

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-000615

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., 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 and Georgetown County is a Respondent.

RECORD ON APPEAL

VOLUME I

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RECEIVED

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SC Court of Appeals

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200032

Ernest F Middleton, III et al
PLAINTIFF(S)

Georgetown County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Dismiss Counterclaim/Strike Other Matters/ Atty Person is granted.

Motion Judgment on the Pleadings/Goff Pro Se is respectfully denied.

Motion Summary Judgment/Goff Pro Se is respectfully denied.

Motion to Strike/Atty Person is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2023 .

Benjamin F Goff Sr Tr for Benjamin F Goff Sr Tr
Benjamin F Goff Sr Tr for Benjamin F Goff Sr Tr
Benjamin F Goff 2004 Revocable Trust Dated June 18 2004

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Ernest F Middleton III , plaintiff, et al VS Georgetown County ,
defendant, et al
Case Number: 2022CP2200032
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-03-24 14:53:51 page 3 of 3

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Ernest F. Middleton, III <i>et al.</i> ,	:	CASE NO. 2022 CP 2200032
	:	
Plaintiffs	:	
v.	:	ORDER GRANTING PLAINTIFFS'
	:	MOTION TO DISMISS
Georgetown County and Benjamin F.	:	COUNTERCLAIM AND MOTION TO
Goff, Sr., Trustee of the Benjamin F.	:	STRIKE OTHER MATTERS.
Goff 2004 Revocable Trust dated June	:	
18, 2004,	:	
	:	
Defendants	:	
	:	

On March 23, 2023, the court heard Plaintiffs' Motion to Dismiss Defendant Goff Trust's Counterclaim and to Strike Other Matters. Cynthia R. Person, Esquire, appeared as attorney for Plaintiffs, and Benjamin F. Goff, Trustee, appeared *pro se* on behalf of Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff Trust."

I. BACKGROUND & PROCEDURAL HISTORY

Plaintiffs filed a Complaint for Declaratory Judgment on January 7, 2022, against Defendants Georgetown County and Goff Trust challenging the validity of two zoning ordinance amendments on land owned by Defendant Goff Trust. Plaintiffs are adjoining landowners, a nonprofit homeowners' association, and a nonprofit citizens organization.

Goff Trust filed an Answer, Affirmative Defenses and Counterclaim on April 18, 2022, alleging 15 affirmative defenses and the following counterclaims: Count I - Declaratory Judgment; Count II - Civil Conspiracy; Count III - Conspiracy Against Rights; Count IV - Deprivation of Rights under Color of Law; and Count V - Injunctive Relief.

On May 18, 2022, Plaintiffs filed a Motion to Dismiss Goff Trust's Counterclaim pursuant to Rule 12(b)(6), SCRP, and a Motion to Strike portions of Goff Trust's Affirmative Defenses pursuant to Rule 12(f), SCRP.

II. STANDARD OF REVIEW

In a Motion to Dismiss for failure to state a cause of action pursuant to SCRPC 12(b)(6), the trial court examines the legal sufficiency of the complaint, construing the facts alleged in the light most favorable to the nonmoving party. Overcash v. S.C. Electric & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

Rule 12(f), SCRPC, permits a motion to strike pleadings containing improper, insufficient, redundant, immaterial, impertinent, or scandalous matters. "[A] motion to strike is addressed to the sound discretion of the trial court." Totaro v. Turner, 273 S.C. 134, 254 S.E.2d 800, 801 (SC Sup. Ct. 1979) (citations omitted).

III. FINDINGS

A. Plaintiffs' Motion to Dismiss Defendant Goff Trust's Counterclaim

After motion hearing and careful consideration, the court grants Plaintiffs' Motion to Dismiss the Counterclaim of Defendant Goff Trust pursuant to 12(b)(6) for failure to state facts sufficient to constitute a cause of action, and finds as follows:

Counterclaim Count I - Declaratory Judgment

South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, allows persons whose "rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise [to] obtain a declaration of rights, status or other legal relations thereunder." Goff Trust's Counterclaim does not set forth facts sufficient to establish a cause of

action for a declaration of rights independent of its defenses to claims for declaration of rights raised in Plaintiffs' Complaint.

Counterclaim Count II - Civil Conspiracy

The elements of civil conspiracy under South Carolina law are "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston County School District, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021). If an unlawful act is not alleged, then it must be shown that "the objective is to ruin or damage the business of another." Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140 (SC Sup. Ct. 2016) (citations omitted); Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co., Inc., 992 F.2d 59, 63 (C.A. 4 1993).

Reviewing the facts in the light most favorable to Goff Trust, its Counterclaim does not set forth facts sufficient to support the elements of civil conspiracy. Goff Trust applied for a rezoning of its property and was successful in having the zoning changed notwithstanding Plaintiffs' opposition. The facts alleged in the Counterclaim are insufficient to support damage or injury to Goff trust or the existence of an agreement on the part of Plaintiffs, the primary purpose of which was to ruin or damage or injure the business of Goff Trust.

Counterclaim Count III - Conspiracy Against Rights **Counterclaim Count IV - Deprivation Of Rights Under Color Of Law**

Counts III and IV cite federal criminal statutes as their basis. This court has no subject matter jurisdiction over federal criminal offenses. 18 USCA Section 3231 gives federal courts exclusive jurisdiction over federal crimes as follows: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

In the event this is an attempt to allege a civil cause of action, in order to state a constitutional claim, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." Melvin v. Social Sec. Admin., 126 F.Supp.3d 584, 607 (E.D. NC 2015), quoting the United States Supreme Court (citations omitted). "The color of law requirement excludes from its reach merely private conduct." Thomas v. The Salvation Army Southern Territory, 841 F.3d 632, 637 (C.A. 4th Circuit, 2016) (citations omitted). American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999).

The elements of Civil Conspiracy Against Constitutional Rights are as follows:

(1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Thomas at 637 (citations omitted).

Goff Trust's Counterclaim does not allege facts sufficient to demonstrate that Plaintiffs, all of whom are private citizens, were acting under color of law or that there was an injury or deprivation of any constitutionally protected right.

Counterclaim Count V - Injunctive Relief

A party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy of law. Rawlinson Road Homeowners Association, Inc., v. Jackson, 395 S.C. 25, 35 (Ct. App. 2011). The Courts recognize that an injunction is a drastic remedy and should be issued only to prevent irreparable harm suffered by the moving party. AJG Holdings, LLC, v. Dunn, 382 S.C. 43 (Ct. App. 2009). In the present case, Goff Trust has not established facts sufficient to warrant injunctive relief.

B. Plaintiffs' Motion to Strike Other Matters

After motion hearing and careful consideration, the court grants Plaintiffs' Motion to Strike portions of Defendant Goff Trust's Affirmative Defenses pursuant to Rule 12(f), SCRCP, as improper and irrelevant to any issue in this case, and finds as follows:

Defendant Goff Trust's Fourth Affirmative Defense of Civil Conspiracy (Par. 167); Fifth Affirmative Defense of Conspiracy Against Rights (Par. 168); Sixth Affirmative Defense of Deprivation of Rights Under Color of Law (Par. 169); Seventh Affirmative Defense of Misrepresentation (Par. 170); Tenth Affirmative Defense of Estoppel (Par. 173); Eleventh Affirmative Defense of Unclean Hands (Par. 174) are not proper defenses to any matter raised in Plaintiffs' Complaint nor relevant to any issue in this case.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, adjudged, and decreed as follows:

1. Plaintiffs' Motion to Dismiss the Counterclaim filed on April 18, 2022, by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, is GRANTED for the reasons set forth above.
2. Plaintiffs' Motion to Strike the 4th, 5th, 6th, 7th, 10th, and 11th Affirmative Defenses filed on April 18, 2022, by Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, is GRANTED for the reasons set forth above.

AND IT IS SO ORDERED.

The Honorable William J. Seals, Jr.
Chief CP Administrative Judge
Fifteenth Judicial Circuit

_____, 2023

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	:	Declaratory Judgment
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.	:	JURY TRIAL DEMANDED
Goff 2004 Revocable Trust dated June 18, 2004,	:	
	:	
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	:	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.	:	COMPLAINT
	:	(Civil Action)
	:	
Georgetown County, Georgetown County Council,	:	
Louis Morant, Lillie Jean Johnson, Raymond	:	Declaratory Judgment
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.	:	JURY TRIAL DEMANDED
Goff 2004 Revocable Trust dated June 18, 2004,	:	
	:	
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 refusal: 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)

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)

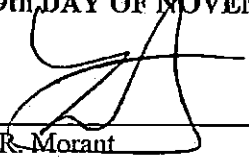
ORDINANCE NO: 21-24

AN ORDINANCE TO AMEND THE COMPREHENSIVE PLAN, FUTURE LAND USE MAP, REGARDING TMS NUMBER 04-0418-011-00-00 LOCATED AT 3138 OCEAN HWY IN GEORGETOWN FROM LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL

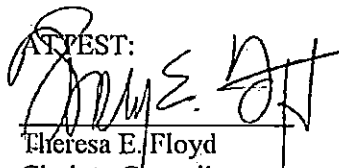
BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED:

To amend the Comprehensive Plan, Future Land Use Map, to reflect the redesignation of tax map parcel 04-0418-011-00-00 located at 3138 Ocean Hwy in Georgetown from low density residential to medium density residential, as reflected on the attached map.

DONE, RATIFIED AND ADOPTED THIS 9th DAY OF NOVEMBER, 2021.

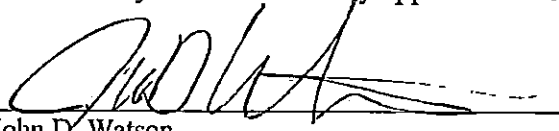


Louis R. Morant (SEAL)
Chairman, Georgetown County Council

ATTEST:


Theresa E. Floyd
Clerk to Council

This Ordinance, No. 21-24, has been reviewed by me and is hereby approved as to form and legality.



John D. Watson
Georgetown County Attorney

First Reading: July 27, 2021

Second Reading: August 24, 2021

Third Reading: November 9, 2021
(on Motion to Reconsider)

Exhibit 1

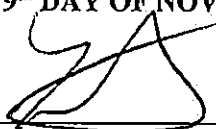
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ORDINANCE NO. 21-25

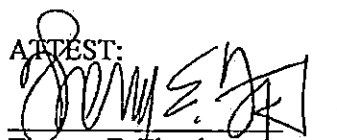
AN ORDINANCE TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY REGARDING TMS NUMBER 04-0418-011-00-00 LOCATED AT 3138 OCEAN HWY IN GEORGETOWN FROM ½ ACRE RESIDENTIAL (R-1/2) TO 10,000 SQUARE FEET RESIDENTIAL (R-10).

BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY, SPECIFICALLY TMS NUMBER 04-0418-011-00-00 LOCATED AT 3138 OCEAN HWY IN GEORGETOWN FROM ½ ACRE RESIDENTIAL (R-1/2) TO 10,000 SQUARE FEET RESIDENTIAL (R-10) AS REFLECTED ON THE ATTACHED MAP.

DONE, RATIFIED AND ADOPTED THIS 9th DAY OF NOVEMBER, 2021.



Louis R. Morant (SEAL)
Chairman, Georgetown County Council

ATTEST:


Theresa E. Floyd
Clerk to Council

This Ordinance, No. 21-25, has been reviewed by me and is hereby approved as to form and legality.



John D. Watson
Georgetown County Attorney

First Reading: July 27, 2021

Second Reading: August 24, 2021

Third Reading: November 9, 2021

(on Motion to Reconsider)

Exhibit 2

STATE OF FLORIDA :
COUNTY OF BROWARD : S.S.

VERIFIED STATEMENT

I, PHILIP BENINCASA, do hereby swear and affirm as follows:

1. I am an adult individual residing at 222 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which is part of The Colony Planned Development.
2. I am President of The Colony Homeowners Association, Inc., (hereinafter "CHA") which 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. I am authorized to give this Statement on behalf of CHA.
3. CHA is the homeowners association for the Planned Development neighborhood known as "The Colony," which consists of 21.03 acres that adjoin the Goff Parcel.
4. CHA is a Plaintiff in the Complaint to which this Statement is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
5. The Colony is zoned as a Planned Development consisting of 49 homes and common property. The Colony directly adjoins the Goff Parcel which is the subject matter of the Complaint.
6. CHA owns a piece of common property that directly adjoins the Goff Parcel . The rear boundary line of this lot, which is approximately 217 feet in length, is a shared boundary with the Goff Parcel.

Exhibit 3

7. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. I spoke at the public hearing on behalf of the CHA and The Colony landowners and communicated our opposition to the zoning change request.

8. Many residents of The Colony are members of Keep It Green as are other neighboring landowners.

9. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where I spoke in opposition on behalf of CHA.

10. Many residents of The Colony signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

11. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

12. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

13. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

14. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused injury to our members as follows:

- a. Decrease in the value of The Colony properties;

- b. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- c. Increase in existing stormwater and flooding problems;
- d. Negative impact on character, aesthetics and enjoyment of The Colony properties;
- e. Sets a precedent for other R-1/2 acre land near The Colony to be rezoned to R-10.
- f. Loss of premium payments for homeowners who purchased 1/2 acre lots that adjoin Goff property zoned R -1/2 acre for lots similar in size.

The statements contained herein are true and correct to the best of my knowledge, information and belief under penalty of perjury and unsworn falsification.

I hereby set my hand and seal this 30th day of December, 2021.



PHILIP BENINCASA
President
The Colony Homeowners' Association

STATE OF NORTH CAROLINA :
COUNTY OF WATAUGA : S.S.

AFFIDAVIT

I, ERNEST F. MIDDLETON, III, do hereby swear under oath as follows:

1. I am an adult individual residing at 359 Southgate Court, Pawleys Island, Georgetown County, South Carolina.
2. I am married to Joyce J. Middleton, an adult individual residing at the above address.
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot, which is approximately 162.1 feet in length, is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated November 29, 2016, for \$384,000 which included a \$37,000 payment for a premium larger lot that adjoins property (Goff Parcel)

Exhibit 4

zoned for 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2927, Page 132.

9. Our home is a three bedroom and two-and-a-half bath with a total of approximately 2,445 square feet.

10. The Goff Parcel contains wetlands and when it rains water pools and stands in the back of our lot and that part of the Goff Parcel adjacent to our rear property line.

11. When we purchased our home and lot and paid the \$37,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.

12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.

13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. A number of other landowners also spoke in opposition to the zoning change request.

14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

- a. Loss of our \$37,000 premium payment for our 1/2 acre lot that adjoins property zoned R-1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

I hereby set my hand and seal this 29 day of December, 2021.

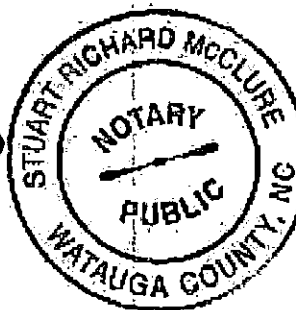

ERNEST F. MIDDLETON, III

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

Subscribed and sworn before me on this 29th day of December, 2021.


NOTARY PUBLIC

(SEAL)



My commission expires: 05/03/2023

STATE OF NORTH CAROLINA :
COUNTY OF WATAUGA : S.S.

AFFIDAVIT

I, JOYCE J. MIDDLETON, do hereby swear under oath as follows:

1. I am an adult individual residing at 359 Southgate Court, Pawleys Island, Georgetown County, South Carolina. *Ernest F. Middleton III* *(EM)*
2. I am married to ~~Joyce J. Middleton~~, an adult individual residing at the above address. *(EM)*
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot, which is approximately 162.1 feet in length, is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated November 29, 2016, for \$384,000 which included a \$37,000 payment for a premium larger lot that adjoins property (Goff Parcel)

Exhibit 5

zoned for 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2927, Page 132.

9. Our home is a three bedroom and two-and-a-half bath with a total of approximately 2,445 square feet.

10. The Goff Parcel contains wetlands and when it rains water pools and stands in the back of our lot and that part of the Goff Parcel adjacent to our rear property line.

11. When we purchased our home and lot and paid the \$37,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.

12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.

13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. A number of other landowners also spoke in opposition to the zoning change request.

14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck.

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

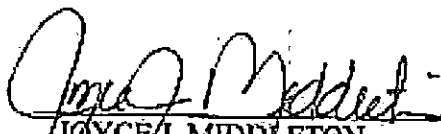
18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

- a. Loss of our \$37,000 premium payment for our 1/2 acre lot that adjoins property zoned R-1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

I hereby set my hand and seal this 29 day of December, 2021.

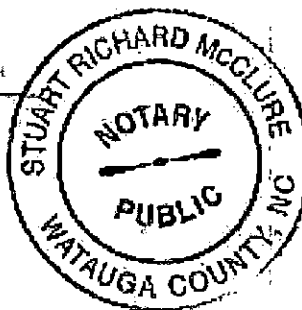

JOYCE J. MIDDLETON

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

Subscribed and sworn before me on this 29th day of December, 2021.


NOTARY PUBLIC (SEAL)

My commission expires: 05/03/2023



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

S.S.

AFFIDAVIT

I, MICHAEL J. FARRAR, do hereby swear under oath as follows:

1. I am an adult individual residing at 367 Southgate Court, Pawleys Island, Georgetown County, South Carolina.
2. I am married to Diana Farrar, an adult individual residing at the above address.
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot, which is approximately 191.4 feet in length, is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated November 11, 2016, for \$354,755 which included a \$23,000 payment for a premium lot that is approximately 1/2 acre in size and adjoins property (Goff Parcel) zoned for similarly sized 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2918, Page 237.

Exhibit 6

adjoins property (Goff Parcel) zoned for similarly sized 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2918, Page 237.

9. Our home is a 4 bedroom and 3 bath, two story home with a total of approximately 2,200 square feet and a pool in the backyard.

10. The Goff Parcel contains wetlands and when it rains water pools and stands in the back of our lot and that part of the Goff Parcel adjacent to our rear property line.

11. When we purchased our home and lot and paid the \$23,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.

12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.

13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. A number of other landowners also spoke in opposition to the zoning change request.

14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

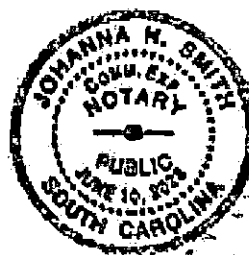
- a. Loss of our \$23,000 premium payment for our 1/2 acre lot that adjoins property zoned R -1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

Michael J. Farrar
MICHAEL J. FARRAR

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 29 day of December, 2021.

[Signature] (SEAL)
NOTARY PUBLIC



My commission expires: 6/10/23

STATE OF SOUTH CAROLINA :
COUNTY OF GEORGETOWN :

S.S.

AFFIDAVIT

I, DIANA FARRAR, do hereby swear under oath as follows:

1. I am an adult individual residing at 367 Southgate Court, Pawleys Island, Georgetown County, South Carolina.
2. I am married to Michael J. Farrar, an adult individual residing at the above address.
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot, which is approximately 191.4 feet in length, is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated November 11, 2016, for \$354,755 which included a \$23,000 payment for a premium lot that is approximately 1/2 acre in size and

Exhibit 7

adjoins property (Goff Parcel) zoned for similarly sized 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2918, Page 237.

9. Our home is a 4 bedroom and 3 bath, two story home with a total of approximately 2,200 square feet and a pool in the backyard.

10. The Goff Parcel contains wetlands and when it rains water pools and stands in the back of our lot and that part of the Goff Parcel adjacent to our rear property line.

11. When we purchased our home and lot and paid the \$23,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.

12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.

13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. A number of other landowners also spoke in opposition to the zoning change request.

14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

- a. Loss of our \$23,000 premium payment for our 1/2 acre lot that adjoins property zoned R -1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

I hereby set my hand and seal this 29 day of December, 2021.

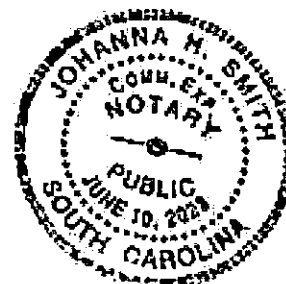
Diana Farrar
DIANA FARRAR

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 29 day of December, 2021.

[Signature] (SEAL)
NOTARY PUBLIC

My commission expires: 6/10/23



STATE OF SOUTH CAROLINA :
COUNTY OF GEORGETOWN : S.S.

AFFIDAVIT

I, ROBERT E. HUNT, do hereby swear under oath as follows:

1. I am an adult individual residing at 351 Southgate Court, Pawleys Island, Georgetown County, South Carolina.
2. I am married to Jeane M. Sullivan, an adult individual residing at the above address.
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated February 10, 2017, for \$370,390 which included a \$31,000 payment for a large premium lot that adjoins property (Goff Parcel) zoned for similarly sized 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2972, Page 156.

Exhibit 8

9. Our home is a 3 bedroom and 2.5 bath home with a total of approximately 2,464 square feet and a pool in the backyard.

10. The Goff Parcel contains wetlands. There is a culvert on our property and when we have a heavy rain, the culvert fills and water will rise above the grate to as much as 1 foot and flood the surrounding area.

11. When we purchased our home and lot and paid the \$31,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.

12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.

13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. I spoke at the meeting in opposition to the zoning change request along with a number of other landowners.

14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners. I also spoke at one of those meetings.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

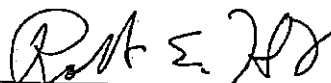
18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

- a. Loss of our \$31,000 premium payment for our lot that adjoins property zoned R - 1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

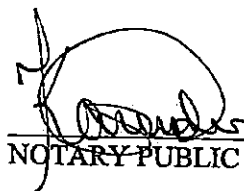
I hereby set my hand and seal this 30 day of December, 2021.



ROBERT E. HUNT

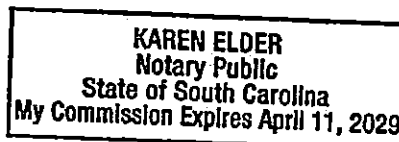
STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 30th day of December, 2021.



NOTARY PUBLIC KAREN ELDER (SEAL)

My commission expires: 04/11/2029



STATE OF SOUTH CAROLINA :
COUNTY OF GEORGETOWN : S.S.

AFFIDAVIT

I, JEANE M. SULLIVAN, do hereby swear under oath as follows:

1. I am an adult individual residing at 351 Southgate Court, Pawleys Island, Georgetown County, South Carolina.
2. I am married to Robert E. Hunt, an adult individual residing at the above address.
3. We are Plaintiffs in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. Our property directly adjoins the Goff Parcel which is the subject matter of the Complaint.
5. Our home is part of The Colony which is zoned as a Planned Development District. We own one of three homes in The Colony that directly adjoins the Goff Parcel.
6. The Goff Parcel was zoned R-1/2 acre when we purchased our property. As I understand it, R-1/2 acre allows a single family home on a minimum half-acre lot.
7. The rear boundary line of our lot is a shared boundary with the Goff Parcel.
8. We purchased our home and lot by deed dated February 10, 2017, for \$370,390 which included a \$31,000 payment for a large premium lot that adjoins property (Goff Parcel) zoned for similarly sized 1/2 acre lots. Our deed was duly recorded in Georgetown County at Deed Book 2972, Page 156.

Exhibit 9

9. Our home is a 3 bedroom and 2.5 bath home with a total of approximately 2,464 square feet and a pool in the backyard.
10. The Goff Parcel contains wetlands. There is a culvert on our property and when we have a heavy rain, the culvert fills and water will rise above the grate to as much as 1 foot and flood the surrounding area.
11. When we purchased our home and lot and paid the \$31,000 premium, we deliberately relied on the fact that the adjoining Goff Parcel was zoned for single family homes on minimum 1/2 acre lots, similar to the size of our lot. We would not have purchased our home or paid the additional premium if the zoning on the adjoining Goff Parcel had permitted homes on lots smaller than 1/2 acre in size.
12. We received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. We sent a letter of opposition and attended the meeting.
13. We are members of Keep It Green as are many neighboring landowners. We also belong to The Colony Homeowners' Association. A representative of Keep It Green and a representative of The Colony Homeowners' Association spoke on our behalf at the Planning Commission meeting. My husband spoke at the meeting in opposition to the zoning change request along with a number of other landowners.
14. Thereafter, we were notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the final reading on October 26, 2021. We wrote letters of opposition and attended those meeting where a representative of Keep It Green and The

Colony Homeowners' Association again spoke in opposition on our behalf along with numerous other neighboring landowners. My husband also spoke at one of those meetings.

15. We signed a Petition opposing the rezoning which was presented to County Council on October 26, 2021. The Petition contained the signatures of more than 1,000 residents of the Waccamaw Neck..

16. At Third Reading on October 26, 2021, we understood that County Council voted not to approve the Goff rezoning request.

17. In December 2021, we learned that Georgetown County Council had signed two ordinances dated November 9, 2021, approving the Goff rezoning. We never received any notice of another public hearing or that action would be taken on the ordinances on November 9, 2021.

18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density and zoning change from R-1/2 acre to R-10 has caused us injury as follows:

- a. Loss of our \$31,000 premium payment for our lot that adjoins property zoned R - 1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents;
- d. Increase in existing stormwater and flooding problems;
- e. Negative impact on character, aesthetics and enjoyment of our property;
- f. Sets a precedent for other R-1/2 acre land near our home to be rezoned to R-10.

- g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

I hereby set my hand and seal this 30 day of December, 2021.

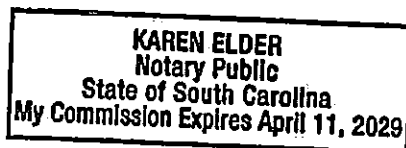
Jeane M Sullivan
JEANE M. SULLIVAN

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 30th day of December, 2021.

Karen Elder
NOTARY PUBLIC KAREN ELDER (SEAL)

My commission expires: 04/11/2029



STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, MARY ELIZABETH KLEIN, do hereby swear under oath as follows:

1. I am an adult individual residing in Pawleys Island, Georgetown County, SC.
2. I am an officer and member of the Board of Directors of Keep It Green, Inc., (hereinafter "KIG"), 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, SC.
3. I have been authorized by the board of KIG to make this Affidavit.
4. KIG is a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
5. 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.
6. 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 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.

Exhibit 10

7. 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 Georgetown County, that increased residential density in conflict with the Comprehensive Plan and had a negative impact on the safety and general welfare of surrounding landowners and citizens. 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.

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

9. 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 many of whom would have standing in their own right to challenge the ordinances in question.

10. The interests of these contiguous landowners are germane to and fall squarely within KIG's purpose and mission.

11. Neither the claims asserted nor the relief requested requires the participation of the individual landowners.

12. KIG received notice in July 2021 that a zoning and density change had been requested by the owners of the Goff Parcel from R-1/2 acre to R-10 zoning, and that a Planning Commission meeting had been scheduled for July 15, 2021. KIG sent a letter of opposition that is attached as Exhibit 17 to the Complaint, and representatives of KIG spoke in opposition at the public hearing on behalf of its members.

13. Thereafter, KIG was notified about County Council meetings on July 27, 2021, August 24, 2021, and a public hearing at the third and final reading on October 26, 2021. KIG

wrote letters of opposition which are attached to the Complaint as Exhibits 20 and 22.

Representatives of KIG attended the meetings and spoke in opposition to the rezoning on behalf of its members.

14. KIG circulated a Petition opposing the rezoning among its members and residents of the community and obtained more than 1,000 signatures of residents of the Waccamaw Neck who opposed this rezoning. The Petition was presented to County Council at the third reading public hearing on October 26, 2021.

15. At third reading on October 26, 2021, KIG understood that County Council voted not to approve the Goff rezoning request.

16. On or about November 12, 2021, KIG learned Georgetown County was taking the position that the Goff ordinances had been approved at the November 9, 2021, council meeting.

17. Upon information and belief, there was never any notice of another public hearing or that action would be taken on the Goff ordinances on November 9, 2021.

18. Keep It Green has and continues to represent and advocate on behalf of neighboring landowners with respect to the Goff rezoning.

19. The County's decision to approve the Goff density increase and zoning change from R-1/2 acre to R-10 has caused injury to KIG's members as follows:

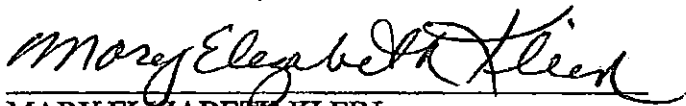
- a. Decrease in the value of property owned by neighboring landowners;
- b. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious accidents and with a volume of traffic already beyond design capacity;
- c. Increase in existing stormwater and flooding problems;

- d. Increased burden on already severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard -- streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes;
- e. Negative impact on character, aesthetics and enjoyment of neighboring properties;
- f. Sets a precedent for other R-1/2 acre land in the vicinity of the Goff Parcel to be rezoned to R-10 which would further exacerbate the above harm to members.

The statements contained herein are true and correct to the best of my knowledge, information and belief.

I hereby set my hand and seal this 6th day of January, 2022.

KEEP IT GREEN, INC.

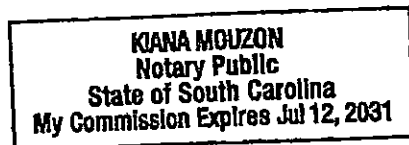

MARY ELIZABETH KLEIN
Secretary

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 6th day of January, 2022.


NOTARY PUBLIC (SEAL)

My commission expires: 7/12/31



REZ-6-21-28323

Rec'd-5/28/21



129 Screven St. Suite 222
 Post Office Drawer 421270
 Georgetown, S. C. 29440
 Phone: 843-545-3158
 Fax: 843-545-3299

PROPOSED ZONING AMENDMENT

COMPLETED APPLICATIONS FOR ZONING AMENDMENTS MUST BE SUBMITTED ALONG WITH THE REQUIRED FEE, AT LEAST FORTY-FIVE (45) DAYS PRIOR TO A PLANNING COMMISSION MEETING.

THE APPLICANT IS REQUESTING: (Indicate one)

- ☒ A change in the Zoning Map.
☐ A change in the Zoning Text.

The following information must be provided for either request:

Property Information that you are requesting the change to:

Tax Map (TMS) Number: 04-0418-011-00-00
 Street Address: 3138 Ocean Hwy (17)
 City / State / Zip Code: Pawleys Island, SC 29585
 Lot Dimensions/ Lot Area: Parcel A=12.79 AC/A1=56/B1=1.42/14.77 Acres
 Plat Book / Page: 1679/229
 Current Zoning Classification: R-1/2
 Proposed Zoning Classification: R-10

Property Owner of Record:

Name: Benjamin F. Goff 2004 Rev Trust
 Address: 18 Powers Farm Rd.
 City/ State/ Zip Code: Randolph, MA 02368
 Telephone/Fax Numbers: H:(781)986-0635 M:(781)789-4838
 E-mail: goff-chem@juno.com
 Signature of Owner / Date: *Benjamin F. Goff*

I have appointed the individual or firm listed below as my representative in conjunction with this matter related to the rezoning request.

Agent of Owner:

Name: Cynthia L. Murray
 Address: P.O. Box 1325
 City / State / Zip Code: Pawleys Island, SC, 29585
 Telephone/Fax: (843) 240-3223
 E-mail: cmurray29585@aol.com
 Signature of Agent/ Date: *Cynthia Murray* / 6/2/2021
 Signature of Property Owner: *Benjamin F. Goff*

Contact Information:

Name: Cynthia L. Murray
 Address: P.O. Box 1325, Pawleys Island, SC 29585
 Phone / E-mail: (843)240-3223 / cmurray29585@aol.com

Please provide the following information.

1. Please submit 12 copies of the site plan or plat (size: 11 x 17 or 24 x 26, as needed)
2. Please explain the rezoning request for this property.

The rezoning of this property from One-Half Acre Residential District (R-1/2) to 6,000 Square Feet Residential District (R-6) would be compatible with existing land uses and consistent with an already approved adjacent parcel and other properties in the area and district; whereas, the intent of the district for moderate to low density development will not be impacted or altered by the change. The necessary essential services and infrastructure, natural environment or area property values will not be negatively impacted by the rezoning.

Please provide the following information for a Zoning Text Amendment.

1. Indicate the section of the Zoning Ordinance that you are proposing to be changed:

NA

2. Indicate the reasons for the proposed changes:

NA

Fee required for all applications at the time of submittal:

Rezoning Applications	\$250.00
Text Amendments	\$250.00

Adjacent Property Owners Information required:

1. The person requesting the amendment to the Zoning Map or Zoning Text must submit to the Planning office, at the time of application submittal, stamped envelopes for each resident within **Four Hundred Feet (400)** of the subject property. The following return address must appear on the

envelope: "Georgetown County Planning Commission, 129 Screven St. Suite 222, Georgetown, SC 29440."

2. A list of all persons (and related Tax Map Numbers) to whom envelopes are addressed must also accompany the application.

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant.

Please submit this **completed application** and appropriate fee to Georgetown County Planning Division at 129 Screven St. Suite 222, Georgetown, S. C. 29440. If you need additional assistance, please call our office at 843-545-3158.

Site visits to the property, by County employees, are essential to process this application. The owner\applicant as listed above, hereby authorize County employees to visit and photograph this site as part of the application process.

A sign is going to be placed on your property informing residents of an upcoming meeting concerning this particular property. This sign belongs to Georgetown County and will be picked up from your property within five (5) days of the hearing.

All information contained in this application is public record and is available to the general public.

Please submit a PDF version of your plans if available. You may e-mail them to csargent@georgetowncountysc.org or include with your application.

3/10/15
Page 23

- Update the Buffer Ordinance.

UPDATE: The County's buffer ordinance was amended to include additional requirements for buffer areas along major thoroughfares for industrial properties as well as provide additional buffer protection in NC zones and across from minor residential streets.

Additional Land use Goals for the 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. In addition, some potential changes in commercial uses could have significant adverse impacts on adjoining properties, and others could seriously impair the efficiency of U.S. Highway 17. The South Waccamaw Neck is the area south of Brookgreen Gardens and the North Waccamaw is the area north of Brookgreen Gardens.

PROPOSED GOALS – SOUTH WACCAMAW NECK

- Protect low and medium density residential neighborhoods from commercial/high density encroachment.
 - Review rezonings and subdivisions that increase residential density.
 - Review the Comprehensive Plan's Future Land Use Map on an annual basis.
 - Examine zoning ordinances that allow an increase in density by circumventing regulations and intent of County.
 - Encourage County government to adopt and implement impact fees in order to pay for expansion of new government agencies, infrastructure, land acquisition, and services required by new development (police/EMS, parks, libraries, land fills, etc.)
UPDATE: Impact fees were passed in 2010. Since then \$3,277.250 has been collected from both residential and commercial developments.
 - For neighborhood and non-neighborhood areas that are currently developed with low-medium density, change the future land use map to match the existing density particularly in areas currently zoned "General Residential".
UPDATE: Several existing GR areas with lots larger than the required minimum were down-zoned to reflect the existing lot sizes. Examples include the Bellamy subdivision and a neighborhood north of Wachesaw Drive near the Wacca Wacche Marina which was rezoned from GR to R-10 after soliciting input from residents.

Exhibit 12

3/10/15
Page 25

- Establish a landscape ordinance for the highway 17 Overlay Zone
 - Add signs to the architectural requirements for the Waccamaw Neck Commercial Corridor Overlay Zone
UPDATE: The sign ordinance was amended to place more stringent requirements on new main identification signs in the Overlay Zone.
 - Consider expanding boundaries of the Overlay Zone
 - Encourage underground utilities
 - Expand the overlay district to all commercial and multi-family properties
- Identify areas that may offer future public beach/river access and public parking or transit facilities.
- Protect existing trees by updating the tree ordinance. Consider:
 - Encourage replanting of native species
 - Establish tree protection overlay zone
 - Adding pine trees to the tree ordinance
 - Increasing fines for violations
UPDATE: The County's tree ordinance was amended to strengthen protection for specimen trees within the buildable area for commercial and other non-single family properties. Also, new subdivisions are required to indicate larger specimen trees on conceptual plans so that infrastructure can be placed in a way that protects such trees.
- Monitor the potential impact of I-73 on the Waccamaw Neck
- Pursue walkways, bikeways in existing neighborhoods in order to promote a more equitable distribution of infrastructure in neighborhoods.
- Pursue obtaining funding or grants to address traffic issues on Martin Luther King and Turntable Roads.
- Maintain the following current Density Limits:
 - 0 – 2.0 – Low Density
 - 2.1 – 5.0 – Medium Density
 - 5.1 – 16.0 – High Density

*These figures apply to "Net Density" (size of property minus wetlands, ponds, and road divided by the number of units)
- Maintain Georgetown County's height limit of 35 feet.
- 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. Open space should be clearly defined to include "usable" open space.

9. LAND USE ELEMENT

3/10/15

INTRODUCTION

This chapter describes existing land use patterns in Georgetown County and sets forth a future land use plan consistent with the County's vision. The purpose of the chapter is to guide future development and redevelopment within the County. The chapter is intended to assist the County when determining the proper use of land and will serve as a basis for zoning map amendments, zoning code revisions, establishment of new zoning districts, development standards, and other land use implementation tools.

Growth and change are now occurring in Georgetown County. The impacts of rapid growth can bring a change in the quality of life in the area. Urban sprawl can reach out into the rural areas, diminishing the character and charm of the County. It can also clog the highways with increased traffic and increase costs of providing public services. The clear desire and vision for Georgetown County, as expressed on the part of the community, is to continue to grow and to diversify the County's economy. A diversity of land uses should be provided in order to maintain a community with a broad and healthy economy that is able to provide services to residents, businesses, and visitors. Quality and sustainable development is important to the County's future prosperity. The need to achieve sustainable development is the fundamental principle emphasized throughout this Land Use Element.

This Element is divided into two central parts: Current and Future Land Use. The first part examines existing land use categories. It provides an inventory and analysis of residential, commercial, industrial, public/semi-public, utilities, recreational, and vacant/undeveloped land uses. The second part is the future land use analysis and plan. The future land use maps identify and recommend locations where different types of uses are encouraged to grow without negatively impacting the community and the natural environment. The future land use component of the Land Use Element emphasizes the need to establish sustainable patterns of growth throughout Georgetown County.

EXISTING CONDITIONS

This section of the Georgetown County Comprehensive Plan includes an analysis of the existing land use for Georgetown County. Land use patterns and development problems are identified. This information will help in the planning process so the future growth and development of Georgetown County can occur according to local goals and objectives. The City of Georgetown

ARTICLE XVII

AMENDMENTS

1701. **Requirements for Change.** 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.

Exhibit 15

Article V Review Procedures

Section 2. Comprehensive Plan.

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. The elements of the comprehensive plan shall be reviewed and updated on a schedule adopted by the Commission, meeting the requirements of applicable S. C. Code § 6-29-510 (E).

Exhibit 16



July 14, 2021

VIA EMAIL

Georgetown County Planning Commission
129 Screven Street
Georgetown, SC 29440

RE: CYNTHIA MURRAY, AGENT FOR BENJAMIN GOFF – REZONING REQUEST

Dear Planning Commission Members:

As you may know, Keep It Green represents thousands of citizens of the Waccamaw Neck. Please accept this letter as our formal objection to the above rezoning request for the following reasons:

1. The requested zoning change violates Georgetown County Comprehensive Plan.

This is a request to amend the FLUM from low to medium density and to rezone 14.77 acres in South Pawleys Island from R-1/2 a to R-10. The current zoning would allow a maximum of 29 sf homes. The requested zoning would allow for a maximum of 64 sf homes resulting in double the density in violation of our comprehensive plan.

Under state law, zoning and zoning changes “must be made in accordance with the comprehensive plan for the jurisdiction.” S.C. Code § 6-29-720.

Georgetown County Comprehensive Land Use Plan states at page 23:

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.
(emphasis added)

The requested zoning change would result in the potential of more than double the maximum number of residential units allowed under current zoning.

The Georgetown County Future Land Use Map shows this property as low density. The requested change is medium density.

Exhibit 17

For these reasons, the requested zoning change is not in accordance with the comprehensive plan and should be denied.

2. The applicant has not met his burden of proving that this request is necessary to advance the public good.

In addition to the requirement that the requested zoning change be in accordance with the comprehensive plan, according to Georgetown County Ordinance 1701, and other applicable law, amendments to zoning ordinances are proper only when the “public necessity, convenience, general welfare or good zoning practice justifies such action.”

The burden of establishing this is on the applicant.

In the present case, absolutely nothing has been offered in support of a justification for this zoning change under the criteria set forth by law. The only reason given for the request is that some other land in the area is zoned R-10 which certainly does not meet the stated legal standard and is not relevant to the issue. Moreover, even if this were a relevant factor, much land in the area is NOT zoned R-10.

Accordingly, not only is there no relevant justification advanced for this zoning change, but such a change would adversely affect the public by increasing density and creating more traffic, flooding and burden on existing infrastructure.

For these reasons, KIG vehemently opposes this zoning change application and requests the Planning Commission to recommend denial.

Thank you for your kind attention and consideration.

Very truly yours,

KEEP IT GREEN, INC.

cc: Angela Christian
Planning Department

KIG OBJECTION TO GOFF ZONING CHANGE REQUEST – R-1/2 A TO R-10

This is a request to amend FLUM from low to medium density and to rezone 14.77 acres off US 17 in South Pawleys Island from R-1/2 a to R-10. The current zoning would allow a maximum of 29 sf homes. The requested zoning would allow for a maximum of 64 sf homes resulting in double the density.

1

**Is the requested zoning change
IN ACCORDANCE WITH THE
COUNTY COMPREHENSIVE PLAN?**

(NO! The FLUM shows this property as
LOW DENSITY and the text of the
land use plan specifically prohibits
INCREASED DENSITY in Pawleys Island.)

NO

**STOP HERE
request must be
DENIED**

2

**HAS THE APPLICANT MET HIS BURDEN OF PROOF
by showing that the requested zoning change is
justified by PUBLIC NECESSITY, PUBLIC
CONVENIENCE, PROMOTING GENERAL PUBLIC
WELFARE, or GOOD ZONING PRACTICE?**

(NO! The applicant has offered absolutely nothing
to establish his burden of proof.)

YES

**STOP HERE
request must be
DENIED**

LAW GOVERNING APPPLICATIONS & ZONING CHANGES

1. A landowner has NO RIGHT to a zoning change.
2. A zoning change may be considered ONLY when it is justified by advancing public welfare and the BURDEN OF PROOF is on applicant to establish this.
3. Under state law, zoning and zoning changes “must be made in accordance with the comprehensive plan for the jurisdiction.” S.C. Code § 6-29-720

GEORGETOWN COUNTY PLANNING COMMISSION**DATE:** July 15, 2021**AGENDA ITEM:** An amendment to the Georgetown County Zoning Map**ISSUE UNDER CONSIDERATION:** A rezoning request was received from Cynthia Murray, agent for Benjamin Goff, to rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10). Tax map number 04-0418-011-00-00. Case Number REZ 6-21-28323.**CURRENT STATUS:** The parcel is zoned ½ Acre Residential (R-½) and is currently vacant.**POINTS TO CONSIDER:**

1. The property is 14.77 acres with 124.75 feet of frontage on U.S Highway 17. The northern most boundary of the property is the centerline of Denny Drive (County Rd). There are currently 9 lots accessed via Denny Drive.
2. The adjacent tracts to the north are zoned ½ Acre Residential (R-½). Tracts to the immediate south are zoned General Commercial (GC) and Planned Development (PD). Surrounding uses are single family residential and undeveloped timberland.
3. R-10 zoning allows for single family dwellings, excluding manufactured homes on 10,000 sf lots. Setbacks for R-10 are 25' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 70'.
4. General Commercial (GC) zoning also allows for single family residential dwellings on 10,000 sf lots. Setbacks for GC are 50' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 60'.
5. The current (R-½) zoning allows for single family dwellings on 20,000 sf lots. Setbacks for the R-½ district are 40' for the front, 15' for the side and 25' for the rear, with a maximum height of 35' and a minimum lot width of 90'.
6. The Georgetown County Future Land Use (FLU) map designates the referenced parcel as low density residential. Low density is defined as 2.0 units per acre or less. The adjacent PD, known as "The Colony" has a (FLU) designation of medium density residential. Medium density is defined as 2.1 to 5 units per acre.
7. In 2013, County Council approved an amendment to the adjacent "Colony" tract. The amendment revised the original plans from 34 single family lots to 49 single family lots with a minimum lot size of 8,000 sf and a minimum lot width of 55 feet. Lots range from 8,035 sf to 26,689 sf. Setbacks for "The Colony" PD are 20' for the front, 7.5' for the side and 15' for the rear, with a maximum height of 35'. The Colony has an external, 10', level two buffer along the common property line associated with the proposal.

8. The 2013 Colony PD amendment also included a FLU amendment from low density to medium density residential as a result of the project's net density of 2.75 units per acre.
9. No subdivision plat or development plans are being proposed at this time. A traffic impact analysis is not warranted for the rezoning. If approved and developed with traffic generations greater than 500 ATDs, a traffic impact analysis shall be required.
10. If approved and developed as a major subdivision, site plan approval from the Planning Commission would be required.

CONCLUSIONS:

1. A medium density FLU designation directly abuts the site to the south.
2. The comprehensive plan suggests that medium density should be developed at a density of 2.1 to 5 units per acre, with a minimum lot size of no less than 6,000 sf if serviced by public water and sanitary sewer.
3. Should the planning commission consider the approval of the rezoning request, staff would recommend a future land use map amendment to medium density residential.

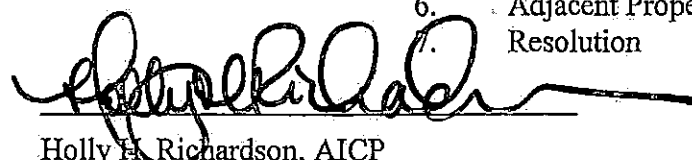
FINANCIAL IMPACT: Not applicable for Planning Commission

OPTIONS:

1. Recommend approval as requested by the applicant.
2. Recommend approval as amended by the Planning Commission.
3. Recommend denial of request.

