an Information Packet to the Planning Commission which contained, *inter alia*, a written narrative prepared by the department which is attached hereto as Exhibit "18," and incorporated herein by reference. The department offered a similar oral narrative as part of the public hearing.

58. The Planning Department narratives omitted and/or failed to objectively set forth important and relevant facts including, but not limited to, the following:

- a. Failed to note inconsistencies with the Comprehensive Plan.
- b. Failed to note that the Comprehensive Plan specifically restricts density increases in the South Waccamaw Neck except in four very limited circumstances, and that the proposed amendments do not fall within any of the enumerated exceptions.
- c. Failed to note that there is no adjoining property zoned R-10.
- d. Failed to note that the majority of adjoining land is zoned as R-1/2 acre, low density, the same as the original zoning of the Goff Parcel.
- e. Failed to note the dangerous ingress and egress to and from the Goff Parcel onto Highway Route 17 at a very hazardous curve where there is poor ability to see oncoming traffic traveling at high speeds, no acceleration or deceleration lanes, and frequent serious car accidents.
- f. Failed to note flooding and stormwater issues that currently exist on neighboring properties.

g. Failed to provide accurate and impartial information about the surrounding zoning, density and land use and instead focused almost exclusively on comparison with The Colony Planned Development, and in the context of this unwarranted comparison, omitted and/or failed to include the following significant facts about The Colony:

- i. Failed to note that The Colony comprises only a very small portion (7%) of adjoining land.
- ii. Failed to note that 100% of The Colony lots adjoining the Goff parcel are larger lots that are consistent with the low density R-1/2 acre original zoning of the Goff Parcel.
- iii. Failed to note that The Colony was approved in 2007 and amended for medium density FLUM designation in 2013, prior to the adoption of the current Comprehensive Plan which restricts density increases.
- iv. Failed to note that the owners of The Colony lots adjoining the Goff Parcel relied on the R-1/2 acre low density zoning of the Goff Parcel when they purchased their properties.

59. The Planning Commission did not discuss or consider whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments or whether the applicant met his burden of proving a “need” for the amendments.

60. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan, the Planning Commission voted 4 to 2 to recommend approval of the amendments.

61. The Planning Commission did not review the Goff amendments for conformity with the Comprehensive Plan nor did it note the conflicts in a report to Council as required by Georgetown County Ordinance 1701 and its Bylaws. Upon information and belief, the only written item issued by the Planning Commission included in the information packet to Council was one unsigned Resolution relative to Ordinance 21-24 that does not note conflicts with the Comprehensive Plan. A copy of this Resolution along with the minutes of the July 15, 2021, Planning Commission Meeting is attached hereto as Exhibit "19," and incorporated herein by reference.

62. In fact, the proposed Goff amendments are in direct conflict with explicit language in the Comprehensive Plan and there was no evidence of a "need" or that public necessity, convenience, general welfare or good zoning practice justified the amendments.

63. The decision by Planning Commission to recommend approval of the Goff proposed amendments was arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

County Council First Reading

64. Proposed Ordinances 21-24 and 21-25 were agenda items for First Reading at the Council meeting on July 27, 2021.

65. Approximately 108 letters of opposition were received by the County prior to First Reading. Numerous residents attended first reading to oppose the Goff amendments and a representative of KIG spoke on behalf of its members and neighboring residents. There were no letters in support of the requested zoning change other than from the applicant

County Council Second Reading – Ordinances Approved

66. Proposed Ordinances 21-24 and 21-25 were agenda items for Second Reading at the Council meeting on August 24, 2021.

67. A total of approximately 260 letters of opposition were received prior to Second Reading, including a letter submitted on August 20, 2021, by Plaintiff KIG outlining the legal objections that form the basis of this complaint. A copy of said KIG letter is attached hereto as Exhibit “20,” and incorporated herein by reference. There were no letters in support other than from the applicant.

68. Numerous residents of the South Waccamaw Neck attended Second Reading to express their opposition, and 11 members of the community spoke on the record in opposition, including neighboring land owners and KIG representatives who spoke on behalf of their members and neighboring landowners.

69. The Planning Department submitted an Agenda Request Form to Council for second reading which contained, *inter alia*, “Points to Consider” for each of the two proposed ordinances which are attached hereto as Exhibit “21,” and incorporated herein by reference. The department offered a similar oral narrative as part of its presentation at the Council meeting.

70. The Planning Department “Points to Consider” omitted and/or failed to objectively set forth important and relevant facts including, but not limited to, all those matters enumerated in Paragraph 58, above, which is incorporated herein by reference.

71. Council did not discuss or consider whether public necessity, convenience, general welfare or good zoning practice justified the requested amendments or whether the applicant had met his burden of proving a “need” for the amendments.

72. Without reviewing, discussing or considering conformity or conflicts with the Comprehensive Plan, Council voted to approve both ordinances.

73. In fact, the proposed Goff amendments were in direct conflict with explicit language in the Comprehensive Plan, and there was no evidence of “need” or public necessity, convenience, general welfare or good zoning practice offered, considered or established to justify the amendments.

74. The decision by Council to approve the Goff amendments was arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

County Council Third Reading – Ordinances Not Approved

75. Proposed Ordinances 21-24 and 21-25 were agenda items for Third Reading and advertised for public hearing at the October 26, 2021, Council meeting.

76. A total of approximately 509 letters of opposition were received prior to Third Reading including a letter submitted by Plaintiff KIG dated October 26, 2021, on behalf of neighboring landowners and citizens of the Waccamaw Neck outlining the legal objections that form the basis of this complaint. A copy of said letter is attached hereto as Exhibit “22,” and incorporated herein by reference. No letters in support were received except from the applicant.

77. A Petition containing more than one thousand (1,000) signatures of residents opposing the Goff amendments and density increases was submitted enumerating the specific legal and factual bases for opposition. A copy of the Petition language is attached hereto as Exhibit “23,” and incorporated herein by reference.

78. Numerous residents of the South Waccamaw Neck attended Third Reading to express opposition and numerous members of the community spoke on the record in opposition, including representatives of KIG who spoke on behalf of members and neighboring residents.

79. The Planning Department submitted an Agenda Request Form to Council Planning Commission for third reading which contained, *inter alia*, "Points to Consider" for each of the two proposed ordinances which are attached hereto as Exhibit "24," and incorporated herein by reference. The department offered a similar oral narrative as part of its presentation at the Council meeting.

80. The Planning Department "Points to Consider" omitted and/or failed to objectively set forth important and relevant facts including, but not limited to, all those matters enumerated in Paragraph 58, above, which is incorporated herein by reference.

81. County Council voted not to approve Ordinance 21-24 (FLUM amendment from low density to medium density) as follows: Three (3) in favor: Raymond Newton, Steve Goggans, and Lillie Jean Johnson; Two (2) opposed: Bob Anderson and John Thomas; One abstention: Everett Carolina; and One recusal: Chairman Louis Morant.

82. Georgetown County Council Rules of Procedure, Section 2-486, which is a Georgetown County Ordinance, requires a majority of members present in order to adopt an ordinance, so the ordinance did not pass; however, following the vote, it was erroneously announced that the motion had passed and that Ordinance 21-24 had been adopted. A copy of said rule is attached hereto as Exhibit "25," and incorporated herein by reference.

83. The failure to approve the FLUM density amendment (Ordinance 21-24) rendered the zoning amendment (Ordinance 21-25) moot and not eligible to be considered or voted upon.

84. Because of the mistaken announcement that Ordinance 21-24 (density amendment) had passed, Ordinance 21-25 (zoning change) was erroneously considered and voted upon.

85. Council voted not to approve Ordinance 21-25 (zoning amendment) as follows: Three (3) in favor: Raymond Newton, Steve Goggans, and Lillie Jean Johnson; Two (2) opposed: Bob Anderson and John Thomas; One abstention: Everett Carolina; and one recusal: Chairman Louis Morant.

86. It was erroneously announced that both ordinances had been approved. Please see Minutes of Georgetown County Council Meeting on October 26, 2021, attached hereto as Exhibit "26," and incorporated herein by reference.

Improper Motion to Reconsider at November 9, 2021, Council Meeting

87. Upon information and belief, at some point after adjournment of the October 26, 2021, Council meeting, it was determined by the County that the Goff ordinances had not, in fact, been approved, based upon application of the proper Georgetown County Council Rules of Procedure as set forth in Paragraph 82, above, which is incorporated herein by reference.

88. At the next meeting on November 9, 2021, Council went into Executive Session to discuss legal matters, the subject of which was not disclosed.

89. Ordinances 21-24 and 21-25 were not listed as items on the November 9, 2021, published agenda nor had they been advertised or noticed in any way. A copy of the November 9, 2021, Council Agenda is attached hereto as Exhibit "27," and incorporated herein by reference.

90. After Executive Session, Councilman Raymond Newton made an improper Motion to Reconsider Ordinance 21-24 (Goff FLUM Amendment).

91. Raymond Newton was not eligible to make a Motion to Reconsider Ordinance 21-24 under Georgetown County Council Rules of Procedure, Section 2-519, which states as follows:

Sec. 2-519 - Motions to Reconsider.

A motion to reconsider any action taken by the council may be made only on the day such action was taken or at the next regular meeting of council. Such motion must be made by a council member voting on the prevailing side . . . .

A copy of this rule is attached hereto as Exhibit "28," and incorporated herein by reference.

92. Raymond Newton had voted in favor of approval of Ordinance 21-24 at the October 26, 2021, meeting, but it did not pass. Accordingly, Newton was not on the prevailing side of the action to be reconsidered as required under the rules.

93. The Motion to Reconsider Ordinance 21-24 made by Newton was null and void; however, County Council improperly voted to approve the motion. Inasmuch as there was no notice to the public regarding this matter, there was no one to speak out opposition of this improper procedure.

94. The Motion to Reconsider Ordinance 21-24 was improper for the further reason that Ordinance 21-24 was not a published agenda item as required by South Carolina Freedom of Information Act, S.C. Code, Section 30-4-80.

95. Councilman Newton then made a Motion to Reconsider Ordinance 21-25 (Goff Zoning Amendment).

96. Ordinance 21-25 (zoning amendment) had been rendered moot at Third Reading as detailed in Paragraph 83, above, and was not a proper subject for reconsideration.

97. Even if it had been a proper subject for reconsideration, Newton was not eligible to make a Motion to Reconsider Ordinance 21-25 because he had voted in favor of its approval at the October 26, 2021 meeting, and it did not pass. Accordingly, he was not on the prevailing side of the action to be reconsidered as required under the rules.

98. The Motion to Reconsider Ordinance 21-25 made by Newton was null and void; however, County Council erroneously and improperly voted to approve the motion. Again, inasmuch as there was no notice to the public regarding this matter, there was no one to speak out opposition of this improper procedure.

99. The Motion to Reconsider Ordinance 21-25 was improper for the further reason that Ordinance 21-25 was not a published agenda item as required by South Carolina Freedom of Information Act, S.C. Code, Section 30-4-80.

100. The Georgetown County Council Rules of Procedure, which set forth very clear requirements about who can properly make a motion to reconsider, and the South Carolina Freedom of Information Act, which requires agenda items to be published before action can be taken, have been enacted to protect the due process rights of citizens and to safeguard against government decisions being made improperly or without notice and opportunity for input from interested parties and/or the public.

101. Because Ordinances 21-24 and 21-25 had been properly defeated at the third and final reading on October 26, 2021, and they were not agenda items for the November 9, 2021, meeting, there was no notice that any action, including Motions for Reconsideration, would be taken on them on November 9, 2021, and Plaintiffs, who are parties in interest with standing and the existence of whom the County Council was well aware, had no notice or opportunity to be

heard about either the procedural improprieties of the Motions to Reconsider or the substantive issues relating to approval of the underlying ordinances.

102. The actions taken on November 9, 2021, with respect to Ordinances 21-24 and 21-25 appear to have been orchestrated by some members of council, who were dissatisfied with defeat of the proposed ordinances after the vote at third and final reading, to circumvent government transparency requirements and Constitutional protections in order to create an illegitimate opportunity to approve the ordinances that would not have been permitted by application of proper law and procedure.

103. There were no motions or votes taken to approve the underlying ordinances at the November 9, 2021, public meeting.

Ordinances 21-24 and 21-25 Signed as Approved on November 9, 2021

104. Georgetown County Council signed Ordinances 21-24 and 21-25 as approved and adopted on November 9, 2021. The details of when, where or how this alleged approval took place have not been disclosed to the public. Minutes of the November 9, 2021, Council Meeting indicate only the Motions to Reconsider. There is nothing in the minutes to indicate that Motions to Approve the ordinances were made or that the ordinances were voted upon or otherwise approved. A copy of the November 9, 2021, Council Minutes is attached hereto as Exhibit 29, and incorporated herein by reference.

105. As of the filing of this complaint, there has been no notice to the public that the ordinances were approved on November 9, 2021.

106. Upon information and belief, the County may consider that approval of the Motions to Reconsider operates as approval of the underlying ordinances.

107. A Motion to Reconsider is not tantamount to a Motion to Approve nor does it have the effect of approving the underlying matter. Even if the Motions to Reconsider had been proper and valid, a successful Motion to Reconsider operates only to bring the action to be reconsidered back to the place it had been prior to the action to reconsider.

108. Any action to approve the ordinances on November 9, 2021, would have been improper for the following reasons:

- a. The proposed ordinances were not included on the November 9, 2021, published agenda.
- b. There was no advertisement or other required notice with respect to action on Ordinances 21-24 and 21-25 at the November 9 council meeting.

109. If the ordinances are determined to have been approved on November 9, 2021, the decision was arbitrary, capricious, without any basis or justification in law or fact, and in violation of state and local law and procedure.

#### JURISDICTION, STANDING AND VENUE

110. Paragraphs 1 through 109 above are incorporated by reference as though fully set forth herein.

111. This court has jurisdiction to hear these claims arising under the South Carolina Comprehensive Planning Enabling Act, South Carolina Uniform Declaratory Judgments Act, South Carolina Freedom of Information Act, and other law.

112. Venue is proper in Georgetown County as all parties reside or are located in Georgetown County, the property in question is situated in Georgetown County, and all pertinent actions took place in Georgetown County.

113. Plaintiffs have statutory standing to challenge these ordinances as follows:

- a. South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-760(C), states that “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment.” Plaintiffs Middleton, Farrar, Hunt/Sullivan and CHA are owners of land that adjoins the Goff Parcel, and Plaintiff KIG is the representative of these and other neighboring landowners with respect to this matter.
- b. South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, states “[a]ny person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” Plaintiffs’ rights and legal relations have been affected by approval of Ordinances 21-24 and 21-25, and they have standing to ask the court to determine rights, status, validity and other legal relations.
- c. South Carolina Freedom of Information Act (“FOIA”), S.C. Code Ann., Section 30-4-100, states that “[a] citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter.” Plaintiffs are all citizens of South Carolina and have specific standing to apply for a declaratory judgment to enforce the provisions of FOIA.

114. Alternatively and in addition, Plaintiffs have constitutional standing to challenge these ordinances pursuant to Article III of the United States Constitution inasmuch as (a) they have suffered an injury by virtue of this zoning change to double density and decrease lot sizes on property that directly adjoins land owned by them; (b) the injury was caused by the improper

approval of the ordinances; and (c) the injury is redressable by a favorable decision of this court declaring that these ordinances are improper, null and void.

115. Alternatively and in addition, Plaintiffs have standing to challenge these ordinances pursuant to the public importance doctrine inasmuch as the decision in this case has potentially far-reaching, widespread, devastating and irreversible negative impact on the public welfare by serving as a precedent for similar rezoning of many acres in the South Waccamaw Neck, and future guidance by this court is necessary to determine the validity of Georgetown County's repeated disregard of explicit language in the Comprehensive Plan that restricts density increases in the South Waccamaw Neck.

116. Plaintiff KIG has associational standing as follows: (a) at least one of its members is an affected person who has standing in his or her own right; (b) the interests at stake are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual landowners and monetary damages are not being requested. Plaintiff KIG represents the interests of the named Plaintiffs as well as other affected persons who own adjoining land or reside in the vicinity of the Goff Parcel. The issues in this case fall squarely within KIG's purpose as set forth above.

#### COUNT I

#### DECLARATORY JUDGMENT

#### Council Decision Not to Approve Ordinances at Third Reading on October 26, 2021 was Valid and Final

117. Paragraphs 1 through 116 above are incorporated by reference as though fully set forth herein.

118. Pursuant to the provisions of the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows:

- a. Council properly voted not to approve Ordinance 21-24 at third and final reading on October 26, 2021, and this vote stands as final.
- b. Ordinance 21-25 (zoning amendment) was rendered moot upon Council voting not to approve Ordinance 21-24 (FLUM density amendment), and in any event Council ultimately voted not to approve Ordinance 21-25 at third and final reading, and this vote stands as final.
- c. No valid action was taken thereafter to alter this final proper decision.

COUNT II

DECLARATORY JUDGMENT

Motions to Reconsider were Improper, Invalid and Void

119. Paragraphs 1 through 118 above are incorporated by reference as though fully set forth herein.

120. Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows.

121. Georgetown County Council Rules of Procedure, Section 2-519 (Exhibit “28”), which has been adopted by ordinance, specifically requires that Motions to Reconsider be made only by “a council member voting on the prevailing side.”

122. Two Motions to Reconsider Ordinances 21-24 and 21-25, respectively, were made at the November 9, 2021, meeting by Raymond Newton who was not a council member voting on the prevailing side as required and not qualified to make the motions.

123. These Motions to Reconsider were made and voted on in violation of a County Ordinance which render them and any action taken upon them improper, invalid, and void.

124. The requirement that only a “prevailing party” may make a Motion to Reconsider is intended to prevent a dissatisfied member of council, who was on the losing side of a vote, from using the Motion to Reconsider as a tool to get a second chance at approval. The true purpose of the requirement is to provide a way for a council member, who voted on the prevailing side, to have the matter reconsidered in the event of imminent new information.

125. To allow council members to flagrantly violate rules in order to circumvent transparency requirements and due process without any accountability or consequence, would obviate the need for rules, and would harm Plaintiffs and the public by allowing the very actions the rules were designed to prevent.

126. Notwithstanding the invalidity of the Motions to Reconsider, successful Motions to Reconsider do not have the effect of automatically approving the underlying matter to be reconsidered.

127. There was no action taken to approve either Ordinance 21-24 or 21-25 at the November 9, 2021, meeting nor could action to approve the ordinances properly have been taken inasmuch as there was no notice or opportunity for Plaintiffs or the public to have input into either the Motions to Reconsider or substantive approval of the ordinances.

COUNT III

DECLARATORY JUDGMENT

Approval of Ordinances was a Violation of County Law

128. Paragraphs 1 through 127 above are incorporated by reference as though fully set forth herein.

129. Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows;

130. Georgetown County Zoning Ordinance 1701 states with respect to amending zoning ordinances, “[w]hen the public necessity, convenience, general welfare or good zoning practice justifies such action . . . Council may undertake the necessary steps to amend the Zoning Ordinance.”

131. The Goff zoning amendments were not justified by public necessity, convenience, general welfare or good zoning practice; nor did Council take this into consideration in violation of this Ordinance 1701. On the contrary, the overwhelming weight of evidence demonstrates that the ordinances would have a negative effect on general public welfare.

132. Georgetown County Planning Commission Bylaws require it to review amendments “first for conformity with the comprehensive plan. Conflicts with the comprehensive plan shall be noted in any report to the County Council on a proposed amendment.”

133. The Planning Commission neither reviewed the Goff amendments for conformity with the Comprehensive Plan nor noted conflicts in a report to Council in violation of its bylaws.

134. The Georgetown County Zoning Amendment Application requires the applicant to prove a need for the zoning change. The Applicant did not present any evidence of need for the amendments and neither the Planning Commission nor Council considered whether the applicant met his burden of proving a need for the amendments.

135. Defendants’ approval of the ordinances was arbitrary and capricious and violated Georgetown County law and procedure.

COUNT IV

DECLARATORY JUDGMENT

Approval of Ordinances was a Violation of  
South Carolina Comprehensive Planning and Enabling Act

136. Paragraphs 1 through 135 above are incorporated by reference as though fully set forth herein.

137. Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows.

138. The South Carolina Comprehensive Planning Enabling Act, S.C. Coe Ann., Section 6-29-720(B) specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction.”

139. The Goff zoning ordinances were not made in accordance with the Comprehensive Plan, and, on the contrary, were made in direct conflict with the explicit and unambiguous language of the Comprehensive Plan in that density was increased in circumstances that did not fall within any of the four enumerated exceptions.

140. The South Carolina Comprehensive Planning Enabling Act, Section 6-29-720(B) further requires that zoning regulations must “be made with a view to promoting the purposes set forth throughout this chapter.” Section 6-29-710 sets forth those purposes to include:

“promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare . . . to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets . . . to protect and preserve scenic, historic, or ecologically sensitive areas . . . to regulate the density and distribution of populations . . . to further the public welfare in any other regard . . . .”

141. The Goff zoning ordinances do not promote the purposes required under state law, and, on the contrary, negatively affect public welfare and serve only to promote the interests of the single landowner applicant.

142. In approving these ordinances, the County disregarded the input of thousands of citizens who expressed opposition to the zoning change for all the relevant reasons required to be considered by the South Carolina Comprehensive Planning Enabling Act. This input to Council consisted of more than 500 letters by landowners and residents, a Petition signed by more than 1,000 individual residents, dozens of speakers who showed up during a pandemic to speak at four different public meetings including two public hearings, multiple letters and verbal input from adjoining landowners, and letters and verbal input from representatives of Plaintiff KIG on behalf of its more than 2,800 members.

143. The County violated the South Carolina Comprehensive Planning Enabling Act and other law by approving the Goff zoning amendments.

COUNT V

DECLARATORY JUDGMENT

Unlawful Spot Zoning

144. Paragraphs 1 through 143 above are incorporated by reference as though fully set forth herein.

145. Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows.

146. Spot zoning has been defined by South Carolina courts as the singling out of a small parcel of land for use classification different from that of the surrounding area, for the benefit of the owners of the property and to the detriment of surrounding landowners.

147. The applicant requested a zoning change from R-1/2 acre to R-10 zoning on a small parcel of property surrounded by land that is primarily zoned R-1/2 acre or is otherwise consistent with current zoning.

148. The use classification of R-10 is significantly different from R-1/2 in that it requires a substantial density change, allows more than twice as many homes on lots that are less than half the size of current zoning.

149. There is no other R-10 zoning in the area.

150. This zoning change would benefit only the applicant and not the general public.

151. This zoning change would be detrimental to neighboring landowners and the general public as set forth herein.

152. Approval of Ordinances 21-24 and 21-25 amounts to unlawful spot zoning.

COUNT VI

DECLARATORY JUDGMENT

Violation of South Carolina  
Freedom of Information Act

153. Paragraphs 1 through 152 above are incorporated by reference as though fully set forth herein.

154. Plaintiffs seek declaratory judgment from this Court that Ordinances 21-24 and 21-25 are null, void, and of no force or effect as follows.

155. Defendants are a “public body” as defined by South Carolina Freedom of Information Act, Section 30-4-20(a) and are thereby subject to its requirements.

156. Defendants violated the requirements of FOIA as follows:

- a. Failed to include Ordinances 21-24 and 21-25 as agenda items on the November 9, 2021, published agenda as required by FOIA, Section 30-4-80.

- b. Failed to hold a meeting that was open to the public with respect to the Motions for Reconsideration and/or approval of Ordinances 21-24 and 21-25 on November 9, 2021, as required by FOIA, Section 30-4-60.
- c. Discussed matters pertaining to Ordinances 21-24 and 21-25 during a closed Executive Session on November 9, 2021, that were not proper exceptions to open meetings under FOIA, Section 30-4-70.
- d. Signed Ordinances 21-24 and 21-25 as if they had been passed on November 9, 2021, when they had, in fact, been denied at third and final reading on October 26, 2021, and there had never been a vote or any proper action taken to approve them at a public meeting on November 9, 2021.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter judgment in their favor as set forth herein, declare Ordinances 21-24 and 21-25 as null, void and of no force or effect, and award Plaintiffs costs and attorneys fees from the municipal Defendants, and such other relief as the court deems just and appropriate.

Respectfully submitted,

/s/ Cynthia Ranck Person  
Cynthia Ranck Person, Esquire (SC Bar #105126)

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ATTORNEY FOR PLAINTIFFS

January 6, 2022  
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
 15TH JUDICIAL CIRCUIT  
 CASE NO.: 2022-CP-2200-032

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert E. Hunt and Jeane M. Sullivan, The Colony Homeowners Association, Inc., and Keep It Green, Inc.,

**MOTION AND ORDER INFORMATION**

Plaintiff, )

**FORM AND COVERSHEET**

vs. )

Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004,

Defendant. )

2022 JAN 25 PM 1:55  
 ALMA Y. WHITE  
 CLERK OF COURT

|                                                                                                                                                                                                      |                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>Cynthia Ranck Person, Bar No. 105126<br>Address:<br>P.O. Box 1922, Pawleys Island, SC 29585<br>Phone: 570-971-8636 Fax _____<br>E-mail: kig.advocacy@gmail.com Other: _____ | Defendant's Attorney:<br>Benjamin F. Goff, Trustee, Pro Se, Bar No. _____<br>Address:<br>18 Powers Farm Road, Randolph, MA 02368<br>Phone: 781-986-0635 Fax 781-986-0635<br>E-mail: goff-chem@juno.com Other: _____ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*Benjamin F. Goff, Trustee, Pro Se*  
 Signature of Attorney for  Plaintiff /  Defendant

January 25, 2022  
 Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT  
)

Ernest F. Middleton, III, and Joyce J. Middleton,  
Michael J. Farrar and Diana Farrar, Robert E. Hunt  
and Jeane M. Sullivan, The Colony Homeowners  
Association, Inc., and Keep It Green, Inc.,

) CASE NO.: 2022CP2200032  
)  
)

Plaintiffs

) MOTION TO DISMISS  
) BENJAMIN F. GOFF, SR., TRUSTEE  
) AS A DEFENDANT

Georgetown County, Georgetown County Council,  
Louis Morant, Lillie Jean Johnson, Raymond  
Newton, Steve Goggans, Everett Carolina, John  
Thomas and Bob Anderson, in their capacities as  
elected members of Georgetown County Council,  
Benjamin F. Goff, Sr., Trustee of the  
Benjamin F. Goff 2004 Revocable Trust,  
dated June 18, 2004,

Defendants

ALAMY WHITE  
CLERK OF COURT  
2022 JAN 25 PM 1:55

**MOTION TO DISMISS BENJAMIN F. GOFF, SR., TRUSTEE AS A DEFENDANT**

Now comes the Defendant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, to request this honorable court to dismiss him as a defendant in this lawsuit. Pursuant to S.C. Rules of Civil Procedure 12(b)(6), the lawsuit fails to state any facts that constitute a cause of action against Benjamin F. Goff, Trustee. As of the date of filing, the Defendant has not been officially served with the Complaint pursuant S.C. Rules of Civil Procedure 4(a) and 12(b)(5). The Complaint fails to meet the requirements of the South Carolina Declaratory Judgment Act (SCDJA). In that the SCDJA is remedial and procedural in nature, to create substantive rights or duties, a claim under the act must show a justiciable controversy. Plaintiffs' lawsuit lacks standing and a justiciable controversy that is a real and substantial controversy and appropriate for judicial intervention. As stated in S.C. Code Ann. Section 15-53-70, a declaratory judgment or decree that would not terminate the uncertainty or controversy that gave rise to the proceeding may be refused. This is a retaliatory lawsuit against

the Georgetown County Council, Planning Commission, Planning Department and Benjamin F. Goff, Trustee. The complaint is really about the Plaintiffs' desire to curtail the population growth and restrict the potential development they perceived will occur if the updated Land Use Element of the Georgetown County Comprehensive Plan is adopted. In exercising his constitutional rights to apply to rezone private property, the Defendant, Benjamin F. Goff, Trustee's application and subsequent approval and adoption of the ordinances have been targeted by opposing individuals, groups and organizations. The plaintiffs are fulfilling their ongoing legal threats for court action if the Georgetown County Council adopted Ordinance Nos. 21-24 and 21-25. In support of this motion, the defendant states the following:

1. At the October 26, 2021 County Council meeting, Ordinance 21-24 and Ordinance 21-25 was approved and adopted by "majority of members present and voting" in accordance with the Model Rules of Parliamentary Procedure for South Carolina Counties, third edition and "majority of members present" in accordance with the Georgetown County Rules of Procedure;
2. The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties states in part as follows:
  - a. Model Rule 2, Applicability Deviation from Rules, states "These Rules shall apply to all meetings of county council, including committee meetings;
  - b. Model Rule 3, Model Rules of Parliamentary Procedure for South Carolina Counties and Robert's Rules of Order Newly Revised ("RONR") (current edition) to Govern Other Cases, states "County council will refer to the Model Rules, and the Comment sections contained therein, as the primary resource in determining the intent and meaning of these Rules;

- c. **Model Rule 8, Voting, Number of Votes Required for Passage, states “RONR, and/or state law may require differing number of members to vote in support of an action. The term “majority” or “simple majority” means more than half of those members present and voting . . . Any ordinance, resolution, or motion, unless otherwise required by these Rules, or by state or federal statute, passes if it receives a simple-majority of the votes cast . . . The term “majority” or “simple majority” means more than half of those members present and voting.”;**
- d. **Model Rule 17, Motion to Reconsider, states . . . “Neither of these motions can be used to reconsider or amend an ordinance or resolution that has become effective. However, the third reading to an ordinance may be reconsidered only at the same meeting in which the third reading was adopted.”;**
3. **“Repealing or amending an existing county ordinance is considered a “legislative action” and thus must be done in accordance with the procedures outlined in § 4-9-120. If the procedures are not followed, the existing ordinance will remain in effect.” Op. Atty. Gen., dated September 30, 2002;**
  4. **County Rules of Procedure Sec.2-489: Ordinances shall take effect on the day the ordinance is given third reading unless another date is specified in the ordinance.**
  5. **The South Carolina Ethics Commission has taken the position that the conflicted member should not only abstain from debating and voting on the matter, but also should not attend that portion of the meeting in which the conflict will arise.**
  6. **The 2013 Home Rule Handbook states that “A time extension is not an amendment or revision of an ordinance. Instead, it is a non-legislative act affecting the execution of a law rather than the substance of the law”;**

7. The 2020 and 2021 Supplement to the 2013 Home Rule Handbook for County Government P. 88 Section 4-9-120 states that the "Procedure for Adoption of Ordinances Case Notes: states "The vote of a member who has been disqualified because of interest or bias in the subject matter being voted upon may not be counted in the majority necessary for valid action";
8. At November 9, 2021 meeting, the County Council performed a non-legislative executive action on the approval and adoption of Ordinance 21-24 and Ordinance 21-25;
9. The Plaintiffs lack standing to bring this complaint against Benjamin F. Goff, Sr., Trustee;
10. The complaint lacks a justiciable controversy and is admittedly premature in the Complaint.
11. Absent County Council rules for an abstention, the Model Rules of Parliamentary Procedure for South Carolina Counties, third edition is the pre-emptive authority;
12. The Municipal Association of South Carolina proposed specific language for County Councils to mitigate and/eliminate issues arising from members abstaining from voting;
13. Standing must be determined at the time at which the plaintiffs' complaint is filed in order to place an actual case or controversy within the purview of the court;
14. The plaintiff must be able to show that they have been harmed at the time that the complaint is filed;
15. Plaintiffs must have standing on the date that his or her action was filed;
16. Subsequent amendments of a complaint which seek to confer standing based on events occurring after the initial complaint was filed cannot cure this jurisdictional defect;
17. The plaintiffs admit that the complaint is premature ("Statement 105. As of the filing of this complaint, there has been no notice to the public that the ordinances were approved on November 9, 2021");

18. To establish standing against Benjamin F. Goff, Trustee, the plaintiff should have provided proof that they have (1) Suffered an "injury in fact" resulting from an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) Should have shown a causal connection between the injury and the conduct complained of and that the injury, if any, is connected to the challenged action of the defendant and not the result of an independent action of the County Council; and (3) Should have proved that is likely as opposed to merely speculative that a declaratory judgment will terminate the controversy;
19. Plaintiffs' complaint and prior coordinated actions can be construed as an effort to injure, oppress, threaten, or intimidate a property owner and deprive a person of rights secure by the United States Constitution and the laws of the United States;
20. Benjamin F. Goff, Trustee is not an elected official or public employee of Georgetown County; therefore, he is not responsible for the decision made by the County Council.

Wherefore, Benjamin F. Goff, Trustee, requests this honorable court to dismiss Benjamin F. Goff, Trustee as a defendant in this legal action: 1) There are no stated facts that constitute a cause of action against Benjamin F. Goff, Trustee; 2) A declaratory judgement will not terminate the controversy, if any, stated in the complaint; 3) The Plaintiffs lack standing; and 4) There is no justiciable controversy. A Memorandum of Law in Support of the Motion is attached.

Respectfully Submitted,  
The Defendant

Date: *January 25, 2022*

*Benjamin F. Goff*  
Benjamin F. Goff, Trustee, Pro Se  
18 Powers Farm Road  
Randolph, MA 02368  
781-986-0635 (Tel)  
goff-chem@juno.com

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

Ernest F. Middleton, III, and Joyce J. Middleton,  
Michael J. Farrar and Diana Farrar, Robert E. Hunt  
and Jeane M. Sullivan, The Colony Homeowners  
Association, Inc., and Keep It Green, Inc.,

)  
)  
) CASE NO.: 2022CP2200032  
)  
)  
)

Plaintiffs

) MEMORANDUM OF LAW  
) IN SUPPORT OF MOTION TO DISMISS  
) BENJAMIN F. GOFF, SR., TRUSTEE  
) AS A DEFENDANT

Georgetown County, Georgetown County Council,  
Louis Morant, Lillie Jean Johnson, Raymond  
Newton, Steve Goggans, Everett Carolina, John  
Thomas and Bob Anderson, in their capacities as  
elected members of Georgetown County Council,  
Benjamin F. Goff, Sr., Trustee of the  
Benjamin F. Goff 2004 Revocable Trust,  
dated June 18, 2004,

Defendants

2022 JAN 25 PM 1:55  
ALVA Y. JEFFREY  
CLERK OF COURT

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS  
BENJAMIN F. GOFF, SR., TRUSTEE AS A DEFENDANT**

Defendant, Benjamin F. Goff, Sr., Trustee, (“Goff”) submits this memorandum of law in support of its Motion to Dismiss Benjamin F. Goff, Sr., Trustee (“Goff”) as a Defendant in the Plaintiffs’ Complaint pursuant to S.C. R. Civ. P. 12(b)(6). Plaintiffs fail to state a cause of action in whole and/or in part as a matter of law against Benjamin F. Goff, Sr., Trustee. Additionally, the motion is based on the grounds that the Plaintiffs lack standing to assert the claims raised in the Complaint and the Complaint lacks a justiciable controversy for judicial intervention.

**BACKGROUND**

On October 26, 2021 a Third Reading was conducted for Ordinance Nos. 21-24 and 21-25. The passage of the ordinances required the reliance on “The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, third edition

(Model Rules). This stemmed from a council member's decision at the Third Reading to abstain from voting on the referenced ordinances on which he previously provided a "yes" vote for passage at the Second Reading on August 24, 2021.

On legal advice from the County Attorney the ordinances were passed based on "majority of members present and voting", as defined in the Model Rules. Also, other factors may have allowed the passage under "majority of members present" based on the Georgetown County Council Rules of Procedure. According to the Model Rules, 2013 Home Rule Handbook, 2020 and 2021 Supplement and County Council Rules of Procedure, the referenced ordinances passed by "majority of members present and voting" and the "valid" majority of members present. Under state law and rules, ordinances adopted by majority vote at the third reading are in effect.

#### **STANDARD FOR REVIEW**

A motion to dismiss should be granted under Rule 12(b)(6) when the complaint fails to state facts sufficient to constitute a cause of action. In deciding a motion to dismiss, all pleadings are to be construed in a light most favorable to the plaintiff; however, in this instant complaint, the alleged facts by the plaintiffs are speculative conclusions and contrived evidentiary facts. The court need not adopt a party's legal conclusions based on those alleged facts. See DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293, 296 (1981); HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010); Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 425, 559 S.E. 2d 362, 364-65 (Ct. App. 2001). An allegation of a mere legal conclusion is insufficient to state a cause of action. See Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Smith v. Ashmore, 184 S.C. 316, 192 S.E. 565 (1937).

The South Carolina Declaratory Judgment Act (SCDJA) "is remedial and procedural in nature and does not create substantive rights or duties." See Felts v. Richland County, 299 S.C.

214, 383 S.E.2d 261, 262-63 (Ct. App. 1989). For a party to state a claim under the act, a justiciable controversy must be demonstrated. See Graham v. See State Farm Mutual Automobile Ins. Co., 319 S.C. 69, 459 S.E.2d 844, 845-46 (1995); See Orr v. Clyburn, 277 S.C. 536, 290 S.E.2d 804, 807 (1982). A justiciable controversy is “a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” See Pee Dee Elec. Coop v. Carolina Power & Light Co., 279 S.C. 764, 301 S.E.2d 761, 761 (1983). The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. See Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). To determine if Plaintiff has a justiciable controversy, standing must be assessed at the time the action is commenced, not at some later point. See S.C. Dep’t of Soc. Servs. v. Boulware, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018). “To have standing, one must have a personal stake in the subject matter of the lawsuit; i.e., one must be the ‘real party in interest.’” See Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424, 427 (1996) (citation omitted).

“Standing to sue is a fundamental requirement in instituting any action.” See Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). “[S]tanding cannot be granted to every individual who is disgruntled by a governmental decision or policy; otherwise, the government would be forced to defend a constant barrage of lawsuits questioning its every move.” See Newman v. Richland Cnty. Historic Pres. Com’n, 325 S.C. 79, 79, 480 S.E.2d 72, 75 (1997).

In Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res., 345 S.C. 594, 550 S.E.2d 287 (2001), the state supreme court adopted the “stringent standing test” applied by the United States Supreme Court in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) for determining constitutional standing. Under that test, an organization seeking redress for an injury

to the organization itself (so-called “individual standing”) must carry the burden of demonstrating each of the following three elements: (1) The plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) “concrete and particularized” and (b) “actual or imminent,” not “conjectural or hypothetical.” (2) There must be a causal connection between the injury and conduct complained of—the injury has to be “fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court.” (3) It must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Id. at 601, 550 S.E.2d at 291 (quoting Lujan). “In order for the injury to be ‘particularized,’ it must affect the plaintiff in a personal and individual way.” Id. at 602, 550 S.E.2d at 292 (quoting Lujan). Merely alleging an injury that all members of the public suffer from fails to establish the first prong requiring an individualized injury. See Carnival Corp. v. Historic Ansonborough Neighborhood Association, 407 S.C. 67, 77, 753 S.E.2d 846, 851 (2014).

When an organization sues in its representative capacity on behalf of its constituent members (“associational standing”), it must be shown that its members have standing to sue in their own right. See Georgetown Cty. See League of Women Voters v. Smith Land Co., 393 S.C. 350, 359, 713 S.E.2d 287, 292 (2011). Specifically, the state has adopted the United States Supreme Court’s test in Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333 (1977) to determine when an organization can sue in a representative capacity on behalf of its members. Under the Hunt test:

[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

See Hunt, 432 U.S. at 343; see also Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001); See Georgetown Cty., 713 S.E.2d at 292 (citing Hunt).

To satisfy the third prong of this test, "the organization must show that the right it seeks to vindicate is common to the membership and the interest of the harmed members in the proceedings derives from their membership." See Georgetown Cty., 713 S.E.2d at 293.

Plaintiffs fail to allege a particularized injury to themselves but merely assert generalized grievances, against the Georgetown County Planning Department, Planning Commission, County Council, or Goff supposedly suffered by the public as a whole, which are insufficient to establish standing. See Carnival, 407 S.C. at 76, 753 S.E.2d at 851 ("Plaintiffs fail to allege a particularized injury either to themselves or their members. Rather, they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing.").

In general, a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or there is an immediate danger that a direct injury will be sustained. See Bodman v. State, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013).

Under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." See Baird v. Charleston Cty., 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Therefore, it is insufficient for a plaintiff to simply state that the case involves a matter of public importance. The criteria for the application of the public importance analysis is the need for "future guidance" from the court. See ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); Bodman, 403 S.C. at 68, 742 S.E.2d at 366.

The courts will not address the merits of any case unless it presents a justiciable controversy. See Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). In Byrd, the Court stated, "Before any action can be maintained, there must exist a justiciable controversy," and, "This Court will not . . . make an adjudication where there remains no actual

controversy." See Id.; see also Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp., 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy."). "Justiciability encompasses . . . ripeness . . . and standing." See James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010). Standing is "a personal stake in the subject matter of the lawsuit." See Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. See 345 S.C. at 600-01, 550 S.E.2d at 291. To meet the "stringent" test for standing, "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" See 345 S.C. at 601, 550 S.E.2d at 291 (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992)). The courts have explained ripeness by defining what is not ripe, stating "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review." See Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty., 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006).

### STATEMENT OF FACTS

The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties states as follows:

Model Rule 2, Applicability Deviation from Rules, states "These Rules shall apply to all meetings of county council, including committee meetings. As used in these Rules, the term "Meeting" means the convening of a quorum of the membership of county council to discuss or act upon a matter over which county council has supervision, control, jurisdiction or advisory power; the term "Quorum" means a simple majority of the membership of county council, or committee of county council. These Rules were adopted as guidelines to assist county council, in conducting orderly and productive meetings. Any deviation from or waiver of these Rules shall not affect or void any action

taken by county council. Furthermore, such deviation or waiver does not convey any right or cause of action to third parties not otherwise imposed by law."