ATTACHMENTS:

1. Rezoning Application and attachments
2. Location Map
3. Zoning Map
4. FLU Map
5. Aerial Map
6. Adjacent Property Notice
7. Resolution



Holly H. Richardson, AICP
Director of Planning and Code Enforcement

Public Notification Information:

Date Advertised: 06-30-2021 (Georgetown Times); 7-01-2021 (Coastal Observer)
Date Property Posted/By: 06-29-2021/Terri Davis
Date of Notification: 06-24-2021 Number Notified: 32

Case Number/Staff Contact: REZ 6-21-28323/ J. Charles Suggs
Report Completion Date: 07-08-2021 Revision Date:

RESOLUTION

WHEREAS, the Georgetown County Comprehensive Plan establishes the goals of providing appropriate area for residential development; and

WHEREAS, Cynthia Murray, agent for Benjamin Goff, filed a request to rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10); and

WHEREAS, the Future Land Use Map for this area, as contained in the Georgetown County Comprehensive Plan, designates this area as low density residential;

NOW, THEREFORE, BE IT RESOLVED, that the Georgetown County Planning Commission hereby recommends to the Georgetown County Council that the Georgetown Future Land Use Map in the Georgetown County Comprehensive Plan be amended to designate TMS parcel number 04-0418-011-00-00 as medium density residential.

ADOPTION OF THE FOREGOING RESOLUTION moved by _____, seconded by _____, and after discussion, upon call vote thereon, the vote was as follows:

Those in favor –

Those opposed –

Elizabeth Krauss, Chairperson
Georgetown County Planning Commission

ATTEST:

Tiffany Coleman
Georgetown County Planning

Exhibit 19

**Georgetown County Planning Commission
1610 Hawkins Street
Georgetown, SC 29440
July 15, 2021
Howard Auditorium**

MEMBERS PRESENT

Zannie Graham
Johnny Weaver
Marla Jean Hamby
Robert Davis
Sandra Bundy
Elizabeth Krauss

STAFF PRESENT

Judy Blankenship
Tiffany Coleman
Holly Richardson
Kristal Infinger
Charles Suggs

MEMBERS ABSENT

Zach Grate

The Vice-Chairperson called the meeting to order at 5:31 pm.

I. PUBLIC INPUT PERIOD

The Vice-Chairperson opened the public input period.

Beverly Sullivan, a resident, spoke to the members to thank Holly Richardson for her work on the tree ordinance revisions and asked the members to please vote yes for the proposed changes.

The Vice-Chairperson closed the public input period.

II. PLANNED DEVELOPMENTS

- A. A request from Dan Stacy as agent for Matthew Clawson to rezone the North Hampton Plantation Planned Development (PD) to a Flexible Design District (FDD) to allow for a Resort RV Park with associated amenities and ancillary services for guests. The property is located south of Highmarket Street approximately .2 miles east of Hallow Branch Road in Georgetown. TMS 01-0417-009-04-00. Case Number AMPD 4-21-27896.

Mrs. Judy Blankenship presented the staff report. This case was deferred from the June meeting. The site contains a total of 260+/- acres and is vacant. The PD was approved in 2006 for 348 single family units. The total number of RV sites is not to exceed 700. Gross density is 2.7 sites per acre. Net density is 4.7 sites per acre. The applicant is proposing an RV park and marina with associated amenities and ancillary services for guests. A landscape plan will need to be reviewed and approved by staff. A preliminary tree survey has been submitted. However, the site plan will need to be adjusted to avoid cutting grand trees as defined in the zoning ordinance. Stormwater drainage will be addressed by the use of grass swales, wet ponds, compost amendments, vegetated filter strips, rain gardens and permeable pavements. A traffic impact study was completed and the proposed RV park is expected to generate approximately 3,445 new daily trips. Approximately 74 acres of the site is zoned Conservation Preservation and will remain as such. The Future Land Use map will need to be amended from low density to commercial and medium density for this project. If the Commission voted to move forward with the project, staff recommended the following:

1. Approval of the traffic study as provided. Traffic improvements will be installed prior to 50% build out of the site, or as required by SCDOT.
2. Final approvals from Corp of Engineers, Georgetown County Stormwater, GCWSD, County Fire, Public Works and SCDOT.
3. The landscape plan shall retain as much existing natural vegetation as possible. A tree plan to be submitted and approved by staff prior to land disturbance. Development will be designed around protected trees over 30" DBH.
4. "Tiny homes" or park models as referenced in the application will not be permanent structures on permanent foundations. The sites will be used for short term rentals, not for long term occupancy.
5. The wetland area shown at the rear of the tract will remain zoned CP. The project will maintain a 15 foot setback from wetland areas.
6. A change to the Future Land Use map for commercial along the front and the correct designation of medium density for the remainder of the tract.

Mrs. Blankenship reviewed the answers to some of the questions that were sent in since the last meeting.

Discussion followed on the request for FDD zoning when the existing zoning ordinance provided for RV Destination zoning and insufficient access point entry lanes, including acceleration and deceleration lanes.

The Chairperson opened the public hearing.

Mr. Dan Stacy, the applicant, addressed the members. He stated that since the deferral from the June meeting, remaining questions had been addressed.

The Chairperson closed the public hearing.

Discussion followed regarding public notices mailed, HI zoning nearby, air/water quality, traffic counts for peak times, lack of entry points and SCDOT encroachment permits, DHEC data for the area and size of RV sites.

Mr. Weaver made a motion to approve the applicant's request. The motion was seconded by Mr. Graham.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Weaver
Mr. Graham
Mr. Weaver

Opposed: Mrs. Hamby
Mrs. Bundy

Mr. Weaver made a motion to revise the FLU map as recommended. The motion was seconded by Mrs. Krauss.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Weaver
Mr. Graham
Mr. Weaver

Opposed: Mrs. Hamby
Mrs. Bundy

III. REZONINGS

- A. A request from Cynthia Murray as agent for Benjamin Goff to rezone 14.77 acres located at 138 Ocean HWY in Pawleys from One-Half Acre Residential (R ½ AC) to 10,000

Square Feet Residential (R-10). Tax Map 04-0418-011-00-00. Case Number REZ 6-21-28233.

** Mr. Weaver recused himself based on the fact that he works for the same company as Mrs. Cynthia Murray, the applicant. Furthermore, he asked that Mrs. Marla Jean Hamby recuse herself based on her affiliation with Keep It Green and their publicly stated position of opposing all density increases along the Waccamaw Neck. Mrs. Hamby disagreed and stated she would not recuse herself.*

Mr. Charles Suggs presented the staff report. The parcel is currently vacant. Surrounding uses are single family residential and undeveloped timberland. The adjacent Colony PD has a FLU designation of medium density and was approved in 2013 with a minimum lot size of 8,000 sf. Lots in The Colony range from 8,035 sf to 26,689 sf. No subdivision plans are being proposed at this time. A traffic impact analysis is not warranted for the rezoning. If approved, and developed as a major subdivision, site plan approval from the Planning Commission would be required.

Discussion followed regarding FLU map designations for the surrounding area, proximity to GC zoning and the number of parcels that may be developed if the rezoning is approved.

The Chairperson opened the public hearing.

Mrs. Cynthia Murray, the applicant, addressed the members. She stated that she is a native of Pawleys Island and also a resident. She said that this rezoning request is consistent with the area and would not negatively impact adjoining parcels. She stated that traffic would be minimally impacted. She added that growth is expected on the Waccamaw Neck, and this rezoning would offer housing needs to accommodate the inevitable growth which would also generate additional tax dollars for the county. She concluded by saying there cannot be exclusivity on the Waccamaw Neck.

Mrs. Cynthia Person, Chairperson of Keep It Green (KIG), spoke in opposition of the request. She stated that the parcel should be used as it is under the current R ½ AC zoning. She stated that this rezoning request violates state law because it is not for the good of the public. She added that the rezoning is not compliant with the Comprehensive Plan or the FLU map which designates this parcel as Low Density.

Ms. Heather Kinder, member of KIG, spoke in opposition of the request. She expressed concerns with increased traffic, stating that current infrastructure could not handle any more overdevelopment on the Waccamaw Neck.

Mr. Bob Hunt, resident of The Colony, spoke in opposition of the request. He expressed concerns with increased density and displacement of wildlife.

Mr. Jerome Smalls, an adjacent resident, spoke in opposition of the request. He expressed concerns with increased traffic that may create a more dangerous environment on that section of HWY 17 due to the lack of turn lanes, curb cuts and traffic lights.

Mr. Phil Benincasa, President of The Colony POA, spoke in opposition of the request. He expressed concerns over property devaluation for The Colony residents, stormwater handling, increased traffic and density and buffers between developments.

Ms. Sheila Banks, a nearby resident, spoke in opposition of the request. She expressed concerns over increased traffic on an already dangerous section of HWY 17.

Mrs. Cynthia Murray, the applicant, offered rebuttal. She stated that traffic is managed by the SCDOT, not the County. She stated that change is inevitable and growth will continue in the area. She said there is a lack of affordable housing in Pawleys which is shutting out younger people.

The Chairperson closed the public hearing.

Discussion followed regarding wetlands on the property, traffic concerns, the number of buildable lots that may be proposed and compatible adjacent zoning.

Mrs. Bundy made a motion to deny the request. Mrs. Hamby seconded the motion.

In Favor: Mrs. Hamby
Mrs. Bundy

Opposed: Mrs. Krauss
Mr. Graham
Mr. Davis

Recused: Mr. Weaver

The motion failed.

Mr. Davis made a motion to approve the applicant's request. The motion was seconded by Mr. Graham.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Graham

Opposed: Mrs. Hamby
Mrs. Bundy

Recused: Mr. Weaver

Mr. Davis made a motion to revise the FLU map as recommended. The motion was seconded by Mrs. Krauss.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Graham

Opposed: Mrs. Hamby
Mrs. Bundy

Recused: Mr. Weaver

** Mr. Weaver rejoined the meeting.*

- B. A request from Dan Stacy as agent for Thomas Sargeant to rezone 4 parcels from General Commercial (GC) to 10,000 Square Feet Residential (R-10). The properties are located on the east side of Ocean Hwy on Litchfield Landings in Litchfield. TMS 04-0134-001-05-00, 04-0134-001-07-00, 04-0134-001-09-00 and 04-0134-001-10-00. Case Number REZ 6-21-28324.**

Mrs. Judy Blankenship presented the staff report. The lots under consideration are currently vacant. GC and PD zoning surround the lots. The applicant is proposing to build single family homes and has indicated that R-10 zoning allows for more flexibility with building area configurations than the current GC zoning, even though single family homes are allowed in the GC zoning district. Staff would not consider this spot zoning since surrounding lots are of the same general size in the Waccamaw Trace PD. An amendment to the FLU map is needed to facilitate this request, since these lots are designated as Commercial and Transitional.

Discussion followed regarding density, definition of spot zoning and date of existing zoning for the area.

The Chairperson opened the public hearing.

Mr. Dan Stacy, the applicant, addressed the members. He gave a brief history of the property stating that zoned GC, the property has been unable to sell. He added that rezoning to R-10 would allow for more flexibility in building design for single family homes.

Discussion followed regarding setback requirements, number of homes to be built and net density in GC and R-10.

Mr. Keith Armstrong, member of the POA for Waccamaw Trace spoke in favor of the project. He stated that the POA had no objections and would be pleased with single family homes on the lots in question.

Mr. Jack Johnston, an adjacent business owner, spoke in opposition of the project. He stated that the R-10 zoning was incompatible with the adjacent GC zoning.

The Chairperson closed the public hearing.

Mr. Weaver made a motion to approve the applicant's request. The motion was seconded by Mr. Davis.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Weaver
Mr. Graham
Mr. Weaver
Mrs. Hamby

Opposed: Mrs. Bundy

Mr. Weaver made a motion to revise the FLU map as recommended. The motion was seconded by Mr. Davis.

In Favor: Mrs. Krauss
Mr. Davis
Mr. Weaver
Mr. Graham
Mr. Weaver
Mrs. Hamby

Opposed: Mrs. Bundy

IV. TEXT CHANGE

A. An amendment to Article III Definitions and Article XIII Tree Regulations of the Zoning Ordinance relating to tree protection, removal and replacement.

Mrs. Holly Richardson presented the staff report. She briefly outlined the minor changes since the last meeting, including 10 trees per acre or 100" DBH per acre for multifamily and commercial sites. In addition, the definition of the Tree Fund was amended to state that funds collected in each overlay zone should be used in that specific zone. She added that Legal continued to advise against implementing larger fees.

Discussion following regarding the size recommendations included in the proposed ordinance and the possibility of using the fees to aide in enforcement.

The Chairperson opened the public hearing.

Helen Davis, a resident of Murrells Inlet, addressed the members. She stated that live oaks should be protected, as they are the epitome of the southern tree, signifying charm and character of our area. She added that they shield against wind and heat and act as sponges absorbing ground water. She stated the proposed ordinance should be implemented, and higher fees for cutting live oaks should be implemented.

The Chairperson closed the public hearing.

Mr. Weaver made a motion to approve the tree ordinance revisions, with a second by Mr. Davis.

In Favor: Mrs. Krauss
Mr. Weaver
Mrs. Hamby
Mrs. Bundy
Mr. Graham
Mr. Davis

Opposed:

V. OTHER BUSINESS

A. Attendance Report

The attendance report was approved as submitted.

B. Discussion- Cultural Resources Element

Mrs. Holly Richardson gave a brief overview of the work being done on the Cultural Resources element of the Comprehensive Plan. She gave a brief overview of the changes that had been made since the last meeting. The completed document was presented.

Mrs. Bundy stated that she would like to see more public input for the Land Use Element of the Comprehensive Plan. She asked for an update to be presented at the next meeting on the status of the Comprehensive Plan.

The members agreed to move forward to advertise and vote on the Cultural Resources Element at the July meeting.

VI. MINUTES- JUNE 2021

A motion to approve the minutes was made by Mr. Davis, seconded by Mr. Weaver and approved.

In Favor: Mrs. Krauss
Mr. Weaver
Mrs. Hamby
Mrs. Bundy
Mr. Graham
Mr. Davis

Opposed:

VII. STATUS REPORT

The status report was approved as submitted.

VIII. LETTER OF CREDIT REPORT

The letter of credit report was approved as submitted.

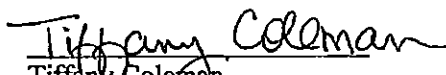
IX. ADJOURNMENT

Mr. Weaver made a motion to adjourn. Mr. Davis seconded the motion. The meeting adjourned at 7:28 pm.

In Favor: Mrs. Krauss
Mr. Weaver
Mrs. Hamby
Mrs. Bundy
Mr. Graham
Mr. Davis

Opposed:

Respectfully,


Tiffany Coleman
Secretary to Planning Commission



August 20, 2021

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29440

RE: GOFF – REZONING REQUEST, 14.77 acres, 3138 Ocean Highway Pawleys Island

Dear County Council Members:

As you may know, Keep It Green represents thousands of citizens of the Waccamaw Neck. Please accept this letter as our formal objection to the above referenced rezoning request to increase density. We believe this request should be DENIED for the following reasons:

1. NO PLAN. The applicant has submitted *no plan*. This is an empty, unsupported request to double current density – with no plan, no detail, and no reasons given.
 - This would set a dangerous precedent that puts every acre of available land on the Waccamaw Neck at risk of arbitrary zoning changes.
2. NO PUBLIC BENEFIT. Under the law, in order to ask for a zoning change, the applicant *has the burden of proving* a need that *benefits the public* not just himself. The applicant has offered absolutely nothing.
 - The following language is directly from the county’s own zoning change application:

“It is understood by the undersigned that . . . the *burden of proving a need* for the proposed amendment *rests with the applicant*.” (Emphasis added.)
3. LANDOWNER RIGHTS. The applicant has the right to use his property in accordance with the way it was zoned when he acquired it (R-1/2), but he has *no right* to a zoning change. Neighboring landowners have a right to expect that zoning will *not* be changed on surrounding property.
 - Current zoning allows a gross density of 29 homes on half acre lots. We affirm the applicant’s right to develop at that density.
 - The requested zoning change would allow a gross density of 64 homes on 10,000 sq. ft. lots. More than double. There is *no right* to that and there is *no justification* for it.
 - Neighboring landowners have a right to rely on the zoning of this land as R-1/2 acre, and would be detrimentally affected by the requested rezoning.

Exhibit 20

Georgetown County Council
August 20, 2021
Page 2

4. DANGER TO PUBLIC SAFETY. This property lies along a very dangerous stretch of US 17 where there are many accidents, including fatalities. Neighboring property owners and other members of the public who regularly travel this road strenuously object to a zoning change.
5. WETLANDS. According to the county map, about half of this parcel is forested wetlands. A zoning change on this tract before stormwater studies are completed would be irresponsible.
6. VIOLATES THE LAW. Under state law, zoning "must be made in accordance with the comprehensive plan for the jurisdiction." S.C. Code § 6-29-720.
 - An increase in density would violate our current comprehensive land use plan which specifically states that density should not be increased in the Pawleys-Litchfield area.

We wish to clarify an important matter. The applicant and his agent seem to imply that our opposition to this zoning change request is somehow intended to stop access to housing and home ownership in the Waccamaw Neck. This is not true. The applicant is a sophisticated real estate investor who purchased this property in 1985 zoned as R-1/2 acre. We absolutely affirm his right to develop that property and build as many houses as permitted under that zoning. The mission of KIG is to protect our community by monitoring compliance with the law, and we believe this request does not comply.

For these reasons, we respectfully request you to deny this application.

Thank you for your kind attention.

Very truly yours,

KEEP IT GREEN, INC.

cc: Angela Christian



Item Number: 11.c
 Meeting Date: 8/24/2021
 Item Type: SECOND READING OF ORDINANCES

AGENDA REQUEST FORM
 GEORGETOWN COUNTY COUNCIL

DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Ordinance No. 21-24 - To amend the FLU map for a parcel located at 3138 Ocean Hwy in Pawleys Island TMS # 04-0418-011-00-00, from Low Density Residential to Medium Density Residential.

A request to re-designate a 14.77 acre parcel located at 3138 Ocean Hwy.

CURRENT STATUS:

The parcel is currently designated as Low Density Residential

POINTS TO CONSIDER:

On July 15, Planning Commission voted 3-2 to recommend rezoning this parcel from One-Half Acre Residential (R 1/2) to 10,000 Square Feet Residential (R-10).

The Commission also voted 3-2 to recommend reclassifying this parcel on the Future Land Use Map to Medium Density Residential to facilitate this request.

FINANCIAL IMPACT:

Not applicable

OPTIONS:

1. Approve as recommended by PC
2. Deny request
3. Defer action
4. Remand to PC for further study

STAFF RECOMMENDATIONS:

Approve as recommended by PC

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

	Description	Type
☐	<u>Ordinance No. 21-24 FLU 3138 Ocean Highway</u>	Ordinance
☐	<u>FLU Map</u>	Ordinance
☐	<u>Goff FLU resolution</u>	Backup Material

Item Number:	11.d
Meeting Date:	8/24/2021
Item Type:	SECOND READING OF ORDINANCES

AGENDA REQUEST FORM **GEORGETOWN COUNTY COUNCIL**



ELECTRONICALLY FILED - 2022 Jan 07 10:19 AM - GEORGETOWN - COMMON PLEAS - CASE#2022 CP2200082

DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Ordinance No. 21-25 - To rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown, identified as TMS #04-0418-011-00-00, from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10).

A rezoning request was received from Cynthia Murray, agent for Benjamin Goff, to rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10).

CURRENT STATUS:

The parcel is zoned ½ Acre Residential (R-½) and is currently vacant.

POINTS TO CONSIDER:

1. The property is 14.77 acres with 124.75 feet of frontage on U.S Highway 17. The northern most boundary of the property is the centerline of Denny Drive (County Rd). There are currently 9 lots accessed via Denny Drive.
2. The adjacent tracts to the north are zoned ½ Acre Residential (R-½). Tracts to the immediate south are zoned General Commercial (GC) and Planned Development (PD). Surrounding uses are single family residential and undeveloped timberland.
3. R-10 zoning allows for single family dwellings, excluding manufactured homes on 10,000 sf lots. Setbacks for R-10 are 25' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 70'.
4. General Commercial (GC) zoning also allows for single family residential dwellings on 10,000 sf lots. Setbacks for GC are 50' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 60'.
5. The current (R-½) zoning allows for single family dwellings on 20,000 sf lots. Setbacks for the R-½ district are 40' for the front, 15' for the side and 25' for the rear, with a maximum height of 35' and a minimum lot width of 90'.
6. The Georgetown County Future Land Use (FLU) map designates the referenced parcel as low density residential. Low density is defined as 2.0 units per acre or less. The adjacent PD, known as "The Colony" has a (FLU) designation of medium density residential. Medium density is defined as 2.1 to 5 units per acre.
7. In 2013, County Council approved an amendment to the adjacent "Colony" tract. The amendment revised the original plans from 32 single family lots to 49 single family lots with a minimum lot size of 8,000 sf and a minimum lot width of 55 feet. Lots range from 8,036 sf to 26,689 sf. Setbacks for "The Colony" PD are 20' for the front, 7.5' for the side and 15' for the rear, with a maximum height of 35'. The Colony has an external, 10', level two buffer along the common property line associated with the proposal.
8. The 2013 Colony PD amendment also included a FLU amendment from low density to medium density residential as a result of the project's net density of 2.75 units per acre.
9. No subdivision plat or development plans are being proposed at this time. A traffic impact analysis is not warranted for the rezoning. If approved and developed with traffic generations greater than 500 ATDs, a traffic impact analysis shall be required.
10. If approved and developed as a major subdivision, site plan approval from the Planning Commission would be required.
11. A medium density FLU designation directly abuts the site to the south. The comprehensive plan suggests that medium density should be developed at a density of 2.1 to 5 units per acre, with a minimum lot size of no less than 6,000 sf if serviced by public water and sanitary sewer. Should the Planning Commission consider the approval of the rezoning request, staff would recommend a future land use map amendment to medium density residential.
12. The Planning Commission held a public hearing at their July 15th meeting. The applicant's agent came forward to speak. Several members of the public came forward to speak against it citing the low density designation on the Future Land Use map, traffic on Highway 17, the effect on property values on The Colony and stormwater runoff. After significant discussion, the PC recommended approval of the rezoning request with a vote of 3-2. PC member Johnny Weaver recused himself from the vote.

FINANCIAL IMPACT:

Not Applicable

OPTIONS:

1. Approve as recommended by PC.
2. Deny Request.
3. Defer Action.
4. Remand to PC for further study.

STAFF RECOMMENDATIONS:

Approve as recommended by PC.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description	Type
☐ <u>Ordinance No. 21-25 Rezoning 3138 Ocean Highway</u>	Ordinance
☐ <u>Application and Attachments</u>	Backup Material
☐ <u>Application and Attachments</u>	Backup Material
☐ <u>Location Map</u>	Backup Material
☐ <u>Zoning Map</u>	Backup Material
☐ <u>FLU Map</u>	Backup Material
☐ <u>Aerial Map</u>	Backup Material
☐ <u>Resolution</u>	Resolution Letter
☐ <u>Letter from applicant</u>	Backup Material
☐ <u>Correspondence</u>	Backup Material
☐ <u>Correspondence 1</u>	Backup Material
☐ <u>Correspondence 2</u>	Backup Material
☐ <u>Correspondence 3</u>	Backup Material
☐ <u>Correspondence 4</u>	Backup Material
☐ <u>Correspondence 5</u>	Backup Material
☐ <u>Letter from Applicant - Benjamin Goff</u>	Backup Material
☐ <u>Correspondence 6</u>	Backup Material
☐ <u>Correspondence 7</u>	Backup Material
☐ <u>KIG Correspondence - Goff Rezoning</u>	Backup Material
☐ <u>Applicant Benjamin Goff - Correspondence 8.23.21</u>	Backup Material
☐ <u>Correspondence 8</u>	Backup Material



October 26, 2021

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29440

RE: REQUEST BY CYNTHIA MURRAY, AGENT FOR BENJAMIN GOFF TO
CHANGE ZONING FROM R-1/2 ACRE TO R-10
TMS#04-0418-011-00-00

Dear County Council Members:

Please be advised that I am writing as attorney for the public interest group, Keep It Green, Inc., (KIG) a nonprofit corporation that represents thousands of citizens of the Waccamaw Neck, as well as the following individual landowners who own property that directly adjoins the subject property, and The Colony property owners' association:

Robert E. Hunt & Jeane M. Sullivan
351 Southgate Court
Pawleys Island, SC 29585

Ernest F. & Joyce J. Middleton
359 Southgate Court
Pawleys Island, SC 29585

Michael J. & Diana Farrar
367 Southgate Court
Pawleys Island SC 29585

The Colony Property Owners' Association
7147 Ocean Highway
Pawleys Island, SC 29585

This letter shall serve as formal notice of our opposition to the above rezoning request to double residential density. This evening at the public hearing, we will submit a Petition signed by more than one thousand (1,000) residents of the Waccamaw Neck, the majority of whom are from District 6 and District 2, the areas primarily involved, requesting you to deny the zoning change request for the reasons stated herein.

Notwithstanding an unprecedented number of emails, letters of opposition, citizens speaking out against, and the District 2 council representative asking you not to approve this zoning change

Exhibit 22

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that increases density in his district – all citing sound reasons for you to deny the request – this arbitrary zoning change was nevertheless approved by you at second reading.

Your job as members of council is to serve and protect the public and to follow the law in doing so. We would ask you to please consider the citizens of the Waccamaw Neck, follow the law, and deny this request at third reading.

PURPOSE OF THE COMPREHENSIVE PLAN

There has been much debate between and among county officials and members of the public about the purpose of our comprehensive land use plan and whether it must be followed in zoning decisions. I have heard many opinions expressed. After careful legal research of South Carolina statutory and appellate court case law dealing with this issue, as well as a review of South Carolina planning guides issued to counties and municipalities, I would submit that, indeed, the comprehensive plan is most certainly intended to be followed.

The South Carolina Comprehensive Planning Enabling Act requires counties to have a comprehensive land use plan to “guide the development and redevelopment of its jurisdiction.” (SC Code 6-29-510).

According to the Act, the specific purpose of zoning ordinances is to implement the comprehensive plan, (S.C. Code, Section 6-29-720). Furthermore, those zoning ordinances that implement the comprehensive plan must be for the public good. (S.C. Code Section 6-29-710).

The Act specifically requires that:

“[Zoning] regulations must be made in accordance with the comprehensive plan for the jurisdiction.” (S.C. Code § 6-29-720.)

Georgetown County officials seem to have latched onto the word “guide” and look no further. They ignore the clear statutory requirement that zoning and zoning changes must be made in accordance with the comprehensive plan. This is mandatory language from the state law. It doesn’t say “may” or “should,” it says “must.” That leaves you no choice but to make zoning changes only in accordance with the comprehensive plan as directed by state law.

Interestingly and ironically, the Planning Commission’s own by-laws specifically state in Article V, Section 2, that:

“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.” (emphasis added.)

Georgetown County Council
October 26, 2021
Page 3

This does not routinely happen in my experience and it certainly did not happen in this case. I attended the Planning Commission hearing in this matter. At no time did the Planning Commission follow its own by-laws and review this zoning amendment for conformity with the comprehensive plan. I have reviewed the information forwarded to you by Planning Commission along with their recommendation and I did not see a specific note about conflicts with the comprehensive plan notwithstanding this requirement. I have attached a transcript of the Planning Commission hearing on this issue for your review and information.

The Planning Commission is a body that is appointed by and responsible to County Council. It is your responsibility to hold them accountable to do their jobs properly which means, among other things, following the law and their own rules. Members of the public should not have to be on full-time high alert watching for instances of failure to follow proper law and procedure, which happen regularly. We should not have to beg you to look out for our best interest.

So, to answer the initial question, "Does the comprehensive plan have to be followed?" Of course, it does. It flies in the face of logic, common sense, and South Carolina state and local law to suggest otherwise. The comprehensive plan is indeed a "guide," but it is a guide that is meant to be followed. The legislature did not intend for it to be an exercise in futility. It is an expression of public good and although the comprehensive plan itself may be amended or updated when justified by circumstances that are in the best interest of the public and when the proper process is followed, amendments to the comprehensive plan cannot be haphazard or on a whim. They must serve the public good.

The bottom line is that state law requires that zoning ordinances and zoning ordinance amendments must be in accordance with the comprehensive plan. We are at a loss to understand why our county officials vehemently resist this.

FACTS OF THIS CASE

The following are the relevant facts in this matter.

- This is a request to rezone 14.77 acres in South Pawleys Island to more than double density from R-1/2 acre to R-10, along a dangerous stretch of US 17 near Hog Heaven.
- No plan has been submitted in support of this request nor has any reason been given to justify an amendment.
- The current zoning (R-1/2 acre) would allow a maximum of 29 single family homes on half-acre lots.
- The requested zoning (R-10) would allow for a maximum of 64 single family homes on 10,000 square foot lots resulting in more than double the density.

- This is a request to amend the Future Land Use Map (FLUM) from low density to medium density.
- There is NO other R-10 zoning that adjoins or is in the vicinity of this property.
- The vast majority of adjoining property is low density (R-1/2 acre) or no density (Conservation Easement.)
- Notwithstanding that the Planning Department makes comparisons with the The Colony Planned Development, the fact is that only 7% of the perimeter of the Goff property abuts The Colony.
- Only three of the 49 lots in The Colony abut the Goff property and those three lots are premium-sized lots. Two are well over ½ acre and the third is nearly ½ acre.
- The residents of The Colony who purchased these lots that abut the Goff parcel paid a premium price for the large size of their lots. The fact that those lots adjoined land zoned R-1/2 acre was part of the consideration upon which those adjoining landowners relied in purchasing those lots.
- The Colony is zoned as a Planned Development District that was approved in 2007 before the current Comprehensive Land Use Plan was enacted. It is not and never has been zoned R-10. The FLUM designates it as medium density, but the reality is that it is primarily low density and the small portion that abuts the Goff property is definitely low density.
- The area of US 17 along which this land lies is an extremely dangerous curve where many accidents happen and it is difficult to pull in or out.
- The Waccamaw Neck is currently facing a critical shortage of emergency responder personnel. An increase in density would further exacerbate this already desperate situation.
- A large portion of this property contains Forested Wetlands according to the county map.
- The Waccamaw Neck is already experiencing unprecedented stormwater flooding and the county has invested more than \$700,000 in a stormwater study that is not yet complete. It would not be prudent to allow zoning changes that increase density anywhere in the neck until that study has been completed.

REASONS FOR OPPOSITION

1. The requested zoning change is not in accordance with the Georgetown County Comprehensive Land Use Plan.

As set forth above, the county must follow its comprehensive plan in making this zoning change decision. Page 23 of the Georgetown County Comprehensive Land Use Plan states as follows:

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. (emphasis added).

The requested zoning ordinance amendment would add to and have a further negative effect on already overburdened infrastructure cited in the current plan that was adopted by this council in 2015. State law requires zoning ordinances and zoning ordinance amendments to be in accordance with the comprehensive plan and to be for the public good. This is neither and should be denied without further consideration.

2. No Public Benefit.

According to Georgetown County Ordinance 1701, amendments to zoning ordinances are proper only when the

“public necessity, convenience, general welfare or good zoning practice justifies such action.”

The burden of proving this justification is on the applicant. The Comprehensive Planning Enabling Act also requires zoning ordinances to be for the public good. (S.C. Code Section 6-29-710).

The applicant in this case has offered nothing in the way of a justification for this zoning change – not even a plan. It is an empty and unsupported request to change zoning for no reason. Not only is there no justification but a zoning change would adversely affect public safety by increasing density and creating more traffic, flooding and burden on existing infrastructure. Accordingly, the request should be denied for this further reason.

3. Spot zoning.

Spot zoning is the "process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of the owners of that property and to the detriment of other owners." *Bob Jones Univ. v. City of Greenville*, 243 S.C. 351, 361, 133 S.E.2d 843, 848 (1963).

The applicant is requesting a zoning change from R-1/2 acre to R-10 zoning. There is NO other R-10 zoning in the area. This change would benefit only the applicant and not the general public. It would be detrimental to neighboring landowners and the general public. Such a zoning change would amount to improper spot zoning and should be denied.

4. Important Facts Omitted from Council Packet.

The information packet forwarded to County Council from the Planning Department, upon which you are expected to make a decision, omitted and/or failed to highlight some very important and relevant information as follows:

- The Colony comprises only 7% of the perimeter of the Goff property, yet the Planning Department made it the primary comparison.
- The vast majority of adjoining land is low density or no density.
- There is NO adjoining property with R-10 zoning and there is none in the immediate vicinity.
- Most of the adjoining property (63%) is zoned R-1/2 acre just as the Goff property is currently zoned.
- There is a 10-acre parcel and a 640-acre parcel to the north and east of the Goff property. Both are zoned R-1/2 acre and shown as low density on the FLUM. If this zoning change were granted, it would set a precedent for other neighboring landowners with R-1/2 acre zoning to double density and get a zoning change to R-10. Where would it end?
- Conservation Easements comprise 11% of adjoining property. This land has ZERO density.
- Sixteen percent of adjoining property is zoned General Commercial. This is Heirs' Property owned by the Smalls family. Several members of the Smalls family came to Planning Commission and voiced their objection to this rezoning.

Please see enclosed map and calculations. These are important facts that should have been taken into consideration by Planning Commission before they forwarded a recommendation to you. This provides additional bases for you to deny this request.

5. Traffic & Safety

This parcel of land is located on a very dangerous stretch of highway that is prone to serious traffic accidents and fatalities many of which require emergency extrication and urgent medical attention. The county is currently suffering a severe shortage of emergency responders and related personnel in the Waccamaw Neck. Under the circumstances, adding an unnecessary increase in residential density to this already dangerous area and critical infrastructure situation would be unsafe and irresponsible.

6. Stormwater & Flooding

County maps show that this parcel contains a significant amount of forested wetlands. The Waccamaw Neck is already experiencing unprecedented stormwater flooding due to over development. The county has invested more than \$700,000 in a stormwater study that is not yet complete. It would not be prudent to allow zoning changes that increase density anywhere in the neck until that study has been completed.

7. Constituents Oppose

There are no sound reasons to approve this arbitrary zoning change request. There are many sound reasons to deny it. Your job is to serve and protect the public and to follow the law in doing so. An unprecedented number of citizens have come forward asking you to please heed the concerns of the citizens, follow the law, and deny this request at third reading.

Conclusion

For the foregoing reasons we respectfully request council to deny this zoning change request

Thank you for your kind attention and consideration.

Very truly yours,

KEEP IT GREEN

Cynthia Ranck Person, Esquire

Enclosures

cc: Angela Christian
County Attorney

**PETITION TO PROTECT & PRESERVE
PAWLEYS ISLAND - LITCHFIELD**

For the safety of our citizens and to preserve the natural character of our community from overburdened infrastructure, traffic, flooding, stormwater and inappropriate development, the undersigned Petitioners **OPPOSE ZONING CHANGES THAT INCREASE RESIDENTIAL DENSITY** in the Pawleys Island-Litchfield area.

We hereby petition GEORGETOWN COUNTY OFFICIALS as follows:

1. DENY zoning changes that increase residential density in the Pawleys Island-Litchfield area.
2. DENY currently pending request to change zoning to double residential density from R-1/2 acre to R-10,000 sq. ft. on 14.77 acres at 3138 Ocean Highway in Pawleys Island.
3. FOLLOW the language in our current Comprehensive Land Use Plan about the need to limit residential density in the Pawleys Island-Litchfield area. (Petition worker has a copy of this current language if you wish to read it.)
4. INCLUDE strict language in the upcoming revision of our Comprehensive Land Use Plan that limits zoning changes to increase residential density in the Pawleys Island-Litchfield area.

Respectfully submitted,

Exhibit 23



Item Number:	10.a
Meeting Date:	10/26/2021
Item Type:	THIRD READING OF ORDINANCES

AGENDA REQUEST FORM
GEORGETOWN COUNTY COUNCIL

DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Ordinance No. 21-24 - To amend the FLU map for a parcel located at 3138 Ocean Hwy in Pawleys Island TMS # 04-0418-011-00-00 from Low Density Residential to Medium Density Residential.

A request to re-designate a 14.77 acre parcel located at 3138 Ocean Hwy.

CURRENT STATUS:

The parcel is currently designated as Low Density Residential

POINTS TO CONSIDER:

On July 15, Planning Commission voted 3-2 to recommend rezoning this parcel from One-Half Acre Residential (R 1/2) to 10,000 Square Feet Residential (R-10).

The Commission also voted 3-2 to recommend reclassifying this parcel on the Future Land Use Map to Medium Density Residential to facilitate this request.

FINANCIAL IMPACT:

Not applicable

OPTIONS:

1. Approve as recommended by PC
2. Deny request
3. Defer action
4. Remand to PC for further study

STAFF RECOMMENDATIONS:

Approve as recommended by PC.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description	Type
☐ <u>Ordinance No. 21-24 FLU 3138 Ocean Highway</u>	Ordinance
☐ <u>FLU Map</u>	Ordinance
☐ <u>Goff FLU resolution</u>	Backup Material

Item Number:	10.b
Meeting Date:	10/26/2021
Item Type:	THIRD READING OF ORDINANCES

AGENDA REQUEST FORM
GEORGETOWN COUNTY COUNCIL



ELECTRONICALLY FILED - 2022 Jan 07 10:19 AM - GEORGETOWN - COMMON PLEAS - CASE#2022-06-P2200032

DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

Ordinance No. 21-25 - To rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown, identified as TMS #04-0418-011-0000, from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10).

A rezoning request was received from Cynthia Murray, agent for Benjamin Goff, to rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10).

CURRENT STATUS:

The parcel is zoned ½ Acre Residential (R-½) and is currently vacant.

POINTS TO CONSIDER:

1. The property is 14.77 acres with 124.75 feet of frontage on U.S Highway 17. The northern most boundary of the property is the centerline of Denny Drive (County Rd). There are currently 9 lots accessed via Denny Drive.
2. The adjacent tracts to the north are zoned ½ Acre Residential (R-½). Tracts to the immediate south are zoned General Commercial (GC) and Planned Development (PD). Surrounding uses are single family residential and undeveloped timberland.
3. R-10 zoning allows for single family dwellings, excluding manufactured homes on 10,000 sf lots. Setbacks for R-10 are 25' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 70'.
4. General Commercial (GC) zoning also allows for single family residential dwellings on 10,000 sf lots. Setbacks for GC are 50' for the front, 10' for the side and 15' for the rear, with a maximum height of 35' and a minimum lot width of 60'.
5. The current (R-½) zoning allows for single family dwellings on 20,000 sf lots. Setbacks for the R-½ district are 40' for the front, 15' for the side and 25' for the rear, with a maximum height of 35' and a minimum lot width of 90'.
6. The Georgetown County Future Land Use (FLU) map designates the referenced parcel as low density residential. Low density is defined as 2.0 units per acre or less. The adjacent PD, known as "The Colony" has a (FLU) designation of medium density residential. Medium density is defined as 2.1 to 5 units per acre.
7. In 2013, County Council approved an amendment to the adjacent "Colony" tract. The amendment revised the original plans from 3 single family lots to 49 single family lots with a minimum lot size of 8,000 sf and a minimum lot width of 55 feet. Lots range from 8,033 sf to 26,689 sf. Setbacks for "The Colony" PD are 20' for the front, 7.5' for the side and 15' for the rear, with a maximum height of 35'. The Colony has an external, 10', level two buffer along the common property line associated with the proposal.
8. The 2013 Colony PD amendment also included a FLU amendment from low density to medium density residential as a result of the project's net density of 2.75 units per acre.
9. No subdivision plat or development plans are being proposed at this time. A traffic impact analysis is not warranted for the rezoning. If approved and developed with traffic generations greater than 500 ATDs, a traffic impact analysis shall be required.
10. If approved and developed as a major subdivision, site plan approval from the Planning Commission would be required.
11. A medium density FLU designation directly abuts the site to the south. The comprehensive plan suggests that medium density should be developed at a density of 2.1 to 5 units per acre, with a minimum lot size of no less than 6,000 sf if serviced by public water and sanitary sewer. Should the Planning Commission consider the approval of the rezoning request, staff would recommend a future land use map amendment to medium density residential.
12. The Planning Commission held a public hearing at their July 15th meeting. The applicant's agent came forward to speak. Several members of the public came forward to speak against it citing the low density designation on the Future Land Use map, traffic on Highway 17, the effect on property values on The Colony and stormwater runoff. After significant discussion, the PC recommended approval of the rezoning request with a vote of 3-2. PC member Johnny Weaver recused himself from the vote.

FINANCIAL IMPACT:

Not Applicable

OPTIONS:

1. Approve as recommended by PC.
2. Deny Request.
3. Defer Action.
4. Remand to PC for further study.

STAFF RECOMMENDATIONS:

Approve as recommended by PC.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description	Type
☐ <u>Ordinance No. 21-25 Rezoning 3138 Ocean Highway</u>	Ordinance
☐ <u>Application and Attachments</u>	Backup Material
☐ <u>Application and Attachments</u>	Backup Material
☐ <u>Location Map</u>	Backup Material
☐ <u>Zoning Map</u>	Backup Material
☐ <u>FLU Map</u>	Backup Material
☐ <u>Aerial Map</u>	Backup Material
☐ <u>Resolution</u>	Resolution Letter
☐ <u>Letter from applicant</u>	Backup Material
☐ <u>Correspondence</u>	Backup Material
☐ <u>Correspondence 1</u>	Backup Material
☐ <u>Correspondence 2</u>	Backup Material
☐ <u>Correspondence 3</u>	Backup Material
☐ <u>Correspondence 4</u>	Backup Material
☐ <u>Correspondence 5</u>	Backup Material
☐ <u>Letter from Applicant - Benjamin Goff</u>	Backup Material
☐ <u>Correspondence 6</u>	Backup Material
☐ <u>Correspondence 7</u>	Backup Material
☐ <u>KIG Correspondence - Goff Rezoning</u>	Backup Material
☐ <u>Applicant Benjamin Goff - Correspondence 8.23.21</u>	Backup Material
☐ <u>Correspondence 8</u>	Backup Material
☐ <u>Planning Director Memo 082421</u>	Backup Material
☐ <u>Correspondence 9</u>	Backup Material
☐ <u>Correspondence 10 9.14.21</u>	Backup Material
☐ <u>Correspondence 11 9.14.21</u>	Backup Material
☐ <u>Correspondence 12 9.14.21</u>	Backup Material
☐ <u>Correspondence 13 9.14.21</u>	Backup Material
☐ <u>Correspondence 14 9.14.21</u>	Backup Material
☐ <u>Correspondence 15 9.30.21</u>	Backup Material
☐ <u>Correspondence 16 10.12.21</u>	Backup Material
☐ <u>Correspondence 17</u>	Backup Material
☐ <u>Correspondence 18 10.21.21</u>	Backup Material
☐ <u>Correspondence 19 10.22.21</u>	Backup Material
☐ <u>Correspondence 20 10.25.21</u>	Backup Material
☐ <u>Applicant Letter Benjamin Goff Correspondence 21 10.25.21</u>	Backup Material
☐ <u>Correspondence 22 10.25.21</u>	Backup Material
☐ <u>Correspondence 23 10.26.21</u>	Backup Material

ARTICLE VII. - GEORGETOWN COUNTY COUNCIL RULES OF PROCEDURE

DIVISION 4. - ORDINANCES AND RESOLUTIONS

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.

(Ord. No. 99-30, Art. IX, § 9-6, 5-25-99)

Georgetown County Council held a Regular Council Meeting on Tuesday, October 26, 2021, at 5:30 PM in the Howard Auditorium, 1610 Hawkins Street, Georgetown, South Carolina.

Present: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

Staff: Angela Christian Ollie Lewis
 Jackie Broach-Akers John D. Watson

Other staff members, members of the public, and representatives of the media were also present. In accordance with the Freedom of Information Act, a copy of the agenda was sent to newspapers, television, and radio stations, citizens of the County, Department Heads, and posted on the bulletin board in the historic Courthouse.

Chairman Louis R. Morant called the meeting to order, and determined that there was a quorum present. Councilmember Everett Carolina gave an invocation, and all joined in the pledge of allegiance.

APPROVAL OF AGENDA:

Councilmember Raymond Newton moved for approval of the meeting agenda, to include a recommendation to move Item 15a, nonprofit spotlight, forward on the meeting agenda, as well as recognition of the "employee of the quarter". Councilmember Bob Anderson offered a second. Chairman Morant called for discussion on the motion, and there was none.

In favor: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

As the non-profit presentation for this meeting was being made on behalf of the Family Justice Center, rather than the SC Environmental Law Project (as noted on the published agenda), Chairman Morant called for a motion to approve this change to the agenda. Councilmember Raymond Newton so moved, and Councilmember Bob Anderson offered a second on the motion. There was no discussion.

In favor: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

PUBLIC COMMENTS:

Cynthia Murray

Ms. Murray spoke in favor of proposed ordinances to rezone property owned by Mr. Benjamin Goff and increase the allowable density located at 3138 Highway 17 in Pawleys Island (Ordinance No. 21-24 & 21-25). Mr. Murray asked County Council for favorable consideration of this application.

Exhibit 26

Cindy Person

Ms. Person advised County Council that she would be speaking on behalf of adjoining land owners, and the *Keep It Green* Organization, and would defer her comments until the public hearing (later during the meeting).

Morris Johnson

Mr. Johnson addressed County Council regarding the process pertaining to re-districting of County Council Districts. He said that seven (7) single-member districts were determined 20 years ago, the same districts were approved 10 years ago, and he asked that County Council work to maintain the integrity of the districts as previously established, with adjustments to accommodate the number of voters residing in each of the districts.

Marvin Neal

Mr. Neal, speaking on behalf of the NAACP as President of the Local Chapter, and the SC Chapter of the NAACP, asked County Council to ensure that the redistricting process is transparent, and that the underserved communities are adequately represented so that the voices of all constituents can be heard.

Randy Ford

Mr. Ford, speaking on behalf of the Choppee Alumni Association, asked County Council for favorable consideration of the request to honor four (4) former educators by naming facilities on the Choppee Campus in their honor.

Chief Elder John Henry

Chief Elder John Henry, speaking as a representative of the new Gullah Geechee Village in Georgetown, said that less than 1% of new construction builders in Horry County are minorities. He said he hoped the project in Pawleys Island would be approved to make opportunities better for all.

Joan Doerr

Ms. Doerr, a member of the NAACP 5520 Executive Committee, and League of Women Voters (both non-partisan groups) spoke regarding the County's redistricting process. She asked that County Council ensure that the process is transparent, fair, and the resulting outcome will be adoption of a redistricting plan that represents all populations.

Mary Ann Mackey

Ms. Mackey, Chairman of the County Democratic Party, and member of the NAACP Executive Committee, stated that the redistricting maps adopted by County Council are one of the most critical decisions that County Council will make, because this impacts the allocation of political power. She asked County Council to adopt the proposed plan that will allow for adequate representation of all, especially communities of color.

Bill Bernimska

Mr. Bernimska asked that members of County Council "pay attention" to the people who speak before them, to follow the law, and make informed decisions. Otherwise, the residents of Pawleys Island, Litchfield, and Murrells Inlet are going to ask to be incorporated so that they can make their own decisions.

Marilyn Hemingway

Ms. Hemingway, Second Vice President of the NAACP Local Chapter, spoke regarding the County's redistricting process, and asked that County Council be intentional and thoughtful in their decisions on this matter, and in drawing district lines in a fair and equitable manner, as every individual deserves to be seen and heard.

Rick Hoffman

Mr. Hoffman spoke in opposition of Ordinance No. 21-24 to allow for a land use variance to change the density of property located at 3138 Ocean Highway in Pawleys Island. He said it was impossible for County Council to make an informed decision on the reclassification and/or rezoning of the property without a written site plan by the developers.

MINUTES:

Council Work Shop – August 24, 2021

Councilmember Everett Carolina moved for approval of the minutes of County Council's workshop held on August 24, 2021. Councilmember Raymond Newton seconded the motion. Chairman Louis Morant called for discussion on the motion, and none occurred.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

Regular Council Meeting – September 28, 2021

Councilmember Bob Anderson moved for approval of the minutes of County Council's meeting held on September 28, 2021. Councilmember Lillie Jean Johnson seconded the motion. Chairman Louis Morant called for discussion on the motion, and none occurred.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

CONSENT AGENDA:

A matter included on the Consent Agenda was approved by virtue of the agenda approval process:

Contract #20-019, Task Order #2 to American Forest Management for Economic Development Reforestation – County Council approved Task Order 2 (Contract #20-019) with American Forest Management in the amount of \$101,674.48.

PUBLIC HEARINGS:

Ordinance No. 21-24

Prior to moving forward with this matter, Chairman Morant disclosed a potential conflict of interest in his participating in discussion and other matters related to Ordinance No. 21-24. He stated that he had filed a written statement indicating such with the Clerk to Council, and asked the Vice Chair to preside over this portion of the meeting. Chairman Morant departed from the Council dais, and Vice Chair Lillie Jean Johnson presided over this portion of the meeting.

Vice Chair Lillie Jean Johnson called the public hearing to order and opened the floor for comments pertaining to Ordinance No. 21-24, an ordinance to amend the Future Land Use (FLU) Map for a parcel located at 3138 Ocean Hwy in Pawleys Island, TMS # 04-0418-011-00-00, from Low Density Residential to Medium Density Residential.

Mary Beth Klein – Ms. Klein spoke in opposition of Ordinance No. 21-24 representing the citizens group Keep It Green. Residents are opposed to an increase of the currently allowable density. They are frustrated at County Council's approval of plans that go against established land use plans, and tax the County's woefully overburdened infrastructure and intensify flooding problems. She asked County Council to deny the request.

Duane Draper – Mr. Draper, a member of the Keep It Green Board, and a SC Master Naturalist spoke in opposition of Ordinance No. 21-24 which will more than double the allowable density for the proposed property. Approval of this request, with no plan, sets a dangerous precedent, and stands to increase traffic, flooding, and destroy wetlands and forest lands. It seems that County Council would see the benefit in waiting for the Master Stormwater Plan it has commissioned before making this decision. He asked Council to vote "no".

Amy Jones – Ms. Jones, a resident of N. Litchfield, spoke in opposition of Ordinance No. 21-24. She stated that she is continually perplexed that County Council has moved forward with approval of this project, despite that it "flies in the face of the Comprehensive Land Use Plan", and defies logic. She asked that County Council take the opportunity to correct this "wrong" by voting not to approve the request.

Beverly Sullivan – Ms. Sullivan spoke in opposition of Ordinance No. 21-24. Approval of this request to increase density will cause more frequent and more serious traffic problems. There have been four (4) vehicle accidents in the immediate area just since the last Council meeting. The County's Mission Statement commits County Council to protect the health, safety, and welfare of its citizens. Responsible planning for future increases in density also requires an increase in services. She asked members of County Council if they are committed to the Mission Statement, and if so, to do the "right" thing by denying this request.

Andy Hallock – Mr. Hallock spoke in opposition of Ordinance No. 21-24, stating that legal counsel has advised that approval of Mr. Goff's request would represent "spot zoning". There is no other property in the immediate area zoned R-10. Additionally, the developer has not submitted a plan of proposed land use, and therefore County Council should take action to vote it down.

Cindy Person – Ms. Person stated that she was speaking as the attorney for individual adjoining property owners, as well as the Keep It Green Organization (with a membership of 2,705 active members) in opposition to Ordinance No. 21-24. Ms. Person stated that she had sent a letter to County Council detailing all of the legal reasons why this application should not be approved. As an attorney who previously practiced in another state, she has since retired here. However, she has taken the South Carolina Bar Exam and is now licensed in SC, as there are individuals ready to go to court to challenge zoning such as this. She asked that County Council "do the right thing" and deny this request.

Following comments from the final speaker, Vice Chair Lillie Jean Johnson called the public hearing on this matter closed. At the conclusion of the public hearing on Ordinance No. 21-24, Chairman Louis Morant returned to the Council dais.

Ordinance No. 21-35

County Council held a public hearing on Ordinance No. 21-35, an Amendment of the FY 2021/2022 Budget Ordinance. There were no public comments pertaining to Ordinance No. 21-35, and Chairman Louis Morant closed the public hearing.

RESOLUTIONS:

Resolution No. 21-32

Councilmember John Thomas moved for the adoption of Resolution No. 21-32, a Resolution to endorse the GSATS US 17 Corridor Study. Councilmember Raymond Newton offered a second. Chairman Morant called for discussion on the motion.

Councilmember Steve Goggans stated that he would like to incorporate additional language into the proposed resolution to support the "complete streets" program. Councilmember Bob Anderson asked if this would create additional financial impacts. Holly Richardson, Planning Director, responded that the SC Department of Transportation has already adopted a State policy in this regard, which would require compliance by all GSATS projects. The inclusion of such language in the proposed resolution would simply endorse the State's policy in this regard.

Councilmember Steve Goggans moved to amend Resolution No. 21-32, to incorporate text to endorse "complete streets" policy pertaining to pedestrian bikeways, sidewalks, and pathways. Councilmember Bob Anderson offered a second on the amendment. There was no further discussion.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

The vote on the main motion was as follows:

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

Resolution No. 21-33

Councilmember Steve Goggans moved for the adoption of Resolution No. 21-33, a resolution to adopt redistricting principles pertaining to Georgetown County Council Districts. Councilmember Everett Carolina offered a second. No discussion followed the motion.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

ORDINANCES-Third Reading

Ordinance No. 21-24

As previously stated, Chairman Louis Morant disclosed a potential conflict of interest in his participating in discussion and/voting on Ordinance No. 21-24 and 21-25. He filed a written statement indicating such with the Clerk to Council in compliance with SC State Ethics guidelines. Chairman Morant asked Vice Chair Lillie Jean Johnson to preside over this portion of the meeting. The Chairman turned the gavel over to the Vice Chair, and departed from the County Council dais.

Vice Chair Lillie Jean Johnson called upon Holly Richardson, Planning & Code Enforcement Director, to provide a report pertaining to this matter. Following Ms. Richardson's report, discussion ensued among members of County Council and Ms. Richardson responded to questions. Councilmember Steve Goggans directed a question to County Attorney, John D. Watson. Mr. Watson stated that he would be prepared to provide a legal opinion regarding this matter in Executive Session if County Council so desired. County Council did not move into Executive Session at this time.

Vice Chairman Johnson called for a motion pertaining to Ordinance No. 21-24, and Councilmember Raymond Newton moved for third reading approval of Ordinance No. 21-24, an Ordinance to amend the Future Land Use Map for a parcel located at 3138 Ocean Hwy in Pawleys Island identified as TMS #04-0418-011-00-00, from Low Density Residential to Medium Density Residential. Councilmember Steve Goggans offered a second on the motion. The Vice Chairman called for discussion on the motion.

Councilmember Bob Anderson said this matter appears to be a little more "involved" than a typical zoning change. He said that in a letter to County Council, the property owner noted that his request for this change was based on County Council's decision in 2007 to approve a zoning classification change for neighboring property. The increase in density was related to increase in profits. Councilmember Anderson said County Council had to stop approving changes of this nature that are requested based on profit margins.

Upon a call for the vote from Vice Chairman Lillie Jean Johnson, the vote was as follows:

In favor:	Steve Goggans	Raymond Newton
	Lillie Jean Johnson	
Opposed:	Bob Anderson	John Thomas
Abstained:	Everett Carolina	
Recused:	Louis R. Morant	

Following the vote, the Vice Chair asked for clarification on the vote outcome, and confirmation regarding whether the motion was carried. County Attorney, John D. Watson, stated that the record should outline the vote count as it occurred, which would stand for itself.

Ordinance No. 21-25

Councilmember Raymond Newton moved for third reading approval of Ordinance No. 21-25, an Ordinance to rezone a 14.77 acre tract located at 3138 Ocean Hwy in Georgetown, identified as TMS #04-0418-011-00-00, from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10). Councilmember Steve Goggans offered a second. No discussion followed the motion.

In favor: Steve Goggans Raymond Newton
Lillie Jean Johnson

Opposed: Bob Anderson John Thomas

Abstained: Everett Carolina

Recused: Louis R. Morant

Following the vote on Ordinance No. 21-25, Chairman Louis Morant returned to the Council dais.

At this time, Council Chairman Louis Morant stated that he may have a legal issue and asked for a 5 minute recess in order to speak with the County Attorney and County Administrator. The Council meeting was briefly recessed.

As the meeting resumed, Chairman Morant recused himself again, and departed from the dais in order for legal counsel to provide clarification on a matter. County Attorney Watson clarified his response to a previous question regarding the vote outcome. In referencing the SC Association of Counties *Model Rules of Parliamentary Procedure*, he confirmed that the previous votes had passed. He noted that Councilmember Carolina was not present during the vote on Ordinance No. 21-25, and asked Mr. Carolina if it was his intent to be recused from the most recent vote, or if he abstained from voting. Councilmember Carolina stated that he abstained from voting on Ordinance No. 21-25. Mr. Watson confirmed that the vote on both ordinances was 3-2, and therefore received third reading approval.

Ordinance No. 21-35

Councilmember Everett Carolina moved for third reading approval of Ordinance No. 21-35, an Amendment of the FY 2021/2022 Budget Ordinance. Councilmember Lillie Jean Johnson offered a second on the motion. Chairman Louis Morant called for discussion. No discussion occurred.

In favor: Bob Anderson Louis R. Morant
Everett Carolina Raymond Newton
Steve Goggans John W. Thomas
Lillie Jean Johnson

ORDINANCES-Second Reading:

No reports.

ORDINANCES-First Reading:

Chairman Louis R. Morant read the following ordinances into the record by title only.

Ordinance No. 21-36 - An Ordinance to declare as surplus a tract of property, owned by Georgetown County, and located at the intersection of Dozier Street and Highmarkert Street, in the City of Georgetown, and to authorize the County Administrator to sell the property in the manner as prescribed within Ordinance No. 20-32, Georgetown County Procurement Ordinance

Ordinance No. 21-37 - An Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and among Georgetown County, South Carolina (The "County"), a Company Identified for the time being as Project Maverick Company A, and a Company Identified for the Time

Being as Project Maverick Company B, Each Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the "Companies"), Pursuant to which the County Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (Collectively, the "Project");(2) the Benefits of a Multi-County Industrial or Business Park to be Made Available to the Companies and the Project; (3) Certain Special Source Revenue Credits in Connection with the Project; and (4) Other Matters Relating Thereto.

Ordinance No. 21-38 - An Ordinance to Amend the FY 2021/2022 Operating Budget of Georgetown County.

COUNCIL BRIEFING & COMMITTEE REPORTS:

No reports.

BIDS:

No reports.

REPORTS TO COUNCIL:

Nonprofit Spotlight – Family Justice Center

(This report we presented earlier during the meeting)

In accordance with Georgetown County and the Bunnelle Foundation's partnership to spotlight local nonprofits during each County Council meeting, a presentation was made by Kim Parsons, Executive Director of The *Family Justice Center*. The *Family Justice Center* is a non-profit organization providing services to victims of domestic violence in both Horry and Georgetown Counties. The organization assists victims of domestic violence in fleeing from dangerous situations, securing emergency living arrangements, case management, court services, and arranging counseling to both adult and child victims.

Employee of the Quarter Recognition

(This report we presented earlier during the meeting)

Harold West, a 17 year veteran of the Public Works Department was recognized as Georgetown County's *Employee of the Quarter*. As a Special Projects Supervisor, Mr. West performs numerous tasks such as resolving and installing drainage systems throughout the County. He assists all Public Works area supervisors in maintaining roads and roadside ditches in their area. He helps other departments and the Department of Public Services investigate and resolve issues when beyond their capacity. He is also skilled in operating all equipment in the Public Works Department.

Request to Name Facilities

Dr. Celeste Pringle, former Principal of Choppee School, and most recently served as Deputy Superintendent of the Georgetown County School District, made a presentation to County Council pertaining to requests to name several facilities in the Choppee area (Council District 7) in honor of various individuals.

Following the presentation, a motion was made by Councilmember Raymond Newton, and seconded by Councilmember Bob Anderson, to re-name Choppee facilities as follows:

- *Football Field at Northwest Regional Recreation Facility* – Named the "John Henry Spears Athletic Field" in honor of Coach John Henry Spears, Choppee School's first football coach.
- *Auditorium at Choppee Health Complex (former school facility)*– Named the "Thomas Moultrie, Jr. – Josephine Caldwell Howard Auditorium" in honor of Choppee School's first band director, Mr. Thomas Moultrie, Jr., and the School's first choral director, Mrs. Josephine Howard.

- *Choppee Health Complex (former school facility)*– Named the “Maudest Kelly Squires Complex” in honor of Choppee School’s first principal, Mrs. Maudest Kelly Squires.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

(THIRD READING) Ordinance No. 20-59 - An Ordinance to revise the Rules of Procedure as previously adopted by Georgetown County Council.

(SECOND READING) Ordinance No. 21-32 – An Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and between Georgetown County, South Carolina (the “County”), and Santee Electric Cooperative, Inc., Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the “Company”), Pursuant to which the County Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (the “Project”); and Other Matters Relating Thereto.

EXECUTIVE SESSION:

No reports.

Being no further business to come before County Council, Councilmember Steve Goggans made a motion to adjourn the meeting.

Date

Clerk to Council

Council Members

District 1: John Thomas
District 2: Bob Anderson
District 3: Everett Carolina
District 4: Lillie Jean Johnson, *Vice Chair*
District 5: Raymond L. Newton
District 6: Steve Goggans
District 7: Louis R. Morant, *Chairman*



County Administrator
Angela Christian

Clerk to Council
Theresa E. Floyd

November 9, 2021

5:30 PM

GEORGETOWN COUNTY COUNCIL
Council Chambers, 129 Screven Street, Suite 213,
Georgetown, SC

AGENDA

1. **INVOCATION**
2. **PLEDGE OF ALLEGIANCE**
3. **APPROVAL OF AGENDA**
4. **PUBLIC COMMENT**
5. **APPROVAL OF MINUTES**
 - 5.a **Regular Council Meeting - October 12, 2021**
6. **CONSENT AGENDA**
 - 6.a **Pictometry for GTC: Orthometric Aerial Capture**
 - 6.b **Procurement #21-046, Electronic Waste Recycling Services**
 - 6.c **Contract #20-059, Task Order #1-Construction Administration for Runway 5/23 Rehabilitation**
7. **PUBLIC HEARINGS**
8. **APPOINTMENTS TO BOARDS AND COMMISSIONS**
9. **RESOLUTIONS / PROCLAMATIONS**
10. **THIRD READING OF ORDINANCES**
11. **SECOND READING OF ORDINANCES**
 - 11.a **Ordinance No. 21-32 – An Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and between Georgetown County, South Carolina (the "County"), and Santee Electric Cooperative, Inc., Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the "Company"), Pursuant to which the County**

Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (the "Project"); and Other Matters Relating Thereto.

- 11.b Ordinance No. 21-36 - An Ordinance to declare as surplus a tract of property Identified as TMS #05-0019-121-00-00, and TMS #05-0019-113-00-00, owned by Georgetown County, and located at 325 Dozier Street in the City of Georgetown, and to authorize the County Administrator to sell the property in the manner as prescribed within Ordinance No. 20-32.
- 11.c Ordinance No. 21-38 - Amendment of the FY 2021/2022 Budget Ordinance

12. FIRST READING OF ORDINANCES

- 12.a Ordinance No. 21-39 - To amend the Future Land Use Map for two parcels (totaling 10.04 acres) located at 92 Fire Station Street and 11397 Pleasant Hill Drive in Georgetown, TMS#s 03-0413-018-01-14 and 03-0413-018-01-10, from Commercial to Low Density Residential.
- 12.b Ordinance No. 21-40 - To rezone 2 parcels totaling 10.04 acres located at 92 Fire Station Street (TMS 03-0413-018-01-14), and 11397 Pleasant Hill Drive (TMS 03-0413-018-01-10), in Georgetown County from General Commercial (GC) to Forest Agriculture (FA).

13. COUNCIL BRIEFING AND COMMITTEE REPORTS

14. BIDS

15. REPORTS TO COUNCIL

- 15.a Nonprofit Spotlight – Winyah Rivers Foundation
- 15.b Innovation Award Presentation

16. DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

- 16.a (THIRD READING) Ordinance No. 20-59 - An Ordinance to revise the Rules of Procedure as previously adopted by Georgetown County Council.
- 16.b (SECOND READING) Ordinance No. 21-37 - An Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and among Georgetown County, South Carolina (The "County"), a Company Identified for the time being as Project Maverick Company A, and a Company Identified for the Time Being as Project Maverick Company B, Each Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the "Companies"), Pursuant to which the County Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (Collectively, the "Project"); (2) the Benefits of a Multi-County Industrial or Business Park to be Made Available to the Companies and the

Project; (3) Certain Special Source Revenue Credits in Connection with the Project; and (4) Other Matters Relating Thereto.

17. LEGAL BRIEFING / EXECUTIVE SESSION

17.a Legal Advice Involving the County pursuant to S.C. Code Ann. § 30-4-70(a)(2)

17.b Legal Briefing Regarding Pending Litigation Involving the County and possibility of negotiated settlement pursuant to S.C. Code Ann. § 30-4-70(a)(2)

18. OPEN SESSION

19. ADJOURNMENT

ARTICLE VII. - GEORGETOWN COUNTY COUNCIL RULES OF PROCEDURE

DIVISION 6. - PARLIAMENTARY PROCEDURE

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, but may be seconded by any other council member, and may be made at any time.

(Ord. No. 99-30, Art. XI, § 11-9, 5-25-99)

Georgetown County Council held a Regular Council Meeting on Tuesday, November 9, 2021, at 5:30 PM in County Council Chambers, located in the *historic courthouse*, 129 Screven Street, Georgetown, South Carolina.

Present:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

Staff:	Angela Christian	Theresa E. Floyd
	Jackie Broach-Akers	John D. Watson

Other staff members, members of the public, and representatives of the media were also present. In accordance with the Freedom of Information Act, a copy of the agenda was sent to newspapers, television, and radio stations, citizens of the County, Department Heads, and posted on the bulletin board in the historic Courthouse.

Chairman Louis R. Morant called the meeting to order, and determined that there was a quorum present. Councilmember Everett Carolina gave an invocation, and all joined in the pledge of allegiance.

APPROVAL OF AGENDA:

Councilmember Bob Anderson moved for approval of the meeting agenda, to include a recommendation to move Item 15a, nonprofit spotlight, forward on the meeting agenda, as well as an item pertaining to Legal Advice Involving the County pursuant to S.C. Code Ann. § 30-4-70(a)(2). Councilmember Raymond Newton offered a second. Chairman Morant called for discussion on the motion, and there was none.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

Chairman Morant stated that County Council has been advised by legal counsel regarding the need to move into Executive Session prior to moving forward with other business matters included on the meeting agenda this evening.

A motion was made by Councilmember Raymond Newton, and seconded by Councilmember Everett Carolina, to move into Executive Session at 5:42 PM.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

OPEN SESSION:

Following Executive Session, a motion was made by Councilmember Raymond Newton to return to Open Session. Councilmember Everett Carolina offered a second. There was no discussion on the motion.

In favor: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

As Open Session resumed, Chairman Morant stated that while in Executive Session County Council received legal advice. No votes were taken during while in Executive Session. Chairman Morant asked if there was additional business to come before County Council at this time.

Councilmember Raymond Newton made motion to reconsider Ordinance No. 21-24. *At this time Chairman Morant noted that he had previously disclosed a potential conflict of interest in his participating in discussion and/ or votes on this matter. He requested to be recused, and asked that Vice Chairman Lillie Jean Johnson preside over the meeting at this time, and the Chairman left the dais.*

Vice Chairman Johnson called for a second on a motion that was already on the floor. Councilmember Steve Goggans offered a second. Upon a call for discussion from the Vice Chairman on the motion, no discussion occurred.

In favor: Everett Carolina Lillie Jean Johnson
 Steve Goggans Raymond Newton

Opposed: Bob Anderson John W. Thomas

Recused: Louis R. Morant

Vice Chairman Lillie Jean Johnson called for any further business for consideration at this time. Councilmember Raymond Newton moved to reconsider Ordinance No. 21-25. Councilmember Steve Goggans offered a second. Vice Chairman Johnson called for discussion, and there was none.

In favor: Everett Carolina Lillie Jean Johnson
 Steve Goggans Raymond Newton

Opposed: Bob Anderson John W. Thomas

Recused: Louis R. Morant

Following the vote, Chairman Morant returned to the Council dais.

PUBLIC COMMENTS:

There were no public comments.

MINUTES:

Regular Council Meeting – October 12, 2021

Councilmember Steve Goggans moved for approval of the minutes of County Council's meeting held on October 12, 2021. Councilmember Bob Anderson seconded the motion. Chairman Louis Morant called for discussion on the motion, and none occurred.

In favor: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

CONSENT AGENDA:

Three matters included on the Consent Agenda have been approved by virtue of the agenda approval process:

Pictometry for GTC: Optometric Aerial Capture – County Council approved a recommendation to authorize a 3-yr contract with Pictometry International Corp..at \$50,000 per year.

Procurement #21-046, Electronic Waste Recycling Services – County Council awarded a contract to Intelligent Lifestyle Solutions.

Contract #20-059, Task Order #1-Construction Administration for Runway 5/23 Rehabilitation – County Council approved Task Order 1, along with an associated purchase order, to Talbert & Bright in the amount of \$202,813.40.

PUBLIC HEARINGS:

No reports.

RESOLUTIONS:

No reports.

ORDINANCES-Third Reading

No reports.

ORDINANCES-Second Reading:

Ordinance No. 21-32

Councilmember Bob Anderson moved for second reading approval of Ordinance No. 21-32, an Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and between Georgetown County, South Carolina (the "County"), and Santee Electric Cooperative, Inc., Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the "Company"), Pursuant to which the County Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (the "Project"); and Other Matters Relating Thereto. Councilmember Raymond Newton offered a second on the motion. Upon a call for discussion from Chairman Morant, there was none.

In favor: Bob Anderson Louis R. Morant
 Everett Carolina Raymond Newton
 Steve Goggans John W. Thomas
 Lillie Jean Johnson

Ordinance No. 21-36

Councilmember Lillie Jean Johnson moved for second reading approval of Ordinance No. 21-36, an Ordinance to declare as surplus a tract of property, owned by Georgetown County, and located at the

intersection of Dozier Street and Highmarkert Street, in the City of Georgetown, and to authorize the County Administrator to sell the property in the manner as prescribed within Ordinance No. 20-32, Georgetown County Procurement Ordinance. Councilmember Steve Goggans offered a second. Chairman Morant called for discussion on the motion.

Councilmember Lillie Jean Johnson moved to amend Ordinance No. 21-36 to incorporate text, as the ordinance was introduced at first reading by title. Councilmember Steve Goggans seconded the amendment. There was no further discussion.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

The vote on the main motion was as follows:

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

Ordinance No. 21-38

A motion was made by Councilmember Lillie Jean Johnson moved for second reading approval of Ordinance No. 21-38, an Ordinance to Amend the FY 2021/2022 Operating Budget of Georgetown County. Councilmember Everett Carolina offered a second. Chairman Morant called for discussion on the motion.

Councilmember Lillie Jean Johnson moved to amend Ordinance No. 21-38 to incorporate text, as the ordinance was introduced at first reading by title. Councilmember Carolina offered a second on the amendment. There was no further discussion.

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

The vote on the main motion was as follows:

In favor:	Bob Anderson	Louis R. Morant
	Everett Carolina	Raymond Newton
	Steve Goggans	John W. Thomas
	Lillie Jean Johnson	

ORDINANCES-First Reading:

Chairman Louis R. Morant read the following ordinances into the record by title only.

Ordinance No. 21-39 - To amend the Future Land Use Map for two parcels (totaling 10.04 acres) located at 92 Fire Station Street and 11397 Pleasant Hill Drive in Georgetown, TMS#s 03-0413-018-01-14 and 03-0413-018-01-10, from Commercial to Low Density Residential.

Ordinance No. 21-40 - To rezone 2 parcels totaling 10.04 acres located at 92 Fire Station Street (TMS 03-0413-018-01-14), and 11397 Pleasant Hill Drive (TMS 03-0413-018-01-10), in Georgetown County from General Commercial (GC) to Forest Agriculture (FA).

COUNCIL BRIEFING & COMMITTEE REPORTS:

No reports.

BIDS:

No reports.

REPORTS TO COUNCIL:

Nonprofit Spotlight – Winyah Rivers Foundation

(This report we presented earlier during the meeting)

In accordance with Georgetown County and the Bunnelle Foundation's partnership to spotlight local nonprofits during each County Council meeting, a presentation was made by Tina Christensen on behalf of the *Winyah Rivers Foundation*, a non-profit organization consisting of an alliance of river keepers protecting our area's rivers for fishing, swimming, and drinking. The organization educates to encourage stewardship of our river resources and advocates to guard against threats to clean water.

DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

(THIRD READING) Ordinance No. 20-59 - An Ordinance to revise the Rules of Procedure as previously adopted by Georgetown County Council.

(SECOND READING) Ordinance No. 21-37 - An Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and among Georgetown County, South Carolina (The "County"), a Company Identified for the time being as Project Maverick Company A, and a Company Identified for the Time Being as Project Maverick Company B, Each Acting for Itself, One or More Affiliates, and/or Other Project Sponsors (Collectively, the "Companies"), Pursuant to which the County Shall Covenant to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes with Respect to the Establishment and/or Expansion of Certain Facilities in the County (Collectively, the "Project");(2) the Benefits of a Multi-County Industrial or Business Park to be Made Available to the Companies and the Project; (3) Certain Special Source Revenue Credits in Connection with the Project; and (4) Other Matters Relating Thereto.

EXECUTIVE SESSION:

No reports.

Being no further business to come before County Council, Councilmember Steve Goggans made a motion to adjourn the meeting.

Georgetown County Council
Meeting Minutes
November 9, 2021

Date

Clerk to Council

ELECTRONICALLY FILED - 2022 Jan 07 10:19 AM - GEORGETOWN - COMMON PLEAS - CASE#2022CP2200032

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)
)

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,

) ANSWER, AFFIRMATIVE DEFENSES
) COUNTERCLAIM AND
) COMPLAINT
)

Defendants)
)

Benjamin F. Goff, Sr., Trustee and the
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004,

Counterclaim-Plaintiffs)
)

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.,

Counterclaim-Defendants)
)

ALMA Y. WHITE
CLERK OF COURT

2022 APR 18 AM 10:32

cc:OWH66666

ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM AND COMPLAINT

ANSWER

Defendant Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee") hereby answers the Plaintiffs' Complaint ("the Complaint"). Except as specifically admitted herein, each and every allegation in the Complaint is expressly denied. References to paragraph numbers in this Answer are references to the

numbered paragraphs of the Plaintiffs' Complaint. The Complaint does not allege and/or state any facts that constitute a legal violation or procedural wrongdoing by Goff Trustee. Plaintiffs' Complaint involves "issues of law, regulations, rules, and procedures" that do not demand a trial by jury as provided in SCRPC 38. Either the Court upon motion or its own initiative should find that that the right of trial by jury of the approval and adoption of the ordinances do not exist. If the Motion to Dismiss is not granted, the Complaint should be tried by the Court.

1. In response to Paragraph 1, the allegation is admitted in part that Ordinances 21-24 and 21-25 were approved and adopted by the Georgetown County Council ("County Council"); but denied that it was "purportedly approved and adopted". All other allegations are denied, and strict proof is demanded.
2. In response to Paragraph 2, the allegation is admitted in part that Ordinance 21-24 amends the Future Land Use Map ("FLUM"); but, denied that it "purports to amend". All other allegations are denied, and strict proof is demanded.
3. In response to Paragraph 3, the allegation is admitted in part that Ordinance 21-25 amends the Georgetown County Zoning Map; but, denied that it "purports to amend". All other allegations are denied, and strict proof is demanded.
4. In response to Paragraph 4, the allegation is denied, and strict proof is demanded.
5. In response to the allegation of Paragraph 5, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
6. In response to Paragraph 6, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
7. In response to Paragraph 7, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.

8. In response to Paragraph 8, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
9. In response to Paragraph 9, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
10. In response to Paragraph 10, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
11. In response to Paragraph 11, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
12. In response to Paragraph 12, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
13. In response to Paragraph 13, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
14. In response to Paragraph 14, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
15. In response to Paragraph 15, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
16. In response to Paragraph 16, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
17. In response to Paragraph 17, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
18. In response to Paragraph 18, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.

19. In response to Paragraph 19, the allegation is admitted in part as to SC Code Ann. 15-53-80, but Goff Trustee should be an "Involuntary Plaintiff" as stated in SCRCF 19(a)2(i).
20. In response to Paragraph 20, the allegation is admitted upon information and belief.
21. In response to Paragraph 21, the allegation is denied, and strict proof is demanded.
22. In response to Paragraph 22, the allegation is denied, and strict proof is demanded.
23. In response to Paragraph 23, the allegation is admitted upon information and belief.
24. In response to Paragraph 24, the allegation is admitted upon information and belief. All allegations not in conformance with referenced documents are denied in its entirety and strict proof is demanded.
25. In response to Paragraph 25, the allegation is admitted in part as to the Goff Parcel being vacant unimproved land located on Highway 17. All other allegations are denied, and strict proof is demanded.
26. In response to Paragraph 26, the allegation is denied in part. When acquired in 1985, the parcel and general area was zoned Forest Agriculture (F/A) until changed in the FLUM.
27. In response to Paragraph 27, the allegation is admitted as to "low density". All remaining allegations are denied, and strict proof is demanded.
28. In response to Paragraph 28, the allegation is admitted upon information and belief.
29. In response to Paragraph 29, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore denied, and strict proof is demanded.
30. In response to Paragraph 30, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth and strict proof is demanded.
31. In response to Paragraph 31, Goff Trustee admits applying for rezoning from R-1/2 to R-10; but, denies other statements and conclusions in the allegation and strict proof is demanded.

32. In response to Paragraph 32, Goff Trustee admits the medium density classification, but denies the accuracy of other statements in the allegation, and strict proof is demanded.
33. In response to Paragraph 33, the allegation is admitted in part as to the burden of proof of need relies with the applicant, which is provided during the approval and adoption process. All other allegations are denied, and strict proof is demanded.
34. In response to Paragraph 34, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth.
35. In response to Paragraph 35, the allegation is admitted upon information and belief, and strict proof is demanded.
36. In response to Paragraph 36, the allegation is admitted upon information and belief, and strict proof is demanded.
37. In response to Paragraph 37, the allegation is denied, and strict proof is demanded.
38. In response to Paragraph 38, the allegation is denied, and strict proof is demanded.
39. In response to Paragraph 39, the allegation is denied, and strict proof is demanded.
40. In response to Paragraph 40, the allegation is denied, and strict proof is demanded.
41. In response to Paragraph 41, the allegation is denied, and strict proof is demanded.
42. In response to Paragraph 42, the allegation is denied, and strict proof is demanded.
43. In response to Paragraph 43, the allegation is denied, and strict proof is demanded.
44. In response to the allegations of Paragraph 44, the allegation is denied in part. In that the Complaint seeks to repeal adopted ordinances which require legislative action under SC law.
45. In response to Paragraph 45, the allegation is denied, and strict proof is demanded.
46. In response to Paragraph 46, the allegation is denied, and strict proof is demanded.

47. In response to Paragraph 47, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
48. In response to Paragraph 48, the allegation is denied, and strict proof is demanded.
49. In response to Paragraph 49, the allegation is admitted in part assuming all allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
50. In response Paragraph 50, the allegation is admitted in part assuming all allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
51. In response to Paragraph 51, the allegation is denied as to Goff amendments lacking conformance with the Comprehensive Plan and strict proof is demanded.
52. In response to Paragraph 52, the allegation is denied, and strict proof is demanded.
53. In response to Paragraph 53, the allegation is admitted.
54. In response to Paragraph 54, the allegation is admitted.
55. In response to Paragraph 55, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
56. In response to Paragraph 56, the allegation is admitted as to public hearing participation. All remaining allegations not addressed are denied.
57. In response to Paragraph 57, the allegation is admitted as to Planning Department document and presentation. All remaining allegations not addressed are denied.
58. In response to Paragraph 58, the allegation is denied, and strict proof is demanded.
59. In response to Paragraph 59, the allegation is denied, and strict proof is demanded.
60. In response to Paragraph 60, the allegation is denied, and strict proof is demanded.

61. In response to Paragraph 61, the allegation is denied, and strict proof is demanded. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded
62. In response to Paragraph 62, the allegation is denied, and strict proof is demanded.
63. In response to Paragraph 63, the allegation is denied, and strict proof is demanded.
64. In response to Paragraph 64, the allegation is admitted.
65. In response to Paragraph 65, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
66. In response to Paragraph 66, the allegation is admitted.
67. In response to Paragraph 67, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
68. In response to Paragraph 68, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth.
69. In response to Paragraph 69, the allegation is admitted. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded
70. In response to Paragraph 70, the allegation is denied, and strict proof is demanded.
71. In response to Paragraph 71, the allegation is denied, and strict proof is demanded.
72. In response to Paragraph 72, the allegation is denied, and strict proof is demanded.
73. In response to Paragraph 73, the allegation is denied, and strict proof is demanded.
74. In response to Paragraph 74, the allegation is denied, and strict proof is demanded.
75. In response to Paragraph 75, the allegation is admitted.
76. In response to Paragraph 76, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.

77. In response to Paragraph 77, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
78. In response to the allegation of Paragraph 78, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
79. In response to Paragraph 79, the allegation is admitted. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
80. In response to Paragraph 80, the allegation is denied, and strict proof is demanded.
81. In response to Paragraph 81, the allegation is denied, and strict proof is demanded.
82. In response to Paragraph 82, the allegation is admitted as to Section 2-486 of County Council Rules of Procedure. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
83. In response to Paragraph 83, the allegation is denied, and strict proof is demanded.
84. In response to Paragraph 84, the allegation is denied, and strict proof is demanded.
85. In response to Paragraph 85, the allegation is denied, and strict proof is demanded.
86. In response to Paragraph 86, the allegation is denied. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
87. In response to Paragraph 87, the allegation is denied, and strict proof is demanded.
88. In response to Paragraph 88, the allegation that County Council held an executive session is admitted. All remaining allegations are denied in their entirety.
89. In response to Paragraph 89, the allegation is admitted that the County Council agenda did not list Ordinances 21-24 and 21-25. All remaining allegations are denied in their entirety.
90. In response to Paragraph 90, the allegation is denied, and strict proof is demanded.

91. In response to Paragraph 91, the allegation is admitted as to Section 2-519 of the County Council Rules of Procedure. All remaining allegations are denied in their entirety.
92. In response to Paragraph 92, the allegation is denied, and strict proof is demanded.
93. In response to Paragraph 93, the allegation is denied, and strict proof is demanded.
94. In response to Paragraph 94, the allegation is denied, and strict proof is demanded.
95. In response to Paragraph 95, the allegation is admitted.
96. In response to Paragraph 96, the allegation is denied, and strict proof is demanded.
97. In response to Paragraph 97, the allegation is denied, and strict proof is demanded.
98. In response to Paragraph 98, the allegation is denied, and strict proof is demanded.
99. In response to Paragraph 99, the allegation is denied, and strict proof is demanded.
100. In response to Paragraph 100, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
101. In response to Paragraph 101, the allegation is denied, and strict proof is demanded.
102. In response to Paragraph 102, the allegation is denied; and strict proof is demanded.
103. In response to Paragraph 103, the allegation is denied, and strict proof is demanded.
104. In response to Paragraph 104, the allegation is denied. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
105. In response to Paragraph 105, the allegation is denied, and strict proof is demanded.
106. In response to Paragraph 106, the allegation is denied, and strict proof is demanded.
107. In response to Paragraph 107, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth; therefore, denied, and strict proof is demanded.
108. In response to Paragraph 108, the allegation and subparts are denied, and strict proof is demanded.

109. In response to Paragraph 109, the allegation is denied, and strict proof is demanded.
110. In response to Paragraph 110, Goff Trustee admits Paragraph 110 as to incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
111. In response to Paragraph 111, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
112. In response to Paragraph 112, the allegation is denied as to the residency of Goff Trustee. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
113. In response to Paragraph 113, the allegation is denied, and strict proof is demanded.
114. In response to Paragraph 114, the allegation is denied, and strict proof is demanded.
115. In response to Paragraph 115, the allegation is denied, and strict proof is demanded.
116. In response to Paragraph 116, the allegation is denied, and strict proof is demanded.
117. As to Plaintiffs' Count I, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.
118. In response to Paragraph 117, Goff Trustee admits Paragraph 117 as to the incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
119. In response to Paragraph 118, the allegation and all subparts are denied, and strict proof is demanded.
120. As to Plaintiffs' Count II, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.

121. In response to Paragraph 119, Goff Trustec admits Paragraph 119 as to the incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustec incorporates by reference all above responses and defenses.
122. In response to Paragraph 120, the allegation is denied, and strict proof is demanded.
123. In response to Paragraph 121, the allegation is admitted. All allegations not in conformance with referenced documents are entirely denied and strict proof is demanded.
124. In response to Paragraph 122, the allegation is denied, and strict proof is demanded.
125. In response to Paragraph 123, the allegation is denied, and strict proof is demanded.
126. In response to Paragraph 124, the allegation is denied, and strict proof is demanded.
127. In response to Paragraph 125, the allegation is denied, and strict proof is demanded.
128. In response to Paragraph 126, the allegation is denied, and strict proof is demanded.
129. In response to Paragraph 127, the allegation is denied, and strict proof is demanded.
130. As to Plaintiffs' Count III, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.
131. In response to Paragraph 128, Goff Trustee admits Paragraph 128 as to the incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
132. In response to Paragraph 129, the allegation is denied, and strict proof is demanded.
133. In response to Paragraph 130, the allegation is admitted as to Georgetown County Zoning Ordinance 1701. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
134. In response to Paragraph 131, the allegation is denied, and strict proof is demanded.

135. In response to Paragraph 132, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
136. In response to Paragraph 133, the allegation is denied, and strict proof is demanded.
137. In response to Paragraph 134, the allegation is denied. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
138. In response to Paragraph 135, the allegation is denied. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
139. As to Plaintiffs' Count IV, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.
140. In response to Paragraph 136, Goff Trustee admits Paragraph 136 as to the incorporation by reference per SCRCP 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
141. In response to Paragraph 137, the allegation is denied, and strict proof is demanded.
142. In response to Paragraph 138, the allegation is admitted as to "The South Carolina Comprehensive Planning Enabling Act, S.C. Coe Ann., Section 6-29-720(B)". All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
143. In response to Paragraph 139, the allegation is denied, and strict proof is demanded.
144. In response to Paragraph 140, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth. All allegations not in conformance with referenced documents are denied in their entirety and strict proof is demanded.
145. In response to Paragraph 141, the allegation is denied, and strict proof is demanded.

146. In response to Paragraph 142, the allegation is denied, and strict proof is demanded.
147. In response to Paragraph 143, the allegation is denied, and strict proof is demanded.
148. As to Plaintiffs' Count V, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.
149. In response to Paragraph 144, Goff Trustee admits Paragraph 144 as to the incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
150. In response to Paragraph 145, the allegation is denied, and strict proof is demanded.
151. In response to the allegation of Paragraph 146, Goff Trustee lacks knowledge or information to form a belief about the allegation's truth, and strict proof is demanded.
152. In response to Paragraph 147, the allegation is denied, and strict proof is demanded.
153. In response to Paragraph 148, the allegation is denied, and strict proof is demanded.
154. In response to Paragraph 149, the allegation is denied, and strict proof is demanded.
155. In response to Paragraph 150, the allegation is denied, and strict proof is demanded.
156. In response to Paragraph 151, the allegation is denied, and strict proof is demanded.
157. In response to Paragraph 152, the allegation is denied, and strict proof is demanded.
158. As to Plaintiffs' Count VI, Goff Trustee denies the merits in its entirety because of lack any facts that constitute a cause of action, lack of standing and a justiciable controversy.
159. In response to Paragraph 153, Goff Trustee admits Paragraph 153 as to the incorporation by reference per SCRCF 10(c) all above paragraphs. Similarly, Goff Trustee incorporates by reference all above responses and defenses.
160. In response to Paragraph 154, the allegation is denied, and strict proof is demanded.
161. In response to Paragraph 155, the allegation is denied, and strict proof is demanded.

162. In response to Paragraph 156, the allegation and all subparts a-d are denied, and strict proof is demanded.

163. Plaintiffs' Prayer for Relief is denied in its entirety, and strict proof is demanded.

AFFIRMATIVE DEFENSES

(All admissions, denials and allegations set forth above are incorporated herein as if repeated verbatim for each listed defense)

FIRST DEFENSE (FAILURE TO STATE A CAUSE OF ACTION)

164. Plaintiffs' Complaint fails to state a cause of action against Goff Trustee or any factual claim upon which relief can be granted; therefore, it should be dismissed pursuant to SCRCP 8 and SCRCP 12(b)(6); therefore, it must be dismissed as a matter of law.

SECOND DEFENSE (NO JUSTICIABLE CONTROVERSY)

165. Plaintiffs have failed to show the existence of an actual, justiciable case or controversy between Plaintiffs and Defendants.

THIRD DEFENSE (LACK OF STANDING)

166. Plaintiffs are not entitled to relief on the ground that there is no injury-in-fact caused by the Goff Trustee parcel and both organizations fail the Hunt Test for associated standing.

FOURTH DEFENSE (CIVIL CONSPIRACY)

167. Plaintiffs' combined actions with opposing individuals, groups and organizations for the expressed purpose of injuring the property of the owner which caused special damages resulting in a civil conspiracy. A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. The Counterclaim-Plaintiffs need not allege an unlawful act to state a cause of action; lawful acts

may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another.

FIFTH DEFENSE (CONSPIRACY AGAINST RIGHTS)

168. Plaintiffs coordinated actions with opposing individuals, groups and organizations 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.

SIXTH DEFENSE (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW)

169. Plaintiffs acting under color of law sought to willfully deprive or cause to be deprived from the property owner those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

SEVENTH DEFENSE (MISREPRESENTATION)

170. Plaintiffs knowingly and/or deliberately misrepresented material facts to the Court and concealed material facts from Defendants, and therefore are not entitled to a declaratory judgment.

EIGHTH DEFENSE (IMPROPER DECLARATORY ACTION)

171. Plaintiffs sought declaratory relief from this Court at a time when there was no legal dispute between Plaintiffs and Defendants over the matters that are the subject hereof, and Plaintiffs therefore have no lawful entitlement to such relief.

NINTH DEFENSE (STATUTORY AUTHORITY)

172. Plaintiffs' claims are barred and should be dismissed because the Georgetown County Council has a statutory right to enact all necessary ordinances, rules, policies and regulations consistent with the law pursuant to Title 4 of the South Carolina Code of Laws.

TENTH DEFENSE (ESTOPPEL)

173. Plaintiffs, by their own conspiratorial misconduct, are estopped to seek the relief, if any, demanded by their Complaint.

ELEVENTH DEFENSE (UNCLEAN HANDS)

174. Plaintiffs' claims for relief are barred by the equitable doctrine of unclean hands, as Plaintiffs seek to invoke the equitable jurisdiction of this Court in aid of their wrongful conspiratorial conduct.

TWELVETH DEFENSE (INVALIDITY)

175. The rights and interests claimed by Plaintiffs that are the subject of the Complaint are contrary to SC case laws, the 2013 Handbook for Counties and 2021 Supplement; therefore, they are invalid and do not constitute a basis for the relief sought.

THIRTEENTH DEFENSE (EXHAUSTING ADMINISTRATIVE PROCEDURES)

176. Plaintiffs have knowing failed to assert, or to seek by other means to enforce, the alleged rights that are the subject of this action; therefore, Plaintiffs claims for such relief, and their claims accordingly are barred.