Model Rule 3, Model Rules of Parliamentary Procedure for South Carolina Counties and Robert's Rules of Order Newly Revised (current edition) to Govern Other Cases, states "County council will refer to the Model Rules, and the Comment sections contained therein, as the primary resource in determining the intent and meaning of these Rules. In all cases not covered by these Rules, county council shall be governed by such rules as are set out in the most recent edition of Robert's Rules of Order Newly Revised (RONR). Provided, however, that state and federal law shall take precedence over these Rules in all cases. Whenever possible, these Rules should be interpreted to conform to state and federal law; if an irreconcilable difference occurs, only the portion of the Rule or Rules directly in conflict with state or federal law is to be overruled, the remaining portions surviving."

Model Rule 8, Voting, Number of Votes Required for Passage, states "RONR, and/or state law may require differing number of members to vote in support of an action. The term "majority" or "simple majority" means more than half of those members present and voting. When a two-thirds majority is required, the term "two-thirds majority" or "super-majority" means at least two-thirds of those present and voting. The term "positive majority" means a majority of the members of council must vote in support of the action, regardless of the number of members present or not. ... Any ordinance, resolution, or motion, unless otherwise required by these Rules, or by state or federal statute, passes if it receives a simple-majority of the votes cast. RONR, and/or state law may require differing number of members to vote in support of an action. The term "majority" or "simple majority" means more than half of those members present and voting."

Model Rule 17, Motion to Reconsider, states "The problem with the Motion to Reconsider and the Motion to Amend Something Previously Adopted is that ordinances and resolutions passed by county council become effective without referral to another chamber or to an executive branch for signature. Neither of these motions can be used to reconsider or amend an ordinance or resolution that has become effective. However, the third reading to an ordinance may be reconsidered only at the same meeting in which the third reading was adopted."

S.C. Code Ann. Section 4-9-120: "Procedures for adoption of ordinances; proceedings and all ordinances shall be recorded. The council shall take legislative action by ordinance which may be introduced by any member. With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings. All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published

by title and made available to public inspection at the office of the clerk of council. The clerk of council shall maintain a permanent record of all ordinances adopted and shall furnish a copy of such record to the clerk of court for filing in that office.”

S.C. Code Ann. Section 4-9-120 does not require county council to make specific findings that amendment of ordinance is in the public interest. See Smith v. Georgetown County Council, 292 S.C. 235, 355 S.E.2d 864 (Ct. App. 1987).

“The procedure for adoption of ordinances under Section 4-9-120 was not violated as the planning commission properly recommended the comprehensive plan to county council prior to the ordinance being given first reading. Appellant was not deprived of due process of law because he was not deprived of his property due to the adoption of the plan nor due to the manner of the plan’s adoption.” See McClanahan v. Richland County, 350 S.C. 433, 567 S.E.2d 240 (Ct.App. 2002).

Under the Home Rule Act, a county council must comply with the requirements of [§ 4-9-120, 1976 Code] in passing temporary as well as permanent ordinances. 1975-76 Op. Atty. Gen., No. 4410.

The 2013 Home Rule Handbook cited the following opinions:

“A zoning ordinance provision stating that all future amendments or modifications in the flood maps are incorporated by reference would constitute an unlawful delegation of legislative power. While a legislative body may incorporate other legislation or rules, regulations, policies, or maps as these may presently exist, any incorporation of future changes to such enactment or documents unlawfully delegates the power to alter the ordinance to another body, person, or entity.” Op. Atty. Gen., dated April 14, 2005.

“A time extension is not an amendment or revision of an ordinance. Instead, it is a non-legislative act affecting the execution of a law rather than the substance of the law. Therefore, a county council may, by resolution, extend the time set in ordinances for the county administrator to execute agreements.” Unpublished Op. Atty. Gen., dated March 21, 2000.

“Repealing or amending an existing county ordinance is considered a “legislative action” and thus must be done in accordance with the procedures outlined in § 4-9-120. If the procedures are not followed, the existing ordinance will remain in effect.” Op. Atty. Gen., dated September 30, 2002.

The 2020 and 2021 Supplement to the 2013 Home Rule Handbook for County Government P. 88 Section 4-9-120:

Procedure for Adoption of Ordinances Case Notes: states “The vote of a member who has been disqualified because of interest or bias in the subject matter being voted upon may not be counted in the majority necessary for valid action. A court may invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote.” See Anderson County v. Preston, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019).

The 2020 and 2021 Supplement to the 2013 Home Rule Handbook for County Government P. 104 Section 4-9-180:

Conflicts Of Interest Case Notes: “The vote of a member who has been disqualified because of interest or bias in the subject matter being voted upon may not be counted in the majority necessary for valid action. A court may invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote. Anderson County v. Preston, 420 S.C. 546, 556, 804 S.E.2d 282, 287 (Ct. App. 2017), cert. granted (Mar. 29, 2018), vacated, 427 S.C. 529, 831 S.E.2d 911 (2019). [EDITOR’S NOTE: This opinion did not specifically address § 4-9-180, but the same result could easily be reached. Additionally, this opinion was vacated by the SC Supreme Court on August 7, 2019, based upon the Court of Appeals not consisting of a quorum when the decision was rendered; however, the new holding and reasoning remains the same.]”

The South Carolina Ethics Commission has taken the position that the conflicted member should not only abstain from debating and voting on the matter, but also should not attend that portion of the meeting in which the conflict will arise. See Ethics Advisory Opinion 93- 081.

S.C. Code Ann. Sec. 15-53-70. Declaratory judgment may be refused. The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

S.C. Code Ann. Sec. 15-53-80, Parties: When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and

no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

The Georgetown County Council Rules of Procedure states as follows:

“Sec. 2-485. Third Reading: After the ordinance has been given second reading, and if a public hearing has been held if required by law or action of council, it shall be given third reading on a subsequent public meeting and amendments may be offered on third reading the same as on second reading. After all amendments and privileged motions, if any are disposed of, the question shall be passage of the ordinance. See (Ord. No. 99-30, Art. IX, § 9-5, 5-25-99).”

“Sec. 2-486. Votes Required For Passage: No ordinance or amendment shall be adopted unless at least a majority of the members present shall have voted for its passage on second and third readings. The repeal or amendment of ordinances shall follow the same procedure set forth for adoption. See (Ord. No. 99-30, Art. IX, § 9-6, 5-25-99).”

“Sec. 2-489. Effective Date Of Ordinances. Ordinances shall take effect on the day the ordinance is given third reading unless another date is specified in the ordinance. See (Ord. No. 99-30, Art. IX, § 9-9, 5-25-99).”

## ARGUMENT

### I. PLAINTIFFS LACK STANDING:

The fact that Plaintiffs brought its lawsuit under the SCDJA does not by itself confer standing as that act is remedial in nature. See Bodman, 403 S.C. at 67 & n.1, 742 S.E.2d at 366 & n.1; see also Carolina All. for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999) (parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.)

When an organization sues in its representative capacity on behalf of its constituent members (“associational standing”), it must be shown that its members have standing to sue in their own right. See Georgetown Cty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 359, 713 S.E.2d 287, 292 (2011). Specifically, the state has adopted the United States Supreme Court’s test in Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333 (1977) to determine when an organization can sue in a representative capacity on behalf of its members.

Under the Hunt test:

[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. See Hunt, 432 U.S. at 343; see also Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001); Georgetown Cty., 713 S.E.2d at 292 (citing Hunt).

“Standing is assessed at the time the action is commenced,” not thereafter. See Clark v. Trailiner Corp., 242 F.3d 388 (10th Cir. 2000) (citing Lujan); see also Associated Credit Union v. Pinto, 677 S.E.2d 789, 791 (Ga. Ct. App. 2009) (“[A]s a general rule, ‘standing must be determined at the time at which the plaintiff’s complaint is filed in order to place an actual case or controversy within the purview of the court.’ Put more succinctly, the plaintiff must be able to show that he has been harmed at the time that the complaint is filed.” (citation omitted)); See Boulware, 422 S.C. at 7, 809 S.E.2d at 226. A significant number of the purported membership of the organization (“Keep It Green, Inc.”) lack standing to sue the County Council. None can claim an “injury-in-fact” for the successful rezoning of the Goff parcel. Therefore, the organization fails the Hunt test since it lacks standing to sue in a representative capacity on behalf of all of its constituent members.

It is improper for a plaintiff to retroactively attempt to correct the standing defect by seeking substitution or by amending its pleading. See Clark, 242 F.3d at 388; see also Perdue v. Lake, 647

S.E.2d 6, 8 (Ga. 2007) (“[A] plaintiff must have standing on the date that his or her action is filed. Subsequent amendments of a complaint which seek to confer standing based on events occurring after the initial complaint was filed cannot cure this jurisdictional defect.”). The plaintiffs admit that the complaint is premature (“Statement 105. As of the filing of this complaint, there has been no notice to the public that the ordinances were approved on November 9, 2021”). The plaintiffs’ complaint does not pass the Hunt test to qualify for standing.

To establish standing against Goff, the plaintiffs would have to provide proof that they have (1) Suffered an “injury in fact” resulting from an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) Should have to show a causal connection between the injury and the conduct complained of and that the injury, if any, is connected to the challenged action of Goff and not the result of an independent action of the County Council; and (3) Should have proof that it is likely as opposed to merely speculative that a declaratory judgment will terminate the controversy. Consequently, the plaintiffs’ lawsuit lacks standing and should be dismissed. The plaintiffs in their affidavits stated that they paid an extra premium when they acquired the properties that are contiguous to the Goff parcel, therefore, have been harmed by the ordinances. The plaintiffs’ pretend injury-in-fact does not meet the necessary legal burden or the requirements for standing to bring this lawsuit against Goff and/or the County Council and its members.

## **II. COMPLAINT LACKS A JUSTICIABLE CONTROVERSY:**

S.C. Const. art. I, § 3, provides that no person shall be deprived of property without due process of law. “Appellant has not been deprived of due process of law because he was not deprived of his property due to the adoption of the Plan, nor due to the manner of the Plan’s adoption. Appellant’s claim in this regard is not justiciable because it is not ripe for review.” See Waters v. South Carolina Land Resources Conservation Comm’n, 321 S.C. 219, 467 S.E.2d

913 (1996) ("A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute."). Plaintiffs have not been deprived of property or sustained any injury to same.

The main requirement that you must meet to get a declaratory judgment is to show that there is an "actual controversy." See 28 U.S.C. Sec. 2201. This requirement comes from Article III of the United States Constitution, which gives the federal courts jurisdiction only over "Cases" and "Controversies." As required for declaratory lawsuits, the defendant, Benjamin F. Goff, Trustee, has not denied the legal character or right to property of the plaintiffs. Plaintiffs' Complaint simply asserted that they have standing to bring this action because of the County Council's approval of Goff's ordinances which is "a matter of wide concern and public importance."

Ordinance 21-24 and Ordinance 21-25 pass by legislative action of the majority of members voting and/or present on October 26, 2021; whereas, the County Council on November 9, 2021, through an executive action, documented the adoption of the ordinances on that date with a 4-2 vote in favor with one recusal. See Exhibit B. Since the ordinances were in effect after approval at the Third Reading, this was a non-legislative act affecting the execution of ordinances rather than the substance of the ordinances. Without a factual and/or legal basis, the plaintiffs claim that the ordinances did not pass on October 26, 2021. In accordance with the Model Rules and County Council Rules of Procedure, both ordinances were approved and adopted on October 26, 2021. The 2013 Home Rule Handbook states that "A time extension is not an amendment or revision of an ordinance. Instead, it is a non-legislative act affecting the execution of a law rather than the substance of the law. Therefore, a county council may, by resolution, extend the time set in ordinances for the county administrator to execute agreements. Unpublished Op. Atty. Gen., dated March 21, 2000." Hence, Ordinance 21-24 and Ordinance 21-

25 are in effect and properly require legislative action to repeal or recall as opposed to judicial intervention.

In accordance with the Model Rule 17, a third reading vote of an ordinance or resolution can only be repealed or recall through the legislative process in S.C. Code Ann. Sec. 4-9-120; therefore, a vote to reconsider the passage of the ordinance at the November 9, 2021 would have been inconsistent with County Council Rules of Procedure, the Model Rules and State law.

The plaintiffs state in the complaint and affidavits that Ordinance 21-24 and Ordinance 21-25 did not pass and/or was defeated at the Third Reading on October 26, 2021. However, the October 26, 2021 meeting minutes which were approved on December 14, 2021 clearly states that both ordinances passed by 3-2 votes. See Exhibit A. One council member recused and another abstained from voting. In addition, several council members and the plaintiffs' lawyer were reported in a local newspaper as clearly understanding that the ordinances had pass on October 26, 2021.

Presumably, if in fact, the approval was questionable, the opportunity to raise the issue and/or reconsider was during and before adjourning the meeting on October 26, 2021. Lacking any objections on the record, the opposing council members had conceded defeat. One might reasonably conclude that the motion to reconsider without discussion was an executive action for purposes not disclosed to the general public.

The Complaint admits and minutes state that a vote did not occur in executive session. In that the three legally mandated public hearing requirements had already been met, public comments were not necessary or required. Without evidence, the plaintiffs are attempting to contrast an apparent executive action on November 9, 2021 as improper and to discount a proper legislative action on October 26, 2021 with false and contrived statements. The October 26, 2021

and November 9, 2021 meeting minutes were approved unanimously at the December 14, 2021 meeting. See Exhibit C. There is no justiciable controversy necessitating judicial intervention.

The factual reality is that County Council Rules of Procedure which define passage the vote of the majority present does not include a rule for members abstaining from voting. Assuming a quorum, defaulting to Roberts Rules of Order Newly Revised (RONR) does not resolve the arising issues. As in this case, the Model Rules are the preemptive authority in defining passage of an ordinance as the majority present and voting; therefore, Ordinances 21-24 and 21-25 pass on October 26, 2021 and were codified on November 9, 2021. See Exhibit B.

RONR states: Changing One's Vote. "A member has the right to change his vote up to the time the result is announced, after that he can make the change only by permission of the assembly, which can be given by unanimous consent (p. 52), or by the adoption of a motion to grant the permission, which is undebatable." See RONR (9<sup>th</sup> Ed.) Sec. 44.

RONR states: Assembly's Prerogative in Judging Voting Procedures. "Unless the bylaws provide otherwise, the assembly itself is the judge of all questions arising which are incidental to the voting and counting of votes." See RONR (9<sup>th</sup> Ed.) Sec. 44.

The South Carolina Association of Counties and Municipal Association of South Carolina are well aware of the problem with abstentions and have proposed the adoption of specific language by county councils to alleviate the issues arising from members abstaining. In small bodies, abstentions can result in decisions made by less than a majority of members. Because Robert's Rules do not prohibit abstentions, a local rule should be adopted. Absent rules on abstentions by county councils, the 2013 Home Rule Handbook, 2020 and 2021 Supplement and Model Rules of Parliamentary Procedure are the default sources for determining passage of ordinances and resolutions. Judicial intervention is not appropriate for a contrived controversy

that has no factual or legal basis. This is not a justiciable controversy and there is no need for "future guidance" from the court.

### **III. INSUFFICIENT FACTS FOR A CAUSE OF ACTION:**

Property owners are entitled to submit and support an application for rezoning as is the public equally entitled to oppose any request. To allow Goff to remain as a defendant will have an unsettling effect on property owners who desire to submit rezoning applications for anything related to private property that are disagreed with or opposed by individuals, groups and organizations. This could be construed as an effort to use judicial authority to intimidate the property owners throughout Georgetown County, specifically on the Waccamaw Neck.

The plaintiffs lack standing and a justiciable controversy to include Goff in this legal action against the County Council for exercising a constitutional right to petition for rezoning of private property. They infer past and future speculative harm and injuries to their properties and have engaged in a coordinated action against constitutionally guaranteed individual rights. Goff is not an elected member of the County Council or a public official and should not be held accountable for governmental and legislative decisions.

The plaintiffs, who reside in Colony subdivision contiguous to the property of Benjamin F. Goff, Trustee, are themselves the beneficiaries of low to medium density rezoning from R-1/2 (20,000 sq. ft.) to R-8 (8,000 sq. ft.) and a variance that allowed lots to increase from 34 to 49. The Planning Department staff supported the rezoning of the Goff parcel from, R-1/2 (20,000 sq. ft.) to R-10 (10,000 sq. ft.), low to medium density that would allow lots to increase from about 24 to 40, comparable to the plaintiffs' Colony lots.

Consequently, the plaintiffs' claims about high and double density from rezoning the Goff parcel and harm to their properties are without merit. In fact, Ordinance 21-24 and

Ordinance 21-25 are in concert with the proposed updates and changes to, the "Georgetown County South Carolina Land Use Element, Planning Commission Review Document, 2020", prepared with technical assistance provided by the Waccamaw Regional Council of Governments", which is fiercely opposed by the plaintiffs.

Other than the property owner, Goff, exercising constitutional rights as a citizen to rezone private property in accordance with the county rules, the complaint fails to state any facts sufficient to constitute a cause of action against Benjamin F. Goff, Trustee. The defendant, Benjamin F. Goff, Trustee is not responsible for the action of the Georgetown County Council, an elected legislative body, acting on behalf of the residents of Georgetown County.

The Goff rezoning application and subsequent approval of the ordinances have been met with organized opposition by individuals, groups and organizations intent on curtailing population growth and blocking high density developments; whereas, the Goff rezoning would only be medium density just like the plaintiffs' Colony subdivision and other rezoned parcels on the Waccamaw Neck. The Complaint is devoid of facts supporting a claim against Goff and/or the County Council; whereas, it is about the Planning Commission and the Comprehensive Plan.

**IV. ORDINANCES APPROVED AT THIRD READING MEETING:**

The Model Rules are the preemptive authority for resolving issues arising from an abstention by defining passage as the "majority of members present and voting", assuming a quorum of members. Whereas, the Georgetown County Rules of Procedure, Section 2-425 on voting does not provide for the reconciliation of an abstention with Section 2-486, votes required for passage. Robert's Rules of Order Newly Revised (RONR), Ninth and current Twelve Additions, states that voting requirements based on the number of members present is generally undesirable due to the negative aspects of abstentions.

At the Second Reading on August 24, 2021, the various comments by opposing individuals, groups and organizations that absent a plan, the rezoning was not in accordance with the policies and procedures, was raised by the public and some Council members. However, the Planning Director informed the questioning Council members and public that there was no such requirement for a plan to accompany a rezoning application or passage of an ordinance. The County Council voted 4-2 to adopt Ordinances 21-24 and 21-25 with 1 recusal.

However, at the Third Reading on October 26, 2021, Councilman Carolina had decided to withdraw his previous support for the ordinances because the property owner did not provide a plan that was not required by the Georgetown County Rules of Procedure. The councilman had become a bias council member that warranted recusal from voting and participation, which in effect was achieved by his abstaining from voting and leaving his seat at the council table.

During the vote on Ordinance 21-24, the Councilman Carolina abstained from voting and subsequently left his seat at the council table. The majority of five remaining members voted "3-2" and the ordinance passed on the "majority of members present and voting" in accordance with the Model Rules and the "majority of the members present" in accordance with the Georgetown County Council Rules of Procedure. When Councilman Carolina returned, the Council had already voted a "3-2" majority to pass Ordinance 21-25. To which Councilman Carolina only voiced an abstention when prompted by the County Attorney and Councilman Anderson, who had voted in opposition. Councilman Anderson's email response to a support letter to the Council from Goff constituted pre-conceived bias and should have disqualified his votes and participation in the second and third readings. Since Councilman Carolina was not present and exhibited pre-conceived bias, the vote on Ordinance 21-25, passed in accordance with the Model

Rules and the County Council Rules of Procedure at the Third Reading Meeting on October 26, 2021 and adopted on November 9, 2021.

The 2020 and 2021 Supplement to the 2013 Home Rule Handbook modified S.C. Code Ann. Sec. 4-9-120 to disqualify the participation of bias members. Therefore, the demonstrably bias members may not be counted in the majority necessary for valid action. The abstaining Councilman's absence from the table did not impact a quorum for voting; however, it reduced the "members present" and "members present and voting" to five. Accordingly, both ordinances passed on majority of members present and voting, in accordance the Model Rules, and "majority of members present" in accordance with Georgetown County Rules of Procedure. As stated by the County Clerk in the approved October 26, 2021 Meeting Minutes: "Mr. Watson ("the county attorney") confirmed that the vote on both ordinances was 3-2, and therefore received third reading approval." There were no objections at the October 26, 2021 Meeting and all council members voted in favor of the minutes at the December 14, 2021 Meeting.

"All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." See South Carolina Life and Accident and Health Ins. Guar. Ass'n v. Liberty Life Ins. Co., 344 S.C. 436, 545 S.E.2d 270 (2001).

### CONCLUSIONS

At the Council Meeting on October 26, 2021, Ordinance Nos. 21-24 and 21-25 passed by a "3-2" majority vote of the "members present and voting" and the "members present" excluding the publically expressed and/or implied bias member and the member with a conflict of interest with the subject matter before the Georgetown County Council. The County Council, Administrator and Attorney made the correct and appropriate decision in compliance with the

Model Rules, Roberts Rules of Order Newly Revised, ninth and twelve additions, and state and federal laws. Consequently, Ordinances 21-24 and 21-25 were lawfully adopted by the "majority of members voting and/or present" by the County Council and in effect on October 26, 2021. At the County Council meeting on November 9, 2021, Ordinances 21-24 and 21-25, by executive action, were officially signed and adopted by the County Council Chairman, County Attorney and County Council Clerk.

The Plaintiffs' instant Complaint does not present, contain or refer to any facts that constitute a cause of action against Benjamin F. Goff, Trustee. The Plaintiffs lack standing to bring this lawsuit and there is no justiciable controversy that warrants a declaratory judgment or judicial intervention.

Wherefore, Benjamin F. Goff, Trustee, requests this honorable court to dismiss him as a defendant in this legal action: 1) There are no stated facts that constitute a cause of action against Defendant, Benjamin F. Goff, Trustee; 2) A declaratory judgement will not terminate the controversy, if any, stated in the complaint; and 3) The plaintiffs lack standing and there is no justiciable controversy. The inclusion of the Defendant, Benjamin F. Goff, Trustee, in the lawsuit is a violation of his constitutional rights and an intimidation of property owners in the County.

Respectfully Submitted,  
The Defendant

Date: *January 25, 2022*


  
Benjamin F. Goff, Trustee, Pro Se  
18 Powers Farm Road  
Randolph, MA 02368  
781-986-0635 (Tel)  
goff-chem@juno.com

Exhibit A: Georgetown County Council Meeting Minutes, October 26, 2021  
Exhibit B: Georgetown County Council Meeting Minutes, November 9, 2021  
Exhibit C: Georgetown County Council Meeting Minutes, December 14, 2021

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) FIFTEENTH JUDICIAL CIRCUIT  
Ernest F. Middleton, III, and Joyce J. Middleton, )  
Michael J. Farrar and Diana Farrar, Robert E. Hunt ) CASE NO.: 2022CP2200032  
and Jeane M. Sullivan, The Colony Homeowners )  
Association, Inc., and Keep It Green, Inc., )  
) )  
Plaintiffs ) REPLY TO PLAINTIFFS' UNFILED  
) RESPONSE TO MOTION TO DISMISS  
Georgetown County, Georgetown County Council, ) BENJAMIN F. GOFF, SR., TRUSTEE  
Louis Morant, Lillie Jean Johnson, Raymond ) AS A DEFENDANT  
Newton, Steve Goggans, Everett Carolina, John )  
Thomas and Bob Anderson, in their capacities as )  
elected members of Georgetown County Council, )  
Benjamin F. Goff, Sr., Trustee of the )  
Benjamin F. Goff 2004 Revocable Trust, )  
dated June 18, 2004, )  
) )  
Defendants )

FILED  
GEORGETOWN COUNTY S.C.  
2022 FEB 28 AM 9:32  
ALMA Y. WHITE  
CLERK OF COURT

**REPLY TO PLAINTIFFS' UNFILED RESPONSE TO MOTION TO DISMISS  
BENJAMIN F. GOFF, SR., TRUSTEE AS A DEFENDANT**

**INTRODUCTION**

A response to the Motion to Dismiss has not filed with the Court; however, the Defendant, Benjamin F. Goff, Trustee, has received several correspondences from the Plaintiffs' lawyer regarding the Motion to Dismiss filed on January 25, 2022. Benjamin F. Goff, Trustee was not served with the Summons and Complaint pursuant S.C. Rules of Civil Procedure 4(a) and 12(b)(5). Although, the Plaintiffs have not filed a response with the Court, the Plaintiffs' lawyer has initiated a filing through the Secretary of State's Office to belatedly serve the Summons and Complaint and provide proof of service to the Court. It is more likely than not, that these matters will be raised at the scheduled March 4<sup>th</sup> motion hearing. Proof of service has not been filed for any of the named defendants. Consequently, the current circumstances warrant a reply from Defendant, Benjamin F. Goff, Trustee, to the unfiled correspondences.

## STATEMENT OF FACTS

1. The Defendant, Benjamin F. Goff, Trustee was not served with the Summons and Complaint filed on January 7, 2022 as required by the South Carolina Rules of Procedure.
2. On January 25, 2022, the Defendant filed a Motion to Dismiss Benjamin F. Goff, Trustee as a defendant and served Plaintiffs' lawyer on January 25, 2022.
3. In accordance with SCR 4(d), the Defendant, Benjamin F. Goff, Trustee, voluntary appearance is equivalent to personal service.
4. To date, a proof of service of the Summons and Complaint has not been filed for any of the named defendants.
5. The Plaintiffs' lawyer has solicited the South Carolina Secretary of State's Office to belatedly serve the Summons and Complaint on Benjamin F. Goff, Trustee.
6. As of February 23, 2022, the Summons and Complaint has not been served on Benjamin F. Goff, Trustee and/or the Benjamin F. Goff 2004 Revocable Trust.
7. On February 7, 2022, the Defendant, Benjamin F. Goff, Trustee, received an email with a proposal regarding the Motion to Dismiss and a request to complete an "Acceptance of Service", an allegation of attempting service through an unknown attorney and a threat of service through the Secretary of State's Office.
8. Subsequently, on or about February 18, 2022, the Defendant received two separate correspondences, dated, February 15, 2022, addressed Benjamin F. Goff, Trustee and the Secretary of State's Office.
9. The name and address of the non-resident trustee, Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust was known to the Plaintiffs' lawyer through the public records in Georgetown County and the filed Motion to Dismiss.

10. The Plaintiffs' lawyer chose to avoid mailing the Summons and Complaint to the address available for Benjamin F. Goff Trustee in the public records and attempted service, if any, through an attorney who has not represented Benjamin F. Goff, Trustee in any legal matter and subsequently through the Secretary of State's Office.
11. The filing letter with Secretary of State's Office omits pertinent facts and allegedly false information on the attempted service of process through an unknown attorney.
12. Even though the Defendant, Benjamin F. Goff, Trustee has already responded to the Summons and Complaint; apparently, the Plaintiffs' lawyer wants to use the South Carolina Secretary of State's Office to correct the failure to follow all of the requirements of South Carolina Rules of Procedure 4(a) service on all defendants and file proof of service as required under South Carolina Rules of Procedure 5(d).

#### ARGUMENT

Specifically, the Plaintiffs' lawyer failed to serve the process as required under South Carolina Rules of Procedure 4(a) and file proof of service as required under South Carolina Rules of Procedure 5(d) after filing the Summons and Complaint on January 7, 2022. The Plaintiffs' lawyer wants Benjamin F. Goff, Trustee, to file an "Acceptance of Service" that would negate the requirements for proof of service. Failing that, the Plaintiffs' lawyer's effort is to use the South Carolina Secretary of State's Office to solve that problem. By the omission of pertinent facts and with false statements on the service of process, the Plaintiffs' lawyer is inappropriately using the Secretary of State's Office to overcome the service of process issue.

Defendant, Benjamin F. Goff, Trustee was not served with the Summons and Complaint in the referenced legal matter within the prescribed time period and "Proof of Service", if any,

was not filed for any of the Defendants named in the Complaint. Georgetown County filed an appearance on February 22, 2022, but has not responded to the Summons and Complaint.