FORTHTEENTH DEFENSE (INSUFFICIECY OF PROCESS)

177. Plaintiffs' Complaint was not served on Goff Trustee as required by SCRCP 4(a).

FIFTHTEENTH DEFENSE (INSUFFICIECY OF SERVICE OF PROCESS)

178. Plaintiffs' Complaint was not served on Goff Trustee in accordance with SCRCP 12(b)(5) and no Proof of Service was filed as required by SCRCP 5(d).

COUNTERCLAIM AND COMPLAINT

Counterclaim-Plaintiffs, Benjamin F. Goff, Sr., Trustee, and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee") submits this Counterclaim Complaint for

“Declaratory Judgment”, “Civil Conspiracy” “Conspiracy Against Rights” and “Injunctive Relief”. The Plaintiffs’ Complaint failed to state a cause of action in whole and/or in part as a matter of law against Goff Trustee or the Georgetown County Council. The Counterclaim-Complaint is based on the grounds that the Counterclaim-Defendants lack standing to assert the claims stated in their Complaint; their Complaint lacks a justiciable controversy for judicial intervention; and a combination of two or more persons have engaged in a conspiracy for the purpose of injuring the Counterclaim-Plaintiff causing special damages in the legal challenge to the approval and adoption of Ordinance 21-24 and Ordinance 21-25. The Counterclaim-Plaintiff, Benjamin F. Goff, Sr., Trustee, and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 (“Goff Trustee”) hereby alleges in its Counterclaim-Complaint as follows:

PARTIES

1. Counterclaim-Plaintiffs, Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 (“Goff Trustee”).
2. Counterclaim-Defendants, Ernest F. Middleton III, Joyce J. Middleton, Michael J. Farrar, Diane Farrar, Robert E. Hunt, Jeane M. Sullivan, Cynthia Rack Person, Philip Benincasa, Colony Homeowners Association, Inc. and Keep It Green, Inc.

JURISDICTION AND VENUE

3. Based upon the foregoing, this Court has jurisdiction over the subject matter and the parties to this action and venue is proper in this Court.

STATEMENT OF FACTS

4. Pursuant to S.C. Rules of Civil Procedure 12(b)(6), the Complaint fails to state any facts that constitute a cause of action against Goff Trustee.

5. Goff Trustee was not served with the Complaint in compliance with S.C. Rules of Civil Procedure 4(a) and 12(b)(5).
6. Counterclaim-Defendants' Complaint lacks standing and a justiciable controversy that is a real and substantial controversy and appropriate for judicial intervention.
7. 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.
8. In exercising constitutional rights to apply to rezone private property, the Counterclaim-Plaintiffs' application and subsequent approval and adoption of the ordinances have been targeted by opposing individuals, groups and organizations.
9. 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 Council Rules of Procedure.
10. The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties states in part as follows: 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."

11. 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.
12. 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”.
13. 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”.
14. 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.
15. The Counterclaim-Defendants must be able to show that they have been harmed at the time that the Complaint was filed and 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 the lack of standing jurisdictional defect.
17. The Counterclaim-Defendants’ Complaint and prior combined and coordinated actions must 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 U. S.
18. The passage of Ordinance Nos. 21-24 and 21-25 required the reliance on “The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, third edition (Model Rules).
19. 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. Additionally, an abstention and

recusal allowed the passage with the “majority of members present” based on the Georgetown County Council Rules of Procedure.

20. 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.
21. The South Carolina Declaratory Judgment Act (SCDJA) “is remedial and procedural in nature and does not create substantive rights or duties.” For a party to state a claim under the act, a justiciable controversy must be demonstrated that is “a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.
22. The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing; therefore, if Plaintiff has a justiciable controversy, standing must be assessed at the time the action is commenced, not at some later point.
23. Under that Hunt 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) A 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.

24. 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. Merely alleging an injury that all members of the public suffer from fails to establish the first prong requiring an individualized injury.
25. The Counterclaim-Defendants 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.
26. 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.” 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” are the need for “future guidance” from the court which is not needed for this Complaint.
27. The courts will not address the merits of any case unless it presents a justiciable controversy. A justiciable controversy must exist before any legal action and a court will not adjudicate a lawsuit where there remains no actual controversy. The threshold inquiry for any court is a determination of justiciability encompasses ripeness and standing a personal stake in the subject matter of the lawsuit.
28. A person has standing to challenge legislation when he has sustained, or is in immediate danger of sustaining, or injury from the legislative action. To meet the stringent test for standing, the person must have suffered an injury in fact which is an invasion of a legally

protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural' or 'hypothetical.

APPLICABLE LAWS, STATUTES AND RULES

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

30. 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.”

31. 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.”

32. 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.”

33. 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.”

34. 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.”

35. 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.

36. 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.

37. 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.”

38. “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.

39. 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).”

40. 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 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.”

41. 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.

42. 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.

43. 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).”

44. Specifically, South Carolina 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.”

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.”

BACKGROUND OF SUPPORTING FACTS

INSUFFICIENT FACTS FOR A CAUSE OF ACTION

45. Other than the property owner, Goff Trustee, exercising constitutional rights as a citizen to rezone private property in accordance with the county rules, the Complaint fails to state any facts, if any, sufficient to constitute a cause of action against Goff Trustee.

46. The Counterclaim-Defendants, with deliberate intent, named Goff Trustee as a defendant in their Complaint as opposed to an “Involuntary Plaintiff” in accordance with SCRCP 19(a)2(i).

47. Plaintiffs' Complaint was not served on Goff Trustee as required by SCRCP 4(a) or SCRCP 12(b)(5) and no Proof of Service was filed as required by SCRCP 5(d).
48. The Counterclaim-Defendants lack standing and a justiciable controversy to file this legal action against Goff Trustee for exercising a constitutional right to petition for rezoning of private property or the Georgetown County Council for the approval and adoption of Ordinance 21-24 and Ordinance 21-25.
49. The Counterclaim-Defendants inferred past and future speculative harm and injuries to their properties in affidavits and have engaged in a combined and coordinated action against the constitutionally guaranteed individual rights of Goff Trustee.
50. The Counterclaim-Defendants, who reside in Colony subdivision contiguous to the property of Goff Trustee, are themselves the beneficiaries of low density 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 Trustee parcel from, R-1/2 (20,000 sq. ft.) to R-10 (10,000 sq. ft.), low density to medium density that would allow lots to increase from about 24 to 40, comparable to the Counterclaim-Defendants' Colony lots.
51. Consequently, the Counterclaim-Defendants' claims about high and double density from rezoning the Goff Trustee parcel and harm to their properties are without merit. In fact, Ordinance 21-24 and Ordinance 21-25 are in concert with the past and 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 Counterclaim-Defendants.

52. The Goff Trustee 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 Trustee rezoning would only be medium density just like the Counterclaim-Defendants' Colony subdivision and other rezoned parcels on the Waccamaw Neck. The Plaintiffs' Complaint is devoid of facts supporting a claim against Goff Trustee and/or the Georgetown County Council; whereas, it is about the Planning Commission and the Comprehensive Plan.

COMPLAINT LACK STANDING

53. The fact that Counterclaim-Defendants brought the Complaint under the SCDJA does not by itself confer standing as that act is remedial in nature. Parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.
54. 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. Specifically, the state has adopted the United States Supreme Court's test in *Hunt* to determine when an organization can sue in a representative capacity on behalf of its members.
55. "Standing is assessed at the time the action is commenced," not thereafter. ("[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." 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” from the successful rezoning of the Goff Trustec parcel. Therefore, both organizations fail the “Hunt Test” since they lack standing to sue in a representative capacity on behalf of all of its constituent members.

56. It is improper for a plaintiff to retroactively attempt to correct the standing defect by seeking substitution or by amending its pleading. (“[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.”).
57. To establish standing against Goff Trustec and County Council, the Counterclaim-Defendants 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 Trust 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.
58. The Counterclaim-Defendants’ lawsuit lacks standing and should be dismiss. The Counterclaim-Defendants in their affidavits stated that they paid an extra premium when they acquired the properties that are contiguous to the Goff Trustee parcel, therefore, they have been harm by the Goff Trustee’s ordinances.

COMPAINT LACKS A JUSTICIABLE CONTROVERSY

59. 41. S.C. Const. Art. I, Section 3, provides that no person shall be deprived of property without due process of law. Counterclaim-Defendants have not been deprived of due process of law because they were not deprived of property due to the adoption of the ordinances, nor due to the manner of the ordinances’ adoption.

60. The main requirement that you must meet to get a declaratory judgment is to show that there is an “actual controversy.” 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 Counterclaim-Plaintiffs, Goff Trustee, have not denied the legal character or right to property of the Counterclaim-Defendants.
61. The Complaint simply asserted that all plaintiffs have standing to bring this action because of the County Council’s approval of Goff Trustee’s ordinances and allege that is “a matter of wide concern and public importance.”
62. 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, assumingly through an executive action, documented the adoption of the ordinances on that date with a 4-2 vote in favor with one recusal. Since the ordinances were in effect after approval at the Third Reading, this was, more likely than not, a non-legislative act affecting the execution of ordinances rather than the substance of the ordinances.
63. Without a factual and/or legal basis, the Counterclaim-Defendants 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.
64. 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 or further guidance from the court.

65. 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, the Model Rules and SC law.
66. The Counterclaim-Defendants 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 state that both ordinances passed by 3-2 votes. One council member was recused from voting, and another abstained from voting.
67. 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 Counterclaim-Defendants 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 without dissent. Consequently, there is no justiciable controversy necessitating judicial intervention.
68. 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, Ordinance 21-24 and Ordinance 21-25 pass on October 26, 2021 and were apparently codified through an administrative action on November 9, 2021.

69. RONR (9th Ed.) Sec. 44 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."

70. RONR (9th Ed.) Sec. 44 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."

THIRD READING APPROVAL AND ADOPTION OF ORDINANCES

71. 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.

72. 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 approved minutes at the December 14, 2021 meeting.

73. At the County Council meeting on October 26, 2021, Ordinances 21-24 and 21-25 passed by a “3-2” majority vote of the “members present and voting” and the “members present” excluding the publicly expressed and/or implied bias member and the member with a conflict of interest with the subject matter before the Georgetown County Council.

ORGANIZED AND COMBINED OPPOSITION

74. The Counterclaim-Defendants, for the express purpose of injuring Goff Trustee’s property combined to interfere with the rezoning process and instituted legal action after having failed to stop the approval and adoption of Ordinance 21-24 and Ordinance 21-25.

75. Goff Trustee has suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of the Counterclaim-Defendants in improperly and in unjustifiably conspiring to interfere with the successful rezoning of the Goff Trustee parcel as reflected in this Counterclaim Complaint. The willful conspiracy engaged in by Plaintiffs, Keep It Green, and Colony Homeowners Association has created special damages by negatively impacting the marketability and market value of the Goff Trustee parcel. Goff Trustee will seek to recover from Counterclaim-Defendants any loss in market value and all other actual, special, and consequential damages that are caused by their misconduct.

76. In all appearance, Goff Trustee was subjected to disparate treatment by the opposing individuals, groups and organizations when viewed in context with a comparable rezoning request with concurrent hearing except for the third reading. Ordinances 21-26 and 21-27 was adopted on September 14, 2021 and Ordinances 21-24 and 21-25 on October 26, 2021.

- a. Ordinance No. 21-24 - An Ordinance to amend the Future Land Use Map (FLU) for a parcel located at 3138 Ocean Highway, in Georgetown County, identified as TMS #04-0418-011-00-00, from Low Density Residential to Medium Density Residential.

- b. Ordinance No. 21-25 - To rezone a 14.77-acre tract located at 3138 Ocean Hwy in Georgetown, identified as TMS #04-0418-011-00-00, from ½ Acre Residential (R-½) to 10,000 Square Feet Residential (R-10).
- c. Ordinance No. 21-26 - An Ordinance to amend the Future Land Use Map (FLU) for four (4) parcels located on the east side of Ocean Highway, Litchfield Landing, in Georgetown County, identified as TMS #04-0134-001-05-00, #04-0134-001-07-00, #04-0134-001-09-00, #04-0134-001-10-00, from Commercial and Transitional to Medium Density Residential.
- d. Ordinance No. 21-27 - To rezone 4 parcels located on the east side of Ocean Hwy on Litchfield Landing in Litchfield, identified as Tax Map parcels #04-0134-001-005-00, 04-0134-001-07-00, 04-0134-001-09-00 and 04-0134-001-10-00, from General Commercial (GC) to 10,000 Square Feet Residential (R-10).

77. On information and belief, there was no opposition from individuals, groups or organizations to the rezoning and adoption of Ordinance 21-26 and Ordinance 21-27. Also, the same two council members who voted against the approval of Ordinances 21-24 and 21-25 voted in favor of approval of Ordinances 21-26 and 21-27. Consequently, Goff Trustee parcel was subjected to disparate treatment along with a civil conspiracy for the medium density residential and to 10,000 Square Feet Residential (R-10) rezoning.

78. A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. The Counterclaim-Plaintiffs need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. Therefore, the

primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the Counterclaim-Plaintiffs.

79. Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. The gravamen of a civil conspiracy claim is the damage resulting to the Counterclaim-Plaintiffs from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. Special damages must be alleged in the complaint to avoid surprise to the other party.
80. Several paragraphs in the Complaint demonstrate the extent of the combined effort to influence the County Council vote by orchestrating and stating a large number of opposition:
- a. Paragraph 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."
 - b. Paragraph 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."
 - c. Paragraph 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.”

- d. Paragraph 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.”
- e. Paragraph 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.”
- f. Paragraph 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.

81. Generally, civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. However, the Counterclaim-Defendants and others did not conceal their combined and collectively action to injure Goff Trustee’s property and prevent the perceived undeserved profits from rezoning from low density to medium density.

82. The attached exhibits which are printouts from the Keep It Green website demonstrate the extent of the effort to facilitate the conspiracy to injure the property of Goff Trustee. Also,

the organization's president, board members and membership were actively threatening, derisive and vocally expressing their views during county council meetings and in local newspapers. Consequently, the current and future marketability and market value of the Goff Trustee parcel has been severely impacted; thereby, causing special damages.

83. The postings from Counterclaim-Defendant Keep It Green's website clearly establishes the existence of a civil conspiracy in combination or agreement of two or more persons; the collective action was to injure Goff Trustee by preventing the rezoning of the property by committing a lawful act by unlawful means through combination and coordination of the effort; and together initiate the commission of an overt act in furtherance of the agreement to injure with the Complaint; and with resultant proximate damages to the Counterclaim-Plaintiff. All prior and current combined and coordinated action in opposition to the ordinances and the Complaint by the Counterclaim-Defendants support the civil conspiracy.

COUNT I – DECLARATORY JUDGMENT

84. Counterclaim-Plaintiffs hereby repeats and re-alleges the matters set forth in Paragraphs 1 through 83 of these Counterclaims, as though such matters were fully set forth herein.
85. Goff Trustee submits that the facts alleged hereinafter entitle Goff Trustee to declaratory and injunctive relief against the Counterclaim-Defendants, and to such other, further, and different relief as the Court may deem appropriate and in the interests of justice.
- For the purposes of determining a question of actual controversy between the parties, Goff Trustee seeks a declaration of its rights pursuant to §15-53-30 of the South Carolina Code.
86. Under SC Code §15-53-30, a party whose rights, status or other legal relations are affected by contract, state statute, municipal ordinance or other instrument may have those rights determined by declaratory judgment.

COUNT II – CIVIL CONSPIRACY

87. Counterclaim-Plaintiff hereby repeats and re-alleges the matters set forth in Paragraphs 1 through 86 of these Counterclaims, as though such matters were fully set forth herein.
88. As shown by the foregoing allegations, the Counterclaim-Defendants, over a period that commenced about one year ago, have knowingly, deliberately, and repeatedly engaged in a civil conspiracy with individuals, groups and organizations to injure and deny Benjamin F. Sr., Goff, Trustee's federal and state constitutional rights.
89. The Counterclaim-Defendants conspired with and among themselves, and with one or more other persons who will be joined as parties after their identities have been ascertained through discovery, to wrongfully harm Counterclaim-Plaintiff by means of the acts alleged hereinabove.
90. Counterclaim-Defendants, Colony Homeowners, Inc. and Keep It Green Advocacy, Inc. combined for the purpose of injuring Goff Trustee's property through their interference with the rezoning and subsequent legal action having failed to defeat the approval and adoption of Ordinance 21-24 and Ordinance 21-25.
91. Goff Trustee has suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of Counterclaim-Defendants in improperly and unjustifiably conspiring to interfere with a successful rezoning of the Goff Trustee's 15-acre parcel. Goff Trustee will seek to recover from Plaintiffs these and all other actual, special, and consequential damages that are caused by their misconduct.
92. Civil conspiracy is defined as conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another.

93. Proof of unlawful means or independently unlawful acts in order to establish a civil conspiracy is no longer required by South Carolina Courts. A cause of action may arise from an act two or more people committed even where no cause of action would arise if an individual committed the same act. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another.
94. A civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. All prior collective actions in opposition to the ordinances and the Complaint by the Counterclaim-Defendants support the civil conspiracy claim.
95. Counterclaim-Plaintiff accordingly respectfully requests that the Court enter judgment in its favor, and against Counterclaim-Defendants who conspired against Goff Trustee for all damages proximately caused to the Goff Trustee parcel, as proved in court, as a result of the wrongful acts of those who joined and participated in this civil conspiracy.

COUNT III – CONSPIRACY AGAINST RIGHTS

96. Counterclaim-Plaintiff hereby repeats and re-alleges the matters set forth in Paragraphs 1 through 95 of these Counterclaims, as though such matters were fully set forth herein.
97. Plaintiffs coordinated actions with opposing individuals, groups and organizations 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.
98. Under Title 18, U.S.C., Section 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free

exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States.

COUNT IV – DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

99. Counterclaim-Plaintiff hereby repeats and re-alleges the matters set forth in Paragraphs 1 through 98 of these Counterclaims, as though such matters were fully set forth herein.

100. Plaintiffs acting under color of law sought to willfully deprive or cause to be deprived from the property owner those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

101. Under Title 18, U.S.C., Section 242, it is a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

102. The Goff Trustee's Ordinances 21-24 and 21-25 approval process was concurrent with Ordinances 21-26 and 21-27 to rezone parcels to 10,000 Square Feet Residential (R-10), medium density; however, the latter met with no opposition from these individuals, groups and organizations, which confirms the disparate treatment detailed in the Complaint.

103. The Counterclaim-Defendants past and persistent effort to conspire against rights and deprive Goff Trustee property of rights under the color of law should be terminated by the dismissal of the Complaint.

COUNT V – INJUNCTIVE RELIEF

104. Counterclaim-Plaintiff hereby repeats and re-alleges the matters set forth in Paragraphs 1 through 103 of these Counterclaims, as though such matters were fully set forth herein.

105. Because Counterclaim-Defendants threaten to continue and to repeat their wrongful actions unless restrained by this Court, Counterclaim-Plaintiffs face the prospect of irreparable injury, for which there is no adequate remedy at law, and as such the Counterclaim-Plaintiffs accordingly are entitled to injunctive relief from this Court.

106. Goff Trustee respectfully requests that the Court immediately and permanently enjoin and restrain the Counterclaim-Defendants, and each of them, from individually, collectively and by combining to continue to injure Goff Trustee.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiffs, Goff Trustee, respectfully requests that the Court enter judgment: 1) Ordering that the Complaint be dismissed with prejudice; 2) In favor of Counterclaim-Plaintiffs on all claims in the Complaint; 3) In favor of the Counterclaim-Plaintiffs on all Counterclaims asserted herein verbatim; 4) Awarding to Counterclaim-Plaintiffs actual, consequential, special, and punitive damages as determined by the Court and allowed by law; 5) Awarding to Counterclaim-Plaintiffs injunctive relief as the Court determines is warranted and as is allowed by law; and 6) Awarding to Counterclaim-Plaintiffs such other and further relief as the Court may determine is just, proper, and equitable.

Respectfully Submitted,
Counterclaim-Plaintiffs

Date: April 14, 2022


Benjamin F. Goff, Trustee, Pro Se
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004
18 Powers Farm Road
Randolph, MA 02368
781-986-0635 (Tel)
goff-chem@juno.com

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

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

) DEFENDANTS BENJAMIN F. GOFF,
) SR., TRUSTEE AND THE
) BENJAMIN F. GOFF 2004,

) REVOCABLE TRUST, DATED
) JUNE 18, 2004 MOTION FOR
) JUDGMENT ON THE PLEADINGS

11

FILED
COUNTDOWN CLOCK
2022 MAY 23 PM 12:25
ALMA T. WHITE
CLERK OF COURT

175

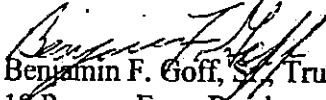
1. The Plaintiffs' attorney and the attorney for Georgetown County and County Council have agreed to the dismissal without prejudice of the Defendants "Georgetown County Council and Council members defendants, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson in their capacities as elected members of the Georgetown County Council".
2. Pursuant to SCRCF 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.
3. The Plaintiffs' Complaint and the various allegations therein will be legally complicated to pursue and/or defend without the County Council and Council members as parties.
4. The Plaintiffs' Complaint summarily alleges, without evidence, that the County Council specifically violated the South Carolina Comprehensive Planning Enabling Act, the Comprehensive Land Use Plan and the County Council Rules and Procedures in the approval and adoption of Goff Trustee/Trust's Ordinances 21-24 and 21-25.
5. 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 Ordinances Number 21-24 and 21-25.
6. Plaintiffs' Complaint does not state any wrongdoing by Goff Trustee/Trust in the procedural approval and adoption of the abovementioned Ordinances.
7. 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 Exhibit A).

8. The referenced email further stated the willingness of the Plaintiffs to agree to the dismissal without prejudice of the Goff Trustee/Trust's Motion to Dismiss, dated January 25, 2022, pending an agreement between all parties, which effectively has occurred.
9. Although, 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.
10. Absent, the County Council and elected members as Defendants, Goff Trustee/Trust cannot remain as parties or Defendants; therefore, the Plaintiffs' Complaint should be dismissed in its entirety with prejudice against Goff Trustee/Trust.
11. In contradiction of Rule 19(a), the Plaintiffs have agreed to allow the County Council and elected members, needed for just adjudication, to be dismissed from the Complaint.
12. Any continued or subsequent legal action against Georgetown County must exclude the involvement or reference to Ordinances 21-24 and 21-25 or Goff Trustee/Trust parcel.

Wherefore, Benjamin F. Goff, Sr., Trustee, and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, request this honorable court to grant the Motion for Judgment on the Pleadings in their favor. There are no stated facts that constitute a cause of action against Goff Trustee/Trust. The Plaintiffs have agreed to dismiss the County Council and members from the Complaint. Consequently, this is a Non-Suit and should be dismiss pursuant to SCRCF Rule 41.

Respectfully Submitted,
The Defendants

Date: May 13, 2022


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

Attached: Exhibit A

JUNO Message Center

Exhibit A

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)

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
COUNTY OF GEORGETOWN

Ernest F. Middleton, III *et al.*,

Plaintiffs

v.

Georgetown County, *et al.*,

Defendants

Benjamin F. Goff, Sr., Trustee of the Benjamin F.
Goff 2004 Revocable Trust dated June 18, 2004,

Counterclaim Plaintiff

v.

Ernest F. Middleton, III, *et al.*,

Counterclaim Defendants

: IN THE COURT OF
: COMMON PLEAS
: FIFTEEN JUDICIAL CIRCUIT

: CASE NO. 2022 CP 2200032

:
:
: PLAINTIFFS' MOTION TO
: DISMISS DEFENDANT
: GOFF'S COUNTERCLAIM
: AND TO STRIKE OTHER
: MATTERS

:
:
: Declaratory Judgment

: JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIM AND
MOTION TO STRIKE OTHER MATTERS**

AND NOW come Plaintiffs by and through their counsel and move this court to dismiss Defendant Goff's Counterclaim with prejudice pursuant to SCRCP 12(b)(6) and to strike portions of Defendant Goff's Affirmative Defenses pursuant to SCRCP 12(f).

BACKGROUND & PROCEDURAL HISTORY

1. This case arises from Defendant Georgetown County's approval of a zoning change request on land owned by Defendant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff."

2. Plaintiffs are adjoining landowners and a South Carolina nonprofit corporation that advocates for the protection and preservation of land.

3. Plaintiffs filed a complaint for Declaratory Judgment on January 7, 2022, challenging the validity of two zoning ordinance amendments changing the zoning of Goff's property from R-1/2 to R-10, more than doubling existing residential density.

4. Goff is proceeding *pro se* and has raised a plethora of issues in multiple filings that include an Answer and Counterclaim filed April 18, 2022, the subject of this motion.

MOTION TO DISMISS GOFF'S COUNTERCLAIM

5. Goff's Counterclaim consists of 106 numbered paragraphs that cover 25 pages.

A. Matters Irrelevant and Immaterial to Counterclaim

6. Paragraphs 4-16, 18-48, 50-51, 53-73 of the Counterclaim relate only to defenses to Plaintiff's Complaint and raise issues of standing, justiciability, service of process, jurisdiction, and failure to state a cause of action, *inter alia*, which are irrelevant to a Counterclaim and do not form the basis for any cause of action.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss Paragraphs 4-16, 18-48, 50-51, 53-73 of Goff's Counterclaim with prejudice.

B. Remaining Paragraphs of Counterclaim

7. The remaining paragraphs 1-3, 17, 49, 52, 74-105, purport to raise causes of action for (a) Declaratory Judgment; (b) Civil Conspiracy; (c) Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Section 241; (d) Deprivation of Rights under Color of Law, pursuant to Federal Crimes Code 18 U.S.C. Section 242; and (e) Injunctive Relief.

8. These paragraphs contain sporadic references to "disparate treatment" and "color of law," suggesting Equal Protection or other constitutional claims.

C. Claims Involving Federal Criminal Offenses

9. Counts III and IV (paragraphs 96-103) purport to state causes of action for Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Sec. 241, and Deprivation of Rights under Color of Law pursuant to Federal Crimes Code, 18 U.S.C. Sec. 242.

10. This court has no subject matter jurisdiction over federal criminal offenses. 18 USCA Section 3231 gives federal courts exclusive jurisdiction over federal crimes.

11. Federal criminal offenses do not constitute civil causes of action.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss Counts III and IV (paragraphs 96-103) of Goff's Counterclaim with prejudice.

D. Constitutional Claims

12. In the event the above references to federal crimes are an attempt to raise a civil claim for federal conspiracy against rights or deprivation of civil rights under federal law, the civil claims fail for the following reasons:

- a. There is no factual support to demonstrate that Plaintiffs, all of whom are private citizens, were acting under color of law.
- b. There is no factual support to establish the elements of conspiracy against rights.
- c. There is no factual support to establish injury or deprivation of any constitutionally protected right.

13. Claims for deprivation of a constitutional right or disparate treatment necessarily require a showing that Plaintiffs were acting under color of law. Melvin v. Social Sec. Admin., 126 F.Supp.3d 584 (E.D. NC 2015).

14. All Plaintiffs are private citizens and there are no facts to support that they were acting in a governmental or quasi-governmental capacity or under any color of law.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss all constitutional claims raised in Goff's Counterclaim with prejudice.

E. Conspiracy Against Rights

15. The elements of Civil Conspiracy Against Constitutional Rights are (1) a conspiracy of two or more persons, (2) motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy. Thomas v. The Salvation Army Southern Territory, 841 F.3d 632, 637 (C.A. 4th Circuit, 2016).

16. Constitutional conspiracy claims require a very strict standard of review and a court must dismiss a claim when the purported conspiracy is alleged in a merely conclusory manner in the absence of concrete supporting facts. Borkowski v. Baltimore County, Maryland, 492 F.Supp.3d 454, 483 (D. Md. 2020).

17. Unsupported legal allegations, unwarranted inferences, unreasonable conclusions, and arguments need not be accepted as true, and legal conclusions couched as factual allegations are insufficient. Barrett v. Board of Educ., 13 F.Supp.3d 502, 508-509 (E.D. NC 2014).

18. Goff's Counterclaim consists entirely of redundant legal conclusions and bald assertions without any relevant factual support. There are no concrete facts to demonstrate any of the elements of conspiracy against rights.

19. Other than the unsupported conclusion that there was a "conspiracy" and a "deprivation" of some unnamed constitutionally protected right, there are no facts to demonstrate the identity of who was involved in the alleged conspiracy, exactly what they supposedly did,

where, when or how they did it, what constitutionally protected right the conspiracy was directed toward, or the nature and cause of an injury.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss all constitutional claims of conspiracy against rights raised in Goff's Counterclaim with prejudice.

F. No Injury or Deprivation of Constitutionally Protected Right

20. The Counterclaim makes frequent reference to the deprivation of "rights" and a conspiracy against "rights;" however, no constitutionally protected right is ever identified.

21. There is no constitutionally protected right to a zoning change.

22. The Counterclaim makes conclusory references to "injury," but contains no allegation of facts in support of an injury.

23. The facts in the light most favorable to Goff reveal that he applied for a zoning change and in spite of public opposition, he got the zoning change he asked for. There is no factual basis to support an injury or deprivation of a constitutionally protected right.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss all constitutional and constitutional conspiracy claims raised in Goff's Counterclaim with prejudice.

G. Civil Conspiracy Under South Carolina Law

24. Count II of the Counterclaim blends elements of conspiracy against rights arising under federal law with those of civil conspiracy arising under state law.

25. The elements of a civil conspiracy under South Carolina law are: (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston County School District, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021).

26. If an unlawful act is not alleged as part of the conspiracy, then it must be shown that the *principal purpose* of the conspiracy was to injure the plaintiff. Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140 (SC Sup. Ct. 2016).

27. The Goff Counterclaim does not set forth facts beyond conclusory allegations to support the elements of civil conspiracy under South Carolina law.

28. There have been no facts alleged to show who entered into an agreement with whom, the details of the alleged agreement, acts in furtherance of the agreement, or that the primary purpose of the agreement was to ruin or damage or injure Goff.

29. There has been no showing of any injury or damage whatsoever. Mr. Goff got the rezoning he asked for despite the alleged “conspiracy.”

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss all civil conspiracy claims raised in the Goff Counterclaim with prejudice.

H. Declaratory Judgment

30. The first count of the Counterclaim asks for Declaratory Judgment, but asserts no basis for a declaration of rights.

31. 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.

(emphasis added).

32. Goff cites no statute, ordinance, contract or franchise to which a declaration of rights, status or other legal relation is required or requested.

33. The Counterclaim simply reiterates defenses to Plaintiffs' Complaint.

34. There is no basis alleged in the Counterclaim for the court to declare judgment.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss the declaratory judgment claims in Goff's Counterclaim with prejudice.

MOTION TO STRIKE AFFIRMATIVE DEFENSES

35. SCRCP 12(f) permits a motion to strike pleadings containing improper, insufficient, redundant, immaterial, impertinent or scandalous matters.

36. The following Affirmative Defenses asserted by Goff are not proper defenses to any matter raised in Plaintiffs' Complaint nor are they relevant to any issue in this case: Fourth Affirmative Defense of Civil Conspiracy (Par. 167); Fifth Affirmative Defense of Conspiracy Against Rights (Par. 168); Sixth Affirmative Defense of Deprivation of Rights Under Color of Law (Par. 169); Seventh Affirmative Defense of Misrepresentation (Par. 170); Tenth Affirmative Defense of Estoppel (Par. 173); Eleventh Affirmative Defense of Unclean Hands (Par. 174).

37. Plaintiffs request these paragraphs be stricken from Goff's Affirmative Defenses.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to strike Affirmative Defenses 4-7, 10 and 11 pursuant to SCRCP 12(f).

PRAAYER FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to grant the following relief:

1. Dismiss Goff's Counterclaim in its entirety with prejudice pursuant to SCRCP 12(b)(6) for failure to state any cause of action and lack of subject matter jurisdiction.

2. Dismiss and/or Strike Goff's Affirmative Defenses 4-7, 10 and 11 contained in Paragraphs 167-170, 173, and 174 pursuant to SCRCP 12(f).

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
(843) 325-7795
kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

May 18, 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.: 2022CP2200032
)

Plaintiffs

) REPLY TO PLAINTIFFS' MOTION TO
) DISMISS THE COUNTERCLAIM AND
) COMPLAINT AND MOTION TO
) STRIKE OTHER MATTERS

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

Benjamin F. Goff, Sr., Trustee and the
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004,

Counterclaim-Plaintiffs

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.,

Counterclaim-Defendants

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ALMA X WHITE
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

**REPLY TO PLAINTIFFS' MOTION TO DISMISS THE COUNTERCLAIM AND
COMPLAINT AND MOTION TO STRIKE OTHER MATTERS**

Now comes Defendant Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004
Revocable Trust, dated June 18, 2004 ("Counterclaim-Plaintiffs") to request this honorable court
to dismiss the Counterclaim-Defendants' Motion to Dismiss the Counterclaim Complaint and
Motion to Strike Other Matters ("the Affirmative Defenses").

INTRODUCTION

Counterclaim-Plaintiffs, Benjamin F. Goff, Sr., Trustee, and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 submitted a Counterclaim Complaint for "Declaratory Judgment", "Civil Conspiracy", "Conspiracy Against Rights" "Deprivation of Rights Under the Color of Law" and "Injunctive Relief". The Plaintiffs' ("Counterclaim-Defendants") Complaint failed to state a cause of action in whole and/or in part as a matter of law against the Counterclaim-Plaintiffs or the Georgetown County Council pursuant to Rule 12(b)(6).

The Counterclaim Complaint is based on the grounds that the Counterclaim-Defendants lack standing to assert the claims stated in the Plaintiffs' Complaint; the Complaint lacks a justiciable controversy for judicial intervention; and a combination of two or more persons have engaged in a "civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law" for the purpose of injuring the Counterclaim-Plaintiffs; thereby, causing special damages in opposing the approval and adoption of Ordinance 21-24 and Ordinance 21-25. In furtherance of the conspiracy, the Counterclaim-Defendants filed a meritless civil action to nullify and void the ordinances through judicial intervention based on contrived allegations.

STATEMENT OF FACTS

1. The fact that Counterclaim-Defendants brought the Complaint under the South Carolina Declaratory Judgment Act does not by itself confer standing as that act is remedial in nature.
2. Parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.
3. 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.

4. The Counterclaim-Defendants have not been deprived of property or sustained any injury-in-fact or have a personal stake in the adoption of Ordinances 21-24 and 21-25.
5. The Counterclaim-Defendants, for the express purpose of injuring Counterclaim-Plaintiffs' property, combined to interfere with the rezoning process and instituted legal action after having failed to stop the approval and adoption of Ordinances 21-24 and 21-25.
6. The Counterclaim-Plaintiffs have suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of the Counterclaim-Defendants in improperly and in unjustifiably conspiring to interfere with the successful rezoning of the Goff Trustee/Trust's 15-acre parcel as reflected in the Counterclaim Complaint.
7. The willful conspiracy engaged in by the Counterclaim-Defendants have created special damages by negatively impacting the marketability and market value of the Counterclaim-Plaintiffs' parcel; therefore, the Counterclaim-Plaintiffs will seek to recover from Counterclaim-Defendants all actual, special, and consequential damages that are caused by their conspiratorial misconduct.
8. On information and belief, there was no opposition from individuals, groups or organizations to the rezoning and adoption of Ordinances 21-26 and 21-27; whereas, the same two council members who voted against the approval of Ordinances 21-24 and 21-25 voted in favor of approval of Ordinances 21-26 and 21-27.
9. Consequently, the Goff Trustee/Trust parcel was subjected to disparate treatment along with a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law for the rezoning to medium density residential, 10,000 Square Feet Residential (R-10).

10. The organization, Keep It Green and its members and associated individuals and organizations, have engaged in conspiratorial misconduct as documented through the various correspondences, website postings and attributable comments in local news articles.

STANDARDS FOR REVIEW

The Fourteenth Amendment of the Constitution provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Because the Amendment is directed at the States, it can be violated only by conduct that may be fairly characterized as "state action."

42 U.S. Code § 1983 – Civil Action for Deprivation of Rights – "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

18 U.S. Code Section 3231: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." (June 25, 1948, ch. 645, 62 Stat. 826.)

State courts may now entertain Section 1983 actions if a plaintiff chooses a state court over the federal forum that is always available as a matter of right. See *Martinez v. California*, 444 U.S. 277, 283, and n. 7, 100 S.Ct. 553, 558, and n. 7, 62 L.Ed.2d 481 (1980). Section 1983 creates no substantive law. It merely provides one vehicle by which certain provisions of the Constitution and other federal laws may be judicially enforced. See *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982) (quoting *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972)) (emphasis added). State as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, which creates a remedy for violations of federal rights committed by persons acting under color of state law.

Under the Supremacy Clause, state courts have a concurrent duty to enforce federal law according to their regular modes of procedure. See *Claflin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833. Such a court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a "valid excuse." *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377, 387-389, 49 S.Ct. 355, 356-357, 73 L.Ed. 747. An excuse that is inconsistent with or violates federal law is not a valid excuse. The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. See *Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 57, 32 S.Ct. 169, 178, 56 L.Ed. 327.

Federal law is enforceable in state courts because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of

procedure. "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. . . . The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent."

See *Clafin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833 (1876); see *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211, 222, 36 S.Ct. 595, 598, 60 L.Ed. 961 (1916)

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. See *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. See *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. See *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." See *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. See *McMillan*, 367 S.C. at 564, 626 S.E.2d at 886. The gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. *Pye*, 369 S.C. at 568, 633 S.E.2d at 511.

Alleging special damages in the complaint to avoid surprise to the other party is no longer required. See *Sheek v. Lee*, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986). The South Carolina Supreme Court has opined that “In light of our decision today, we are returning to our long-standing precedent pre-Todd and for clarification specifically state a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” See *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021); *Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d Conspiracy § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. Conspiracy § 4 (2012) (same).

ORGANIZED AND COMBINED CIVIL CONSPIRACY

The gist of a civil conspiracy is not the unlawful agreement or combination but the damage caused by the acts committed in pursuance of the formed conspiracy. See 15A C.J.S. Conspiracy § 7 (2012). The Counterclaim-Plaintiffs need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. Therefore, the primary inquiry in civil conspiracy is whether the Counterclaim-Defendants’ principal purpose of the combination was to injure the Counterclaim-Plaintiffs. The answer is validated herein and the public record and hearings.

Conspiracies may be concluded from the very nature of the acts done, the relationship of the parties, the motives of the alleged conspirators, and other circumstances. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of

proof by direct evidence. The significance of a civil conspiracy claim is the damage resulting to the Counterclaim-Plaintiffs from the overt acts taken in furtherance of the combination by the Counterclaim-Defendants conspirators in filing the civil action for judicial intervention.

Several paragraphs in the Complaint demonstrate the extent of the combined effort to influence the County Council vote by orchestrating “force of numbers” in opposition.

- a. Paragraph 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.”
- b. Paragraph 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.”
- c. Paragraph 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 Keep It Green representatives who spoke on behalf of their members and neighboring landowners.”
- d. Paragraph 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."

- e. Paragraph 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."
- f. Paragraph 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 Keep It Green who spoke on behalf of members and neighboring residents.

A conspiracy scheme generally involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence; however, the Counterclaim-Defendants and others did not conceal their combined and collectively action to injure Counterclaim-Plaintiffs' property and prevent the perceived undeserved profits from rezoning from low density to medium density. The postings from Counterclaim-Defendant Keep It Green's website clearly establishes the existence of a civil conspiracy in combination or agreement of two or more persons. See Exhibits A - D.

The obvious intent of the collective action was to injure the Counterclaim-Plaintiffs' parcel 1) by preventing the rezoning of the property; 2) by committing lawful acts with unlawful means through combined and coordinated efforts; 3) together initiate the commission of an overt act in furtherance of the agreement to injure through judicial intervention; and 4) with resultant proximate damages to the Counterclaim-Plaintiffs' property market value and marketability. Further, the Counterclaim-Defendants' affidavits are uniform in content with the premise that

they acquired their properties with the expectation that the Counterclaim-Plaintiffs' parcel would never be rezoned; therefore, they are retroactively injured by Ordinances 21-24 and 21-25.

As shown by the foregoing allegations, the Counterclaim-Defendants, over a period that commenced about one year ago, have knowingly, deliberately, and repeatedly engaged in a civil conspiracy as individuals, groups and organizations to injure and deny the Counterclaim-Plaintiffs' federal and state constitutional rights. The Counterclaim-Defendants conspired with others and among themselves, and with one or more other persons who will be joined as parties after their identities have been ascertained through the discovery process, to wrongfully harm the Counterclaim-Plaintiffs by means of the acts alleged in the Counterclaim Complaint.

The Counterclaim-Plaintiffs have suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of Counterclaim-Defendants in improperly and unjustifiably conspiring to interfere with a successful rezoning of the Counterclaim-Plaintiffs' 15-acre parcel. The Counterclaim-Plaintiffs will seek to recover from the Counterclaim-Defendants all actual, special, and consequential damages that are caused by their misconduct. Civil conspiracy is defined as conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another.

Proof of unlawful means or independently unlawful acts in order to establish a civil conspiracy is no longer required by South Carolina Courts. A cause of action may arise from an act two or more people committed even where no cause of action would arise if an individual committed the same act. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another.

A civil conspiracy claim has been established: 1) the combination or agreement of two or more persons 2) to commit an unlawful act or a lawful act by unlawful means; 3) together with

the commission of an overt act in furtherance of the agreement; and 4) damages proximately resulting to the plaintiff.

CONSTITUTIONAL VIOLATIONS OF CIVIL RIGHTS

The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. Under Title 18, U.S.C., Section 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States. Under Title 18, U.S.C., Section 242, it is a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. Private persons, jointly engaged with state officials in the prohibited action, are acting under color of law for purposes of the statute. To act under color of law does not require that the accused be an officer of the State. It is enough that she/he is a willful participant in joint activity with the State or its agents. See *United States v. Price*, 383 U.S. 787, 794, n. 7, 86 S.Ct. 1152, 1157 n.7, 16 L.Ed.2d 267 (1966). The U.S. Supreme Court has held that the private party's joint participation with a state official in a conspiracy to discriminate would constitute both state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights and action under color of law for purposes of the statute. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970).

COUNTY COUNCIL AND ELECTED MEMBERS STIPULATION OF DISMISSAL

The Counterclaim-Defendants' attorney and the attorney for Georgetown County and County Council have agreed to the dismissal without prejudice of the Defendants "Georgetown

County Council and Council members defendants, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson in their capacities as elected members of the Georgetown County Council". The agreed "Stipulation to Dismissal", between the Plaintiffs' attorney and the Georgetown County Council's attorney, submitted to the Court on May 5, 2022, essentially invalidated the Plaintiffs' Complaint pursuant to SCRCP Rule 41. It is an admittance of the lack of a justiciable controversy pursuant to SC Code Ann. Sec. 15-53-70 of the Uniform Declaratory Judgment Act. The dismissal of the Georgetown County Council and Council members, at whom the allegations in the Plaintiffs' Complaint are directed left Goff Trustee/Trust as the only actionable defendants. In contradiction of Rule 19(a), the Plaintiffs have agreed to allow the County Council and elected members, needed for just adjudication, to be dismissed from the Complaint. This can be construed as joint participation in the "deprivation of rights under the color of law" by the Plaintiffs and Georgetown County. Moreover, a person need not actually be a government employee or official to act under color of law. See *United States v. Price*, 383 U.S. 787, 794, n. 7, 86 S.Ct. 1152, 1157 n.7, 16 L.Ed.2d 267 (1966).

MOTION TO STRIKE OTHER MATTERS (AFFIRMATIVE DEFENSES)

Under Rule 12(e), if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just; whereas, Rule 12(f) Motion to Strike, states: Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no

responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e). The Counterclaim-Defendants want the Court to strike the affirmative defenses they arbitrarily and capriciously disagree without pointing out defects, if any, or requesting a more definite statement. The affirmative defenses purported in the Motion to Strike are the most indefensible violations of laws by the Counterclaim-Defendants.

The allegations and defenses the Counterclaim-Defendants want to strike include, but limited to, the lack of facts to constitute a cause of action, lack of standing, lack of a justiciable controversy and the following affirmative defenses: 1) Forth Defense: Civil Conspiracy, Plaintiffs combined actions with opposing individuals, groups and organizations for the expressed purpose of injuring the property of the owner which caused special damages resulting in a civil conspiracy; 2) Fifth Defense: Conspiracy Against Rights, Plaintiffs coordinated actions with opposing individuals, groups and organizations 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; 3) Sixth Defense: Deprivation of Rights Under Color of Law, Plaintiffs acting under color of law sought to willfully deprive or cause to be deprived from the property owner those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States; 4) Seventh Defense: Misrepresentation, Plaintiffs knowingly and/or deliberately misrepresented material facts to the Court and concealed material facts from Defendants, and therefore are not entitled to a

declaratory judgment; 5) Tenth Defense: Estoppel, Plaintiffs, by their own conspiratorial misconduct, are estopped to seek the relief, if any, demanded by their Complaint; and 6) Eleventh Defense: Unclean Hands, Plaintiffs' claims for relief are barred by the equitable doctrine of unclean hands, as Plaintiffs seek to invoke the equitable jurisdiction of this Court in aid of their wrongful conspiratorial conduct.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim-Plaintiffs respectfully requests that this Honorable Court: 1) to dismiss the Motion to Dismiss the Counterclaim Complaint and Motion to Strike Other Matters (Affirmative Defenses); and 2) grant a judgment in favor of the Counterclaim-Plaintiffs on all claims. There is presumptive evidence already available in the public record (Planning Department, Planning Commission and County Council documents and audio-video of meetings) along with other evidence that will become available through the discovery process that the Counterclaim-Defendants have engaged in a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law, to which the court can take judicial notice.

Respectfully Submitted,
Counterclaim-Plaintiffs

Date: May 25, 2022


Benjamin F. Goff, Trustee, Pro Se
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004
18 Powers Farm Road
Randolph, MA 02368
781-986-0635 (Tel)
goff-chem@juno.com

Exhibits: A, B, C & D



crperson

Aug 15 1 min read

Exhibit A

URGENT ACTION NEEDED!

WE NEED YOUR HELP to fight a REZONING request in Pawleys Island at a dangerous intersection on the east side of US 17 near the Hog Heaven curve.

1. Please ATTEND the County Council meeting on Tuesday, August 24, 2021, at 5:30 pm, Howard Auditorium, 1610 Hawkins St., Georgetown, and wear green. WE NEED A RECORD TURN-OUT!
2. Please EMAIL YOUR OPPOSITION to County Council at tfloyd@gtcounty.org by Sunday, August 22.
3. Please TELL EVERYONE YOU KNOW to do the same!

Details in the attached letter.



Goff Property Call to Action 8-15-21.pdf

Download PDF • 119KB





Last Chance to Stop Increased Density on the Neck!

Two weeks ago County Council voted at second reading to allow an arbitrary zoning change in Pawleys Island from R-1/2 acre to R-10 which doubles gross density on a 14.77 acre parcel along the east side of US 17 on a very dangerous stretch of highway near from Hog Heaven. This decision was in spite of hundreds of letters in opposition and many outstanding speakers at public input. John Thomas and Bob Anderson, both from the Waccamaw Neck, voted against it and Steve Goggans, also of the Waccamaw Neck, voted in favor of the increased density along with the other council members.

Our county officials seem to have no regard for following our comprehensive land use plan which calls for no increased density. This was a request to rezone unsupported by any plan. This decision sets a dangerous precedent that would allow any landowner to request and be granted a zoning change for any reason or no reason and would permit all available land on the Waccamaw Neck to be re-zoned to increase density.

The people of the Waccamaw Neck should not have to beg our county officials to represent and protect us. We have a serious problem with council members failing to follow the overwhelming voice of the people with respect to issues affecting the neck.

There will be a third reading on September 14, at which time the County Council will have a final vote. Please email your opposition to tfloyd@gtcounty.org and please attend the meeting to help make our voices heard.



Help Save Our Community

Please join your friends and neighbors in signing the PETITION TO PROTECT & PRESERVE PAWLEYS ISLAND-LITCHFIELD.

If you have not already done so, please click [HERE](#) to SIGN THE PETITION asking our county to:

- DENY zoning change request to double residential density on 14.77 acres at 3138 Ocean Highway near Hog Heaven. (Public hearing rescheduled for October 26, at 5:30 pm. Details to follow in a week or so.)
- FOLLOW our land use plan and DENY all zoning change requests to increase density in Pawleys-Litchfield.
- INCLUDE strict language in the comprehensive land use plan revision to limit zoning changes that increase density.

Our county officials consistently turn a blind eye to our comprehensive plan and support agendas that favor developers and special interests. The residents of the Waccamaw Neck are growing weary of being ignored and effectively unrepresented.

This is a final push to make our voices heard and it is important for us to get as many signatures on this Petition as possible. Please tell your friends and neighbors.

NOTE: We have traditional paper Petitions for those who do not have access to a computer or are not on social media. If you wish to have a paper Petition to circulate among your friends and neighbors, please email us at keepitgreen.pi@gmail.com and we will see that you get a packet with everything you need. Every signature counts!

Thank you for your continued support of our work to protect our community.

10/26/21 Exhibit D

**PETITION TO PROTECT & PRESERVE
PAWLEYS ISLAND - LITCHFIELD**

For the safety of our citizens and to preserve the natural character of our community from overburdened infrastructure, traffic, flooding, stormwater and inappropriate development, the undersigned Petitioners **OPPOSE ZONING CHANGES THAT INCREASE RESIDENTIAL DENSITY** in the Pawleys Island-Litchfield area.

We hereby petition **GEORGETOWN COUNTY OFFICIALS** as follows:

1. **DENY** zoning changes that increase residential density in the Pawleys Island-Litchfield area.
2. **DENY** currently pending request to change zoning to double residential density from R-1/2 acre to R-10,000 sq. ft. on 14.77 acres at 3138 Ocean Highway in Pawleys Island.
3. **FOLLOW** the language in our current Comprehensive Land Use Plan about the need to limit residential density in the Pawleys Island-Litchfield area. (Petition worker has a copy of this current language if you wish to read it.)
4. **INCLUDE** strict language in the upcoming revision of our Comprehensive Land Use Plan that limits zoning changes to increase residential density in the Pawleys Island-Litchfield area.

Respectfully submitted,

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

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

Defendants

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

) CASE NO.: 2022CP2200032

) DEFENDANT BENJAMIN F. GOFF,
) SR., TRUSTEE OF THE

) BENJAMIN F. GOFF 2004,

) REVOCABLE TRUST, DATED

) JUNE 18, 2004 MEMORANDUM OF

) LAW IN SUPPORT OF MOTION FOR

) SUMMARY JUDGMENT ON THE

) PLEADINGS, ANSWERS, CLERK OF COURT

) ADMISSIONS AND EXHIBITS
)

FILED
GEORGETOWN COUNTY, S.C.
2023 JAN - 6 PM 3:33
EMMA Y. WHITE
CLERK OF COURT

**MOTION FOR SUMMARY JUDGMENT
ON THE PLEADINGS, ANSWERS, ADMISSIONS AND EXHIBITS**

Now comes the Defendant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee"), to request this honorable court to grant the Motion for Summary Judgment in his favor based on the pleadings, answers, admissions and exhibits and on the grounds that there are no genuine issues as to any material facts as to which there are genuine issues to be tried against him and he is entitled to summary judgment in his favor as a matter of law pursuant to Rule 56, SCRPC.

In the Court Order, the presiding judge construed the Motion to Dismiss, Defendant, Benjamin F. Goff, Trustee, as a motion to dismiss the Complaint and inexplicably determined that a "fairly read" cause of action existed against Goff Trustee. Additionally, the Plaintiffs and the Georgetown County lawyers filed a Stipulation of Dismissal releasing the County Council and elected members from any and all claims in the above-captioned civil litigation.

Pursuant to Rule 41, SCRPC, the dismissal of the Georgetown County Council and Council members ("County Council"), at whom the allegations in the Complaint are directed,

demands a favorable judgment for Goff Trustee on the pleadings, answers, admissions and exhibits. Absent the County Council members, there are no genuine issues of material facts to be tried. The Plaintiffs have acknowledged in writings and hearing transcript that they have no claims against Goff Trustee. Consequently, there are no genuine issues of material facts and never was against Goff Trustee, whose presence in the litigation was mandated by SC Code Ann, Sec 15-53-80 as a party-in-interest as opposed to a defendant.

Rule 56(c), SCRPC, allows for the disposition of a civil action on the merits without the necessity of a trial if there is no real dispute as to the material facts. The initial burden on the moving party is to "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law". Rule 56(c), SCRPC, states that "When a motion for summary judgment is made and supported, an adverse party may not rest upon the mere allegation or denial of the pleadings, but the response, by affidavits or as otherwise provided by Rule 56(e), SCRPC, , must set forth specific facts showing that there is a genuine issue for trial. See Madsen v. Erwin, 395. 715, 719 (1985). Where there is no genuine issue of fact, a court can apply the substantive law in determining which fact, if any, is material to the moving party.

Rule 56(e), SCRPC, requires the opposing party of any summary judgment motion to do more than simply denying the claimant allegations. The adverse party bears the burden of introducing enough countervailing evidence to demonstrate the existence of a genuine material factual issue. Summary judgment allows the prompt disposition of controversies on the merits without a trial, when no real dispute exists as to the pertinent and salient facts and the dispute involves a question of law. To avoid summary judgment, a party may not rely on unsworn

pleadings, on conclusions, on assertions, or unsubstantiated speculations to draw contradictory inferences from materials placed in the record.

In support of this motion, Goff Trustee states the following:

1. Pursuant to SC Code Ann. § 15-53-80 and Rule 19(a)(2), SCRCP, Goff Trustee should have been made a “person-in-interest” or “involuntary plaintiff” in this litigation as opposed to a defendant.
2. The Plaintiffs’ lawyer and the lawyer for Georgetown County Council agreed to the dismissal without prejudice of the Defendants “Georgetown County Council and Council members in their capacities as elected members of the Georgetown County Council.
3. The agreed “Stipulation to Dismissal”, between the Plaintiffs’ lawyer and the Georgetown County Council’s lawyer, submitted to the Court on May 5, 2022, voided the Plaintiffs’ Complaint pursuant to Rule 41, SCRCP.
4. The Plaintiffs’ Complaint and the various allegations therein will be legally complicated to pursue and/or defend without the County Council and Council members as parties.
5. The Plaintiffs’ Complaint summarily alleges, without evidence, that the County Council specifically violated the South Carolina Comprehensive Planning Enabling Act, the Comprehensive Land Use Plan and the County Council Rules and Procedures in the approval and adoption of Goff Trustee’s Ordinances 21-24 and 21-25.
6. Plaintiffs’ Complaint does not state any claims against Goff Trustee in the procedural approval and adoption of Ordinances 21-24 and 21-25.
7. Goff Trustee 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 Ordinances 21-24 and 21-25.

8. 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.
9. The referenced email further stated the willingness of the Plaintiffs to agree to the dismissal without prejudice of the Goff Trustee's Motion to Dismiss, dated January 25, 2022, pending an agreement between all parties.
10. Although, 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.

Wherefore, Benjamin F. Goff, Sr., Trustee, of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, request this honorable court to grant the Motion for Summary Judgment in his favor. There are no claims or fairly read or stated facts that constitute a cause of action against Goff Trustee. With the dismissal of any and all claims against the Georgetown County Council and elected members, there are no genuine issues as to any material facts as to which there are genuine issues to be tried. Goff Trustee is entitled to a judgment in his favor as a matter of law.

Respectfully Submitted,
The Defendant

Date: December 29, 2022


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

Attached: Memorandum of Law in Support of Motion for Summary Judgment on the Pleadings, Answers, Admissions and Exhibits

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

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

Defendants

) IN THE COURT OF COMMON PLEAS
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) CASE NO.: 2022CP2200032
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) DEFENDANT BENJAMIN F. GOFF,
) SR., TRUSTEE OF THE

) BENJAMIN F. GOFF 2004,
) REVOCABLE TRUST, DATED

) JUNE 18, 2004 MEMORANDUM OF
) LAW IN SUPPORT OF MOTION FOR

) SUMMARY JUDGMENT ON THE
) PLEADINGS, ANSWERS,

) ADMISSIONS AND EXHIBITS
)

FILED
GEORGETOWN COUNTY, S.C.
2023 JAN-6 PM 3:33
CLERK OF COURT
J. WHITE

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON THE PLEADINGS, ANSWERS, ADMISSIONS AND EXHIBITS**

BACKGROUND

On January 7, 2022, the Plaintiffs filed a complaint under the Uniform Declaratory Judgment Act (UDJA) against Georgetown County, Georgetown County Council and Council members in their capacities as elected members and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, ("Goff Trustee") questioning the validity of Ordinances 21-24 and 21-25. Although named as a Defendant in the complaint, Goff Trustee should have been named as a "party-in-interest" pursuant to S.C. Code Ann. § 15-53-80 or an "involuntary plaintiff" pursuant to Rule 19(a)(2), SCRPC. See *Appendix pp. 1 - 7*. A Rule 12(b)(6), SCRPC Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant was filed on January 25, 2022.

The Goff Trustee's Motion to Dismiss was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act (UDJA) or an involuntary plaintiff in accordance with Rule 19(a)(2), SCRPC. It was not a motion to dismiss the entire case in which there were insufficient facts for a cause of action against Goff Trustee. A

Motion to Dismiss the Plaintiffs' Complaint in its entirety was made by the County Council on April 11, 2022 and not heard by the court because it was resolved by a Stipulation of Dismissal filed on May 5, 2022. See *Appendix pp. 77 – 78*.

In the resolution of the County's Motion to Dismiss with the agreed Stipulation of Dismissal, the County and Plaintiffs dismissed without prejudice any and all claims against the Georgetown County Council and elected members. All of the allegations in the Plaintiffs' Complaint were directed at the County Council for approving and adopting the challenged ordinances. Having dismissed all claims against the County Council, the Plaintiffs' Complaint became futile and moot. Therefore, neither Goff Trustee nor the County should continue as defendants in this action. Goff Trustee was joined under Section 15-53-80 of UDJA. Although, the County as a legal entity can sue and be sued, it was not the individual actor in the litigation as opposed to the County Council and elected members. There was an apparent tacit agreement to avoid the hearing on the Motion to Dismiss that had a high probability of being granted to allow purported and non-existent constitutional claims in continuation of the Plaintiffs' Complaint to void and nullify the Goff Trustee's ordinances.

The Goff Trustee's Motion to Dismiss him as a Defendant was heard, May 19, 2022. On or about May 25, 2022, Goff Trustee was informed by the Court's law clerk in an email that the motion was denied and a fair reading indicated a cause of action against Goff Trustee. The Order was authored by the Plaintiffs' lawyer as requested by the law clerk. In this Motion for Summary Judgment, Goff Trustee is following the guidance of the Court in challenging the failure to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against Goff Trustee in the Plaintiffs' Complaint. The interlocutory order was appealed on June 10, 2022. It was tantamount to a final judgment and appealable; however, it was dismissed on motion by the Court of Appeals on December 7, 2022.

STATEMENT OF RELEVANT FACTS

1. There are no genuine issues of material facts to be tried against Goff Trustee in the Plaintiffs' Complaint and he is entitled to judgement in his favor as a matter of law. See *Appendix pp. 11 - 42*.
2. Pursuant to Rule 19(a)(2), SCRCP, Goff Trustee should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80. See *Rule 19(a)(2), SCRCP and Uniform Declaratory Judgment Act, (UDJA), S.C. Code Ann. § 15-53-80*.
3. There are no stated facts or claims in the Plaintiffs' Complaint that constitutes a "fairly read" cause of action against Goff Trustee, pursuant to Rule 12(b)(6), SCRCP. See *Appendix pp. 11 - 42*.
4. There is no requirement for a "burden of proving the need" justification to be submitted with the rezoning application; rather, it's during the first, second and third readings; consequently, Paragraph 33 in the Complaint is a disingenuously false statement. See *Appendix p. 18*.
5. The Plaintiffs' lawyer made admissions in an email message, a letter and motion hearing transcript that in summary stated that her clients have no claims against Goff Trustee. See *Appendix p. 75; Appendix p. 76; and Appendix p. 94, Lines 10 - 15*.
6. All allegations in the Plaintiffs' Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed by stipulation. See *Appendix pp. 11 - 42*.
7. The Plaintiffs do not have a particularized or imminent injury-in-fact from the ordinances to create standing and/or a justiciable controversy for judicial intervention. See *Appendix pp. 58 - 62*.
8. The Stipulation of Dismissal between the Plaintiffs' and Georgetown County lawyers dismissed any and all claims against the County Council and elected members. See *Appendix pp. 81 - 82*.
9. The Plaintiffs' and the County Council's lawyers, resolution of the Motion to Dismiss the claims against the County Council and elected members in the Plaintiffs' Complaint, was a concession to legislative immunity that deters judicial intervention. See *Appendix pp. 77 - 82*.

10. Goff Trustee 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 Ordinances Number 21-24 and 21-25. See *Appendix pp. 105 – 111*.
11. Ordinances 21-24 and 21-25, passed in accordance with the South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, third edition, and the Georgetown County Council Rules of Procedure at the Third Reading Meeting on October 26, 2021 and adopted on November 9, 2021. See *Appendix pp. 54 – 58*; and *Appendix pp. 65 – 67*.
12. The Plaintiffs' Complaint did not allege constitutional violations, if any, in the procedural approval of Goff Trustee's Ordinances 21-24 and 21-25. See *Appendix pp. 11 - 42*.
13. The Plaintiffs' lawyer, in authoring the Order, served in the role of advocate and advisor in an adversarial proceeding. See *Rule 1.8(l), S.C. Rules of Professional Conduct*.

ISSUES PRESENTED

1. Whether Goff Trustee is entitled to summary judgment based on the pleadings, answers, admissions and exhibits on the Plaintiffs' Complaint which does state any claims against him?
2. Whether Goff Trustee is entitled to summary judgment based on the absence of genuine issues of material facts to be tried against him and he is entitled to judgment in his favor as a matter of law?
3. Whether the Court erred in finding that the Plaintiffs' Complaint, "fairly read", constituted a cause of action against Goff Trustee, where none was stated or existed in the complaint?
4. Whether the Court erred in finding a "fairly read" cause of action against Goff Trustee when the Plaintiffs' lawyer stated in filings before the Court that they had no claims against him and in the motion hearing transcript that "we don't think that he did something wrong"?
5. Whether the Court erred in not finding that the Goff Trustee should have been named a party-in-interest or an involuntary plaintiff as opposed to a defendant in the litigation?

6. Whether the Court erred in not hearing and ruling on the Georgetown County Council's Motion to Dismiss the County Council and elected members on the grounds of legislative immunity and lack of judicial power to grant relief to Plaintiffs?
7. Whether the Court erred in not dismissing the Plaintiffs' Complaint in its entirety based on the Stipulation of Dismissal which dismissed any and all claims against the defendants, County Council and elected members?
8. Whether the legislative immunity of the County Council and elected members upholds the Goff Trustee's Ordinances 21-24 and 21-25 and deters judicial intervention?
9. Whether Goff Trustee, as a property owner, should remain a defendant and be held accountable for having submitted and supported an application for successfully rezoning a parcel of land?
10. Whether the Court erred in allowing the Plaintiffs' lawyer to serve in the role of advocate and advisor in authoring the Order in an adversarial proceeding?

ARGUMENT

I. NO GENUINE ISSUES OF MATERIAL FACTS TO BE TRIED

Rule 56, SCRCP provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. See *Rule 56(a), SCRCP*. The trial court must grant the motion "if the pleadings, answers to interrogatories, admissions and exhibits on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See *Id. Rule 56(c), SCRCP*. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact or any claims to be tried." See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

"With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"--that is, pointing out to the [trial] court--that

there is an absence of evidence to support the nonmoving party's case.” See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. See *Id.* (quoting *Celotex*, 477 U.S. at 323); and *Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence that show there is a genuine issue of fact remaining for trial. See *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” See *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). In the grant of a summary judgment motion, the Court applies the standard under Rule 56(c), SCRPC: “summary judgment is proper when ‘there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.’” See *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991).

In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. See *Id.* at 115, 410 S.E.2d at 545. However, the nonmoving party must demonstrate the likelihood that a trial will uncover additional relevant evidence.” See *Id.* at 112, 410 S.E.2d at 544.

In that the County Council members have been dismissed from the case, a review of the record before the Court compels a finding that summary judgment should be granted for Goff Trustee. See *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) (“Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.”).

Despite being bound to review the record in a light most favorable to plaintiffs, “[a] court ‘cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.’” See *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted).

The Plaintiffs’ Complaint does not contain or presented any claims, if any, against Goff Trustee that establishes a genuine issue of material fact for trial. In fact, the Plaintiffs’ lawyer has stated in written communications and at the motion hearing that there are no claims against Goff Trustee. Plaintiffs are not permitted to simply rest on the allegations in their complaint, especially where, as here, the factual allegations are conclusory in nature and directed at the County Council and elected members. Rule 56(e), SCRCF states that an adverse party may not rest upon the mere allegations or denials of his pleading, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Under the circumstances of this case, the Court should appropriately grant summary judgment to Goff Trustee. See *Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants “advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”). A trial is unlikely to create any genuine issue of material fact. See *Baughman*, 306 S.C. at 112, S.E.2d at 544 (nonmoving party must demonstrate that further discovery will likely uncover additional relevant evidence); see also *George v. Fabri*, 345 S.C. at 452, 548 S.E.2d at 874 (purpose of summary judgment is to dispose of cases which do not require a fact finder).

Nowhere, in the Plaintiffs’ Complaint are there any allegations of wrongdoing by Goff Trustee. The Plaintiffs’ lawyer has, in summary, stated in an email message, letter and the motion transcript that her clients have no claims against Goff Trustee. “The only reason you are included as

a party is that the Declaratory Judgment Act states that all “parties in interest” must be named.” However, arbitrarily and capriciously, Goff Trustee was named as a Defendant in the Summons and Complaint, Court Docket and Order. It is inconceivable that a “fair reading” of the Plaintiffs’ Complaint would conclude that a cause of action exists against Goff Trustee. With the previous admissions of no claims against Goff Trustee, the motion decision and Order by the Court contradicted the reality, admitted facts and admissions in this case. See *Appendix pp. 5 – 6*.

All allegations and claims in the Plaintiffs’ Complaint are directed at the Georgetown County Council and elected Council members along with a request to nullify and void Ordinances 21-24 and 21-25. Having stipulated to the dismissal any and all claims against the County Council and elected members, Goff Trustee has been left as the only opposing party. On April 11, 2022, the lawyer for the County Council and elected members filed a Motion to Dismiss the Complaint based on legislative immunity related to the enacting the challenged ordinances and the lack of power of the court to compel the County Council to take legislative action with respect to the challenged ordinances. See *Appendix pp. 77 - 78*.

A Letter to Court, dated May 4, 2022, which implied an agreement between the lawyers resulted in a Stipulation of Dismissal, filed of May 5, 2022, to dismiss the all claims against the County Council and elected members from the Plaintiffs’ Complaint. With the real Defendants exonerated and protected by legislative immunity, this left Goff Trustee as the sole Defendant in a legal action in which he did nothing wrong. See *Appendix pp. 79 – 80*.

Absent the claims against the County Council, the Complaint is void. The Court rejected the Plaintiffs’ lawyer transcript statement and filings stating no claims against Goff Trustee. With the dismissal of the County Council and elected members, the Plaintiffs should not be allowed to continue this litigation against Goff Trustee for exercising a constitutional right to petition for rezoning of private property. See *Appendix pp. 81 – 82*.

II. ABUSE OF DISCRETION IN COURT ORDER DECISION

The Order, which involves the merits in the action, in effect determines the outcome of the action, is an abuse of discretion and will prevent an appeal of a final judgment. The SC Supreme Court has held that an abuse of discretion arises in cases in which: (1) the judge issuing the order was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support. See *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 169 S.E. (2d) 387 (1969); See *Brown v. Weathers*, 251 S.C. 67, 160 S.E. (2d) 133 (1968); See *Holliday v. Holliday*, 235 S.C. 246, 111 S.E. (2d) 205 (1959); See *Simon v. Flowers*, 231 S.C. 545, 99 S.E. (2d) 391 (1957).

“In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court.” See *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). “The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and policies of this state and the Court's sense of law, justice, and right.” *Id.* at 467, 636 S.E.2d at 605-06.

An allegation or statement 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 denial of the Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant impacts the merit of the case and will prevent the appeal of a final judgment. The Court misinterpreted the Goff Trustee's motion to dismiss him as a defendant as a request to dismiss the case. Goff Trustee understood the necessity of defending his interest as a party. That is why Goff Trustee petitioned the court to defined him as a party-in-interest as required the under the Uniform Declaratory Judgment Act (UDJA), S.C. Code Ann. § 15-53-80 or an involuntary plaintiff under with Rule 19(a)(2), SCRPC. Instead of understanding that a required party should not be a defendant, Goff Trustee has been made culpable for allegations against the County Council and

charged with a “fairly read” cause of action, where none exist. Absent facts and evidence, an innocent person should not be accountable based on an error in judgment or an abuse of discretion.

The Georgetown County Council’s lawyer filed a Motion to Dismiss the entire legal action on the grounds of legislative immunity and lack of judicial power to grant relief. The motion was resolved with an agreement to file a Stipulation of Dismissal which dismissed any and all claims against the County Council and elected members. The Stipulation of Dismissal did not involve and was not signed by Goff Trustee. All allegations in the Plaintiffs’ Complaint were directed at the County Council and elected members. See *Appendix pp. 77 – 78; and Appendix pp. 81 – 82.*

A letter, dated May 4, 2022, was sent to the Court stating that the Motion to Dismiss was resolved in lieu of a Stipulation of Dismissal pursuant to Rule 41, SCRPC between the County Council’s and Plaintiffs’ lawyer. It was filed on May 5, 2022 and stated in part that the parties hereby stipulated, pursuant to Rule 41, SCRPC, to the dismissal, without prejudice, of any and all claims against the County Council and elected members and dismissed them as necessary parties under S.C. Code Ann. § 15-53-80. See *Appendix pp. 79 – 80.*

The Goff Trustee’s Motion to Dismiss, in essence, was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of Uniform Declaratory Judgment Act (UDJA) or an involuntary plaintiff in accordance with Rule 19(a)(2), SCRPC. In this Motion for Summary Judgment, Goff Trustee is following the Court’s guidance in challenging the finding and Order denying to dismiss him as a Defendant and finding an unstated “fairly read” cause of action, where admittedly no claims were made against Goff Trustee in the Complaint. Effectively, the Court allowed the accused defendants to be released and the unaccused and inadvertently or deliberately designated defendant to remain and be charged with an unspecified cause of action. Consequently, Goff Trustee is being sued for having submitted a rezoning application that was accepted by the

Planning Department, recommended by the Planning Commission and approved and adopted into ordinances by the County Council and elected members. See *Appendix p. 17, Para. 31*.

The Order states that “[T]he court finds that Plaintiffs’ Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment”. However, all allegations of controversy are against the County Council and elected members, who have been removed from the complaint with any and all claims dismissed. Therefore, the claims of controversy are now assigned to Goff Trustee. The Order states that “[T]he court finds that Defendant Goff Trust was properly named as a defendant in this declaratory judgment action” presumes sufficient facts for a cause of action against Goff Trustee, where none exist and the Plaintiffs’ lawyer have so stated in writing and the hearing transcript. See *Appendix pp. 5 – 6*.

In filing the Motion to Dismiss, Goff Trustee sought the removal of the Trustee as a Defendant and to be designated a party-in-interest as required by the UDJA. Further, the Goff Trustee’s Motion to Dismiss addressed the inadequacy and futility of the Plaintiffs’ Complaint against the County Council because the validity of the Goff Trustee’s ordinances was being challenged. In the Plaintiffs’ Complaint and Motion in Opposition, the lawyer clearly stated that the UDJA required anyone whose substantial rights are at risk to be named a party. However, the UDJA does not state that the party must be a defendant. Goff Trustee is a party-in-interest and the Plaintiffs’ lawyer clearly recognized that in the opposing motion and in an email, letter and the transcript, in summary, stating that her clients have no claims against Goff Trustee. See *Appendix pp. 44 – 48; and Appendix pp. 49 - 68*.

Plaintiffs’ lawyer stated in an email that “my clients have no specific claims (causes of action) against you (Goff Trustee), the only reason you are included as a party is that the Declaratory Judgment Act states that all parties in interest must be named, and the Goff Trustee’s Trust is arguably a party-in-interest.” In that only Goff Trustee is named as a Defendant in the

Complaint, it translates into no claims against Goff Trustee or Trust. For all legal purposes, Goff Trustee is owner of all assets within the trust; therefore, if the Trust is definable as a party-in-interest, Goff Trustee should be a party-in-interest. See *Fed.R.Civ.P. 17(a) and (b)*.

The Trust, as a legal entity, was not sued and cannot be sued. In pleadings, the Plaintiffs' lawyer views Goff Trustee and Trust as independent actors, as does the Court in the docket, and conflates them in the Order. This is an error in the interpretation of federal and state laws, an abuse of discretion by the Court and a violation of professional conduct by the Plaintiffs' lawyer. See *Appendix p. 75; Appendix p. 76; Appendix p. 92, Lines 3 - 6 and p. 94, Lines 10 - 15*.

The presiding hearing judge apparently interpreted Goff Trustee's motion as only to dismiss the entire Complaint and failed to recognize the specific request of the removing Goff Trustee as a Defendant and to designate him as party-in-interest or involuntary plaintiff. The Plaintiffs' lawyer, in authoring the Order, capitulated to the Court's decision which sanctioned Goff Trustee as a Defendant with an implied a "fairly read" cause of action.

The Plaintiffs' Complaint was solely directed at the County Council with no stated allegations against Goff Trustee, hence the "fairly read" statement. In viewing Goff Trustee as a Defendant, the presiding judge abused his discretion with regards to the UDJA, Section 15-53-80 and the Plaintiffs' Complaint. See *Appendix pp. 11 - 42*.

The Court Order, which was authored by the Plaintiffs' lawyer, contradicts statements made by the lawyer in an email missive to Goff Trustee, dated February 7, 2022. The Plaintiffs' lawyer is a current or former member/officer of the Keep It Green organization that supposedly opposes all rezoning efforts on the Waccamaw Neck area in Georgetown County. This Order raises questions of entitlement to equal protection under the law and whether Goff Trustee has any rights the Court is bound to respect. See *Appendix p. 75; Appendix p. 76; Appendix p. 100; Appendix pp. 101 - 104; Appendix p. 92, Lines 3 - 6 and p. 94, Lines 10 - 15*.

With all allegations and claims in the Plaintiffs' Complaint directed at the County Council and elected members having been dismissed, there are no remaining claims, if any, to litigate. It is counterintuitive to suggest any remaining claims against the approval and adoption of Ordinances 21-24 and 21-25 after dismissal of any and all claims against the County Council and elected members. Goff Trustee cannot defend against a phantom "fairly read" cause of action that is unstated and without a factual or evidentiary basis. See *Appendix pp. 11 - 42*.

Contrary to the statement in the Stipulation of Dismissal, there are no remaining claims to adjudicate. There cannot realistically be any claims against Georgetown County since they have been dismissed against the County Council and elected members. Goff Trustee, who should not be a defendant, has been saddled, without factual evidence, with an unstated "fairly read" cause of action in the Court Order where none exists in the Plaintiffs' Complaint. In accordance with the plain language of the Uniform Declaratory Judgment Act, Section 15-53-80, Goff Trustee has an interest and should be named a party in the declaratory action. The presumed intent is to protect the rights of those parties who have a claim or interest to protect but are not defendants. "The determination of legislative intent is a matter of law." See *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, they must be taken and understood in their plain, ordinary and popular sense. See *Id. Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530. The text of a statute is considered the best evidence of the legislative intent; therefore, the courts are bound to give effect to the expressed intent of the legislature. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Whether Goff Trustee should be a Defendant with a "fairly read" and unstated cause of action is a question of law. It is unmistakably clear that Goff Trustee should not be defendant in this declaratory judgment and the ordinances are valid based on legislative immunity.

III. PLAINTIFFS' LAWYER ADVOCATE/ADVISOR/OPPOSITION MEMBER

In Section 1.8(I), S.C. Rules of Professional Conduct, Conflict of Interest, Current Clients, Specific Rules:

“In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact. A lawyer serving as an advocate in a particular matter shall not directly or indirectly engage in an ex parte communication with the hearing officer, trial judge or trier of fact concerning the proceeding.” See *Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules, S.C. R. Prof'l. Cond. 1.8(l)*.

The Plaintiffs' lawyer, a current or former board member and/or president of Keep It Green, Inc, a plaintiff in the Complaint. The Plaintiffs, in the compulsory Counterclaim Complaint, are alleged to have engaged in a civil conspiracy against Goff Trustee. The judge's clerk, in an email, dated May 25, 2022, requested the Plaintiffs' lawyer to prepare the Order for the motion hearing Judge. The lawyer, Cynthia Ranck Person, former chief executive officer and/or current board member of Keep It Green, Inc., represents the Plaintiffs. In essence, the advocate was solicited to become an advisor to the hearing officer in an adversarial proceeding.

Keep It Green and its members participated in an organized and combined effort to oppose the rezoning of Goff Trustee's property. After the failure to prevent the approval and adoption of the ordinances, this legal action was filed for judicial intervention to render the ordinances null and void. See *Appendix pp. 11 – 42*. The Plaintiffs' lawyer as an advocate and was invited to be an advisor by the trier of fact in preparing an Order that conflicted with previous admissions and failed to inform the court of the conflict, to Goff Trustee's knowledge, when solicited to prepare the Order. See *Appendix pp. 8 – 9; Appendix p. 100; and Appendix pp. 101 – 104*.

The Order, as written by Plaintiffs' lawyer conflicted with her written admissions and transcript statements, in summary, stating that the Plaintiffs have no claims against Goff Trustee and his presence was necessitated by the UDJA. However, the Act does not mandate the designation of the parties as defendants; whereas, Rule 19(a)(2) states that in a proper case Goff Trustee should

be an involuntary plaintiff to protect his interest. See *Appendix p. 92, Lines 3 – 6*. Additionally, the Order does not state the findings and directives as provided in the email from the judge's law clerk; rather, it repeats of the Plaintiffs' Motion in Opposition and willing concurs that Goff Trustee is a Defendant with an unspecified cause of action. See *Appendix p. 75; Appendix p. 76; Appendix p. 94; and Appendix pp. 8 - 9*.

IV. PLAINTIFFS ADMISSIONS OF NO CLAIMS AGAINST GOFF TRUSTEE

Rule 3.3, S.C. Rules of Professional Conduct, Candor towards the Tribunal and Rule 19(a)(2)(i) states in part:

"A lawyer shall not knowingly: (a) (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." (d) "In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." See *Rule 3.3 - Candor toward the Tribunal, S.C. R. Prof'l. Cond. 3.3*.

Rule 19(a)(2)(i), SCRCP "if he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may "(i) as a practical matter impair or impede his ability to protect that interest." . . . "in a proper case, an involuntary plaintiff."

The Order that was authored by the Plaintiffs' lawyer and approved by the motion hearing judge. However, the Order is inconsistent with the admissions, admitted facts and the intent of the Plaintiffs' Complaint for joining Goff Trustee, which under S.C. Code Ann. § 15-53-80, required he be made a party-in-interest. Pursuant to Rule 19(a)(2), SCRCP, Goff Trustee should have been joined as an involuntary plaintiff as opposed to a defendant. There was no wrongdoing by Goff Trustee stated in the pleadings; therefore, he should not have been named as a defendant. Absence from the Order are the specific guidance provided to the Plaintiffs' lawyer, from by the judge's law clerk. The Court's decision and guidance stated that:

“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.” See *Appendix pp. 8 – 9*.

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Plaintiffs’ lawyer stated:

“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.” See *Appendix p. 76*.

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs’ lawyer stated:

“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.” See *Appendix p. 75*.

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs’ lawyer stated:

“I certainly – I sympathize with Mr. Goff’s position in the sense that I know he feels he didn’t do anything wrong, and we don’t think that he did something wrong. But it is a declaratory judgment action, and he does own the property that is affected by these ordinances. And so under the Declaratory Judgment Act, he is a necessary party.” See *Appendix p. 94, Lines 10-15*.

Plaintiffs’ Complaint does not state any claims against Goff Trustee in the procedural approval and adoption of the ordinances. Even though, Goff Trustee’s Trust is not individually listed as a Defendant in the Plaintiffs’ Complaint, it has been defined as a Defendant by the Court. 224

Goff Trustee only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department, provided supporting memorandums of the need, and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. See *Appendix p. 17, Para. 31 and Appendix pp. 105 -m111.*

The Order as crafted by the Plaintiffs' lawyer and approved by the Court, does not reflect the case facts and admissions made in the written statements to Goff Trustee and in the motion hearing transcript in court. In accordance with Rule 19(a)(2)(i), SCRPC, Goff Trustee should be an involuntary plaintiff. Goff Trustee's motion was misconstrued as a motion to dismiss the entire Complaint as opposed to dismissing him as a defendant and redesignating him as a party-in-interest or involuntary plaintiff. This was clearly understood and expressed by the Plaintiffs' lawyer in her emails and letters. See *Appendix p. 75; Appendix p. 76; and Appendix pp. 101 - 104.*

It is disingenuous and a violation of professional conduct for the Plaintiffs' lawyer to prepare an Order that defined Goff Trustee as a Defendant when the lawyer has stated otherwise in writings and the transcript. The presiding judge should have dismissed the Plaintiffs' Complaint in its entirety as opposed to implying a "fairly read" cause of action against Goff Trustee to prolong this case. The unwillingness the Court to redesignate Goff Trustee as an involuntary plaintiff or party-in-interest violated the constitutional privilege of rezoning private property by owners without the threat of becoming an unaccused defendant. See *Appendix p. 75; p. 76; and p. 94, Lines 10 - 15.*

In that any and all claims have been dismissed against the County Council and elected members, the Order has targeted Goff Trustee with an unspecified cause of action. Having dismissed the County Council and elected members, the Plaintiffs' lawyer, as the author, has disingenuously used the Order to support their Complaint and redirect the litigation towards Goff Trustee as a Defendant with an implied, unstated "fairly read" cause of action. Absence the County

Council and elected members, there are no remaining claims or defendants, if any, other than Goff Trustee. See *Appendix pp. 5 – 6*.

V. LEGISLATIVE IMMUNITY VOIDS PLAINTIFFS' COMPLAINT

The Court accepted a Stipulation of Dismissal that allowed the Georgetown County Council and elected members to be dismissed from the complaint based on legislative immunity and lack of judicial power to render relief. Pursuant to Rule 41(b), SCRCP, Involuntary Dismissal: Non-suit: The complaint should be dismissed for failure to prosecute and comply with the stated rule.

In a case decided by the S.C. Supreme Court, owners of property adjacent to rezoned land challenged the rezoning ordinance, arguing it conflicted with the local Zoning Land Development Regulations (ZLDR). See *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E.2d 92 (Ct. App. 2007), petition for cert. filed (S.C. January 24, 2008). The court specifically held that the zoning regulations and S.C. Code Ann. § 6-29-740 provide "County Council with final decision-making authority in rezoning actions. *Id.* at 560, 654 S.E.2d at 96-97. As noted in *Mikell*, "there is nothing to suggest that County Council cannot change an ordinance that it created." *Id.* at 561, 654 S.E.2d at 97.

With regards to legislative immunity, the Courts have opined in multiple cases: South Carolina recognizes the longstanding doctrine of legislative immunity for legislators carrying on their legislative duties. See *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (holding a legislator was absolutely immune from liability for comments made during the performance of his legislative duties). Legislative immunity protects legislators from "deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good." See *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951). The public good is undermined by any restriction placed on a legislator's ability to exercise legislative discretion, including the fear of personal liability. See *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998).

Although few South Carolina cases discuss legislative immunity, the Supreme Court has addressed similar public policy considerations for immunity for other types of public officials carrying out their official duties. See *Williams v. Condon*, 347 S.C. 227, 242-43, 553 S.E.2d 496, 505 (Ct. App. 2001) (noting qualifying a prosecutor's immunity would "prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system" (quoting *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976)).

Specifically, the South Carolina Supreme Court stated that: “The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the Courts, and they will not be interfered with . . . unless there is plain violation of the constitutional rights of citizens. There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the Planning and Zoning Commission and the city council of a municipality has acted after considering all the facts, the Court should not disturb the finding unless such action is arbitrary, unreasonable, or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority.”

“Likewise, the power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations.” See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (citation omitted).

With respect to judicial review of zoning ordinances, the S.C. Supreme Court has noted that there is a strong presumption in favor of validity of municipal zoning ordinances and validity of their application. See *Bob Jones University, Inc. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963). The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon the party attacking it to show through clear and convincing evidence the arbitrary and capricious nature of the ordinance. See *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1992). The Court has concluded that the action of a municipality regarding the rezoning of property will not be overturned by a court as long as the decision is “fairly debatable”. See *Rushing v. City of Greenville*, 265 S.C. 285, 217 S.E.2d 797 (1975).

The S.C. Supreme Court has cautioned that, “[i]t is not the role of the courts to substitute their judgment for that of local legislative bodies, which are better qualified to act upon local zoning matters.” See *Smith v. Georgetown County Council*, 292 S.C. 235, 355 S.E.2d 864 (Ct.App.1987). *Id.* 355 S.E.2d at 866. The Court Record in this case contains such evidence as to preclude finding that the zoning ordinances are arbitrary and capricious.

A Land Use Plan prepared by the Planning Commission has no power to zone property. The plan does not establish the zoning for the property, nor does it mandate the County Council to abide by the plan. It merely provides a general direction for considering future rezoning, which is a legislative process. See *Hampton v. Richland County*, 292 S.C. 500, 357 S.E.2d 463 (Ct.App.1987) (an ordinance rezoning a particular piece of property, like an ordinance adopting a comprehensive zoning plan, is legislative, and as such, presumptively valid because it is not the court's prerogative to pass upon the wisdom of the municipality's decision).

As stated in the Motion to Dismiss for Georgetown, et al, “Ordinances 21-24 and 21-25 were enacted within legitimate legislative activity by the County Council and are legislatively immune and not subject to judicial review.” See *S.C. Pub. Int. Found. v Courson*, 420 S.C. 120, 125, 801 S.E.2d 185, 187 (Ct. App. 2017). 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.”).

Accordingly, the Plaintiffs’ Complaint which contested the approval and adoption of Ordinances 21-24 and 21-25 is not viable. In that courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance, no relief, if any, is available to the Plaintiffs in this litigation. Consequently, the Plaintiffs’ challenge to the County Council’s approval and adoption of Ordinance 21-24 and Ordinance 21-25, enacted on October 26, 2021 and codified

on November 9, 2021 is barred by doctrines of legislative authority and judicial lack of power to compel a legislative body. In agreeing to the Stipulation of Dismissal, the Plaintiffs have acquiesced to legislative immunity, the inability of the court to grant relief and the futility of the complaint against the County Council, elected members and Goff Trustee.

VI. COUNTY COUNCIL'S MOTION TO DISMISS NOT HEARD BY COURT

Georgetown County filed a Rule 12(b)(6), SCRCF Motion to Dismiss the Complaint in its entirety that was scheduled and not heard by the Court; thereby, preventing a fair and necessary adjudication that should have ended the litigation and denying Goff Trustee procedural due process under the Fourteenth Amendment. In not hearing the County's Motion to Dismiss, the Goff Trustee's constitutional rights were abridged:

The U.S. Const. amend. XIV: Procedural due process, based on principles of fundamental fairness, that addresses which legal procedures are required to be followed in state proceedings. Relevant issues, include notice, opportunity for hearing and basis of decision.

The County's Motion to Dismiss the Plaintiffs' Complaint in its entirety was scheduled for a hearing on May 19, 2022 and the Court Docket does not reflect that it was withdrawn by motion. Presumably, the County's motion was resolved by the Stipulation of Dismissal between the County's and Plaintiffs' lawyers. The County's lawyer filed a letter on May 4, 2022 stating that the parties have reached a resolution on the County Council's Rule 12(b)(6), SCRCF Motion to Dismiss that was filed on April 11, 2022. Goff Trustee was not a part of the discussion or agreement and did not sign the stipulation as required by Rule 41(a)(B), SCRCF.

In lieu of proceeding with the Motion to Dismiss, the County and Plaintiffs' lawyers agreed in the Stipulation of Dismissal to dismiss any and all claims against the County Council and elected members and that they are not necessary parties under S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act. In essence, by not hearing the motion, Goff Trustee was denied procedural due process and equal protection and has incurred a substantial risk of irreparable harm.

The motion stated that the County Council and elected members had legislative immunity as it relates to enacting the challenged ordinances since they were in the sphere of legitimate legislative activity. Additionally, it stated that no relief was possible in that courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance. Settled case laws were cited to support both grounds for dismissal of the Plaintiffs' Complaint in its entirety. Absence, a hearing and oral argument, Goff Trustee was denied his constitutional rights to due process of the law as required by the Fourteenth Amendment.

The S.C. Supreme Court has opined that county ordinances are not challengeable unless they are arbitrary and capricious. Also, the appellate courts have stated that controversies that are "fairly debatable" are not ripe for judicial intervention. With regard to the ordinances, the Complaint alleges a violation of the County Council Rules of Procedure which are fairly debatable.

Instead of challenging the County's Motion to Dismiss, the Plaintiffs agreed to a resolution to dismiss any and all claims against the County Council and elected members. Whereas, a hearing and ruling on the motion would have, more likely than not, ended the Complaint in its entirety. With regard to the ordinances, the Plaintiffs' Complaint did not allege or specify any constitutional issues, if any, but rather an administrative violation of the County Council Rules of Procedure. The Court, in not hearing and ruling on the County Council's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF failed to consider if a cause of action existed for constitutional issues.

The statement that the Plaintiffs seek to challenge the constitutionality of the ordinances in the County's Motion to Dismiss is an unsupported statement that allows another pathway to nullify the ordinances; thereby, implying that constitutional violations only occurred with the Goff Trustee ordinances as opposed to those approved and adopted concurrently, before and after. If heard and ruled on by the Court, the County lawyer's Motion to Dismiss should have resulted in the dismissal

of the Complaint in its entirety based on the doctrine of legislative immunity that deters judicial intervention into the legislative process.

VII. COUNTY'S AND PLAINTIFFS' STIPULATION OF DISMISSAL

Goff Trustee was not a party to the agreement or informed regarding the Plaintiffs and County Council lawyers' Stipulation of Dismissal and was not requested to sign the Stipulation of Dismissal at any time.

Rule 41(a)(B), SCRPC states in part: An action may be dismissed - (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action.
Rule 41(b), SCRPC states in part: Involuntary Dismissal: Non-suit, Effect Thereof;
For failure of the plaintiff to prosecute and comply with these rules.

A Stipulation of Dismissal pursuant to Rule 41, SCRPC between the County Council's and Plaintiffs' lawyer was filed on May 5, 2022 which states that the parties hereby stipulated, pursuant to Rule 41, SCRPC, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council in their capacities as elected members of the Georgetown County Council and members and excluded them as necessary parties under S.C. Code Ann. § 15-53-80. In that the County and Goff Trustee had filed their Answers to the Complaint, pursuant to Rule 41(a)(B), SCRPC the Stipulation of Dismissal was required to be signed by all parties.

The Plaintiffs' lawyer and the lawyer for Georgetown County and County Council agreed to the dismissal of any and all claims without prejudice against the "Georgetown County Council and elected Council members Defendants based on legislative immunity that prevented judicial intervention to grant relief. With all allegations and claims in the Plaintiffs' Complaint directed at the County Council and elected members, there are no remaining claims, if any, to litigate against the County or Goff Trustee. See *Appendix pp. 81 - 82*.