The Summons and Complaint are available to the public on the Georgetown County Fifteenth Judicial Court Public Index. In concert with S.C. Code Ann. 15-9440(3), despite not being served with the Summons and Complaint, Benjamin F. Goff, Trustee filed a 12(b)(6) Motion to Dismiss Benjamin F. Goff, Trustee, as a Defendant on January 25, 2022. A hearing on the motion is scheduled for March 4, 2022.

On February 7, 2022, the Plaintiffs' lawyer, Cynthia Ranck Person, sent Benjamin F. Goff, Trustee an email requesting him to sign an "Acceptance of Service" or service of the process would be made through the Secretary of State Office. Benjamin F. Goff, Trustee received a letter on February 18, 2022 soliciting the office of the Secretary of State to serve a process that the Plaintiffs' lawyer decidedly avoided doing with deliberate intent.

Although, a non-resident trustee, the name and address of the Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust is known to the Plaintiffs' lawyer through the public records in Georgetown County. Additionally, the Plaintiffs and their lawyer were aware of the address in the Motion to Dismiss, the rezoning application and access through the FOIA.

The Complaint correctly states the address of Benjamin F. Goff, Trustee. The attorney cited in the email, dated, February 7, 2022, and referred to in the Keep It Green email and letter is not my former attorney. It is nonsensical that this lawyer chose to avoid mailing the Summons and Complaint to the address available for Benjamin F. Goff Trustee in the public records and attempted service, if any, through an attorney who has not represented Benjamin F. Goff, Trustee in any legal matter.


The Despite the fact that Benjamin F. Goff, Trustee has already responded to the Summons and Complaint, the lawyer wants to use the South Carolina Secretary of State's Office to correct the failure to follow all of the requirements of South Carolina Rules of Procedure 4(a) service on all defendants and file proof of service as required under South Carolina Rules of Procedure 5(d).

#### CONCLUSION

The Summons and Complaint were filed on January 7, 2022; whereas, a pre-answer Motion to Dismiss was filed on January 25, 2022. Now, about six weeks thereafter filing the Summons and Complaint, the Plaintiffs' lawyer has involved the South Carolina Secretary of State's Office to serve a process to which a response has already been made to defend their failure in Court to comply with the applicable requirements of the South Carolina Rules of Procedure. The Complaint should be dismissed in its entirety with prejudice.

Respectfully Submitted;  
The Defendant

Date: February 23, 2022

  
Benjamin F. Goff, Trustee, Pro Se  
18 Powers Farm Road  
Randolph, MA 02368  
781-986-0635 (Tel)  
goff-chem@juno.com

#### Exhibits:

- A - Keep It Green Advocacy, Inc., Letter to Secretary of State, Dated February 15, 2022
- B - Keep It Green Advocacy, Inc., Letter to Benjamin F. Goff, Trustee, Dated February 15, 2022
- C - Keep It Green Advocacy, Inc., Email, Dated February 7, 2022

Exhibit A

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29586

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

South Carolina Secretary of State's Office  
ATTENTION:SERVICE OF PROCESS  
1205 Pendleton Street, Suite 525  
Columbia, SC 29201

RE: Middleton v. Georgetown County, 2022-CP-2200-032

Dear Sir or Madam:

Enclosed for service of process, please find two file stamped copies of a Summons and Complaint filed in Georgetown County on January 7, 2022, along with a check in the amount of \$10 for the filing fee.

South Carolina Code of Laws, Section 15-9-440(3) authorizes service of process upon the Secretary of State when there is no resident trustee of an *inter vivos* trust that owns real property in South Carolina that is the subject matter of a proceeding.

Defendant, Benjamin F. Goff, Sr., is the sole Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, (hereinafter "Goff Trust") pursuant to the terms of a Certificate of Trust dated September 17, 2021, and recorded in Georgetown County Record Book 4231, Page 204, a copy of which is enclosed. There is no resident trustee or other agent.

Benjamin F. Goff, Sr., Trustee is an adult individual residing at: 18 Powers Farm Road, Randolph, MA 02368

The Goff Trust is the owner of real estate that is the subject matter of the enclosed Summons and Complaint pursuant to Deed dated July 21, 2005, recorded in Georgetown County Deed Book 1679, Page 229. A copy of the Deed is enclosed.

Plaintiffs have unsuccessfully attempted to accomplish service upon Defendant Benjamin F. Goff, Trustee through his former South Carolina attorney, by email and by regular mail.

Thank you for your kind attention.

Very truly yours,  
  
Cynthia Ranck Person, Esquire

Enclosures

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29585

*A nonprofit public interest law firm.*

*Exhibit B*

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

Benjamin F. Goff, Trustee  
18 Powers Farm Road  
Randolph, MA 02368

RE: Middleton v. Georgetown County, 2022-CP-2200-032

Dear Mr. Goff

Enclosed please find a letter to the Secretary of State for Service of Process. We received your Motion to Dismiss and we may have a potential resolution.

My clients have no specific claims against you apart from the fact that the trust owns the real property. You are included as a party because the Declaratory Judgment Act provides that all "parties in interest" must be named. As owner of the land, the trust is a party in interest. If the county is willing to stipulate that a decision on the issues would be binding on all parties without having you named as a party, and if the court agrees, we would be willing to dismiss you without prejudice.

As soon as the county defendants have officially accepted service and their attorney has entered an appearance, I will contact them about this.

In addition to the above, the court will need to have proof that you received a copy of the Summons and Complaint. We are in the process of accomplishing service through the Secretary of State which is our only recourse when service cannot be otherwise accomplished on a nonresident trustee. You have clearly received the Complaint inasmuch as you have filed a responsive motion.

If you are willing, please sign the enclosed Acceptance of Service which will be returned to the court for filing. All the county defendants are accepting service in this manner. Otherwise, we will continue to proceed through the Secretary of State.

Thank you for your kind attention.

Very truly yours,



Cynthia Ranck Person, Esquire

Enclosures

From: KIG Advocacy <kig.advocacy@gmail.com>

To: goff-chem@juno.com

Sent: Mon, Feb 07, 2022 12:27 PM

Subject: Middleton v. Georgetown County

Acceptance of Serv... (14KB)

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Good afternoon, Mr. Goff:

I hope you are well.Â

We received your Motion to Dismiss and wanted to let you know that we have a potential resolution of your motion if the county is willing to agree. My clients have no specific claims against you, and the only reason you are included as a party is that the Declaratory Judgment Act states that all "parties in interest" must be named. As owner of the land, the trust is arguably a party in interest. If the county is willing to stipulate that you are not a party in interest for purposes of the DJA, and that a decision on the issues would be binding on all parties without having you as a party, we would agree to your dismissal without prejudice.

As soon as the county defendants have officially accepted service and their attorney has entered an appearance, I will contact them about their willingness to agree to this.

~~We have the additional matter of needing to officially accomplish service of the complaint on you. We have been attempting to do that through Attorney Dallis, the Charleston attorney that filed your Certificate of Trust. You have clearly received the Complaint inasmuch as you have filed a responsive motion, but the court will need to have evidence of service. If you are willing to sign an Acceptance of Service, I have attached the proper form which you may sign and return for filing. All the county defendants are accepting service in this manner. If you are not willing to accept service, I will have no choice but to accomplish service upon the trust through the Secretary of State. If you wish me to email you a copy of the complaint and exhibits, I would be happy to do that as well.~~

Thank you for your kind attention. I look forward to hearing from you about this.

Sincerely,  
Cindy Person

—  
**Cynthia Ranck Person, Esquire**  
**Chief Counsel & Executive Director**

**KEEP IT GREEN ADVOCACY, INC.**  
P.O. Box 1922  
Pawleys Island, SC 29585  
KIG.Advocacy@gmail.com

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) C/A NO.: 2022-CP-22-00032

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert E. Hunt and Jeane M. Sullivan, The Colony Homeowners Association, Inc., and Keep It Green, Inc.,

Plaintiffs,

vs.

Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004

Defendants.

**DEFENDANTS GEORGETOWN COUNTY COUNCIL, LOUIS MORANT, LILLIE JEAN JOHNSON, RAYMOND NEWTON, STEVE GOGGANS, EVERETT CAROLINA, JOHN THOMAS, AND BOB ANDERSON, IN THEIR CAPACITY AS ELECTED MEMBERS OF GEORGETOWN COUNTY COUNCIL'S MOTION TO DISMISS**

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas, and Bob Anderson, in their capacities as elected members of Georgetown County Council, (hereinafter "Defendants") move to dismiss the Complaint against them. Plaintiffs' Complaint seeks to challenge the constitutionality of an ordinance passed by Defendants but Defendants are not a proper party to such action. Defendants enjoy legislative immunity as it relates to enacting the challenged ordinances. Since defendants enacted the ordinances in the sphere of legitimate legislative activity, and Defendants' actions in doing so are not subject to judicial review. *S.C. Pub. Int. Found. v. Courson*, 420 S.C. 120, 125, 801 S.E.2d 185, 187 (Ct. App. 2017).

Further, there is no relief Plaintiffs could obtain from these Defendants, as courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance. *See Foster v. Taylor*, 210 S.C. 324, 333, 42 S.E.2d 531, 536 (1947) (“The court will, of course, not attempt to compel the legislature by mandamus to perform a legislative duty or function.”). If Plaintiff prevails, he could obtain whatever relief he is entitled to obtain from Georgetown County, which is the proper party to challenge the constitutionality of a county ordinance.

Based on the contents of this motion, any accompanying memorandum, evidence, documents, and/or authorities which may be submitted to the Court prior to or during the hearing on this motion, and the arguments of counsel for Defendants, Defendants pray the Complaint against these Defendants be dismissed in its entirety. Further, Defendants pray for such other and further relief as this Court may deem just and proper under the circumstances.

**RESPECTFULLY SUBMITTED,**

**SMITH | ROBINSON**

**Smith Robinson Holler DuBose and Morgan, LLC**

By: *s/H. Thomas Morgan Jr.*

**H. Thomas Morgan, Jr., SC Bar #73585**

Rachel Lee, SC Bar No. 104184

ATTORNEYS FOR DEFENDANTS

GEORGETOWN COUNTY COUNCIL, LOUIS

MORANT, LILLIE JEAN JOHNSON,

RAYMOND NEWTON, STEVE GOGGANS,

EVERETT CAROLINA, JOHN THOMAS, AND

BOB ANDERSON, IN THEIR CAPACITIES AS

ELECTED MEMBERS OF GEORGETOWN

COUNTY COUNCIL

935 Broad Street

Post Office Drawer 39

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April 11, 2022

# SMITH ROBINSON

Forward thinking. Results driven.

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Reply To: Camden

May 4, 2022

**VIA EMAIL**

The Honorable Benjamin H. Culbertson  
Georgetown County Courthouse  
401 Cleland St.  
Georgetown, SC 29442  
[bculbertsonsc@sccourts.org](mailto:bculbertsonsc@sccourts.org)

**RE: *Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert E. Hunt and Jeane M. Sullivan, The Colony Homeowners Association, Inc., and Keep It Green, Inc., Plaintiffs, vs. Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, Defendants.***  
**C/A No. 2022-CP-22-00032**

Dear Judge Culbertson:

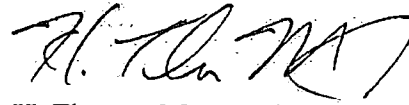
I hope this correspondence finds you and your staff well. Rachel Lee and I represent the Defendants in the above-referenced case filed by Plaintiff Keep It Green Advocacy, Inc., represented by Cindy Ranck Person.

The parties have reached a resolution of our Motion to Dismiss. The Stipulation of Dismissal of Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, was filed with the Court April 28, 2022. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgments Act, SC Code of Laws 15-53-10, et. seq.

Thank you for your consideration of this matter and your willingness to preside over this matter. If there are any questions, please do not hesitate to contact me. I am copying Plaintiff's Counsel on this communication with the Court.

Very truly yours,

SMITH ROBINSON HOLLER  
DuBOSE AND MORGAN, LLC



H. Thomas Morgan, Jr.

HTM/sr

cc: Cindy Ranck Person, Esquire (via electronic mail)  
Rachel Lee, Esquire (via electronic mail)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN ) C/A NO.: 2022-CP-22-00032

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert E. Hunt and Jeane M. Sullivan, The Colony Homeowners Association, Inc., and Keep It Green, Inc.,

Plaintiffs,

vs.

Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004

Defendants.

**STIPULATION OF DISMISSAL OF DEFENDANTS GEORGETOWN COUNTY COUNCIL, LOUIS MORANT, LILLIE JEAN JOHNSON, RAYMOND NEWTON, STEVE GOGGANS, EVERETT CAROLINA, JOHN THOMAS, AND BOB ANDERSON, IN THEIR CAPACITY AS ELECTED MEMBERS OF GEORGETOWN COUNTY COUNCIL**

The parties hereby stipulate, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, in the above-captioned matter. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgments Act, SC Code of Laws 15-53-10, *et. seq.*

<<<<<Signatures on following page>>>>>

**WE SO STIPULATE:**

By: s/Cynthia Ranck Person  
**Cynthia Ranck Person, SC Bar #105126**  
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By: s/H. Thomas Morgan, Jr.  
**H. Thomas Morgan, Jr., SC Bar #73585**  
Rachel Lee, SC Bar #104184  
Smith Robinson  
Attorneys for Defendants Georgetown County  
Council, Louis Morant, Lillie Jean Johnson,  
Raymond Newton, Steve Goggans, Everett  
Carolina, John Thomas and Bob Anderson, in their  
capacities as elected members of Georgetown  
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STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) FIFTEENTH JUDICIAL CIRCUIT  
2022-CP-22-00032

ERNEST F. MIDDLETON, III, )  
And JOYCE J. MIDDLETON, )  
MICHAEL J. FARRAR and )  
DIANA FARRAR, ROBERT H. HUNT )  
and JEANE M. SULLIVAN, the )  
COLONY HOMEOWNERS ASSOCIATION )  
INC., and KEEP IT GREEN, INC., )  
PLAINTIFFS, )

VS. )

TRANSCRIPT OF RECORD )

GEORGETOWN COUNTY and )  
BENJAMIN F. GOFF, SR., TRUSTEE )  
OF THE BENJAMIN F. GOFF 2004 )  
REVOCABLE TRUST DATED )  
JUNE 18, 2004, )  
DEFENDANTS. )

May 19, 2022

Virtual Courtroom via Webex

B E F O R E:

THE HONORABLE STEVEN H. JOHN, JUDGE

A P P E A R A N C E S:

CYNTHIA RANCK PERSON, ESQ.  
Attorney for the Plaintiffs

BENJAMIN F. GOFF  
Pro Se Defendant

BONNIE M. BRITT  
Official Court Reporter

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I N D E X

(WHEREUPON, there were no witnesses called.)