The Plaintiffs' lawyer conceded to settled case laws on legislative immunity of County Councils and the Court's lack of power to intercede. The Stipulation of Dismissal between the

Plaintiffs' lawyer and the County Council's lawyer, submitted to the Court on May 5, 2022, essentially voided the Plaintiffs' Complaint in accordance with settled case laws. The Plaintiffs effectively accepted the unquestioned validity of the ordinances and in fact, the futility of Complaint. It was exculpatory with respect to Goff Trustee and Ordinances 21-24 and 21-25.

VIII. NO CONSTITUTIONAL ISSUES INVOLVING ORDINANCES

There are no allegations or claims in the complaint or statements in the affidavits or pleadings that the Plaintiffs were deprived of property, due process of law or any constitutional rights of the United States or State of South Carolina.

“[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.” See *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 154, 705 S.E.2d 53, 54, 55 (2011). “[T]he power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations.” See *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965).

“There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and when the planning commission and the city council of a municipality have acted after reviewing all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or in clear abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority.” See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963).

S.C. Code Ann. § 15-53-80 of the Declaratory Judgment Act requires service on the Attorney General if an ordinance alleged to be unconstitutional. No such service occurred because the allegations against the County Council involved only administrative violations of County Council Rules of Procedure related to the passage of the ordinances. A municipal ordinance is a legislative enactment and is presumed to be constitutional. See *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998). The burden of proving the invalidity of a zoning ordinance is on the party attacking it and it is incumbent on the attacking party to show the arbitrary and capricious

character of the ordinance through clear and convincing evidence. *Id.*; see also *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 489 S.E.2d 630 (1997) (a strong presumption exists in favor of the validity and application of zoning ordinances). "Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of citizen's constitutional rights." See *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991).

There were no alleged violations of the South Carolina Constitution, deprivation of property or due process of law, regarding the approval and adoption of the Ordinances 21-24 and 21-25. In that Georgetown County remains a Defendant, a statement in the filed Motion to Dismiss that County is the proper party to challenge the constitutionality of a county ordinance suggests further litigation on constitutionality. The Plaintiffs' Complaint did not allege any challenge to the constitutionality of the ordinances. See *Appendix pp. 11 – 42; and Appendix pp. 83 - 99*.

CONCLUSIONS

Wherefore this Honorable Court should grant the Motion for Summary Judgment in whole or part in favor of Goff Trustee. The Complaint does not contain any claims against Goff Trustee and the Plaintiffs' lawyer have stated in documents in the Court Record that they have no claims against Goff Trustee. With the dismissal of any and all claims against the Georgetown County Council and elected members, there are no genuine issues of material facts to be tried and Goff Trustee is entitled to judgment in his favor as a matter of law.

Respectfully Submitted,

Date: December 29, 2022


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IX. APPENDIX (Attached)

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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

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

Defendants

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

) CASE NO.: 2022CP2200032
)

) DEFENDANT BENJAMIN F. GOFF,
) SR., TRUSTEE OF THE

) BENJAMIN F. GOFF 2004,
) REVOCABLE TRUST, DATED

) JUNE 18, 2004 MEMORANDUM OF

) LAW IN SUPPORT OF MOTION FOR

) SUMMARY JUDGMENT ON THE

) PLEADINGS, ANSWERS,

) ADMISSIONS AND EXHIBITS
)

APPENDIX TO

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON THE PLEADINGS, ANSWERS, ADMISSIONS AND EXHIBITS**

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Ernest F. Middleton, III, *et al.*

Plaintiffs

v.

Georgetown County, *et al.*,

Defendants

Benjamin F. Goff, Sr., Trustee of the
Benjamin F. Goff 2004 Revocable Trust
dated June 18, 2004,

Counterclaim Plaintiff

v.

Ernest F. Middleton, III, *et al.*,

Counterclaim Defendants

: IN THE COURT OF
: COMMON PLEAS
: FIFTEEN JUDICIAL CIRCUIT
:
: CASE NO. 2022 CP 2200032
:
: PLAINTIFFS' MEMORANDUM OF
: LAW IN SUPPORT OF THEIR
: MOTION TO DISMISS DEFENDANT
: GOFF TRUST'S COUNTERCLAIM &
: MOTION TO STRIKE OTHER
: MATTERS

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS DEFENDANT GOFF TRUST'S COUNTERCLAIM &
MOTION TO STRIKE OTHER MATTERS**

This Memorandum of Law is filed in support of Plaintiffs' Motion to Dismiss Goff Trust's Counterclaim with prejudice pursuant to SCRCP 12(b)(6) for failure to state a cause of action and for lack of subject matter jurisdiction, and to strike portions of Defendant Goff Trust's Affirmative Defenses pursuant to SCRCP 12(f) that are improper, insufficient, redundant, and immaterial.

I. BACKGROUND & PROCEDURAL HISTORY

This case arises from Defendant Georgetown County's approval of a zoning change request on land owned by Defendant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff

2004 Revocable Trust dated June 18, 2004, hereinafter “Goff Trust.” Plaintiffs consist of three married couples and an incorporated homeowners association all of whom own land adjoining the Goff Trust parcel, and a South Carolina nonprofit corporation that advocates for the protection and preservation of land in the lower Waccamaw Neck of Georgetown County.

Plaintiffs filed a complaint on January 7, 2022, asking for Declaratory Judgment relative to two zoning ordinance amendments changing the zoning of Goff Trust’s property from R-1/2 to R-10, more than doubling existing residential density. A Stipulation of Dismissal was subsequently entered into between counsel for Plaintiffs and counsel for Georgetown County whereby the county council and individual council members were dismissed, leaving Georgetown County and Goff Trust as the remaining defendants.

Goff Trust is proceeding *pro se* and has filed numerous motions, appeals and other documents creating the following procedural chronology:

1. Goff Trust Motion to Dismiss & Interlocutory Appeal. On January 25, 2022, Goff Trust filed a Motion to Dismiss Plaintiffs' Complaint which was denied by Order dated June 3, 2022. Goff Trust subsequently attempted to appeal this interlocutory order to the South Carolina Court of Appeals by filing a Notice of Appeal on June 10, 2022, which stayed trial court proceedings. The appeal was ultimately dismissed by the Court of Appeals and remitted back to this court on January 7, 2023.
2. Goff Trust Answer & Counterclaim. On April 18, 2022, Goff Trust filed an Answer & Counterclaim to which Plaintiffs filed a Motion to Dismiss/Strike which is scheduled for hearing by this court on February 9, 2023.
3. Goff Trust Motion for Judgment on the Pleadings. On May 22, 2022, Goff Trust filed a Motion for Judgment on the Pleadings to which Plaintiffs filed a Motion to Strike on the

basis that pleadings are not yet closed as required by Rule 12(c), SCRCPP. These motions are pending and presently scheduled for hearing on February 9, 2023.

4. Goff Trust Motion for Summary Judgment. On January 6, 2023, Goff Trust filed a Motion for Summary Judgment which is pending and presently scheduled for hearing by this court on February 9, 2023.

This brief is filed in support of Plaintiffs' Motion to Dismiss/Strike Goff Trust's Counterclaim and certain matters raised in its Answer and Affirmative Defenses.

II. STANDARD OF REVIEW FOR MOTION TO DISMISS

A. General

In the context of a Motion to Dismiss for failure to state a cause of action pursuant to SCRCPP 12(b)(6), the trial court examines the legal sufficiency of the complaint, construing the facts alleged in the light most favorable to the nonmoving party. Overcash v. S.C. Electric & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

South Carolina law is very clear that “[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court,” Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 121-122, 634 S.E.2d 5 (Ct.App. 2006) (citations omitted), and “[w]hen a plaintiff states nothing more than legal conclusions, a claim should fail.” Paradis v. Charleston County School District, 424 S.C. 603, 819 S.E.2d 147, 153 (Ct. App. 2018) (citations omitted) (reversed on other grounds). While the courts “recognize the pleadings must be liberally construed, Rule 12(b)(6) requires the plaintiff to allege facts” and not simply legal conclusions. Id. at 153 (citations omitted) (emphasis added).

B. Strict Standard of Review for Constitutional Claims

In pleading federal constitutional claims, and particularly constitutional conspiracy claims, a much more strict standard of review is applied. The Fourth Circuit “has rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a [constitutional] conspiracy ... and [a] court must dismiss [the] claim whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.” Borkowski v. Baltimore County, Maryland, 492 F.Supp.3d 454, 483 (D. Md. 2020), citing Simmons v. Poe, 47 F.3d 1370, 1377 (4th Cir. 1995) (emphasis added) (citations omitted).

“The Fourth Circuit has made clear that the standard for a [federal constitutional] conspiracy claim requires more than conclusory allegations. Rather, it requires concrete facts.” Smith v. Town of South Hill, --- F.Supp.3d ---- (E.D. Va. 2020), 2020 WL 1324216 at 25. (citations omitted) (emphasis added).

Likewise, appellate courts are consistently clear that “[i]n evaluating the complaint, unsupported legal allegations need not be accepted. Legal conclusions couched as factual allegations are insufficient, as are conclusory factual allegations devoid of any reference to actual events.” Id. at 468 (citations omitted) (emphasis added).

Citing the United States Supreme Court, the court in Barrett v. Board of Educ. of Johnston County, N.C., 13 F.Supp.3d 502, 508-509 (E.D. NC 2014), explained that

[a] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Similarly, the Court need not accept as true a plaintiff’s unwarranted inferences, unreasonable conclusions, or arguments. The Court is not bound to accept as true a legal conclusion couched as a factual allegation. Accordingly, to survive a Rule 12(b)(6) motion, a complaint must contain facts sufficient to raise a right to relief above the speculative level and to satisfy the Court that the claim is plausible on its face.

Id. at 508-509 (citations omitted).

Accordingly, in the present case, all claims raised in Goff Trust's Counterclaim that pertain to federal constitutional conspiracy theories must be dismissed unless they are supported by specific concrete facts that go beyond labels, conclusions, and threadbare allegations.

III. MOTION TO DISMISS COUNTERCLAIM

Goff Trust's Counterclaim against Plaintiffs consists of 106 separately numbered paragraphs that cover 25 pages. The paragraphs fall into one of the two following categories: (1) matters irrelevant to any cause of action; and (2) matters that purport to state a cause of action.

A. Matters Irrelevant to any Cause of Action.

Paragraphs 4-16, 18-48, 50-51, 53-73 of the Counterclaim relate only to Goff Trust's defenses to Plaintiff's Complaint and raise issues of Standing, Justiciability, Service of Process, Failure to State a Cause of Action, and other miscellaneous defenses, all of which have been raised repeatedly in Goff Trust's various filings and are irrelevant to and not appropriately raised in a Counterclaim. These matters do not form a basis for any cause of action and Plaintiffs respectfully request these paragraphs to be dismissed pursuant to Rule 12(b)(6).

B. Matters that Purport to State a Cause of Action

The remaining paragraphs of the Counterclaim, 1-3, 17, 49, 52, 74-105, purport to raise causes of action for (a) Declaratory Judgment; (b) Civil Conspiracy; (c) Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Section 241; (d) Deprivation of Rights under Color of Law, pursuant to Federal Crimes Code 18 U.S.C. Section 242; and (e) injunctive relief. These paragraphs also contain sporadic references to "disparate treatment" and "color of law," suggesting Equal Protection or other constitutional claims although these causes of action are not specifically referenced nor are the elements set forth.

1. FEDERAL CRIMES AND OFFENSES

Counts III and IV (paragraphs 96-103) purport to state causes of action for Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Section 241, and Deprivation of Rights under Color of Law pursuant to Federal Crimes Code, 18 U.S.C. Section 242.

These are federal criminal offenses that have no place in this civil state court Counterclaim. This court has no subject matter jurisdiction over federal criminal offenses. 18 USCA Section 3231 gives federal courts exclusive jurisdiction over federal crimes as follows: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." Furthermore, Goff Trust lacks standing to prosecute federal criminal offenses in any court.

A federal criminal offense does not constitute a civil cause of action, and accordingly, Plaintiffs respectfully request these paragraphs and purported causes of action to be dismissed with prejudice.

2. CONSTITUTIONAL CLAIMS

In the event these references to federal crimes are deemed as an attempt to raise a civil claim for federal conspiracy against rights or deprivation of civil rights under federal law, these claims fail for the following reasons:

- a. There is no factual support to demonstrate that Plaintiffs, all of whom are private citizens, were acting under color of law.
- b. There is no factual support to establish conspiracy against rights.
- c. There is no factual support to establish injury or deprivation of any constitutionally protected right.

a. No Color of Law

Any purported claim for deprivation of a constitutional right or disparate treatment necessarily fails because there is not a single fact to support that any of the Plaintiffs were acting under color of law. All Plaintiffs are private citizens and were not acting in a governmental or quasi-governmental capacity.

The court in Melvin v. Social Sec. Admin., 126 F.Supp.3d 584 (E.D. NC 2015), quoting the United States Supreme Court, noted the well settled principle that, “[t]o state a [constitutional] claim ... a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” Id. at 607 (citations omitted).

“The color of law requirement excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” Thomas v. The Salvation Army Southern Territory, 841 F.3d 632, 637 (C.A. 4th Circuit, 2016) (citations omitted). American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999).

There is no fact alleged in Goff Trust’s Counterclaim to support the notion that Plaintiffs were acting under color of law.

b. No Showing of Civil Conspiracy Against Rights

In order to properly plead a claim for Civil Conspiracy Against Constitutional Rights,

a plaintiff must show: (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Thomas, supra. at 637 (citations omitted).

Furthermore,

a claimant must show an agreement or a 'meeting of the minds' by defendants to violate the claimant's constitutional rights ... and it must be shown that there was a single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences. This is a relatively stringent standard that requires sufficient evidence that the alleged conspirators participated in a joint plan.

Melvin, supra. at 610 (citations omitted).

A court must dismiss a claim "whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts." Borkowski, supra. at 483 (citations omitted) (emphasis added). The courts have set a strict standard that is very difficult to achieve. As the Borkowski court noted, the Fourth Circuit has rarely, if ever, found sufficient facts.

By way of example,

the Fourth Circuit has affirmed the lower court's decision to dismiss a plaintiff's conspiracy claim where the plaintiff failed to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made.

Smith supra. at 25 (citations omitted). The Smith court, quoting the United States Supreme Court, gave the following important guidance to trial courts. "[A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Smith, supra. at 26 (citations omitted). In another case, the court similarly noted that, "a bare assertion of conspiracy will not suffice." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

The Smith court described in detail how this process is applied.

The court will dismiss claims when allegations consist almost entirely of formulaic recitation of the elements of a cause of action via naked

assertions of wrongdoing containing none of the required factual enhancement . . . to cross the line between possibility and plausibility of entitlement to relief. Such allegations alone cannot suffice to state a . . . conspiracy claim, especially given the weighty burden to properly bring such a claim.

Smith supra. at 26.

In the present case, the allegations of the Counterclaim that purport to raise a constitutional conspiracy against rights consist entirely of redundant legal conclusions and bald assertions without any relevant factual support. There are no concrete facts to support any of the five elements of conspiracy against rights. Other than the unsupported conclusion that there was a “conspiracy” and a “deprivation” of some unnamed constitutionally protected right, there are no facts alleged to demonstrate the identities of who was involved, what exactly they did, where, when or how they did it, or what constitutionally protected right the conspiracy was directed toward.

c. No Injury or Deprivation of Constitutionally Protected Right

The Goff Trust Counterclaim makes frequent reference to the deprivation of rights and a conspiracy against rights; however, no constitutionally protected right is ever actually identified. Likewise, Goff Trust claims to have been “injured,” but has not alleged any facts in support of a real injury.

It is important to note at the outset that there is no constitutionally protected right to a zoning change. A review of the facts in the light most favorable to Goff Trust reveals that it applied for a rezoning of its property from R-1/2 to R-10 to double residential density. Plaintiffs and other neighboring residents publicly opposed the zoning change as they were lawfully permitted to do. Despite this opposition, Goff Trust was successful in having its application for R-10 rezoning approved. Indeed, Defendant Georgetown County enacted two ordinances to

change the zoning on the Goff Trust parcel from R-1/2 to R-10. Goff Trust got what it asked for. There is simply no factual basis to support an injury or deprivation of a constitutionally protected right.

For these reasons, Plaintiffs request the court to dismiss with prejudice all constitutional claims and constitutional conspiracy claims raised in the Counterclaim.

3. CIVIL CONSPIRACY UNDER SOUTH CAROLINA STATE LAW

Count II of Goff Trust's Counterclaim blends elements of conspiracy against rights arising under federal law with those of civil conspiracy arising under state law. Under South Carolina state law,

a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.

Paradis v. Charleston County School District, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021).

If an unlawful act is not alleged as part of the civil conspiracy, then it must be shown that "the objective is to ruin or damage the business of another. Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff."

Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140 (SC Sup. Ct. 2016) (citations omitted) (emphasis added).

In other words, injury that occurs to a plaintiff as an incidental consequence of a legitimate primary purpose is not actionable. Plaintiff is "required to prove that the object of the conspiracy was to ruin or damage the business of another." Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co., Inc., 992 F.2d 59, 63 (C.A. 4 1993) (emphasis added).

In the present case, Goff Trust has not set forth facts beyond conclusory allegations to support any of the four elements of civil conspiracy under South Carolina law. As in the case of the conspiracy against rights cause of action, there have been no facts alleged to identify who entered into an agreement with whom or to show that the primary purpose of such agreement was to ruin or damage or injure Goff Trust. There were no acts alleged in furtherance of this agreement. Finally, there has been no showing of any damage whatsoever. Goff Trust got the rezoning it asked for and even if it had not, it would be in the exact same position it was in before the alleged “conspiracy.”

Accordingly, Plaintiffs respectfully request the court to dismiss with prejudice all claims for civil conspiracy raised in the Counterclaim.

4. DECLARATORY JUDGMENT

The first count of Goff Trust’s Counterclaim asks for Declaratory Judgment, but asserts no basis for a declaration of rights.

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.

(emphasis added).

Goff Trust cites no statute, ordinance, contract or franchise to which a declaration of rights, status or other legal relation is required. The Counterclaim simply reiterates and repeats defenses to Plaintiffs’ Complaint that have been raised in Goff Trust’s Motion to Dismiss and Answer and Affirmative Defenses. There is nothing alleged for the court to declare judgment

upon independent of responses or defenses raised to Plaintiffs' Complaint. Accordingly, Plaintiffs request the court to dismiss the Declaratory Judgment claims with prejudice.

IV. MOTION TO STRIKE

SCRCP 12(f) permits a motion to strike pleadings containing improper, insufficient, redundant, immaterial, impertinent or scandalous matters. "It is well settled that a motion to strike is addressed to the sound discretion of the trial court ... [and t]he trial court's decision will not be reversed absent an abuse of discretion." Totaro v. Turner, 273 S.C. 134, 254 S.E.2d 800, 801 (SC Sup. Ct. 1979) (citations omitted).

In Totaro, the South Carolina Supreme Court affirmed the lower court's granting of a motion to strike many irrelevant paragraphs contained in appellant's lengthy original complaint.

In addition to paragraphs 4-16, 18-48, 50-51, 53-73 of the Counterclaim, referenced in Section III. A. above, the following matters raised as affirmative defenses in Goff Trust's Answer to Plaintiffs' Complaint are improper and/or irrelevant to any issue in this case:

1. Fourth Affirmative Defense of Civil Conspiracy (Par. 167): This is not a proper defense to any matter raised in Plaintiffs' Complaint, and for the reasons set forth above with respect to Plaintiffs' Motion to Dismiss Goff Trust's Counterclaim, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.
2. Fifth Affirmative Defense of Conspiracy Against Rights (Par. 168): This is not a proper defense to any matter raised in Plaintiffs' Complaint, and for the reasons set forth above with respect to Plaintiffs' Motion to Dismiss Goff Trust's Counterclaim, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.

3. Sixth Affirmative Defense of Deprivation of Rights Under Color of Law (Par. 169):
This is not a proper defense to any matter raised in Plaintiffs' Complaint, and for the reasons set forth above with respect to Plaintiffs' Motion to Dismiss Goff Trust's Counterclaim, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.
4. Seventh Affirmative Defense of Misrepresentation (Par. 170): This is not a proper defense to any matter raised in Plaintiffs' Complaint nor is it relevant to any issue in this case. For these reasons, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.
5. Tenth Affirmative Defense of Estoppel (Par. 173): This is not a proper defense to any matter raised in Plaintiffs' Complaint nor is it relevant to any issue in this case. For these reasons, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.
6. Eleventh Affirmative Defense of Deprivation of Unclean Hands (Par. 174): This is not a proper defense to any matter raised in Plaintiffs' Complaint nor is it relevant to any issue in this case. For these reasons, Plaintiffs request this paragraph be stricken from Goff Trust's Affirmative Defenses as improper and irrelevant.

V. CONCLUSION

The United States District Court for the District of South Carolina noted that while courts liberally construe *pro se* documents, *pro se* litigants are not excused from meeting minimum legal requirements, and the Court cannot "ignore a clear failure in the pleading to allege facts which set forth a claim." Bruce v. Wilmington Savings Fund Society, (United States District

Court, D. South Carolina) (2019) WL 1293718, 1 (citations omitted). The court further observed in a situation similar to this one,

[a]lthough Plaintiff mentions certain federal statutes and appears to assert that his constitutional rights have been violated, his allegations are so generally incomprehensible and filled with what could only be considered by a reasonable person as unconnected, conclusory, and unsupported comments, ... that it is unclear what is to be made of them.

Id. at 2 (citations omitted).

Goff Trust's Counterclaim and many of its Affirmative Defenses, as set forth above, fall into the category cited by the court in Bruce. Defendant Goff Trust has elected not to retain legal counsel and to proceed on a *pro se* basis. Plaintiffs respect this decision as fully within Defendant Goff Trust's rights, and they understand and sympathize with the *pro se* litigant who may not fully understand the nature of a landowner's role in a Declaratory Judgment action involving land that it owns.

For the past year, Plaintiffs have done their best to exercise patience and understanding in light of the fact that Goff Trust is a *pro se* litigant. That said, this case has been bogged down and substantially delayed by numerous Goff Trust filings that have been improper, without legal basis, repetitive, and/or largely incomprehensible. Plaintiffs have been seriously prejudiced by both the delay and the inordinate amount of time and expense they and their legal counsel have had to incur in addressing all of these matters including those raised in this motion.

For all the reasons set forth herein, Plaintiffs respectfully request this Honorable Court to grant the following relief:

1. Dismiss Goff Trust's Counterclaim in its entirety with prejudice pursuant to SCRCP 12(b)(6) for failure to state any cause of action and for lack of subject matter jurisdiction.

2. Dismiss and/or Strike Goff Trust's Affirmative Defenses, Paragraphs 167-170, 173, and 174 pursuant to SCRCP 12(f).
3. Order such other relief as the court deems just.

Respectfully submitted,

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

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ATTORNEY FOR PLAINTIFFS

February 1, 2023
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Ernest F. Middleton, III, *et al.*

Plaintiffs

v.

Georgetown County, *et al.*,

Defendants

Benjamin F. Goff, Sr., Trustee of the
Benjamin F. Goff 2004 Revocable Trust
dated June 18, 2004,

Counterclaim Plaintiff

v.

Ernest F. Middleton, III, *et al.*,

Counterclaim Defendants

: IN THE COURT OF
: COMMON PLEAS
: FIFTEEN JUDICIAL CIRCUIT

: CASE NO. 2022 CP 2200032

: PLAINTIFFS' MOTION TO STRIKE
: DEFENDANT GOFF TRUST'S
: MOTION FOR JUDGMENT ON THE
: PLEADINGS

**PLAINTIFFS' MOTION TO STRIKE DEFENDANT GOFF TRUST'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

AND NOW come Plaintiffs pursuant to Rule 12(f), SCRPC, and file this Motion to Strike the Motion for Judgment on the Pleadings filed by Defendant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff Trust."

1. The basis for this Motion to Strike is that according to Rule 12(c), SCRPC, a Motion for Judgment on the Pleadings should be filed "after the pleadings are closed."

2. In the present case, the pleadings are not closed. Defendant Goff Trust filed an Answer and Counterclaim to Plaintiffs' Complaint on April 18, 2022, to which Plaintiffs filed a

Motion to Dismiss/Strike pursuant to Rules 12(b)(6) and 12(f), SCRCP, on May 18, 2022. This motion is presently pending before the court and scheduled for hearing on February 9, 2023.

3. Goff Trust is proceeding in this case *pro se* and has filed numerous motions as well as an interlocutory appeal that stayed proceedings in the trial court from June 10, 2022, until January 9, 2023, when the appeal was dismissed by the South Carolina Court of Appeals as interlocutory and the case was remitted back to this court.

4. On January 9, 2023, Defendant Goff Trust filed a Motion for Summary Judgment, which is also pending before this court and scheduled for argument on February, 9, 2023.

5. Inasmuch as the pleadings are not closed, this Motion for Judgment on the Pleadings is not proper and should be stricken pursuant to Rule 12(f), SCRCP.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Honorable Court to grant their Motion to Strike Goff Trust's Motion for Judgment on the Pleadings for failure to conform to Rule 12(c), SCRCP, which requires the pleadings to be closed.

Respectfully submitted,

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

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January 31, 2023
Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Ernest F. Middleton, III, *et al.*

Plaintiffs

v.

Georgetown County, *et al.*,

Defendants

Benjamin F. Goff, Sr., Trustee of the
Benjamin F. Goff 2004 Revocable Trust
dated June 18, 2004,

Counterclaim Plaintiff

v.

Ernest F. Middleton, III, *et al.*,

Counterclaim Defendants

: IN THE COURT OF
: COMMON PLEAS
: FIFTEEN JUDICIAL CIRCUIT
:
: CASE NO. 2022 CP 2200032
:
: PLAINTIFFS' MEMORANDUM IN
: OPPOSITION TO DEFENDANT
: GOFF TRUST'S MOTION FOR
: SUMMARY JUDGMENT

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANT GOFF TRUST'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs submit this Memorandum in Opposition to the Motion for Summary Judgment filed on January 6, 2023, by Defendant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 (hereinafter "Goff Trust").

PROCEDURAL HISTORY

1. Background. This case arises from Defendant Georgetown County's approval of a zoning change request on land owned by Defendant Goff Trust. Plaintiffs are adjoining landowners and their representative.

2. Complaint. Plaintiffs filed a Complaint on January 7, 2022, asking for Declaratory Judgment relative to two zoning ordinance amendments. Georgetown County and Goff Trust are defendants.

3. Goff Trust Motion to Dismiss. On January 25, 2022, Goff Trust, proceeding *pro se*, filed a Motion to Dismiss Plaintiffs' Complaint which was heard by the court on May 19, 2022, and denied by Order dated June 3, 2022, which is attached hereto as Exhibit "A."

4. Goff Trust Motion for Judgment on the Pleadings. On May 22, 2022, Goff Trust filed a Motion for Judgment on the Pleadings.

5. Court Order dated June 3, 2022. In its denial of Goff Trust's Motion to Dismiss, this court specifically found that:

- a. "[T]he Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment." (Order, p. 4)
- b. "Defendant Goff Trust was properly named as a defendant in this declaratory judgment action." (Order, p. 5)

6. Notice of Appeal. On June 10, 2022, Goff Trust filed a Notice of Appeal in an attempt to appeal the interlocutory Order of June 3, 2022. The appeal was ultimately dismissed by the Court of Appeals and remitted back to this court on January 7, 2023.

7. Goff Trust Motion for Summary Judgment. On January 6, 2023, Goff Trust filed a Motion for Summary Judgment along with a 132-page Memorandum and Appendix, to which this Opposition is addressed.

SUMMARY OF ARGUMENT

Goff Trust's Motion for Summary Judgment and related submissions do not establish the absence of genuine issues of material fact or entitlement to judgment as a matter of law.

ARGUMENT

A. Legal Standard

Rule 56, SCRCP, provides that summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law."

South Carolina law is clear that "[i]n determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." Edgewater on Broad Creek Owners Association, Inc. v Ephesians Ventures, LLC, 430 S.C. 400, 405, 845 S.E.2d 211, 214 (2020) (citations omitted). "[A]ll ambiguities, conclusions, and inferences arising in and from the evidence [must be viewed] in a light most favorable to the non-moving party." Id. "Summary judgment is a *drastic remedy* that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues." Id. (emphasis added).

B. Prior Determination of Issues - Order of June 3, 2022

Goff Trust's voluminous submissions offer nothing to establish its burden of demonstrating the absence of genuine issues of material fact or entitlement to judgment as a matter of law. On the contrary, Goff Trust's arguments actually confirm the existence of many issues of fact. Moreover, much of the material in the motion and memorandum repeats and rehashes issues that were previously raised and decided by the court.

It its Order dated June 3, 2022, this court specifically determined that Goff Trust was properly named as a Defendant in this Declaratory Judgment action. (Court Order. p. 5).

Accordingly, the portions of Goff Trust's Motion for Summary Judgment arguing that it is not a properly named Defendant are moot as previously decided and should be denied.

The court also made the specific finding in its Order of June 3, 2022, that the Complaint establishes a justiciable controversy. (Order, p. 4). No additional evidence has been presented by Goff Trust and no additional evidence even exists at this early stage of the process to establish the lack of a justiciable controversy or genuine issue of material fact. Thus, the Motion for Summary Judgment must be denied for failure of Goff Trust to meet its heavy burden of proving entitlement to this "drastic remedy."

C. Irrelevant Matters

There are references in Goff Trust's motion and memorandum that make unfounded and inappropriate allegations questioning the ethical propriety of the court and opposing counsel relative to two different matters. The first is a Stipulation of Dismissal entered into and filed by Plaintiffs and Georgetown County related Defendants whereby the County Council and individual council members were dismissed leaving Georgetown County as the sole responsible county related Defendant. The second is the Court's directive, after its decision to deny Goff Trust's Motion to Dismiss, requiring Plaintiffs' counsel to draft and submit a proposed Order for the judge's review and consideration.

These two matters are routine, proper and completely ethical elements of legal process. Goff Trust's baseless claims have no relevancy whatsoever to this Motion for Summary Judgment.

Goff Trust's motion also attaches and references correspondence between the Goff Trust Trustee and Plaintiffs' counsel that occurred in the context of transmitting documents and exploring potential settlement. Goff Trust argues that these communications somehow operate as

admissions entitling it to summary judgment. First, matters of negotiation between a party and counsel for an opposing party are not admissible as proof of any substantive issue relevant to this motion for summary judgment. Second, taking the words of Plaintiffs' counsel out of their original context and attempting to apply them to a completely different situation is not proper nor does it form a basis for summary judgment.

D. No Additional Evidence of Record

As a result of the delay caused by Goff Trust's numerous pretrial motions and improper interlocutory appeal that stayed proceedings in this court for a substantial period of time, this case is not much further ahead than when it was filed a little more than a year ago. Pleadings are not closed, depositions have not yet been taken, written discovery has barely begun, and there are no admissions or other evidence on the record. Accordingly, there is no additional legitimate evidence to be considered in the context of Goff Trust's Motion for Summary Judgment because nothing has happened in this case since the Motion to Dismiss and attempted appeal.

E. Genuine Issues of Material Fact

A review of the matters of record in the light most favorable to the Plaintiffs with all inferences and conclusions drawn in their favor, demonstrates the existence of genuine issues of material fact as follows:

1. The South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-760(C), authorizes an adjoining landowner or its representative to bring an action contesting an ordinance or amendment affecting property.
2. Complaint Paragraphs 5-18, 28-30 and supporting affidavits and exhibits establish that Plaintiffs are adjoining landowners or representatives of adjoining landowners and have described that they have been and will be affected by approval of Ordinances 21-24 and 21-25,

in the following ways: loss of premium payment, decrease in property value, overburdened infrastructure, increase in traffic, increase in stormwater and flooding, negative impact on character, aesthetics and enjoyment of their property, and precedent for similar zoning changes in vicinity.

3. Plaintiffs' Complaint, affidavits and exhibits enumerate the genuine issues of material fact involving the alleged invalidity of the two ordinances as follows:

- a. Paragraph 1 identifies the two ordinances in question, 21-24 and 21-25.
- b. Paragraphs 2 and 3 explain the effect of the ordinances.
- c. Paragraph 4 sets forth that the "ordinances were improperly approved and are null, void and of no force and effect."
- d. Paragraphs 5–23 identify the parties in detail and explain why each is named.
- e. Paragraphs 24–30 set forth details about the land parcel in question and contiguous parcels.
- f. Paragraphs 31–52 set forth the details of Goff Trust's Zoning Change Application as well as relevant facts and law.
- g. Paragraphs 53–109 set forth facts relevant to the Planning Commission Hearing, the three County Council readings and the subsequent council meeting on November 9, 2021.
- h. Paragraphs 110–116 detail the specific bases for jurisdiction, venue and standing, all of which have been determined by the court in its Order dated June 3, 2022.
- i. Paragraphs 117–156 set forth six separate counts under the Uniform Declaratory Judgments Act requesting the court to declare the ordinances null, void and of no force or effect for reasons set forth.

Viewing the Complaint, attached affidavits, exhibits and other matters of record in the light most favorable to Plaintiffs, genuine issues of material fact clearly exist and Goff Trust's Motion for Summary Judgment should be denied.

F. Necessary Parties

The 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.

As owner of the land in question, Defendant Goff Trust has a claim or interest that would be affected by a declaration, and, therefore, is required to be named as a party in the action, as was determined by this court in its Order of June 3, 2022.

CONCLUSION

Defendant Goff Trust has elected not to retain legal counsel and to proceed in this matter on a *pro se* basis. Plaintiffs recognize that this decision is fully within Goff Trust's rights. For the past year, Plaintiffs have done their best to exercise patience, indulgence, and understanding in light of the fact that Goff Trust is a *pro se* litigant and may not fully understand the legal process. While courts construe *pro se* filings liberally, *pro se* litigants are not excused from meeting minimum legal requirements. Bruce v. Wilmington Savings Fund Society, (United States District Court, D. South Carolina) (2019) WL 1293718 (citations omitted).

For more than a year, this case has been bogged down and substantially delayed by numerous Goff Trust filings that have been improper, without legal basis, repetitive, and/or largely incomprehensible. Plaintiffs have been seriously prejudiced by both the delay and the

inordinate amount of time and expense they and their legal counsel have had to incur in addressing all of these matters including those raised in this motion.

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the Motion for Summary Judgment of Defendant Goff Trust.

Respectfully submitted,

/s/ Cynthia Ranck Person
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February 3, 2023
Pawleys Island, South Carolina

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2022CP2200032

) REPLY TO MEMORANDUM IN
) OPPOSITION TO DEFENDANT
) GOFF TRUST'S MOTION FOR
) SUMMARY JUDGMENT

SUMMARY JUDGMENT

1

ALMA WHITE
SHEPHERD
DAUGHTER

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Motion to Dismiss the Plaintiffs' Complaint in its entirety was made by the County Council on April 11, 2022 and not heard by the court because it was resolved by a Stipulation of Dismissal filed on May 5, 2022. See *Appendix pp. 77 – 78*.

In the resolution of the County's Motion to Dismiss with the agreed Stipulation of Dismissal, the County and Plaintiffs dismissed without prejudice any and all claims against the Georgetown County Council and elected members. All of the allegations in the Plaintiffs' Complaint were directed at the County Council for approving and adopting the challenged ordinances. Having dismissed all claims against the County Council, the Plaintiffs' Complaint became futile and moot. Therefore, neither Goff Trustee nor the County should continue as defendants in this action. Goff Trustee was joined under Section 15-53-80 of UDJA. Although, the County as a legal entity can sue and be sued, it was not the individual actor in the litigation as opposed to the County Council and elected members. There was an apparent tacit agreement to avoid the hearing on the Motion to Dismiss that had a high probability of being granted to allow purported and non-existent constitutional claims in continuation of the Plaintiffs' Complaint to void and nullify the Goff Trustee's ordinances.

The Goff Trustee's Motion to Dismiss him as a Defendant was heard, May 19, 2022. On or about May 25, 2022, Goff Trustee was informed by the Court's law clerk in an email that the motion was denied and a fair reading indicated a cause of action against Goff Trustee. The Order was authored by the Plaintiffs' lawyer as requested by the law clerk. In this Motion for Summary Judgment, Goff Trustee is following the guidance of the Court in challenging the failure to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against Goff Trustee in the Plaintiffs' Complaint. The interlocutory order was appealed on June 10, 2022. It was tantamount to a final judgment and appealable; however, it was dismissed on motion by the Court of Appeals on December 7, 2022.

NO GENUINE MATERIAL FACTS TO BE TRIED AGAINST GOFF TRUSTEE

1. There are no genuine issues of material facts to be tried against Goff Trustee in the Plaintiffs' Complaint and he is entitled to judgement in his favor as a matter of law. See *Appendix pp. 11 - 42*.
2. Pursuant to Rule 19(a)(2), SCRCF, Goff Trustee should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80. See *Rule 19(a)(2), SCRCF and Uniform Declaratory Judgment Act, (UDJA), S.C. Code Ann. § 15-53-80*.
3. There are no stated facts or claims in the Plaintiffs' Complaint that constitutes a "fairly read" cause of action against Goff Trustee, pursuant to Rule 12(b)(6), SCRCF. See *Appendix pp. 11 - 42*.
4. The Plaintiffs' lawyer made admissions in an email message, a letter and motion hearing transcript that in summary stated that her clients have no claims against Goff Trustee. See *Appendix p. 75; Appendix p. 76; and Appendix p. 94; Lines 10 - 15*.
5. All allegations in the Plaintiffs' Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed by stipulation. See *Appendix pp. 11 - 42*.
6. The Stipulation of Dismissal between the Plaintiffs' and Georgetown County lawyers dismissed any and all claims against the County Council and elected members. See *Appendix pp. 81 - 82*.
7. The Plaintiffs' and the County Council's lawyers, resolution of the Motion to Dismiss the claims against the County Council and elected members in the Plaintiffs' Complaint, was a concession to legislative immunity that deters judicial intervention. See *Appendix pp. 77 - 82*.
8. Goff Trustee 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 Ordinances Number 21-24 and 21-25. See *Appendix pp. 105 -- 111*.
9. Goff Trustee, a landowner, is not responsible for the legislative decisions of the County Council.
10. The Plaintiffs' Complaint did not allege constitutional violations, if any, in the procedural approval and adoption of Goff Trustee's Ordinances 21-24 and 21-25. See *Appendix pp. 11 - 42*.

STANDARD FOR REVIEW

SCRCP, Rule 56(d) states that "If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly." But when the question for decision concerns drawing inferences from undisputed evidence, or interpreting and evaluating evidence to derive legal conclusions, a trial may not add to the judge's ability to decide.

To preclude summary judgment, a fact dispute must be "material." A fact issue is material if it must be decided in order to resolve the substantive claim or defense to which the motion is directed. "Only disputes over facts that might affect the outcome of the suit" preclude summary judgment. See *Anderson v. Liberty Lobby* 477 U.S. 242, 248 (1986).

If the nonmovant's version of the facts, although disputed, could not support a verdict as a matter of law, the dispute is immaterial because the legal sufficiency of the alleged facts can be decided on the assumption that they are true. See, e.g., *Burkevich v. Air Line Pilots Ass'n*, 894 F.2d 346,352 (9th Cir. 1990); *Wilson v. Seiter*, 893 F.2d 861, 864-67 (6th Cir. 1990).

The determination of materiality, therefore, requires analyzing the logic of the case. Issues must be identified clearly and ordered in relation to each other. By this process, courts can ascertain which issues may be dispositive of the case, rendering other factual disputes immaterial. See *Yancey v. Carroll County*, 876 F.2d 1238, 1244 (6th Cir. 1989).

The Burden on the Moving Party Rule 56 (a) and (b) establish that the party moving for summary judgment must come forward with an initial showing that it is entitled to judgment. When the moving party bears the burden of persuasion on the issue at trial, its showing must sustain that burden as well as demonstrate the absence of a genuine dispute. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 331-32 (1986). Thus, it must satisfy both the initial burden of production on the summary judgment motion-by showing that no genuine dispute exists as to any material fact-and the ultimate burden of persuasion on the claim-by showing that it would be entitled to a directed verdict at trial. See, e.g., *U.S. v. One 107.9 Acre Parcel of Land Located in Warren Township*, 898 F.2d 396,398 (3d Cir. 1990); *U.S. v. O'Connell*, 890 F.2d 563,567 (1st Cir. 1989).

The showing may consist of pleadings filed by the opponent, depositions, answers to interrogatories, admissions, and affidavits made on personal knowledge and setting forth facts admissible in evidence, although the facts need not be presented in admissible form. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 331-32 (1986).

Once the movant makes a properly supported motion, the burden shifts to the nonmovant to demonstrate the existence of a genuine dispute. Under Rule 56(e), "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial". Nor is it sufficient for the nonmovant simply to attack the credibility of the movant's affiants without a supporting factual showing. See *Bose Corp. v. Consumers Union of U.S.*, 466 U.S. 485, 512 (1984). See also *Fed. R. Civ. P. 56(e) advisory committee's notes (amended 1963)*. The court must determine on the basis of the parties' submissions whether the movant is entitled to judgment as a matter of law. 216. See *Mendez v. Banco Popular de P.R.*, 900 F.2d 4,7 (1st Cir. 1990); *Jaroma v. Massey*, 873 F.2d 17, 20 (1st Cir. 1989). The court must determine on the basis of the parties' submissions whether the movant is

entitled to judgment as a matter of law. 216. See *Mendez v. Banco Popular de P.R.*, 900 F.2d 4, 7 (1st Cir. 1990); *Jaroma v. Massey*, 873 F.2d 17, 20 (1st Cir. 1989).

The facts on which the nonmovant may rely must be admissible at trial, but need not be in admissible form as presented in the opposition. See *Leonard v. Dixie Well Servo & Supply*, 828 F.2d 291, 295 (5th Cir. 1987). Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). To permit an opposition to be based on evidence that would not be admissible at trial would undermine the goal of the summary judgment procedure to prevent unnecessary trials, since inadmissible evidence could not support a jury verdict.

A court may consider any admissible evidence submitted by the parties on a motion for summary judgment. See *Aguilera V. Cook County Police & Corrections Merit Bd.*, 760 F.2d 844, 849 (7th Cir.), *cat. denied*, 474 U.S. 907 (1985); *Property Management & Invs. V. Lewis*, 752 F.2d 599, 604 nA (11th Cir. 1985). It may refer to the testimony and exhibits binding on a party from a prior trial, admissions in answers to the complaint or interrogatories, or admissions imputed to a party because of its failure to respond to requests for admission. See *U.S. v. O'Connell*, 890 F.2d 563, 567 (1st Cir. 1989). ("because depositions and answers to interrogatories may be considered on a motion for summary judgment, 'there is no sensible rationale which would preclude reliance on sworn testimony faithfully recorded during the conduct of a judicially-supervised adversarial proceeding.'" 890 F.2d at 567 (quoting *Advance Fin. Corp. v. Isla Rica Sales*, 747 F.2d 21, 27 (1st Cir. 1984)). "The mere existence of a scintilla of evidence will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant]." See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

ARGUMENT

A. NO GENUINE ISSUES OF MATERIAL FACTS TO BE TRIED

Rule 56, SCRCP provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. See *Rule 56(a), SCRCP*. The trial court must grant the motion “if the pleadings, answers to interrogatories, admissions and exhibits on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” See *Id. Rule 56(c), SCRCP*.

“Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact or any claims to be tried.” See *Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)*.

“With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by “showing” - that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party’s case.’” See *Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)*.

The moving party need not support its motion with affidavits or other similar materials negating the opponent’s claim. See *Id. (quoting Celotex, 477 U.S. at 323); and Richardson v. State-Record Co., 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998)*. Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence that show there is a genuine issue of fact remaining for trial. See *Baughman, 306 S.C. at 115, 410 S.E.2d at 545*.

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” See *George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)*. In the grant of a summary judgment motion, the Court applies the standard under Rule 56(c), SCRCP: “summary judgment is proper when ‘there is no genuine issue as to any material fact

and ... the moving party is entitled to judgment as a matter of law.” See *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991).

In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. See *Id. at 115, 410 S.E.2d at 545*. However, the nonmoving party must demonstrate the likelihood that a trial will uncover additional relevant evidence.” See *Id. at 112, 410 S.E.2d at 544*.

In that the County Council members have been dismissed from the case, a review of the record before the Court compels a finding that summary judgment should be granted for Goff Trustee. See *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) (“Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.”).

Despite being bound to review the record in a light most favorable to plaintiffs, “[a] court cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” See *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted).

The Plaintiffs’ Complaint does not contain or presented any claims, if any, against Goff Trustee that establishes a genuine issue of material fact for trial. In fact, the Plaintiffs’ lawyer has stated in written communications and at the motion hearing that there are no claims against Goff Trustee. Plaintiffs are not permitted to simply rest on the allegations in their complaint, especially where, as here, the factual allegations are conclusory in nature and directed at the County Council and elected members. Rule 56(e), SCRPC states that an adverse party may not rest upon the mere

allegations or denials of his pleading, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Under the circumstances of this case, the Court should appropriately grant summary judgment to Goff Trustee. See *Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants “advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”). A trial is unlikely to create any genuine issue of material fact. See *Baughman*, 306 S.C. at 112, S.E.2d at 544 (nonmoving party must demonstrate that further discovery will likely uncover additional relevant evidence); see also *George v. Fabri*, 345 S.C. at 452, 548 S.E.2d at 874 (*purpose of summary judgment is to dispose of cases which do not require a fact finder*).

Nowhere, in the Plaintiffs’ Complaint are there any allegations of wrongdoing by Goff Trustee. The Plaintiffs’ lawyer has, in summary, stated in an email message, letter and the motion transcript that her clients have no claims against Goff Trustee. “The only reason you are included as a party is that the Declaratory Judgment Act states that all “parties in interest” must be named.” However, arbitrarily and capriciously, Goff Trustee was named as a Defendant in the Summons and Complaint, Court Docket and Order. It is inconceivable that a “fair reading” of the Plaintiffs’ Complaint would conclude that a cause of action exists against Goff Trustee. With the previous admissions of no claims against Goff Trustee, the motion decision and Order by the Court contradicted the reality, admitted facts and admissions in this case. See *Appendix pp. 5 – 6*.

All allegations and claims in the Plaintiffs’ Complaint are directed at the Georgetown County Council and elected Council members along with a request to nullify and void Ordinances 21-24 and 21-25. Having stipulated to the dismissal any and all claims against the County Council and elected members, Goff Trustee has been left as the only opposing party. On April 11, 2022, the

lawyer for the County Council and elected members filed a Motion to Dismiss the Complaint based on legislative immunity related to the enacting the challenged ordinances and the lack of power of the court to compel the County Council to take legislative action with respect to the challenged ordinances. See *Appendix pp. 77 - 78*.

A Letter to Court, dated May 4, 2022, which implied an agreement between the lawyers resulted in a Stipulation of Dismissal, filed of May 5, 2022, to dismiss the all claims against the County Council and elected members from the Plaintiffs' Complaint. With the real Defendants exonerated and protected by legislative immunity, this left Goff Trustee as the sole Defendant in a legal action in which he did nothing wrong. See *Appendix pp. 79 - 80*.

Absent the claims against the County Council, the Complaint is void. The Court rejected the Plaintiffs' lawyer transcript statement and filings stating no claims against Goff Trustee. With the dismissal of the County Council and elected members, the Plaintiffs should not be allowed to continue this litigation against Goff Trustee for exercising a constitutional right to petition for rezoning of private property. See *Appendix pp. 81 - 82*.

B. ABUSE OF DISCRETION IN COURT ORDER DECISION

Plaintiffs cannot rely on the Court Order created finding that an unstated "fairly read" cause of action exist in the Complaint when they have admitted to no claims against Goff Trustee; thereby, the court becomes an advocate for one party at the disadvantage the opposing party. Also, the presiding judge violated the statutory intent of Uniform Declaratory Judgment Act (UDJA), S.C. Code Ann. § 15-53-80 in concluding that Goff Trustee is properly named defendant as opposed to a party-in-interest.

The Order, which involves the merits in the action, in effect determines the outcome of the action, is an abuse of discretion and will prevent an appeal of a final judgment. The SC Supreme Court has held that an abuse of discretion arises in cases in which: (1) the judge issuing the order

was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support. See *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 169 S.E. (2d) 387 (1969); See *Brown v. Weathers*, 251 S.C. 67, 160 S.E. (2d) 133 (1968); See *Holliday v. Holliday*, 235 S.C. 246, 111 S.E. (2d) 205 (1959); See *Simon v. Flowers*, 231 S.C. 545, 99 S.E. (2d) 391 (1957).

"In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." See *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). "The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and policies of this state and the Court's sense of law, justice, and right." *Id.* at 467, 636 S.E.2d at 605-06.

An allegation or statement 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 denial of the Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant impacts the merit of the case and will prevent the appeal of a final judgment. The Court misinterpreted the Goff Trustee's motion to dismiss him as a defendant as a request to dismiss the case. Goff Trustee understood the necessity of defending his interest as a party. That is why Goff Trustee petitioned the court to defined him as a party-in-interest as required the under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-80 or an involuntary plaintiff under with Rule 19(a)(2), SCRCF. Instead of understanding that a required party should not be a defendant, Goff Trustee has been made culpable for allegations against the County Council and charged with a "fairly read" cause of action, where none exist. Absent facts and evidence, an innocent person should not be accountable based on an error in judgment or an abuse of discretion.

The Georgetown County Council's lawyer filed a Motion to Dismiss the entire legal action on the grounds of legislative immunity and lack of judicial power to grant relief. The motion was resolved with an agreement to file a Stipulation of Dismissal which dismissed any and all claims

against the County Council and elected members. The Stipulation of Dismissal did not involve and was not signed by Goff Trustee. All allegations in the Plaintiffs' Complaint were directed at the County Council and elected members. See *Appendix pp. 77 – 78; and Appendix pp. 81 – 82.*

A letter, dated May 4, 2022, was sent to the Court stating that the Motion to Dismiss was resolved in lieu of a Stipulation of Dismissal pursuant to Rule 41, SCRCF between the County Council's and Plaintiffs' lawyer. It was filed on May 5, 2022 and stated in part that the parties hereby stipulated, pursuant to Rule 41, SCRCF, to the dismissal, without prejudice, of any and all claims against the County Council and elected members and dismissed them as necessary parties under S.C. Code Ann. § 15-53-80. See *Appendix pp. 79 – 80.*

The Goff Trustee's Motion to Dismiss, in essence, was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of Uniform Declaratory Judgment Act (UDJA) or an involuntary plaintiff in accordance with Rule 19(a)(2), SCRCF. In this Motion for Summary Judgment, Goff Trustee is following the Court's guidance in challenging the finding and Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against Goff Trustee in the Complaint. Effectively, the Court allowed the accused defendants to be released and the unaccused and inadvertently or deliberately designated defendant to remain and be charged with an unspecified cause of action. Consequently, Goff Trustee is being sued for having submitted a rezoning application that was accepted by the Planning Department, recommended by the Planning Commission and approved and adopted into ordinances by the County Council and elected members. See *Appendix p. 17, Para. 31.*

The Order states that "[T]he court finds that Plaintiffs' Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment". However, all allegations of controversy are against the County Council and elected members, who have been removed from the complaint with any and all claims dismissed. Therefore, the claims of

controversy are now assigned to Goff Trustee. The Order states that "[T]he court finds that Defendant Goff Trust was properly named as a defendant in this declaratory judgment action" presumes sufficient facts for a cause of action against Goff Trustee, where none exist and the Plaintiffs' lawyer have so stated in writing and the hearing transcript. See *Appendix pp. 5 – 6*.

In filing the Motion to Dismiss, Goff Trustee sought the removal of the Trustee as a Defendant and to be designated a party-in-interest as required by the UDJA. Further, the Goff Trustee's Motion to Dismiss addressed the inadequacy and futility of the Plaintiffs' Complaint against the County Council because the validity of the Goff Trustee's ordinances was being challenged. In the Plaintiffs' Complaint and Motion in Opposition, the lawyer clearly stated that the UDJA required anyone whose substantial rights are at risk to be named a party. However, the UDJA does not state that the party must be a defendant. Goff Trustee is a party-in-interest and the Plaintiffs' lawyer clearly recognized that in the opposing motion and in an email, letter and the transcript, in summary, stating that her clients have no claims against Goff Trustee. See *Appendix pp. 44 – 48; and Appendix pp. 49 – 68*.

Plaintiffs' lawyer stated in an email that "my clients have no specific claims (causes of action) against you (Goff Trustee), the only reason you are included as a party is that the Declaratory Judgment Act states that all parties in interest must be named, and the Goff Trustee's Trust is arguably a party-in-interest." In that only Goff Trustee is named as a Defendant in the Complaint, it translates into no claims against Goff Trustee or Trust. For all legal purposes, Goff Trustee is owner of all assets within the trust; therefore, if the Trust is definable as a party-in-interest, Goff Trustee should be a party-in-interest. See *Fed.R.Civ.P. 17(a) and (b)*.

The presiding motion hearing judge apparently interpreted Goff Trustee's motion as only to dismiss the entire Complaint and failed to recognize the specific request of the removing Goff Trustee as a Defendant and to designate him as party-in-interest or involuntary plaintiff. The

Plaintiffs' lawyer, in authoring the Order, capitulated to the Court's decision which sanctioned Goff Trustee as a Defendant with an implied a "fairly read" cause of action.

The Plaintiffs' Complaint was solely directed at the County Council with no stated allegations against Goff Trustee, hence the "fairly read" statement. In viewing Goff Trustee as a Defendant, the presiding judge abused his discretion with regards to the UDJA, Section 15-53-80 and the Plaintiffs' Complaint. See *Appendix pp. 11 – 42*.

The Court Order, which was authored by the Plaintiffs' lawyer, contradicts statements made by the lawyer in an email missive to Goff Trustee, dated February 7, 2022. The Plaintiffs' lawyer is a current or former member/officer of the Keep It Green organization that supposedly opposes all rezoning efforts on the Waccamaw Neck area in Georgetown County. This Order raises questions of entitlement to equal protection under the law and whether Goff Trustee has any rights the Court is bound to respect. See *Appendix p. 75; Appendix p. 76; Appendix p. 100; Appendix pp. 101 – 104; Appendix p. 92, Lines 3 – 6 and p. 94, Lines 10 – 15*.

With all allegations and claims in the Plaintiffs' Complaint directed at the County Council and elected members having been dismissed, there are no remaining claims, if any, to litigate. It is counterintuitive to suggest any remaining claims against the approval and adoption of Ordinances 21-24 and 21-25 after dismissal of any and all claims against the County Council and elected members. Goff Trustee cannot defend against a phantom "fairly read" cause of action that is unstated and without a factual or evidentiary basis. See *Appendix pp. 11 - 42*.

Contrary to the statement in the Stipulation of Dismissal, there are no remaining claims to adjudicate. There cannot realistically be any claims against Georgetown County since they have been dismissed against the County Council and elected members. Goff Trustee, who should not be a defendant, has been saddled, without factual evidence, with an unstated "fairly read" cause of action in the Court Order where none exists in the Plaintiffs' Complaint. In accordance with the plain

language of the Uniform Declaratory Judgment Act, Section 15-53-80, Goff Trustee has an interest and should be named a party in the declaratory action. The presumed intent is to protect the rights of those parties who have a claim or interest to protect but are not defendants. "The determination of legislative intent is a matter of law." See *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, they must be taken and understood in their plain, ordinary and popular sense. See *Id. Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530. The text of a statute is considered the best evidence of the legislative intent; therefore, the courts are bound to give effect to the expressed intent of the legislature. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Whether Goff Trustee should be a Defendant with a "fairly read" and unstated cause of action is a question of law. It is unmistakably clear that Goff Trustee should not be defendant in this declaratory judgment and the ordinances are valid based on legislative immunity.

C. PLAINTIFFS ADMISSIONS OF NO CLAIMS AGAINST GOFF TRUSTEE

The Uniform Declaratory Judgment Act, Section 15-53-80. Parties. States:

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.

Rule 19(a)(2)(i), SCRPC states in part: "if he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may "(i) as a practical matter impair or impede his ability to protect that interest." . . . "in a proper case, an involuntary plaintiff."

The Order that was authored by the Plaintiffs' lawyer and approved by the motion hearing judge. However, the Order is inconsistent with the admissions, admitted facts and the intent of the

Plaintiffs' Complaint for joining Goff Trustee, which under S.C. Code Ann. § 15-53-80, required he be made a party-in-interest. Pursuant to Rule 19(a)(2), SCRPC, Goff Trustee should have been joined as an involuntary plaintiff as opposed to a defendant. There was no wrongdoing by Goff Trustee stated in the pleadings; therefore, he should not have been named as a defendant. Absence from the Order are the specific guidance provided to the Plaintiffs' lawyer, from by the judge's law clerk. The Court's decision and guidance stated that:

"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." See *Appendix pp. 8 – 9*.

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Plaintiffs' lawyer stated:

"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." See *Appendix p. 76*.

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs' lawyer stated:

"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." See *Appendix p. 75*.

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs' lawyer stated:

"I certainly -- I sympathize with Mr. Goff's position in the sense that I know he feels he didn't do anything wrong, and we don't think that he did something wrong. But it is a declaratory judgment action, and he does own the property that is affected by these ordinances. And so under the Declaratory Judgment Act, he is a necessary party." See *Appendix p. 94, Lines 10-15*.

Plaintiffs' Complaint does not state any claims against Goff Trustee in the procedural approval and adoption of the ordinances. Even though, Goff Trustee's Trust is not individually listed as a Defendant in the Plaintiffs' Complaint, it has been defined as a Defendant by the Court. Goff Trustee only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department, provided supporting memorandums of the need, and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. See *Appendix p. 17, Para. 31 and Appendix pp. 105 -m111*.

The Order as crafted by the Plaintiffs' lawyer and approved by the Court, does not reflect the case facts and admissions made in the written statements to Goff Trustee and in the motion hearing transcript in court. In accordance with Rule 19(a)(2)(i), SCRPC, Goff Trustee should be an involuntary plaintiff. Goff Trustee's motion was misconstrued as a motion to dismiss the entire Complaint as opposed to dismissing him as a defendant and redesignating him as a party-in-interest or involuntary plaintiff. This was clearly understood and expressed by the Plaintiffs' lawyer in her emails and letters. See *Appendix p. 75; Appendix p. 76; and Appendix pp. 101 - 104*.

It is disingenuous and a violation of professional conduct for the Plaintiffs' lawyer to prepare an Order that defined Goff Trustee as a Defendant when the lawyer has stated otherwise in writings and the transcript. The presiding judge should have dismissed the Plaintiffs' Complaint in its entirety as opposed to implying a "fairly read" cause of action against Goff Trustee to prolong this case. The unwillingness the Court to redesignate Goff Trustee as an involuntary plaintiff or party-in-interest violated the constitutional privilege of rezoning private property by owners without the threat of becoming an unaccused defendant. See *Appendix p. 75; p. 76; and p. 94, Lines 10 - 15*.

In that any and all claims have been dismissed against the County Council and elected members, the Order has targeted Goff Trustee with an unspecified "fairly read" cause of action. Having dismissed the County Council and elected members, the Plaintiffs' lawyer, as the author, has disingenuously used the Order to support their Complaint and redirect the litigation towards Goff Trustee as a Defendant with an implied, unstated "fairly read" cause of action. Absence the County Council and elected members, there are no remaining claims or defendants, if any, other than Goff Trustee. See *Appendix pp. 5–6*.

D. NOT A MERE SCINTILLA OF EVIDENCE EXIST AGAINST GOFF TRUSTEE

There is not "a mere scintilla of evidence" that Goff Trustee did anything beyond exercising his federal and state constitutional rights to rezone private property by submitting an application and providing supporting letters to the Georgetown County Planning Department, Planning Commission and County Council. As stated herein and in the Counterclaim Complaint, the Goff Trustee/Trust parcel was subjected to disparate treatment along with a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law for the rezoning to medium density residential, 10,000 Square Feet Residential (R-10). See *Title 18, U.S.C., Section 241 and 242*. Filing and naming Goff Trustee as defendant in this litigation to injure him is the continuation of the organized and combined civil conspiracy. The motion hearing decision states in part: "This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant." Therefore, the Plaintiffs bears a heightened burden of proof and must produce evidence to support the reversal of written averments and transcript testimony that there are no claims against Goff Trustee. The true defendants, if any, are Georgetown County and County Council and elected members.

Specifically, the SC Supreme Court chose to settle a dispute among the lower courts regarding the standard for summary judgment for different types of issues in state court:

"[W]e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co.*, 381 S.C. at 330-31, 673 S.E.2d at 803. In this litigation where there is no evidence or claims against Goff Trustee, the Plaintiffs need to demonstrate more than a mere scintilla of evidence to defeat the summary judgment. For a federal question, the nonmoving party presumably must meet the higher standard described by the United States Supreme Court in *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242 (1986). The mere existence of a scintilla of evidence will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant]. See *Id.* at 252.

42 U.S. Code § 1983 – Civil Action for Deprivation of Rights – "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Under the Supremacy Clause, state courts have a concurrent duty to enforce federal law according to their regular modes of procedure. See *Clafflin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833. Such a court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a "valid excuse." *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S.

377, 387-389, 49 S.Ct. 355, 356-357, 73 L.Ed. 747. An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. See *Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 57, 32 S.Ct. 169, 178, 56 L.Ed. 327.

CONCLUSIONS

This Honorable Court should grant the Motion for Summary Judgment in whole or part in favor of Goff Trustee. The Plaintiffs' Complaint does not contain any claims against Goff Trustee and the Plaintiffs' lawyer have, in summary, stated in documents in the Court Record that they have no claims against Goff Trustee. With the dismissal of any and all claims against the Georgetown County Council and elected members, there are no genuine issues of material facts, if ever, to be tried against Goff Trustee and he is entitled to judgment in his favor as a matter of law.

Respectfully Submitted,

Date: February 16, 2023


Benjamin F. Goff, Sr., Trustee, Pro Se
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Appendix: Memorandum of Law in Support Of Motion for Summary Judgment on the Pleadings, Answers, Admissions and Exhibits (Filed by Clerk on January 6, 2023)

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

) DEFENDANTS BENJAMIN F. GOFF,
) SR., TRUSTEE AND THE
) BENJAMIN F. GOFF 2004,

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

) REVOCABLE TRUST, DATED
) JUNE 18, 2004 MEMORANDUM OF
) LAW IN SUPPORT OF MOTION FOR
) JUDGMENT ON THE PLEADINGS
)

Defendants

)

)

)

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS**

BACKGROUND

Defendants, Benjamin F. Goff, Sr., Trustee and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee"), request this honorable court to grant the Motion for Judgment on the Pleadings pursuant to SCRCR Rule 12(c). Pursuant to Rule 12(b)(6), the Plaintiffs' Complaint fails to state any facts that constitute a cause of action against Goff Trustee. Although, 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.

In this Complaint, under the Uniform Declaratory Judgment Act (UDJA) Section 15-53-80, Goff Trustee has been named as a defendant when he should be a party-in-interest or an involuntary plaintiff. The Court has abused its discretion in the motion to dismiss hearing in sanctioning Goff Trustee as defendant and creating a "fairly read" cause of action where none is stated in the Complaint. The Court Order is an abuse of judicial discretion and a violation of the UDJA statute in maintaining him as a defendant. Also, the Plaintiffs have stated in writings and

court transcript that they have no claims against Goff Trustee. All of the claims or allegations in the Complaint are directed at the County Council and elected members against whom any and all claims have been dismissed by stipulation. With the dismissal of the County Council based on legislative immunity and the inability of court intervention, there are no genuine issues of material facts to be tried or discovered at trial against Goff Trustee. The Plaintiffs' Complaint was filed on January 7, 2022 and Goff Trustee filed a motion to dismiss him as defendant in the complaint where he should be a party-in-interest. With the stipulated dismissal of any and all claims against the County Council, their filed motion to dismiss was not heard by court. The apparent outcome of the court in denying Goff Trustee's motion to dismiss him as a defendant was a re-direction of the allegations against him. Absence the County Council, there are no genuine issues of material facts to be tried. With regards to the Plaintiffs' Complaint, the pleadings closed with the filing of the Stipulation of Dismissal by the Plaintiffs' and County Council lawyers; whereas, the Counterclaim Complaint is a separate and independent action.

STATEMENT OF RELEVANT FACTS

1. There are no genuine issues of material facts to be tried against Goff Trustee in the Plaintiffs' Complaint and he is entitled to judgment in his favor as a matter of law. See *Appendix pp. 11 - 42*.
2. Pursuant to Rule 19(a)(2), SCRPC, Goff Trustee should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80. See *Rule 19(a)(2), SCRPC and Uniform Declaratory Judgment Act, (UDJA), S.C. Code Ann. § 15-53-80*.
3. There are no stated facts or claims in the Plaintiffs' Complaint that constitutes a "fairly read" cause of action against Goff Trustee, pursuant to Rule 12(b)(6), SCRPC. See *Appendix pp. 11 - 42*.

4. There is no requirement for a “burden of proving the need” justification to be submitted with the rezoning application; rather, it’s during the first, second and third readings; consequently, Paragraph 33 in the Complaint is a disingenuously false statement. See *Appendix p. 18*.
5. The Plaintiffs’ lawyer made admissions in an email message, a letter and motion hearing transcript that in summary stated that her clients have no claims against Goff Trustee. See *Appendix p. 75; Appendix p. 76; and Appendix p. 94, Lines 10 - 15*.
6. All allegations in the Plaintiffs’ Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed by stipulation. See *Appendix pp. 11 - 42*.
7. The Plaintiffs do not have a particularized or imminent injury-in-fact from the ordinances to create standing and/or a justiciable controversy for judicial intervention. See *Appendix pp. 58 - 62*.
8. The Stipulation of Dismissal between the Plaintiffs’ and Georgetown County lawyers dismissed any and all claims against the County Council and elected members. See *Appendix pp. 81 - 82*.
9. The Plaintiffs’ and the County Council’s lawyers, resolution of the Motion to Dismiss the claims against the County Council and elected members in the Plaintiffs’ Complaint, was a concession to legislative immunity that deters judicial intervention. See *Appendix pp. 77 - 82*.
10. Goff Trustee 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 Ordinances Number 21-24 and 21-25. See *Appendix pp. 105 – 111*.
11. Ordinances 21-24 and 21-25, passed in accordance with the South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, third edition, and the Georgetown County Council Rules of Procedure at the Third Reading Meeting on

October 26, 2021 and adopted on November 9, 2021. See *Appendix pp. 54 – 58*; and *Appendix pp. 65 – 67*.

12. The Plaintiffs' Complaint did not allege constitutional violations, if any, in the procedural approval of Goff Trustee's Ordinances 21-24 and 21-25. See *Appendix pp. 11 - 42*.

STANDARD FOR REVIEW

Rule 12(c), SCRCP, Motion for Judgment on the Pleadings, After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 56, SCRCP provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. See *Rule 56(a), SCRCP*. The trial court must grant the motion "if the pleadings, answers to interrogatories, admissions and exhibits on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See *Id. Rule 56(c), SCRCP*. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact or any claims to be tried." See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

"With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"—that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case.'" See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

Directing the Court's attention to the Defendant's motion for judgment on the pleadings, or, in the alternative, summary judgment, the court must apply the appropriate legal test. The test applicable for a judgment on the pleadings or a summary judgment is whether or not, when viewed in the light most favorable to the party against whom the motion is made, no genuine issues of material fact remain and the case can be decided as a matter of law. See *King v. Gemini Food Services, Inc.*, 438 F. Supp. 964, 966 (D.Va.1976), aff'd 562 F.2d 297 (4th Cir. 1977).

Any party may move for a judgment on the pleadings under Rule 12(c), SCRPC. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. See *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. See *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Cl. App. 1990).

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. . . . When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. See *Russell*, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." Id.

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRPC. See *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to

dismiss under Rule 12(b)(6), SCRCF); See *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). A ruling on a Rule 12(b)(6) motion must be based solely on the allegations set forth on the face of the complaint. See *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). When considering a motion for judgment on the pleadings under Rule 12(c), SCRCF, the court must regard all properly pleaded factual allegations as admitted. See *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

In *Falk v. Sadler*, “Any party may move for a judgment on the pleadings under Rule 12(c), SCRCF.”; *Id.* (stating that when considering a motion for judgment on the pleadings, “the court must regard all properly pleaded factual allegations as admitted”); See *Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445-46 (Ct. App. 2019) (“In evaluating a Rule 12(c) motion, the court must consider that ‘a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever.’” (quoting *Falk*, 341 S.C. at 287, 533 S.E.2d at 353); and (“stating appellate courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties” (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991))); *Id.* (“[A] judgment on the pleadings is considered to be a drastic procedure by our courts.” (quoting *Russell*, 305 S.C. at 89, 406 S.E.2d at 339)); *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004).

ARGUMENT

A. COURT ORDER – MOTION TO DISMISS HEARING

Goff Trustee contends that the motion hearing judge abused his discretion in deciding that he should remain a defendant with a “fairly read” cause of action in the Complaint despite written statements and hearing testimony from the Plaintiffs’ lawyer of no claims against him.

The SC Supreme Court has held that an abuse of discretion arises in cases in which: (1) the judge issuing the order was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support. See *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 169 S.E. (2d) 387 (1969); See *Brown v. Weathers*, 251 S.C. 67, 160 S.E. (2d) 133 (1968); See *Holliday v. Holliday*, 235 S.C. 246, 111 S.E. (2d) 205 (1959); See *Simon v. Flowers*, 231 S.C. 545, 99 S.E. (2d) 391 (1957).

"In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." See *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). "The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and policies of this state and the Court's sense of law, justice, and right." *Id.* at 467, 636 S.E.2d at 605-06.

An allegation or statement 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 Uniform Declaratory Judgment Act, Section 15-53-80. Parties. States:

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.

Rule 19(a)(2)(i) states in part:

Rule 19(a)(2)(i), SCRPC "if he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may "(i) as a practical matter impair or impede his ability to protect that interest." . . . "in a proper case, an involuntary plaintiff."

This Rule 19(a) is the same as the Federal Rule. The principle behind this Rule is that whenever possible persons materially interested in the action should be joined so that they may

be heard and a complete determination had. There is no mandate that these required persons should be made a defendant.

The Court Order that was authored by the Plaintiffs' lawyer and approved by the motion hearing judge. However, the Order is inconsistent with the court's decision, admissions, admitted facts and the intent of the Plaintiffs' Complaint for joining Goff Trustee, which under S.C. Code Ann. § 15-53-80, required he be made a party-in-interest. Pursuant to Rule 19(a)(2), SCRCP, Goff Trustee should have been joined as an involuntary plaintiff as opposed to a defendant. There was no wrongdoing by Goff Trustee stated in the pleadings; therefore, he should not have been named as a defendant. Absence from the Order are the specific guidance provided to the Plaintiffs' lawyer, from by the judge's law clerk. The Court's decision and guidance stated that:

"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." See *Appendix pp. 8 – 9*.

B. ADMISSIONS

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Plaintiffs' lawyer stated:

"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." See *Appendix p. 76*.

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs' lawyer stated:

"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." See *Appendix p. 75*.

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs' lawyer stated:

"I certainly – I sympathize with Mr. Goff's position in the sense that I know he feels he didn't do anything wrong, and we don't think that he did something wrong. But it is a declaratory judgment action, and he does own the property that is affected by these ordinances. And so under the Declaratory Judgment Act, he is a necessary party." See *Appendix p. 94, Lines 10-15*.

Plaintiffs' Complaint does not state any claims against Goff Trustee in the procedural approval and adoption of the ordinances. Even though, Goff Trustee's Trust is not individually listed as a Defendant in the Plaintiffs' Complaint, it has been defined as a Defendant by the Court. Goff Trustee only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department, provided supporting memorandums of the need, and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. See *Appendix p. 17, Para. 31 and Appendix pp. 105 -111*.

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. The referenced email further stated the willingness of the Plaintiffs to agree to the dismissal without prejudice of the Goff Trustee/Trust's Motion to Dismiss, dated January 25, 2022, pending an agreement between all parties, which effectively has occurred. Absent, the County Council and elected members as Defendants, Goff Trustee/Trust cannot remain as parties or Defendants; therefore, the Plaintiffs' Complaint should be dismissed in its entirety with prejudice against Goff Trustee/Trust. In contradiction of Rule

19(a), the Plaintiffs have agreed to allow the County Council and elected members, needed for just adjudication, to be dismissed from the Complaint.

C. STIPULATION OF DISMISSAL

The Court accepted a Stipulation of Dismissal that allowed the Georgetown County Council and elected members to be dismissed from the complaint based on legislative immunity and lack of judicial power to render relief. Although few South Carolina cases discuss legislative immunity, the Supreme Court has addressed similar public policy considerations for immunity for other types of public officials carrying out their official duties. See *Williams v. Condon*, 347 S.C. 227, 242-43, 553 S.E.2d 496, 505 (Ct. App. 2001) (noting qualifying a prosecutor's immunity would "prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system" (quoting *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976)).

The agreed "Stipulation to Dismissal", between the Plaintiffs' attorney and the Georgetown County Council's attorney, submitted to the Court on May 5, 2022, essentially invalidated the Plaintiffs' Complaint pursuant to SCRPC Rule 41. This is an admittance of the lack of a justiciable controversy pursuant to SC Code Ann. Sec. 15-53-70 of the Uniform Declaratory Judgment Act. Pursuant to SCRPC Rule 19(a), the dismissal of the Georgetown County Council and Council members ("County Council"), at whom the allegations in the Complaint are directed, demands a favorable judgment on the pleadings and dismissal of the complaint against Goff Trustee and/or Plaintiffs' Complaint in its entirety.

The Plaintiffs' attorney and the attorney for Georgetown County and County Council agreed to the dismissal without prejudice of the Defendants "Georgetown County Council and Council members defendants, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve

Goggans, Everett Carolina, John Thomas and Bob Anderson in their capacities as elected members of the Georgetown County Council". Pursuant to SCRCF Rule 19(a), without the County Council and Council members, complete relief cannot be accorded to Goff Trustee and the ability to defend and protect their interest will be impaired and they will incur a substantial risk of harm. Goff Trustee should not be burdened with or have to account for the dismissed allegations against the County Council and Council members.

D. LEGISLATIVE IMMUNITY

In a case decided by the S.C. Supreme Court, owners of property adjacent to rezoned land challenged the rezoning ordinance, arguing it conflicted with the local Zoning Land Development Regulations (ZLDR). See *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E.2d 92 (Ct. App. 2007), petition for cert. filed (S.C. January 24, 2008). The court specifically held that the zoning regulations and S.C. Code Ann. § 6-29-740 provide "County Council with final decision-making authority in rezoning actions. *Id.* at 560, 654 S.E.2d at 96-97. As noted in Mikell, "there is nothing to suggest that County Council cannot change an ordinance that it created." *Id.* at 561, 654 S.E.2d at 97.

With regards to legislative immunity, the Courts have opined in multiple cases: South Carolina recognizes the longstanding doctrine of legislative immunity for legislators carrying on their legislative duties. See *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (holding a legislator was absolutely immune from liability for comments made during the performance of his legislative duties). Legislative immunity protects legislators from "deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good." See *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951). The public good is

undermined by any restriction placed on a legislator's ability to exercise legislative discretion, including the fear of personal liability. See *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998).

The Plaintiffs' Complaint summarily alleges, without evidence, that the County Council specifically violated the South Carolina Comprehensive Planning Enabling Act, the Comprehensive Land Use Plan and the County Council Rules and Procedures in the approval and adoption of Goff Trustee/Trust's Ordinances 21-24 and 21-25. 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 Ordinances Number 21-24 and 21-25. Plaintiffs' Complaint does not state any wrongdoing by Goff Trustee/Trust in the procedural approval and adoption of the abovementioned Ordinances.

The Plaintiffs Complaint asks this Court to inquire into individual city council members' motives behind their legislative acts. *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999) ("A municipal ordinance is a legislative enactment ..."). This is a fundamentally inappropriate inquiry for a court. See *Pressley v. Lancaster County*, 343 S.C. 696, 542 S.E.2d 366 (2001) ("Judicial inquiry into legislative motivation is to be avoided") (citation omitted); *Columbia Ry., Gas & Elec. Co. v. Carter*, 127 S.C. 473, 121 S.E. 377, 379 (1924) ("The court cannot speculate as to the intention, much less as to the motives, of the Legislature"); *Douglas v. City Council of Greenville*, 92 S.C. 374, 75 S.E. 687, 689 (1912) (discussing improper motives for passing an ordinance, "[w]e cannot inquire into the motives which induce legislative action"); *State v. Cardozo*, 5 S.C. 297 (1874) ("So far as it implies any wrong or improper motive on the part of the Legislature in the particular enactment, it is beyond the control of the judicial department."). "A municipal ordinance is a legislative enactment and is

presumed to be constitutional.” See *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999).

E. THE DECLARATORY JUDGMENTS ACT

The Declaratory Judgments Act provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (1976). “Any person . . . whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30 (1976); see also Rule 57, SCRPC.

Despite the Act's broad language, it has its limits. An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. See *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970); *City of Columbia v. Sanders*, 231 S.C. 61, 68, 97 S.E.2d 357, 361 (S.C. 1957). A declaratory judgment should not address moot or abstract matters. See *Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951). To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. See *Power v. McNair*, *Supra* at 553.

“The Uniform Declaratory Judgment Act, Title 10, Chapter 24 of the 1952 Code “does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise”. See *Town of Tryon v. Duke Power Co.*, 222 N.C. 200, 22 S.E.2d 450, 453.

CONCLUSION

Benjamin F. Goff, Sr., Trustee, of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, request this honorable court to grant the Motion for Judgment on the Pleadings in their favor. There are no stated facts that constitute a cause of action against Goff Trustee. In summary, the Plaintiffs' lawyer has admitted in written communications and under oath at the motion hearing that her clients have no claims against Goff Trustee. For the motion hearing judge finding that Goff Trustee should be a defendant violated the Uniform Declaratory Judgment Act and abused his discretion in creating a fairly read cause of action when the Plaintiffs state that they have none and the complaint does not state any claims against Goff Trustee. The Plaintiffs have agreed to dismiss any and all claims against the County Council and elected members from the Complaint. There are no genuine material facts to be tried in the Complaint against the remaining defendants Goff Trustee or the County

Respectfully Submitted,

Date: February 16, 2023


Benjamin F. Goff, Sr., Trustee, Pro Se
18 Powers Farm Road
Randolph, MA 02368
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Appendix: Memorandum of Law in Support of Motion for Summary Judgment on the Pleadings, Answers, Admissions and Exhibits (Filed by Clerk on January 6, 2023)

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

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,

) REPLY TO COUNTERCLAIM-
) DEFENDANTS' MEMORANDUM
) OF LAW IN SUPPORT OF THEIR
) MOTION TO DISMISS THE
) COUNTERCLAIM AND
) MOTION TO STRIKE
) OTHER MATTERS
)
)

Defendants

Benjamin F. Goff, Sr., Trustee and the
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004,

Counterclaim-Plaintiffs

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.,

Counterclaim-Defendants

ALMA Y. WHITE
CLERK OF COURT

2023 FEB 22 AM 8:41

FILED
IN GEORGETOWN COUNTY, S.C.

**REPLY TO COUNTERCLAIM-DEFENDANTS' MEMORANDUM OF LAW IN
SUPPORT OF THEIR MOTION TO DISMISS THE COUNTERCLAIM AND
MOTION TO STRIKE OTHER MATTERS**

Benjamin F. Goff, Trustee and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Counterclaim-Plaintiffs") request this honorable court to deny the Counterclaim-Defendants' Motion to Dismiss the Counterclaim Complaint and Motion to Strike Other Matters ("the Affirmative Defenses").

BACKGROUND

Counterclaim-Plaintiffs, Benjamin F. Goff, Sr., Trustee, of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 (Goff Trustee) submitted a Counterclaim Complaint for "Declaratory Judgment", "Civil Conspiracy", "Conspiracy Against Rights" "Deprivation of Rights Under the Color of Law" and "Injunctive Relief". The Plaintiffs' ("Counterclaim-Defendants") Complaint failed to state a cause of action in whole and/or in part as a matter of law against the Counterclaim-Plaintiffs or the Georgetown County Council pursuant to Rule 12(b)(6). On May 18, 2022, the Counter-Defendants filed a Motion to Dismiss the Counterclaim that was stayed due the appeal of an interlocutory order that was an abuse of discretion and tantamount to a final judgment, which was dismissed by the Court of Appeals as interlocutory. The hearing on the first Motion to Dismiss the Counterclaim Complaint was scheduled to be heard on February 9, 2023. It was postponed by an Order of Protection submitted by the County lawyer on February 3, 2023. On February 3, 2023, the Counter-Defendants filed a Memorandum of Law in support of the Motion to Dismiss the Counterclaim. Consequently, the Counterclaim-Plaintiffs have filed this reply Memorandum of Law in Opposition Motion to Dismiss the Counterclaim. The Counterclaim-Defendants is basically repetitive and contains ad hominin comments about the Pro Se Counterclaim-Plaintiffs that are false, not relevant to the controversy and professionally inappropriate for an officer of the court.

The Counterclaim Complaint is based on the grounds that a combination of two or more persons have engaged in a "Civil Conspiracy, Conspiracy Against Rights and the Deprivation of Rights under the Color of Law" for the purpose of injuring the Counterclaim-Plaintiffs; thereby, causing special damages in opposing the approval and adoption of Ordinance 21-24 and Ordinance 21-25. In furtherance of the conspiracy, the Counterclaim-Defendants filed a meritless

civil action to nullify and void the ordinances through judicial intervention based on contrived allegations against the County Council and elected members. Also, the Counterclaim-Defendants lack standing to assert the claims stated in the Plaintiffs' Complaint against the Counterclaim-Plaintiffs and lacks a justiciable controversy for judicial intervention and legislative immunity.

The Counterclaim-Defendants stipulated to dismiss any and all claims against the County Council and elected members and continued this legal action against the Counterclaim-Plaintiffs. The Counterclaim-Plaintiffs only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department that was accepted, recommended by the Planning Commission and approved and adopted into Ordinance 21-24 Ordinance 21-25 in concert with the Comprehensive Plan and Future Land Use Map.

STATEMENT OF FACTS

1. The fact that Counterclaim-Defendants brought the Complaint under the South Carolina Declaratory Judgment Act does not by itself confer standing as that act is remedial in nature.
2. Parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.
3. 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.
4. The Counterclaim-Defendants have not been deprived of property or sustained any injury-in-fact or have a personal stake in the adoption of Ordinances 21-24 and 21-25.
5. The Counterclaim-Defendants, for the express purpose of injuring Counterclaim-Plaintiffs' property, combined to interfere with the rezoning process and instituted legal action after having failed to stop the approval and adoption of Ordinances 21-24 and 21-25.

6. The Counterclaim-Plaintiffs have suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of the Counterclaim-Defendants in improperly and in unjustifiably conspiring to interfere with the successful rezoning of the Goff Trustee/Trust's 15-acre parcel as reflected in the Counterclaim Complaint.
7. The willful conspiracy engaged in by the Counterclaim-Defendants have created special damages by negatively impacting the marketability and market value of the Counterclaim-Plaintiffs' parcel; therefore, the Counterclaim-Plaintiffs will seek to recover from Counterclaim-Defendants all actual, special, and consequential damages that are caused by their conspiratorial misconduct.
8. On information and belief, there was no opposition from individuals, groups or organizations to the rezoning and adoption of Ordinances 21-26 and 21-27; whereas, the same two council members who voted against the approval of Ordinances 21-24 and 21-25 voted in favor of approval of Ordinances 21-26 and 21-27.
9. Consequently, the Goff Trustee/Trust parcel was subjected to disparate treatment along with a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law for the rezoning to medium density residential, 10,000 Square Feet Residential (R-10).
10. The organization, Keep It Green and its members and associated individuals and organizations, have engaged in conspiratorial misconduct as documented through the various correspondences, website postings and attributable comments in local news articles.

STANDARDS FOR REVIEW

The Fourteenth Amendment of the Constitution provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws." Because the Amendment is directed at the States, it can be violated only by conduct that may be fairly characterized as "state action."

42 U.S. Code § 1983 – Civil Action for Deprivation of Rights – "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

18 U.S. Code Section 3231: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." (*June 25, 1948, ch. 645, 62 Stat. 826.*)

State courts may now entertain Section 1983 actions if a plaintiff chooses a state court over the federal forum that is always available as a matter of right. See *Martinez v. California*, 444 U.S. 277, 283, and n. 7, 100 S.Ct. 553, 558, and n. 7, 62 L.Ed.2d 481 (1980). Section 1983 creates no substantive law. It merely provides one vehicle by which certain provisions of the Constitution and other federal laws may be judicially enforced. See *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982) (*quoting Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972))

(emphasis added). State as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, which creates a remedy for violations of federal rights committed by persons acting under color of state law.

Under the Supremacy Clause, state courts have a concurrent duty to enforce federal law according to their regular modes of procedure. See *Claflin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833. Such a court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a "valid excuse." *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377, 387-389, 49 S.Ct. 355, 356-357, 73 L.Ed. 747. An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. See *Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 57, 32 S.Ct. 169, 178, 56 L.Ed. 327.

Federal law is enforceable in state courts because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure. "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. . . . The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." See *Claflin v. Houseman*, 93 U.S. 130, 136-137, 23 L.Ed. 833 (1876); see *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211, 222, 36 S.Ct. 595, 598, 60 L.Ed. 961 (1916).

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. See *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. See *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. See *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." See *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. See *McMillan*, 367 S.C. at 564, 626 S.E.2d at 886. The gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. *Pye*, 369 S.C. at 568, 633 S.E.2d at 511.

Alleging special damages in the complaint to avoid surprise to the other party is no longer required. See *Sheek v. Lee*, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986). The South Carolina Supreme Court has opined that "In light of our decision today, we are returning to our long-standing precedent pre-Todd and for clarification specifically state a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately

resulting to the plaintiff.” See *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021); *Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d *Conspiracy* § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. *Conspiracy* § 4 (2012) (same).

ORGANIZED AND COMBINED CIVIL CONSPIRACY

The gist of a civil conspiracy is not the unlawful agreement or combination but the damage caused by the acts committed in pursuance of the formed conspiracy. See 15A C.J.S. *Conspiracy* § 7 (2012). The Counterclaim-Plaintiffs need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. Therefore, the primary inquiry in civil conspiracy is whether the Counterclaim-Defendants’ principal purpose of the combination was to injure the Counterclaim-Plaintiffs. The answer is validated herein and the public record and hearings.

Conspiracies may be concluded from the very nature of the acts done, the relationship of the parties, the motives of the alleged conspirators, and other circumstances. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. The significance of a civil conspiracy claim is the damage resulting to the Counterclaim-Plaintiffs from the overt acts taken in furtherance of the combination by the Counterclaim-Defendants conspirators in filing the civil action for judicial intervention.

Several paragraphs in the Complaint demonstrate the extent of the combined effort to influence the County Council vote by orchestrating “force of numbers” in opposition.

- a. Paragraph 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.”

- b. Paragraph 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.”
- c. Paragraph 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 Keep It Green representatives who spoke on behalf of their members and neighboring landowners.”
- d. Paragraph 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.”
- e. Paragraph 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.”

- f. Paragraph 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 Keep It Green who spoke on behalf of members and neighboring residents.

A conspiracy scheme generally involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence; however, the Counterclaim-Defendants and others did not conceal their combined and collectively action to injure Counterclaim-Plaintiffs' property and prevent the perceived undeserved profits from rezoning from low density to medium density. The postings from Counterclaim-Defendant Keep It Green's website clearly establishes the existence of a civil conspiracy in combination or agreement of two or more persons. See Exhibits A - D.

The obvious intent of the collective action was to injure the Counterclaim-Plaintiffs' parcel 1) by preventing the rezoning of the property; 2) by committing lawful acts with unlawful means through combined and coordinated efforts; 3) together initiate the commission of an overt act in furtherance of the agreement to injure through judicial intervention; and 4) with resultant proximate damages to the Counterclaim-Plaintiffs' property market value and marketability. Further, the Counterclaim-Defendants' affidavits are uniform in content with the premise that they acquired their properties with the expectation that the Counterclaim-Plaintiffs' parcel would never be rezoned; therefore, they are retroactively injured by Ordinances 21-24 and 21-25.

As shown by the foregoing allegations, the Counterclaim-Defendants, over a period that commenced about one year ago, have knowingly, deliberately, and repeatedly engaged in a civil conspiracy as individuals, groups and organizations to injure and deny the Counterclaim-Plaintiffs' federal and state constitutional rights. The Counterclaim-Defendants conspired with

others and among themselves, and with one or more other persons who will be joined as parties after their identities have been ascertained through the discovery process, to wrongfully harm the Counterclaim-Plaintiffs by means of the acts alleged in the Counterclaim Complaint.

The Counterclaim-Plaintiffs have suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of Counterclaim-Defendants in improperly and unjustifiably conspiring to interfere with a successful rezoning of the Counterclaim-Plaintiffs' 15-acre parcel. The Counterclaim-Plaintiffs will seek to recover from the Counterclaim-Defendants all actual, special, and consequential damages that are caused by their misconduct. Civil conspiracy is defined as conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another.

Proof of unlawful means or independently unlawful acts in order to establish a civil conspiracy is no longer required by South Carolina Courts. A cause of action may arise from an act two or more people committed even where no cause of action would arise if an individual committed the same act. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another.

A civil conspiracy claim has been established: 1) the combination or agreement of two or more persons 2) to commit an unlawful act or a lawful act by unlawful means; 3) together with the commission of an overt act in furtherance of the agreement; and 4) damages proximately resulting to the plaintiff.

CONSTITUTIONAL VIOLATIONS OF CIVIL RIGHTS

The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. Under Title 18, U.S.C., Section 241, it is unlawful for two or more persons to conspire to

injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States. Under Title 18, U.S.C., Section 242, it is a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. Private persons, jointly engaged with state officials in the prohibited action, are acting under color of law for purposes of the statute. To act under color of law does not require that the accused be an officer of the State. It is enough that she/he is a willful participant in joint activity with the State or its agents. See *United States v. Price*, 383 U.S. 787, 794, n. 7, 86 S.Ct. 1152, 1157 n.7, 16 L.Ed.2d 267 (1966).

The U.S. Supreme Court has held that the private party's joint participation with a state official in a conspiracy to discriminate would constitute both state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights and action under color of law for purposes of the statute. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970).

COUNTY COUNCIL AND ELECTED MEMBERS STIPULATION OF DISMISSAL

The 'Counterclaim-Defendants' attorney and the attorney for Georgetown County and County Council have agreed to the dismissal without prejudice of the Defendants "Georgetown County Council and Council members defendants, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson in their capacities as elected members of the Georgetown County Council". The agreed "Stipulation to Dismissal", between the Plaintiffs' attorney and the Georgetown County Council's attorney, submitted to the Court on May 5, 2022, essentially invalidated the Plaintiffs' Complaint pursuant to SCRCF Rule

41. It is an admittance of the lack of a justiciable controversy pursuant to SC Code Ann. Sec. 15-53-70 of the Uniform Declaratory Judgment Act. The dismissal of the Georgetown County Council and Council members, at whom the allegations in the Plaintiffs' Complaint are directed left Goff Trustee/Trust as the only actionable defendants. In contradiction of Rule 19(a), the Plaintiffs have agreed to allow the County Council and elected members, needed for just adjudication, to be dismissed from the Complaint. This can be construed as joint participation in the "deprivation of rights under the color of law" by the Plaintiffs and Georgetown County. Moreover, a person need not actually be a government employee or official to act under color of law. See *United States v. Price*, 383 U.S. 787, 794, n. 7, 86 S.Ct. 1152, 1157 n.7, 16 L.Ed.2d 267 (1966).