E X H I B I T S

(WHEREUPON, there were no exhibits introduced.)

1 (The following hearing was held via Webex on  
2 May 19, 2022.)

3 THE COURT: This is 2022-CP-22-32, Ernest F. Middleton,  
4 III, plaintiff, and others vs. Georgetown County, defendant,  
5 and others; one of those defendants being Benjamin F. Goff,  
6 Sr., as a Trustee of trust.

7 Now, Ms. Person, who do you represent, please, ma'am?

8 MS. PERSON: I represent all plaintiffs.

9 THE COURT: And, Mr. Goff, you represent yourself, the  
10 Trustee of the trust; is that correct?

11 MR. GOFF: That is correct. Yes, sir.

12 THE COURT: All right. Very good. Now, before we get  
13 into any arguments about the motion to dismiss, I want to --  
14 having looked at the file, I want to cover one thing before  
15 we go any further. As I understand it, Mr. Goff -- and you  
16 tell me if I'm correct -- you have objected to the service  
17 of the summons and complaint upon you; is that correct?

18 MR. GOFF: Yes, sir.

19 THE COURT: All right, sir.

20 MR. GOFF: To the survey?

21 THE COURT: Service.

22 MR. GOFF: No, sir, I did not. I was not served with  
23 the summons and complaint.

24 THE COURT: Okay. Well, that's what I asked you; if  
25 you objected to the service, meaning you don't agree that

1 you were served or properly served with the summons and  
2 complaint.

3 MR. GOFF: Excuse me. I had voluntarily appeared by  
4 filing a motion on January 25th of this year. And voluntary  
5 -- it was voluntary appearance is proven to personal service  
6 as I understood it.

7 THE COURT: Unless you object in that voluntary  
8 appearance to the service. Okay? Just because you file a  
9 motion to say I wasn't properly served, doesn't mean you're  
10 in the case.

11 MR. GOFF: That's correct. But I didn't object to the  
12 service.

13 THE COURT: So as I read your motion, one of the things  
14 that's in your motion is you are saying you were not  
15 properly served with the summons and complaint?

16 MR. GOFF: That is correct.

17 THE COURT: All right. And so do you want to make some  
18 argument to the Court about that? Just that issue.

19 MR. GOFF: I think we're beyond that, because I was...

20 THE COURT: No, sir. You're not beyond that.

21 MR. GOFF: Okay.

22 THE COURT: You filed a motion. And part of the  
23 grounds of that motion say, I was not properly served.

24 MR. GOFF: I was not properly served.

25 THE COURT: Well, okay. So listen to me. All right,

1 please. Since you put that in your motion that you were not  
2 properly served, you are able to argue that point to the  
3 Court. All right.

4 MR. GOFF: Yes, sir. I understand that.

5 THE COURT: So ---

6 MR. GOFF: And I maintain that.

7 THE COURT: All right. So you want -- you do object  
8 because you don't think you were properly served; is that  
9 right?

10 MR. GOFF: That's correct.

11 THE COURT: All right. What I'm going to do, now, is  
12 I'm going to turn to Ms. Person, and hear her arguments as  
13 to why she believes you were properly served. And we'll see  
14 if the Court has some questions or there's any further  
15 response that's necessary.

16 So, Ms. Person, let me hear from you, ma'am.

17 MS. PERSON: Yes. Thank you, Your Honor. In this  
18 case, Mr. Goff is the Trustee of an Inter Vivos Trust that  
19 owns property in South Carolina. And that would be the  
20 property that's the subject matter of this declaratory  
21 judgment action. And there is no resident trustee named for  
22 that trust. And so under South Carolina Code of Laws 15-8-  
23 440, subsection (3), the Secretary of State of South  
24 Carolina is authorized to accept service of process when  
25 there is no resident trustee of an Inter Vivos Trust that

1 owns property in South Carolina.

2 And the South Carolina Secretary of State did accept  
3 service, and we filed that proof of service, Your Honor.

4 THE COURT: All right. And I see that. Did you  
5 attempt any kind of personal service on Mr. Goff, knowing  
6 where he resided?

7 MS. PERSON: In Massachusetts.

8 THE COURT: In Massachusetts. Did you try any personal  
9 service on him?

10 MS. PERSON: We did send him a letter and an email  
11 asking him to accept service.

12 THE COURT: Which he's not obligated to do.

13 MS. PERSON: Which he is not obligated to do.

14 THE COURT: Okay. So ---

15 MS. PERSON: And so ---

16 THE COURT: --- under the other methods of service,  
17 under Rule 4, did you give it to the sheriff of the county  
18 in which he lived to serve him with the summons and  
19 complaint, or do anything like that or send it certified  
20 mail?

21 MS. PERSON: We did not because it was a trust and we  
22 had this provision under 15-9-440.

23 THE COURT: All right.

24 All right. Mr. Goff, let me hear your argument.

25 MR. GOFF: I did receive an email from you -- from

1 Attorney Person wanting me to sign an acceptance of service.  
2 She threatened that if I didn't sign that she would go to  
3 the Secretary of State which she did. And I did receive a  
4 package.

5 THE COURT: From the Secretary of State?

6 MR. GOFF: Yes. But the service was not made, and  
7 there was no proof of service filed within the ten-day  
8 period that was required by the rules.

9 THE COURT: All right. So that's your argument on  
10 that; is that correct?

11 MR. GOFF: On that particular point; yes, sir.

12 THE COURT: All right. Well, hold that in abeyance.  
13 And so you've got other grounds in your motion to dismiss.  
14 Now, you understand that you're operating under Rule  
15 12(b)(6), South Carolina Rules of Civil Procedures; you  
16 understand that? As you put in your motion?

17 MR. GOFF: Right. My motion to dismiss is a 12(b)(6)  
18 motion based on South Carolina Rules and Procedure.

19 THE COURT: Okay. And you understand, sir, that all I  
20 can look at when you make a motion under 12(b)(6) is the  
21 four corners of the summons and complaint; what is contained  
22 in the summons and complaint. I can't accept any outside  
23 arguments or documentation. We are just -- we are bound  
24 under 12(b)(6) -- we're just looking at the summons and  
25 complaint. That's all. And South Carolina rules are that

1 if any cause of action that the Court could determine from  
2 looking at the summons and complaint that there's any kind  
3 of cause and action in that summons and complaint that is  
4 properly filed.

5 MR. GOFF: Well, I complained in the motion to dismiss  
6 about the service of the complaint; the absence -- the lack  
7 of standing; and the absence of a justiciable controversy.

8 THE COURT: All right, sir. Let me hear you about your  
9 argument about justiciable controversy.

10 MR. GOFF: Yes. Again, let me say for the Court, I am  
11 Benjamin F. Goff, Trustee and sole Trustee of the Benjamin  
12 F. Goff 2004 Revocable Trust dated June 2004. As we just --  
13 the complaint does not state a cause of action against Goff  
14 Trustee or Goff Trust.

15 THE COURT: All right, sir.

16 MR. GOFF: The individuals in the complaint, as I've  
17 already said, lack standing to bring this legal action, and  
18 the complaint lacks a justiciable controversy. None of the  
19 plaintiffs have demonstrated an injury in fact at the time  
20 of the filing of the complaint or any future prospective  
21 injury in fact. The complaintists, those who provided  
22 affidavits, infer that they paid a premium for their  
23 properties based on the fact that the Goff Trust property  
24 was zoned R-1/2; and as a consequence of the ordinance, they  
25 are now harmed.

1 THE COURT: All right, sir.

2 MR. GOFF: All right. The complaint (inaudible) states  
3 the legislative action on October 26th at the third reading  
4 when ordinance 21-24 and 21-25 was passed, and some  
5 inference about an administrative action that occurred on  
6 November 9th was a violation of council procedures. In  
7 fact, at the reading, third reading, on October 26th, there  
8 was an abstention by one councilman who had previously  
9 voted. As a consequence of that abstention, the passage  
10 defaulted to the model rules of parliamentary procedures  
11 which was developed by the South Carolina county of  
12 government of -- for -- I'm misstating that -- for city  
13 councils.

14 The ordinance passed, and they were cited as passed by  
15 the attorney for the town. Subsequent to that, we have this  
16 complaint that's alleging that the ordinance didn't pass;  
17 therefore, there was some inappropriate activities that took  
18 place on November 9th. Now, what we have now and the most  
19 pertinent thing is that the plaintiff's attorney and the  
20 Georgetown County attorney has agreed to a stipulation of  
21 dismissal of the county council and the elected members of  
22 the county council in their role as elected members. As a  
23 consequence to that, there's nothing in the complaint that  
24 infers wrongdoing by Goff Trustee or Goff Trust. Therefore,  
25 absence the county council members, there are no viable

1 defendants in the complaint. Certainly, as I understood it,  
2 the county council wants to maintain the defendant -- the  
3 Georgetown County as a defendant. And what my argument is  
4 Benjamin F. Goff, Trustee and the Trust should not be  
5 defendants in this complaint. If anything, they should be  
6 involuntarily plaintiffs under Rule 19(a).

7 But nonetheless, I'm arguing that this complaint cannot  
8 proceed, and should be dismissed in its entirety if the  
9 Georgetown County Council and their selected members are no  
10 longer defendants in the complaint. And if, in fact, the  
11 county attorney wants to proceed with this complaint against  
12 the county council, there shouldn't be any reference to  
13 ordinance 21-24 or 21-25 or the Goff Trust parcel. We've  
14 done nothing wrong in this case except submit an application  
15 to the Planning Department which was approved by the  
16 Planning Commission; and subsequently, the ordinance were  
17 adopted by the council.

18 Certainly, the Supreme Court and other case laws from  
19 the State of South Carolina determine that if there's no  
20 justiciable controversy and injury in fact, whatever is  
21 stated as a controversy is fairly debatable, this is -- no  
22 requirement for judicial intervention. The plaintiffs want  
23 to infer, as I indicated, that they're injured in fact,  
24 which they aren't. And that this is -- (inaudible) of my  
25 ordinance is of importance, which it's not. At the same

1 time and concurrent with the approval of the Goff Trustee  
2 Ordinance, there was an ordinance -- an application from  
3 Litchfield Landing to rezone to the same R10 medium density  
4 as the Goff Trust Ordinance. And, yet, there is no  
5 opposition if any from the plaintiffs and this organization,  
6 Keep It Green.

7 In addition to that, it appears that there's been an  
8 organized and combined effort on the part of the plaintiffs  
9 to injure Goff Chem in some capacity. And as a consequence  
10 to that, based on compulsory counterclaim requirement, I  
11 filed a counterclaim and complaint mainly charging them with  
12 civil conspiracy; it's that, in fact, what they did. The  
13 complaint, itself, states numerous letters that were  
14 organized and sent by the county council. There was a 1000  
15 page petition; signatures submitted to the county council;  
16 all to avert the approval of these ordinances. And the  
17 plaintiffs have (inaudible) intervention in order to stymie  
18 or reverse the process of these ordinances having been  
19 approved and adopted by the county council.

20 So I'm requesting this Honorable Court to dismiss this  
21 complaint in its entirety. And if, in fact, the county  
22 council wants to move forward with some sort of complaint,  
23 it should address all issues that should have applied to all  
24 ordinances been approved if, in fact, they're not following  
25 the county rules and procedures. But I don't believe that

1 is the case. Thank you.

2 THE COURT: All right, sir. Thank you, Mr. Goff.

3 All right. Ms. Person, let me hear your response,  
4 please, ma'am.

5 MS. PERSON: Thank you, Your Honor. Again, I just want  
6 to point out that there were some matters of the merits that  
7 aren't appropriate for a 12(b)(6). And unless Your Honor  
8 wants to hear about those, I will not address those  
9 particular matters.

10 I certainly -- I sympathize with Mr. Goff's position in  
11 the sense that I know he feels he didn't do anything wrong,  
12 and we don't think that he did something wrong. But it is a  
13 declaratory judgment action, and he does own the property  
14 that is affected by these ordinances. And so under the  
15 Declaratory Judgment Act, he is a necessary party.

16 So I will address the standing issue. We've addressed  
17 it thoroughly in the memorandum of law if Your Honor has  
18 that.

19 THE COURT: Yes.

20 MS. PERSON: Yeah. Only one source of standing's  
21 necessary. The plaintiffs in this case all have standing by  
22 virtue of the Comprehensive Planning Enabling Act of Section  
23 7-60(c) which, specifically says that in the context of the  
24 amendment of a zoning ordinance, the owners of adjoining  
25 land or their representatives have standing. And in this

1 particular case, all the plaintiffs, with the exception of  
2 Keep It Green, are owners of adjoining land. And Keep It  
3 Green is their representative.

4       So we really don't have to go further than that, but  
5 even if we wanted to, the Uniform Declaratory Judgments Act  
6 provides standing as well as does the Freedom of Information  
7 Act for the account that we raised under that. So if any of  
8 these are established, and we would submit that they all  
9 are, this is the end of the inquiry. In addition to  
10 statutory standing, Keep It Green has associational  
11 standing, and we've set that forth in our brief as well as  
12 constitutional standing.

13       And with respect to the justiciability issue, case law  
14 is very clear that if there's any kind of actual  
15 controversy, there's justiciability. And in this particular  
16 case, it's clear we have some issues of whether or not to  
17 the validity of the ordinances -- or whether or not the  
18 ordinances are valid; and that is the controversy. I set  
19 out in our memorandum the very specific references in the  
20 memorandum -- or excuse me, in the complaint. We tried very  
21 hard in drafting the complaint to plead very specifically  
22 and comprehensively about standing and justiciability in  
23 order to avoid a 12(b)(6). So that would be our position.

24       I do want to say something about the service of  
25 process. My understanding of that provision is that it

1 wasn't -- and the provision I'm referring to is the South  
2 Carolina Code of Laws 15-9-440, subsection(3). There wasn't  
3 a requirement that we go through any attempts under Rule 4,  
4 necessarily, to accomplish service. So I just -- that was  
5 my understanding.

6 THE COURT: I understand.

7 MS. PERSON: Okay.

8 THE COURT: I understand your position. I just wanted  
9 to be ---

10 MS. PERSON: Yeah.

11 THE COURT: --- clear about how service was  
12 accomplished, and whether or not anything else occurred.  
13 Okay. All right.

14 So, Mr. Goff, do you want to make any brief reply?

15 MR. GOFF: Your Honor, I think the plaintiff's  
16 complaint speaks for itself. And my motion and memorandum  
17 of law clearly delineates what the issues are and how they  
18 arise. And I think the Court will be able to discern from  
19 that whether or not there's a justiciable controversy. And,  
20 again, the plaintiff's complaint clearly indicates that they  
21 combine to injure Goff Trustee and Goff Trust from rezoning  
22 this property.

23 If you -- the plaintiff's website was a constant  
24 solicitation to its members in the community to act against  
25 this particular ordinance. And it appears to me, it was

1 selective in nature. Thank you very much.

2 THE COURT: All right. Thank you, Mr. Goff.

3 And thank you, Ms. Person

4 MS. PERSON: Thank you, Your Honor.

5 THE COURT: What I'm going to do is I'm going to go  
6 back -- now, based upon the arguments that have been made  
7 here today, I'm going to go back and review the clerk of  
8 court's electronic file; the motion to dismiss; the response  
9 to the motion to dismiss; and the response to the response  
10 to the motion to dismiss that Mr. Goff filed. And I'm going  
11 to go back and review those, combined with the arguments  
12 today; I will shortly give a ruling to you.

13 Now, Mr. Goff, I want to make sure that the clerk of  
14 court's office here in Georgetown County has your proper  
15 email address.

16 MR. GOFF: Yes, sir. Yes, they have my proper email  
17 address. I'll repeat it for the Court.

18 THE COURT: That's very good. I just want to make sure  
19 that so when there's communication, we make sure that you're  
20 included and you know what's going on.

21 MR. GOFF: Yes, sir. I receive emails from the court.  
22 So the address is properly recorded with them.

23 THE COURT: Okay. All right. Could you, Mr. Goff, if  
24 you can, can you -- just so we're all on the same page, say  
25 your email address to me? I want to make sure.

1 MR. GOFF: Yes, sir, I will. The email is Goff, G-o-f-  
2 f, dash, c-h-e-m at juno dot com. Goff as in my last name,  
3 Charlie Harry Edward Mary at Juno dot com. It's a dash, a  
4 hyphen, between, not an underscore.

5 THE COURT: All right. It's a hyphen not an  
6 underscore. All right. Very good. Mr. Goff, I appreciate  
7 it.

8 Ms. Person, I appreciate it.

9 And we'll shortly let everyone know the Court's ruling  
10 in this matter. All right. Thank y'all very much.

11 MS. PERSON: Thank you, Your Honor.

12 MR. GOFF: I appreciate your hearing the case, Your  
13 Honor, and the questions you've asked, and what you say how  
14 you're going to proceed. Thank you very much.

15 THE COURT: Yes, sir. Well, I appreciate it, Mr. Goff.  
16 You did a fine job being a pro se participant. You did a  
17 fine job arguing your position. I appreciate it very much.

18 MR. GOFF: Thank you.

19 THE COURT: Thank you.

20 --- END OF TRANSCRIPT OF RECORD ---

21

22

23

24

25

CERTIFICATE OF REPORTER

I, the undersigned BONNIE M. BRITT, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Georgetown County, South Carolina, on the 19th day of May 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 19, 2022

*Bonnie M. Britt*

Official Court Reporter

**BENJAMIN F. GOFF 2004 REVOCABLE TRUST  
18 POWERS FARM ROAD  
RANDOLPH, MA 02368  
781-986-0635 (Tel/Fax)**

May 16, 2022

**BY FIRST CLASS MAIL AND FACSIMILE (843-915-5859)**

The Honorable Steven H. John  
1301 Second Avenue, Suite 3A30  
Conway, SC 29526-5234

RE: C/A No. 2022-CP-22-00032, Ernest F. Middleton, III, et al, vs. Georgetown County et al

Dear Judge John:

The Plaintiffs' attorney and the attorney for the Georgetown County Council have agreed to the dismissal without prejudice of the defendants "Georgetown County Council and Council members defendants in their capacities as elected members of the Georgetown County Council, which was accepted by the Court on May 5, 2022. The Plaintiffs' Complaint and the various allegations therein will be legally complicated to pursue and/or defend without the Georgetown County Council and Council members. Consequently, Benjamin F. Goff, Sr., Trustee has filed a Motion for Judgment on the Pleadings, dated May 13, 2022.

Goff Trustee and Goff Trust should not remain as parties or defendants without the Georgetown County Council and Council members; therefore, the Plaintiffs' Complaint should be dismissed in its entirety with prejudice. The dismissal from the Complaint of the Georgetown County Council and Council members, at whom the allegations in the Complaint are directed, necessitates granting the Goff Trustee's Motion to Dismiss the Plaintiffs' Complaint.

In contradiction of Rule 19(a), the Plaintiffs have agreed to allow the County Council and the elected members, needed for just adjudication, to be dismissed from the Complaint. Pursuant to Rule 19(a), without the County Council and Council members, complete relief cannot be accorded to Goff Trustee/Trust and the ability to defend and protect their interest will be impaired and they will incur a substantial risk of harm. Subsequent to the dismissal of the Plaintiffs' Complaint, any further legal action against Georgetown County should be a separate civil complaint and exclude the involvement or reference to Ordinances 21-24 and 21-25 or the Goff Trustee/Trust parcel. The Counterclaim Complaint is subject to conditional dismissal.

Respectfully,

  
Benjamin F. Goff, Sr., Trustee, Pro Se

cc: H. Thomas Morgan, Jr., Esq.  
Cynthia Ranck Person, Esq.

ALMA Y. WHITE  
CLERK OF COURT

2022 MAY 19 AM 11:20

F.H.E.L.  
GEORGETOWN COUNTY

**BENJAMIN F. GOFF 2004 REVOCABLE TRUST  
18 POWERS FARM ROAD  
RANDOLPH, MA 02368  
781-986-0635 (Tel/Fax)**

June 1, 2022

**BY FIRST CLASS MAIL**

The Honorable Steven H. John  
1301 Second Avenue, Suite 3A30  
Conway, SC 29526-5234

RE: C/A No. 2022-CP-22-00032, Ernest F. Middleton, III, et al, vs. Georgetown County et al

Dear Judge John:

The Plaintiffs' Complaint was filed under the Uniform Declaratory Judgment Act against Georgetown County, Georgetown County Council and Council members in their capacities as elected members of the Georgetown County Council, questioning the validity of Ordinances 21-24 and 21-25. In accordance with Section 15-53-80, Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust ("Goff Trustee/Trust"), the applicant and property owner, were made parties. Although named as defendants in the Complaint, pursuant to Rule 19(a)(2) (i) Goff Trustee/Trust should have been named as "Involuntary Plaintiffs". A Rule 12(b)(6) motion to dismiss Benjamin F. Goff, Trustee as a Defendant was filed on January 25, 2022. The motion was heard on May 19, 2022 and on or about May 25, 2022, Goff Trustee was informed by email that the motion was denied and a fair reading indicated a cause of action against Goff Trustee/Trust and directed the Plaintiffs' lawyer to prepare an Order for the Court.

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Plaintiffs' lawyer stated, "My clients have no specific claims against you..." with reference to Goff Trustee/Trust (See Exhibits A and B). Plaintiffs' Complaint does not state any wrongdoing by Goff Trustee/Trust in the procedural approval and adoption of the ordinances. Even though, the Goff Trust is not individually listed as a party in the Plaintiffs' Complaint, the Goff Trust has been defined as a Defendant by the Court. Goff Trustee/Trust only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. The application met all requirements and was accepted by the Planning Department, recommended for approval by the Planning Commission and adopted into ordinances by the Georgetown County Council.

The allegations in the Plaintiffs' Complaint are directed at the Georgetown County Council and elected Council members, specifically, for violations the South Carolina Comprehensive Planning and Enabling Act, the Comprehensive Land Use Plan and the County

2022 JUN -9 PM 2:22  
ALPHA Y. WHITE  
CLERK OF COURT  
GEOGETOWN COUNTY

From: KIG Advocacy <kig.advocacy@gmail.com>

To: goff-chem@juno.com

Sent: Mon, Feb 07, 2022 12:27 PM

Subject: Middleton v. Georgetown County

Acceptance of Serv... (14KB)

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Good afternoon, Mr. Goff:

I hope you are well.Â

We received your Motion to Dismiss and wanted to let you know that we have a potential resolution of your motion if the county is willing to agree. My clients have no specific claims against you, and the only reason you are included as a party is that the Declaratory Judgment Act states that all "parties in interest" must be named. As owner of the land, the trust is arguably a party in interest. If the county is willing to stipulate that you are not a party in interest for purposes of the DJA, and that a decision on the issues would be binding on all parties without having you as a party, we would agree to your dismissal without prejudice.

As soon as the county defendants have officially accepted service and their attorney has entered an appearance, I will contact them about their willingness to agree to this.

We have the additional matter of needing to officially accomplish service of the complaint on you. We have been attempting to do that through Attorney Dallis, the Charleston attorney that filed your Certificate of Trust. You have clearly received the Complaint inasmuch as you have filed a responsive motion, but the court will need to have evidence of service. If you are willing to sign an Acceptance of Service, I have attached the proper form which you may sign and return for filing. All the county defendants are accepting service in this manner. If you are not willing to accept service, I will have no choice but to accomplish service upon the trust through the Secretary of State. If you wish me to email you a copy of the complaint and exhibits, I would be happy to do that as well.

Thank you for your kind attention. I look forward to hearing from you about this.

Sincerely,  
Cindy Person

—  
Cynthia Ranck Person, Esquire  
Chief Counsel & Executive Director

KEEP IT GREEN ADVOCACY, INC.  
P.O. Box 1922  
Pawleys Island, SC 29585  
KIG.Advocacy@gmail.com

From: "John, Steven H. Law Clerk (Madeline Bowers)" <SJohnLC@sccourts.org>  
To: "crperson@aol.com" <crperson@aol.com>, "goff-chem@juno.com" <goff-chem@juno.com>  
Sent: Wed, May 25, 2022 01:55 PM  
Subject: 2022CP2200032 - Ernest F Middleton III, plaintiff, et al v. Georgetown County, defendant, et al

---

Dear All,

The Motion to Dismiss is denied. A fair reading of the pleadings establishes a cause of action as against this Defendant. This is based solely on the contents of the pleadings as required by a motion under 12(b)(6). This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant. That remains to be decided. Defendant Goff is free to file a Motion for Summary Judgment at any stage, should he believe that is warranted.

Attorney Persons, please draft a proposed order based on the above and e-file it to Judge John's attention. Please let me know if you have any questions or whether I can be of assistance. Thank you!

Respectfully,

Madeline

Madeline A. Bowers  
Law Clerk to the Honorable Steven H. John  
Resident Circuit Court Judge, Fifteenth Judicial Circuit Chief Administrative Judge, Court of Common Pleas  
1301 2nd Avenue  
Conway, SC 29526  
Phone: (843) 915-6697  
Fax: (843) 915-5859  
sjohnlc@sccourts.org

----- CONFIDENTIALITY NOTICE ----- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**18 POWERS FARM ROAD  
RANDOLPH, MA 02368  
781-986-0635 (Tel/Fax)**

June 6, 2022

**BY FIRST CLASS MAIL**

Common Pleas Supervisor  
Georgetown County Clerk of Court Office  
P.O. Box 479  
Georgetown, SC 295440

RE: Case No. 2022-CP-2200-032, Middleton v. Georgetown County

Attention:

Enclosed please find for filing in the above-entitled matter:

Letter to Judge Steven H. John, dated June 1, 2022.

Thank you for your consideration.

Respectfully Submitted,

  
Benjamin F. Goff, Trustee, Pro Se

cc: Cynthia Rank Person, Plaintiff's Attorney

THE STATE OF SOUTH CAROLINA

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

**RECEIVED**  
OCT 14 2022  
SC Court of Appeals

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowners Association, Inc., and Keep It Green, Inc., Respondents,

v.

Georgetown County and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, Defendants,


Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion and Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on October 11, 2022 to the following:

Cynthia Ranck Person, Esq.  
Keep It Green Advocacy, Inc.  
P.O. Box 1922  
Pawleys Island, SC 29585  
Attorney for Respondents

H. Thomas Morgan, Jr., Esq.  
Smith Robinson, Holler Dubose and Morgan, LLC  
Post Office Drawer 39  
Camden, SC 29020  
Attorney for Georgetown County

  
Benjamin F. Goff, Sr., Trustee  
18 Powers Farm Road  
Randolph, MA 02368  
781-986-0635 (Tel)  
goff-chem@juno.com  
Pro Se for Appellant

18 POWERS FARM ROAD  
RANDOLPH, MA 02368  
781-986-0635 (Tel/Fax)

**RECEIVED**

OCT 14 2022

SC Court of Appeals

October 11, 2022

The Honorable Jenny Abbott Kitchings  
S.C. Court Administration  
Clerk, Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Ernest Middleton, III, et al, Respondents v. Benjamin F. Goff, Sr., Trustee, Appellant,  
Appellate Case No. 2022-000811

Dear Ms. Kitchings:

Please find for filing are an original and six copies to two separate returns to motions filed in the referenced case:

Respondents:

1. Motion in Opposition to Respondents' Motion to Dismiss Appeal;
2. Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
3. Appendix to Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
4. Certificate of Service.

Defendant Georgetown County:

1. Motion in Opposition to Motion to be Designated as a Respondent;
2. Memorandum of Law in Opposition to Motion in Opposition to Motion to be Designated as a Respondent;
3. Certificate of Service.

Thank you for your consideration.

Respectfully Submitted,

  
Benjamin F. Goff, Sr., Trustee

cc: Cynthia Ranck Person, Esq.  
H. Thomas Morgan, Jr., Esq.