MOTION TO STRIKE OTHER MATTERS (AFFIRMATIVE DEFENSES)

Under Rule 12(e), if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just; whereas, Rule 12(f) Motion to Strike, states: Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e). The Counterclaim-

Defendants want the Court to strike the affirmative defenses they arbitrarily and capriciously disagree without pointing out defects, if any, or requesting a more definite statement. The affirmative defenses purported in the Motion to Strike are the most indefensible violations of laws by the Counterclaim-Defendants.

The allegations and defenses the Counterclaim-Defendants want to strike include, but limited to, the lack of facts to constitute a cause of action, lack of standing, lack of a justiciable controversy and the following affirmative defenses: 1) Forth Defense: Civil Conspiracy, Plaintiffs combined actions with opposing individuals, groups and organizations for the expressed purpose of injuring the property of the owner which caused special damages resulting in a civil conspiracy; 2) Fifth Defense: Conspiracy Against Rights, Plaintiffs coordinated actions with opposing individuals, groups and organizations 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; 3) Sixth Defense: Deprivation of Rights Under Color of Law, Plaintiffs acting under color of law sought to willfully deprive or cause to be deprived from the property owner those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States; 4) Seventh Defense: Misrepresentation, Plaintiffs knowingly and/or deliberately misrepresented material facts to the Court and concealed material facts from Defendants, and therefore are not entitled to a declaratory judgment; 5) Tenth Defense: Estoppel, Plaintiffs, by their own conspiratorial misconduct, are estopped to seek the relief, if any, demanded by their Complaint; and 6) Eleventh Defense: Unclean Hands, Plaintiffs' claims for relief are barred by the equitable doctrine of unclean hands, as Plaintiffs seek to invoke the equitable jurisdiction of this Court in aid of their wrongful conspiratorial conduct.

CONCLUSION

Counterclaim-Plaintiffs respectfully requests that this Honorable Court deny the Motion to Dismiss the Counterclaim Complaint and Motion to Strike Other Matters (Affirmative Defenses). There is sufficient evidence presented herein and presumptive evidence already available in the public record (Planning Department, Planning Commission and County Council documents, audio-video of council meetings and local newspaper comments) along with other evidence that will become available through the discovery process that the Counterclaim-Defendants have engaged in a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law, to which the court can take judicial notice.

Respectfully Submitted,
Counterclaim-Plaintiffs

Date: February 16, 2023


Benjamin F. Goff, Trustee, Pro Se
Benjamin F. Goff 2004 Revocable Trust,
dated June 18, 2004
18 Powers Farm Road
Randolph, MA 02368
781-986-0635 (Tel)
goff-chem@juno.com

Exhibits: A, B, C & D

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

) DEFENDANT BENJAMIN F. GOFF,
) SR., TRUSTEE OF THE
) BENJAMIN F. GOFF 2004,

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

) REVOCABLE TRUST, DATED
) JUNE 18, 2004 REPLY TO
) OPPOSITION AGAINST MOTION FOR
) JUDGMENT ON THE PLEADINGS
)

Defendants

)
)
)

**REPLY TO OPPOSITION AGAINST
MOTION FOR JUDGMENT ON THE PLEADINGS**

INTRODUCTION

Defendants, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee"), request this honorable court to grant the Motion for Judgment on the Pleadings pursuant to SCRCP Rule 12(c). Plaintiff opposition is based on the contention that the pleadings have not closed and discovery has not been completed. The pleadings closed when the responsive answers to Plaintiffs' Complaint were filed by Goff Trustee on April 14, 2022 and the County on April 11, 2022. Plaintiffs' Complaint fails to state any facts that constitute a cause of action against Goff Trustee and the Plaintiffs' lawyer has stated in written communications and in the motion hearing transcript that, in summary, her clients have no claims against Goff Trustee. Although, 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. The Plaintiffs' lawyer avers with reference to the Counterclaim Complaint that the pleadings have not closed; however, that complaint is an independent action based on a civil conspiracy.

ALMA Y. WHITE
CLERK OF COURT

2023 MAR -9 AM 10:28

FILED
GEORGETOWN COUNTY, S.C.

In this Complaint, under the Uniform Declaratory Judgment Act (UDJA) Section 15-53-80, Goff Trustee has been named as a Defendant when he should be a Party-in-Interest or an Involuntary Plaintiff. The Court abused its discretion in the motion to dismiss hearing in sanctioning Goff Trustee as Defendant and creating a "fairly read" cause of action where none is stated in the Complaint. The Court Order is an abuse of discretion and a violation of the UDJA statute in maintaining Goff Trustee as a Defendant despite, the Plaintiffs having stated in writings and the court motion hearing transcript that they have no claims against him. An abuse of discretion results: (1) when the judge issuing the order was controlled by some error of law; or (2) where the order is without evidentiary support.

STATEMENT OF RELEVANT FACTS

1. There are no stated facts or claims in the Plaintiffs' Complaint that constitutes a "fairly read" cause of action against Goff Trustee, pursuant to Rule 12(b)(6), SCRPC or any violation of law.
2. There are no genuine issues of material facts to be tried against Goff Trustee in the Plaintiffs' Complaint and he is entitled to judgment in his favor as a matter of law.
3. Pursuant to Rule 19(a)(2), SCRPC, Goff Trustee should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80. See *Rule 19(a)(2), SCRPC and Uniform Declaratory Judgment Act, (UDJA)*, S.C. Code Ann. § 15-53-80.
4. The Plaintiffs' lawyer made admissions in an email message, a letter and the motion hearing transcript that, in summary, stated that her clients have no claims against Goff Trustee.
5. All allegations in the Plaintiffs' Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed by stipulation.

6. Goff Trustee 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 Ordinances Number 21-24 and 21-25.

7. In their affidavits, the Plaintiffs abutting the Goff Trustee property claim they paid a specific premium cost to Lennar Carolinas LLC, the developer/builder, for the purchase of their lots on the expectation that Goff Trustee's parcel would never be rezoned from R-1/2, Residential.

STANDARD FOR REVIEW

Rule 12(c), SCRPC, Motion for Judgment on the Pleadings: ;

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Directing the Court's attention to the Defendant's motion for judgment on the pleadings, or, in the alternative, summary judgment, the court must apply the appropriate legal test. The test applicable for a judgment on the pleadings or a summary judgment is whether or not, when viewed in the light most favorable to the party against whom the motion is made, no genuine issues of material fact remain and the case can be decided as a matter of law. See *King v. Gemini Food Services, Inc.*, 438 F. Supp. 964, 966 (D.Va.1976), aff'd 562 F.2d 297 (4th Cir. 1977).

Any party may move for a judgment on the pleadings under Rule 12(c), SCRPC. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. See *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. See *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990).

S.C. Code Ann. § 15-36-10: (4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if: (i) the person has not read the frivolous pleading, motion, or document; (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based; (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

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).

ARGUMENT

A. ADMISSIONS OF NO CLAIMS AGAINST GOFF TRUSTEE

The Plaintiffs' Complaint against Goff Trustee ordinances is tantamount to a frivolous legal action designed to injure and harass him for having successfully rezoned the property despite their combined and organized opposition. In the admissions, Plaintiffs' lawyer clearly believes that under the facts of this legal action, her claims or defense was clearly not warranted against Goff Trustee under existing law and that a good faith or reasonable argument does not exist for the extension, modification, or reversal of existing law. It was a violation of the Uniform Declaratory Judgment Act to make a party whose interest would be affected by the outcome a Defendant. Subsequent to an abuse of discretion by the motion hearing judge in

sanctioning the Defendant status and creating a “fairly read” cause of action, the Plaintiffs, by opposing the Motions for Judgment on the Pleadings and Summary Judgment want to pursue a trial where there are no genuine material facts to be tried against Goff Trustee.

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Plaintiffs’ lawyer stated:

“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.” See *Appendix p. 76*.

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs’ lawyer stated:

“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.” See *Appendix p. 75*.

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Plaintiffs’ lawyer stated:

“I certainly – I sympathize with Mr. Goff’s position in the sense that I know he feels he didn’t do anything wrong, and we don’t think that he did something wrong. But it is a declaratory judgment action, and he does own the property that is affected by these ordinances. And so under the Declaratory Judgment Act, he is a necessary party.” See *Appendix p. 94, Lines 10-15*.

The motion hearing judge’s “fairly read” cause of action decision despite the Plaintiffs’ lawyer transcript statement “we don’t think that he did something wrong”, in reference to Goff Trustee, was an abuse of discretion and tantamount to bias and without merit.

B. INJURY-IN-FACT UNSUPPORTED BY AFFIDAVITS OR EVIDENCE

In their affidavits, Complaint Exhibits 4 to 9, the Plaintiffs abutting the Goff Trustee parcel claim they paid a specific premium cost to Lennar Carolinas LLC, the developer, for the purchase of their lots on the expectation that Goff Trustee's parcel would never be rezoned; therefore, they have been injured by the rezoning approval and adoption. A rezoning of unimproved land does not produce an immediate and actionable injury, if any. Companies, like Lennar Carolinas LLC, concurrently develop subdivisions and build homes. The Colony subdivision developer/builder, Lennar Carolinas LLC, sold lots and homes in combination with the price based on lot size, base construction cost, home design selection/modification and amenities; whereas, in their affidavit exhibits, each abutting Plaintiffs state specific premiums of \$23,000, \$31,000 and \$37,000 allegedly paid for their adjoining the Goff Trustee's property.

However, the Plaintiffs have not presented evidence, if any, of an agreement or itemized statement from Lennar Carolinas LLC outlining the premium costs stated in their unsupported affidavits. In the Colony subdivision, lots abutting on the cul-de-sac are slightly larger and price higher than the smaller lots aligning the Southgate Court roadway. As assessed by the County Assessor's office, the market value of the lots was \$110,000 for the roadway and \$119,900 for the cul-de-sac, less than a \$10,000 difference, an assessment base on lot size and community.

The Colony Subdivision was rezoned to R-8, 8,000 square feet residential with a variance to lower the frontage below 70 feet to increase the number of lots; whereas, the Goff Trustee property was only rezoned to R-10, 10,000 square feet, residential. The Plaintiffs deeds, the only recorded documents, state the purchased price for each home and does not specify any agreement or premium cost that was paid individually for the lots and they have presented no evidence to support their affidavits, if any, to prove an alleged injury in the past, present or in the future.

The implication by the Plaintiffs that the developer/builder charge them a premium for lots is spurious and unsupportable without any evidence. Notwithstanding that Lennar Carolinas LLC had no control of the Goff Trustee property or the power to prevent rezoning, a legislative act, by the County Council. Without a particularized injury, there cannot be a justiciable controversy. See *Registry of Deeds, Bk 2972, P 156; Bk 2927, P 132; and Bk 2918, P 237*.

C. PLAINTIFFS' COMPLAINT LACKS STANDING AND A JUSTICIABLE CONTROVERSY AGAINST GOFF TRUSTEE

The abutting Plaintiffs fail to allege a particularized "injury in fact" to themselves but merely assert generalized grievances, against the County Council in the Complaint and Goff Trustee's property in their affidavits, supposedly suffered by the public as a whole, which are insufficient to establish standing. See *Carnival Corp. v. Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 77, 753 S.E.2d 846, 851 (2014). ("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.").

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). There is no justiciable controversy against Goff Trustee.

To establish standing against Goff Trustee, 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 Trustee 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. Having stipulated to the dismissal of any and all claims against the County Council and elected members, there is no justiciable controversy for judicial intervention and Goff Trustee's motion for judgment on the pleadings should be granted.

CONCLUSION

Benjamin F. Goff, Sr., Trustee, of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, request this honorable court to grant the Motion for Judgment on the Pleadings in his favor. There are no stated facts in the Complaint that support a "fairly read" cause of action against Goff Trustee. In summary, the Plaintiffs' lawyer has admitted in written communications and under oath at the motion hearing that her clients have no claims against Goff Trustee. The Plaintiffs' Complaint does not contain any allegation that reasonably can be construed as a "fairly read" cause of action against Goff Trustee, who should only be a Party-in-Interest.

Respectfully Submitted,

Date: March 6, 2023


Benjamin F. Goff, Sr., Trustee, Pro Se
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) 2022-CP-22-0032

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.

TRANSCRIPT OF RECORD

GEORGETOWN COUNTY and BENJAMIN F.)
GOFF, SR., TRUSTEE of the BENJAMIN F.)
GOFF 2004 REVOCABLE TRUST, dated)
June 18, 2004,)

DEFENDANTS.)

March 23, 2023

Virtual Courtroom via Webex

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

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

CYNTHIA R. PERSON, ESQ.
Attorney for Plaintiff

SIDNEY J. DOUGLAS, ESQ.
Attorney for Defendant

BENJAMIN F. GOFF, SR.
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 on March 23, 2023.)

2 THE COURT: Which one do y'all want to proceed on
3 first?

4 MS. PERSON: Whatever you think, Judge.

5 THE COURT: Why don't we take it looks like plaintiff's
6 motion to dismiss defendant's counterclaims?

7 MS. PERSON: Yes, that's fine. Thank you. We will
8 proceed. So this case has somewhat of a convoluted and
9 unusual procedural history. So this is a declaratory
10 judgment action involving the rezoning of a parcel of land
11 by Georgetown County Council owned by the Goff Trust. The
12 complaint was filed last January of '22 by plaintiffs who
13 are adjoining landowners and citizens groups against the
14 county and the Goff Trust as owner of the land. And the
15 Goff Trust was named in the suit because under the Uniform
16 Declaratory Judgments Act, all parties are required -- or
17 all parties who have an interest are required to be named.

18 The issues really involve Georgetown County. The
19 Trust, as Mr. Goff mentioned, is represented by Benjamin
20 Goff who is the trustee and is proceeding pro se in this
21 matter. The Goff Trust filed a motion to dismiss and the
22 other motions that are before you this morning. The motion
23 to dismiss was heard and denied last year by Judge John on
24 June 3rd. The Goff Trust then attempted to appeal the case
25 to the Court of Appeals. That appeal was, ultimately,

1 dismissed because it was interlocutory, but it was about a
2 six month or so timeframe. So it was remitted back to this
3 court in January. The Goff Trust raised the same issues
4 that it had raised in the motion to dismiss in its motion
5 for summary judgment, motion for judgment on the pleadings.

6 So before we get too deeply into the legal argument on
7 these different motions, it might be worthwhile to mention
8 to the Court that last summer, Mr. Goff approached us about
9 possible ways to let the Goff Trust out of the case. And we
10 explored different options. And I informed Mr. Goff that
11 plaintiffs were more than willing to stipulate to the
12 dismissal of the Goff Trust provided that the Goff Trust
13 would be bound by whatever decision the Court might make in
14 the declaratory judgment action; and provided that the Court
15 approved of the dismissal, of course.

16 Mr. Goff was not comfortable with anything other than
17 ending the entire case. And I explained that plaintiffs
18 were not willing to do that. Mr. Goff approached us again
19 within the last few weeks and renewed the desire to be
20 dismissed; and again, I explained that we were very willing
21 to do that, even eager to do that since it's -- most of our
22 claims involved the county. I was eager to do that on the
23 same terms, of course, and I have not heard back from him.

24 So I bring this up because if the Court thinks it might
25 be worth exploring a possible stipulation with the Court's

1 guidance in this regard before we proceed with all these
2 motions and some rather tangled legal issues, it would,
3 certainly, simplify the case. But if the Court doesn't feel
4 that's worthwhile to pursue, I'll, certainly, proceed with
5 my argument.

6 THE COURT: I'm not sure if we can since it's a D.J.
7 action and we have to have all the parties that are affected
8 in the lawsuit.

9 MS. PERSON: Yeah.

10 THE COURT: I mean, if they want to remain dormant and
11 just, kind of, ride along that's fine; but I think we need
12 to leave them in to ---

13 MS. PERSON: Right.

14 THE COURT: --- protect the D.J. action.

15 MS. PERSON: That's what I've tried to explain. So,
16 okay, very good. So I will proceed, then, with my motion to
17 dismiss. So plaintiffs filed a motion to dismiss the
18 counterclaim filed by the Goff Trust and some portions of
19 the affirmative defenses. The counterclaim is quite lengthy
20 and all over the place as far as subject-matter's concerned.
21 So I've tried to organize my argument by characterizing
22 items that are either not properly raised in a counterclaim
23 at all, or matters that purport to raise a cause of action
24 but we believe do not.

25 So as far as those that are not properly raised,

1 paragraphs four through 16; 18 through 48; 50 through 51; 53
2 through 73 relate to defenses and raise issues of standing;
3 justice ability; service of process; failure to state a
4 cause of action; and all the miscellaneous defenses that
5 were raised in the motions to dismiss and motion for summary
6 judgment; motion for judgment on the pleading; and do not
7 form a proper basis for a cause of action against
8 plaintiffs. So for that reason we're asking that those
9 portions be dismissed.

10 The matters that purport to state a cause of action
11 would be paragraphs one through three; 17; 49; 52; 74
12 through 105 state -- or purport to state claims for
13 declaratory judgment; civil conspiracy; conspiracy against
14 rights pursuant to the Federal Crimes Code under section
15 241; deprivation of rights under Color of Law -- again,
16 under the Federal Crimes Code; and injunctive relief. So in
17 addition to those causes of action that are, actually,
18 defined, there are references to disparate treatment and
19 Color of Law that suggest equal protection or other
20 constitutional claims; although, they're not specified and
21 the elements aren't set forth specifically.

22 So the most important point that plaintiffs would like
23 to make about all of these -- the conspiracy claims is that
24 damage or injury as a result of a conspiracy is always
25 required as part of setting forth any conspiracy claim. And

1 in this case, there is no injury or damage or harm, nor
2 could there be because the Goff Trust got what it asked for
3 in the zoning change. It asked for a zoning change; filled
4 out an application; and it got the zoning change. So even
5 if all the plaintiffs who objected to the zoning change and
6 went into the hearings and spoke against it -- if they were,
7 actually, conspiring to harm the Goff Trust or deprive it of
8 some constitutionally protected right, the fact of the
9 matter is that no harm was done because the zoning change
10 was, actually, approved and the Goff Trust got what it asked
11 for.

12 As far as the federal criminal offenses are concerned,
13 this Court does not have subject-matter jurisdiction in
14 these matters. That's the exclusive jurisdiction of the
15 Federal District Court. Moreover, the Goff Trust would lack
16 standing to prosecute federal crimes in any court. So those
17 matters are not civil causes of action that are
18 appropriately raised in a counterclaim. And so we would ask
19 that those be dismissed on that basis.

20 If these federal crimes were deemed as an attempt to
21 raise a civil claim for federal conspiracy against rights or
22 for deprivation of civil rights under federal law, we
23 believe, they fail for the following reasons: Plaintiffs
24 are all private citizens. There's no fact pled to establish
25 that they were acting in a governmental capacity or a quasi

1 governmental capacity. And the courts are clear that
2 private conduct is excluded regardless of how discriminatory
3 or wrongful it might be.

4 In addition, in order to plead a claim for civil
5 conspiracy against federal constitutional rights, the courts
6 are very clear that facts must be pled, not just
7 conclusions. And we -- for the reasons we stated in our
8 brief, we believe, facts have not been stated. So for those
9 reasons we would submit that any civil federal
10 constitutional conspiracy claims should be dismissed.

11 As far as the civil conspiracy under South Carolina
12 state law as -- in addition to what we mentioned which is
13 that there's no damage or injury shown; that, actually, they
14 got the zoning changed. There is no fact to establish that
15 the principal purpose of the plaintiffs' objection to the
16 zoning change was to hurt Mr. Goff or to commit an unlawful
17 act or a lawful act by unlawful means. And as far as the
18 declaratory judgment counterclaim, there has been no basis
19 for a declaratory judgment asserted in the context of that
20 claim.

21 We would point out that the standard of review -- the
22 courts require facts not merely conclusions. And as far as
23 the federal constitutional claims are concerned, the
24 standard is raised; it's a stricter standard. So that's the
25 motion to dismiss.

1 The motion to strike the affirmative defenses -- there
2 are six affirmative defenses raised that are not proper
3 affirmative defenses. The one is the defense -- it's the
4 fourth affirmative defense of civil conspiracy; that's
5 paragraph 167. The fifth affirmative defense of conspiracy
6 against rights; that's 168. The sixth affirmative defense
7 of deprivation of rights under Color of Law; that's
8 paragraph 169. The seventh affirmative defense of
9 misrepresentation; 170. Tenth affirmative defense of
10 estoppel; 173. Eleventh affirmative defense of unclean
11 hands; that's 174. And we would submit that they should be
12 stricken under Rule 12(f) as not being proper affirmative
13 defenses.

14 So that is the summary of our argument with respect to
15 the motions.

16 THE COURT: Okay. And would you like to say anything,
17 Mr. Goff?

18 MR. GOFF: Yes, Your Honor. Let me start by saying
19 first, this is supposed to be a declaratory judgment
20 lawsuit. And as such when a declaratory relief is sought,
21 all persons should be made parties. The law does not
22 require that the parties be made a defendant.

23 Let me say that according to Black's Law Dictionary, a
24 defendant is a party against whom relief and recovery is
25 sought. In this case, there's no relief or recovery to be

1 sought from Goff Trustee as a defendant. And by the way, a
2 trust cannot be sued. The trust is an entity. The trustee
3 owns the assets in the trust.

4 The plaintiffs' complaint is a suit against Goff
5 Trustee, not the trust. Even though the Court, in its
6 wisdom, has defined the trust as a defendant along with Goff
7 Trustee as a defendant. But in this particular lawsuit,
8 being a declaratory judgment, there's no requirement in the
9 law for a party in interest to be designated as a defendant.
10 In Rule 19(a)(2)(i) indicates that in order for a party in
11 interest or a necessary party to protect that interest, they
12 should be made an involuntary plaintiff.

13 My motion to dismiss was based on those two premises
14 and request laws to dismiss Goff Trustee as a defendant.
15 And since the motion, the suit against the county -- in
16 order to protect an interest, I might say, I delve into the
17 fact that there was no eminent particularizing injury
18 leading to an eminent injury that required standing on the
19 part of the adjoining plaintiffs to sue even the county let
20 alone Goff Trustee.

21 Now, that being said, if we talk about the judgment on
22 the pleading, the plaintiffs contain that the pleadings have
23 closed -- or have not closed. The pleadings have, indeed,
24 closed. The pleadings was answered by the county and
25 answered by Goff Trustee prior to the motion to dismiss. If

1 the -- the plaintiffs had ample time to do whatever
2 discovery that they necessarily wanted to do. The county
3 presented -- from my recollection, presented discovery
4 documents for interrogatories and production to the
5 plaintiff in June or July of last year. And to my
6 knowledge, they still haven't completely answered those. At
7 least I haven't been informed of such.

8 So the pleadings have not closed. There's nothing in
9 the complaint that alleges any claims against Goff Trustee
10 or the Goff Trust. In the motion to dismiss, the presiding
11 judge found -- decided, rather, it was a fairly read cause
12 of action against Goff Chem -- excuse me, against Goff
13 Trustee. Now, the plaintiffs, in correspondence in effort
14 to get an acceptance of service, admitted twice in writings
15 that there are no claims -- that their clients have no
16 claims against Goff Trustee or the Goff Trust, and, indeed,
17 the trust was defined in one of the missives as a person in
18 interest. And if the trust can be a person in interest,
19 certainly, Goff Trustee should be a person in interest and
20 not a defendant.

21 So what I'm faced with, now, is to defend -- continue
22 defense in a lawsuit where the cause of action is
23 unspecified and undefined. And that's the reason why I
24 submitted the judgment on the pleading and the additional
25 attachments which show that this plaintiff's lawyer,

1 Attorney Person, even has alleged that her client has no
2 claims against Goff Trustee. And she stated in the court
3 transcript at the hearing that Goff Trustee, in summary, had
4 not done anything wrong.

5 So here I am being focused on when the county in itself
6 had filed a motion to dismiss in April of last year. And
7 prior to hearing that motion to dismiss which was not heard
8 by the Court -- there was a stipulation of dismissal between
9 Attorney Person and Attorney Morgan. And, basically, the
10 motion to dismiss indicated -- which the Supreme Court and
11 all the Appeals Court have opined on -- that county councils
12 have legislative immunity that deters judicial intervention.
13 And there was a concession to that as a resolution for not
14 hearing the motion to dismiss, and the county council and
15 elected members were dismissed from the complaint. They
16 were the people who were accused in the complaint, and they
17 have been dismissed.

18 Now Goff Trustee has been left as the only defendant
19 along with the county to proceed in this lawsuit. The
20 county contend in their motion to dismiss that they want to
21 go on to pursue constitutional issues. Attorney Person has
22 indicated that she wants to continue to pursue the validity
23 of the ordinance.

24 Now, if, in fact, she has agreed to the fact that the
25 county council has legislative immunity in the courts and

1 should not interfere as the Supreme Court and the Appeals
2 Court have said in numerous cases, then what is the purpose
3 of continuing Goff Trustee as a defendant in this suit; and
4 not granting the motion for dismissal -- rather the motion
5 for judgment on the pleading and the motion for summary
6 judgment? In fact, there are no material -- genuine
7 material facts to be tried against Goff Trustee. I can't
8 imagine there's any remaining claims for the county council.
9 But if they want to pursue those claims whenever those
10 fictitious -- I consider fictitious claims, then they can
11 proceed to do so. But there's no reason for keeping Goff
12 Trustee as a defendant in this suit. And therefore, I
13 request this Honorable Court to grant the judgment on the
14 pleading and the motion for summary judgment.

15 Now, let me move on to the complaint for conspiracy and
16 the plaintiffs wanting to dismiss the suit for civil
17 conspiracy. Indeed, South Carolina law saying proof is no
18 longer required of a civil conspiracy. A civil conspiracy
19 exists if two or more people engage in an unlawful act. And
20 indeed, the threshold for civil conspiracy is the -- whether
21 or not there's an effort to injure the -- in this case, Goff
22 Trustee. There's no question that that has happened, and
23 that is the intent. The ordinance were passed by the
24 council according to the South Carolina Association rules.
25 It was passed according to the county council's rules. And,

1 yet, the plaintiff alleges in the complaint that they didn't
2 pass. There's no proof whatsoever whether or not that the
3 ordinance had passed. And she is proceeding on that basis.
4 Presented no proof.

5 You have the other plaintiffs, the adjoining lot
6 owners, are claiming that they were injured because they
7 paid a premium for the lots with the expectation of promise
8 that the Goff ordinance, the Goff property would never be
9 rezoned. There was no consensus from me. I wasn't aware of
10 that. And they have not produced any proof to whom they
11 paid extra money. And in fact, the Colony Subdivision is
12 being sold as a housing unit.

13 I don't believe, according to my information, there's
14 any separate purchase of the lot. It was sold as a package
15 depending on what style homes that needed to be built. Any
16 price differential with the lots in the Colony are based on
17 size and perhaps location which is consistent with how real
18 estate is sold. I'm familiar with the Colony from 2007 when
19 it was first parceled as a subdivision, and the lots were
20 sold relatively without price differentials that's alleged
21 in the affidavits.

22 Now, back to the civil conspiracy. Yes, it is an
23 effort to injure Goff Chem by -- many of the people who
24 objected to this ordinance were concerned that if I rezoned
25 the property, that I can -- a developer where they can fit

1 more units on the property; that's going to give me more
2 profits in the sale of the property. And I wasn't entitled
3 to that which is one of the premises that was being put
4 forth.

5 The gist of, in my opinion, is that as a large land
6 owner, I submit to the planning department something -- and
7 the planning commission and the council something that's in
8 their interest. The objective of the comprehensive plan is
9 to plan for population growth. And by me providing this
10 opportunity to increase development which is necessary --
11 you can't stop population growth as Keep It Green and other
12 organizations want to do. My ordinance passed because it
13 was consistent with the comprehensive plan; the objectives
14 of the planning commission; and the county council. That's
15 why they passed; not because they were doing me a favor.
16 They were doing their jobs that they were commissioned to do
17 as employees of the planning department; members of the
18 planning council; and members of the county council.

19 So let me say, in fact, that it was an effort -- the
20 lawsuit in and of itself is a furtherance of the conspiracy
21 against -- civil conspiracy against Goff Trustee. They
22 submitted to county council a petition with 1,000 plus
23 signatures of people objecting to the passing of the
24 ordinance. And with the ordinance having passed, they
25 proceeded to sue the county council; name me as a defendant,

1 which is a further effort to injure me when I should have
2 been a party in interest.

3 Thank you very much for allowing me to have this
4 conversation with you, Your Honor. And I want to say in
5 ending, in fairness to -- and justice, this Honorable Court
6 needs to grant my judgment on the pleadings; grant my motion
7 for summary judgment; deny the plaintiff's motion to strike
8 the pleadings; and deny the plaintiff's motion against -- to
9 dismiss the civil conspiracy charge that I have alleged.
10 Thank you much.

11 THE COURT: Thank you.

12 And Ms. Douglas, anything you want to add to all this?

13 MS. DOUGLAS: The county really doesn't have any, kind
14 of, dog in the fight, necessarily, with all the motions
15 before the Court today. We would just agree with you
16 earlier that -- I mean, it's not that there's any action
17 directly against Mr. Goff; it's that he is an interested
18 party, and his rights could be affected by anything that the
19 Court decides here. So that's really, kind of, where we're
20 at.

21 THE COURT: And, Ms. Person, do you have any more
22 motions, or has everything been covered?

23 MS. PERSONS: Well, I do just want to -- I do have a
24 motion to strike the judgment -- the motion for judgment on
25 the pleadings, because the pleadings are not closed; and the

1 rules require that for that. As far as the motion for
2 summary judgment, the only -- I'm not going to go into
3 chapter and verse. I would, simply, say that there are
4 still genuine issues of material fact.

5 The motion to dismiss which was on the same basis that
6 these other motions are being filed was denied; and so we'd
7 ask you to deny those as well.

8 MR. GOFF: I would ask Your Honor to please review the
9 filings in the court for a most explicit explanation of what
10 has transpired and what the request is. Me being a
11 defendant is inconsistent with the law. There is no fairly
12 read cause of action against Goff Trustee.

13 THE COURT: Okay. I'll study the file, and I'll issue
14 a ruling by the end of next week.

15 MR. GOFF: Okay. Thank you.

16 THE COURT: Thank you all.

17 MS. PERSON: Thank you.

18 MS. DOUGLAS: Thank you, Your Honor.

19 THE COURT: Have a good day.

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

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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 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, via Webex on the 23rd day of March 2023.

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

April 28, 2023

Bonnie M. Britt

Official Court Reporter

**PETITION TO PROTECT & PRESERVE
PAWLEYS ISLAND - LITCHFIELD**

For the safety of our citizens and to preserve the natural character of our community from overburdened infrastructure, traffic, flooding, stormwater and inappropriate development, the undersigned Petitioners **OPPOSE ZONING CHANGES THAT INCREASE RESIDENTIAL DENSITY** in the Pawleys Island-Litchfield area.

We hereby petition GEORGETOWN COUNTY OFFICIALS as follows:

1. DENY zoning changes that increase residential density in the Pawleys Island-Litchfield area.
2. DENY currently pending request to change zoning to double residential density from R-1/2 acre to R-10,000 sq. ft. on 14.77 acres at 3138 Ocean Highway in Pawleys Island.
3. FOLLOW the language in our current Comprehensive Land Use Plan about the need to limit residential density in the Pawleys Island-Litchfield area. (Petition worker has a copy of this current language if you wish to read it.)
4. INCLUDE strict language in the upcoming revision of our Comprehensive Land Use Plan that limits zoning changes to increase residential density in the Pawleys Island-Litchfield area.

Respectfully submitted,

District	Last Name	First Name	Number	Street	City
1	Adamson	David	903	Crooked Oak Drive	PI
1	Aichner	Esther		340 Old Cedar Loop	PI
1	Aichner	Woodward		340 Old Cedar Loop	PI
1	Alvarez	Jaiden		129 Old Cedar Loop	PI
1	Anderson	Douglas		1705 Hawthorn dr	PI
1	Anderson	Shirley		34 Mingo Drive, 1E	PI
1	Baxley	Kristie		129 Old Cedar Loop	PI
1	Baxley	Robert		129 Old Cedar Loop	PI
1	Behney	Kevin		430 Hawthorn	PI
1	Berko	Katherine		101 Prentice Court	PI
1	Boggess	Linda		211 Sandfiddler Dr.	PI
1	Boggess	Steve		271 Sandfiddler Dr.	PI
1	Brenneman	Carol		728 Elmwood Circle	MI
1	Burnett	Pam		120 forest loop	PI
1	Burnside	Leroy		69 Old Pointe Rd	PI
1	Burnside	Sheila		69 Old Pointe Road	PI
1	Camasso	Eileen		486 Country Club Dr	PI
1	Carollo	Frank		295 Old Cedar Loop	PI
1	Caron	Cindi		68 Lowcountry Lane	PI
1	Caron	Peter		68 Lowcountry Lane	PI
1	Carroll	Bill	296	Sweetgum Dr.	PI
1	Carroll	John	55	Lowcountry Ln.	PI
1	Carroll	Marianne	55	Lowcountry Ln.	PI
1	Carter	Ruzanna	224	Captiva Cove Loop	PI
1	Carter	Sonny		686 Hawthorn Dr	PI
1	Carter	Virgil	686	Hawthorn Dr.	PI
1	Caudle	Julian	446	Tradition Club Dr.	PI
1	Caufield	Janet	623	Tradition Club Dr.	PI
1	Caufield	Robert	623	Tradition Club Dr.	PI
1	Cavanaugh	John	252	Hawthorn Dr.	PI
1	Checkaneck	Nancy	195	South Dunes Drive	PI
1	Ciuba	Jeff	4330	creek Dr.	MI
1	Coffman	Kenneth	163	Osprey Watch Circle	PI
1	Coffman	Nancy	163	Osprey Watch Circle	PI
1	Conrad	Patrick	768	Country Club Dr.	PI

District	Last Name	First Name	Number	Street	City
1	Cook	David	117	Parkview	PI
1	Coppola	Dennis	232	Goodson Loop	PI
1	Cornwell	Monica	23	Half Shell Court	PI
1	Coughlin	Comine	59	bay tree pl.	PI
1	Cox	Linda	88	Oleander Dr	PI
1	Crabtree	Gayle	1092	Hawthorn Dr.	PI
1	Craft	Luanna	32	Parkview	PI
1	Cross	James	214	Lumbee Cir.	PI
1	Cutler	Patricia	91	Bobcat Dr.	PI
1	D'AMBROSIO	MARILYN		1353 HAWTHORN DR.	PI
1	D'Attilio	Diane		429 Tradition Club Drive	PI
1	D'Amato	Frank	256	Sandfiddler Dr.	PI
1	Dadosky	Stephen	20	Crosswind Tr.	PI
1	Davies	Carol	209	OLD Cedar Loop	PI
1	Davies	Michael	209	OLD Cedar Loop	PI
1	DeCola	Amy	311	Parkview	PI
1	delaney	camie		24 Lamplighter Ct	PI
1	delaney	Patrick		24 Lamplighter Ct	PI
1	DiMaria	Virginia	120	Alexander Glennie Dr.	PI
1	Dodson	Darlene		651 Tradition Club Drive	PI
1	Doerr	mechelle	176	OLD Cedar Loop	PI
1	Dorman	Paul	4577	Hwy	MI
1	DROSIEKO	AMANDA		39 goodson loop	PI
1	Drosieko	Mary	39	Goodson Loop	PI
1	Dwyer	Maureen	32	Pampus Pl.	PI
1	Dwyer	Steve	32	Pampus Place	PI
1	Eanes	Mitchell		130 Sweetgum Dr	PI
1	Eaton	Mary	372	OLD Cedar Loop	PI
1	Eaton	Maynard	372	OLD Cedar Loop	PI
1	Edwards	Debbie	99	Alexander Glennie Dr.	PI
1	Edwards	Thomas	99	Alexander Glennie Dr.	PI
1	England	Mary Lou	200	Lakes at Litchfield Dr.	PI
1	Farrell	Carole	184	Aspen Loop	PI
1	Farrell	Debra	908	Hawthorn Dr.	PI
1	Farrell	Martin	184	Aspen Loop	PI

District	Last Name	First Name	Number	Street	City
1	Farrell	Michael	908	Hawthorn Dr.	PI
1	Fayer	Karen	139	Alexander Glennie Dr.	PI
1	Fellinger	David	160	Captiva Cove Loop	PI
1	FELDMAN	PAUL		17 GOODSON LOOP	PI
1	Ferguson	Paige	142	Aspen Loop	PI
1	Fisher	James		14290 Ocean Hwy	PI
1	Fitzgerald	Elizabeth		10 Sugarberry Lane	PI
1	FLEISS	PHILIP		379 HISTORIC LANE	PI
1	Fleiss	Roberta	379	Historic Ln.	PI
1	Flewelling	Ingrid	282	Hawthorn Dr.	PI
1	Flewelling	Maurice	282	Hawthorn Dr.	PI
1	Foderaro	Albert	1348	Tradition Club Dr.	PI
1	Foderaro	Susann	1348	Tradition Club Dr.	PI
1	Forbes Piehler	Margaret		812 Aspen Loop	PI
1	Friedenberg	Ann	34	Monarch Ct.	PI
1	Friedman	Andrew	104	Aspen Loop	PI
1	Friedman	Edwina	104	Aspen Loop	PI
1	Gallo	Liz	263	Lakeshore Dr.	PI
1	Gaouette	Kathryn	78	Grace Bay Ct.	PI
1	Gardner	Melton		490 Aspen Loop	PI
1	Gardner	Pam Gardner		490 Aspen Loop	PI
1	Gaston	John	33	Crab Trap Ct.	PI
1	George	Cheryl		3012 Purity Place Loop	MI
1	Gibbons	Susan	933	Hawthorn Dr.	PI
1	Gochinski	Joann	516	Linden Cir.	PI
1	Gochinski	Timothy	516	Linden Cir.	PI
1	Gondek	Dana	689	Flamingo Ct.	MI
1	Graves	James		981 Crooked Oak Drive	PI
1	Gravitte	Rita	211	Sandfiddler	PI
1	Green	Cornell	408	Hawthorn Dr.	PI
1	Green	Elizabeth	408	Hawthorn Dr.	PI
1	Grella	Cheryl	338	Sweetgum Dr.	PI
1	Griffith	Sheila		16 golf view court	PI
1	Guilmette	Edward	116	Historic Ln.	PI
1	Gustafson	David	125	Lakes at Litchfield Dr.	PI

District	Last Name	First Name	Number	Street	City
1	Hartman	Paul		436 Mahogany Drive	MI
1	Hasty	Jaelin	170	forest Loop	PI
1	Heck	Andy		Oleander	PI
1	Heck	Marnie		Oleander	PI
1	Hendrix	Megan		4248 MI Road	MI
1	Hill	Kelley		5187 Inlet Garden Ct	MI
1	Hills	Bill		587 Vaux Hall Ave	MI
1	Hipp	Benjamin	1181	Crooked Oak Drive	PI
1	Hojnacki	Bruce		809, Crooked Oak Drive	PI
1	Holberton	Mary	150	Deacon Dr.	PI
1	Holberton	Philip	150	Deacon Dr.	PI
1	Howell	Peg	37	Bobcat Dr.	PI
1	Hoxie	Amie	170	forest Loop	PI
1	Hoxie	Cynthia	170	forest Loop	PI
1	Huguenin	Thomas		1057 Crooked Oak Dr	PI
1	Hurt	Barbara		386 Oleander Dr	PI
1	Jennison	Lucy	70	Mingo Dr.	PI
1	Johns	Terri	8	Captiva Cove Loop	PI
1	Johnston	Christine		1387 Hawthorn Drive	PI
1	Johnston	William		1387 Hawthorn Drive	PI
1	Jones	Amy	92	Middleton Dr.	PI
1	Jones	Joanna		192 Old Pointe	PI
1	Jones	Lucia	417	Tradition Club Dr.	PI
1	Joyce	Jane	221	Sweetgum Dr.	PI
1	Joyce	Jim		221 Sweetgum Dr.	PI
1	Jurasinski	David	220	Crooked Oak Drive	PI
1	KALAYJIAN	Georgia		83 Goodson Loop	PI
1	Kefauver	Sally	33	Brookridge Ln.	PI
1	Koziof	Nola	249	Deacon Dr.	PI
1	Kramer	John	292	Snowbell Ln.	PI
1	Lagarenne	Paul	131	Bobcat Dr.	PI
1	Lagarenne	Priscilla	131	Bobcat Dr.	PI
1	Lamb	Robert		1153 crooked oak dr.	PI
1	Lambert	Gina	1097	Hawthorn Dr.	PI
1	Lambert	Thomas	1097	Hawthorn Dr.	PI

District	Last Name	First Name	Number	Street	City
1	Lamont	Brock		9 Lumbee Circle	PI
1	Latal	Lisa	167	Sandfiddler Dr.	PI
1	Lawton	Michael	4448	LADY Banks Ln.	MI
1	Ledford	Joseph		1021 CROOKED OAK DR	PI
1	Leonard	Joan	391	Historic Ln.	PI
1	Link	Bonnie	91	Prentice Ct.	PI
1	Link	Vincent	91,	Prentice Ct.	PI
1	Lombardi	Mary	54	Spartina Ct.	PI
1	Loonam	Teresa	361	Tradition Club Dr.	PI
1	Lord	David	398	Aspen Loop	PI
1	Maass	Linda		37 Graham Way	PI
1	MacDonald	Allan		1438 Tradition Club Drive	PI
1	MacDonald	Allan		1438 Tradition Club Drive	PI
1	MacDonald	Allan	1438	Tradition Club Dr.	PI
1	MacSorley	Kathy	32	Thrasher Ct.	PI
1	Mahon	John	13	Crab Trap Ct.	PI
1	Mahon	Sally	13	Crab Trap Ct.	PI
1	Malick	James	867	Tradition Club Dr.	PI
1	Mallard	Lowell	244	Sweetgum Dr.	PI
1	Marinoff	Catherine	490	Linden	PI
1	Martin	Keith		1279 Hawthorn Drive	PI
1	Mays	Lori	1467	Hawthorn Dr.	PI
1	McCool	Barrett		359 country club drive	PI
1	McCool	Patrick		359 Country Club Dr	PI
1	McCool	Raenell		359 country club drive	PI
1	McElroy	Bill		694 Tradition Club Drive	PI
1	McLaughlin	John	71	Monarch Ct.	PI
1	McMillen	Anne	236	Crooked Oak Drive	PI
1	McMillen	John	128	Cockleshell Ct.	PI
1	McMillen	Mary Ellen		218 Tradition Club Drive	PI
1	McNamara	Teresa	103	Goodson Lp.	PI
1	Milligan	Tracie	1308	Crooked Oak Drive	PI
1	Mitchell	Carol		423 Parker Dr. Unit 606	PI
1	Mitchell	George	43	Prentice Ct.	PI
1	Mitchell	Linda	43	Prentice Ct.	PI

District	Last Name	First Name	Number	Street	City
1	Mitchell	Maurita		Hawthorn Dr.	PI
1	Modjeski	Jan	4315	Lotus Ct.	MI
1	Moeller	Francis	673	Tradition Club Dr.	PI
1	Monk	Jean	925	Crooked Oak Drive	PI
1	Moore	Errol	99	Confederate Ln.	PI
1	Moore	Grayson		218 Hawthorn Drive	PI
1	Moore	Karen		75 Knotty Pine Way	MI
1	Moore	Tim		218 Hawthorn Drive, 23	PI
1	Muffolet	Joseph	245	LAKES at Litchfield Dr.	PI
1	Mulcaha	Bill	184	Linden Cir.	PI
1	Munday	Rebecca		32 Crosswind Trail	PI
1	Murray	Susan		1252 Hawthorn Dr	PI
1	Muren	Walter	29	Revolution Ct.	PI
1	Mushock	Lynne	20	Oleander	PI
1	Mushock	Michael	20	Oleander	PI
1	Myslinski	Barbara		462 Hawthorn Drive	PI
1	NAGELE	MARILYN		325 Deacon Drive	PI
1	Nalaiehua	J. R.		312 Crooked Oak Dr.	PI
1	Neal	Brian	10	Sea Oats Cir.	PI
1	Neal	Claire		10 Sea Oats Circle	PI
1	Neal	Katherine	10	Sea Oats Cir.	PI
1	Negethon	Mary	133	Puffin Dr.	PI
1	Oberembt	Marilyn	438	Aspen Loop	PI
1	Onley	Ben	188	Forest Loop	PI
1	Onley	Margaret	188	Forest Loop	PI
1	Orchard	John		192 Goodson Loop	PI
1	Orchard	Mindy		192 Goodson Loop	PI
1	Orr	Lisa	1308	Crooked Oak Drive	PI
1	Parker	Susan	108	Melrose Dr.	PI
1	Parr	David	141	Osprey Watch Cir.	PI
1	Perry	Rose	94	Lowcountry Ln.	PI
1	Perry	Wade	113	ALEXANDER Glennie Dr.	PI
1	Person	Cynthia	56	Pampus Place	PI
1	Person	John	124	Snowbell Lane	PI
1	Person	Sam	56	Pampus Place	PI

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1	Pikaart	Penelope	47	Basketmaker Ct.	PI
1	Porter	Laurie		290 Aspen Loop	PI
1	Porter	William		290 Aspen Loop	PI
1	Pratt	Mary Ann Pratt		420 Aspen Loop	PI
1	Proctor	Grover		251 Oleander Dr	PI
1	Proctor	Tina		251 Oleander Dr	PI
1	Putman	Duane		390 Old Cedar Loop	PI
1	Quillian	Edward	230	Old Cedar Loop	PI
1	Register	Chris	92	Middleton Dr.	PI
1	Renault	Jeanette	36	Cobblestone Dr.	PI
1	Rexroat	Annie	125	Melrose Dr.	PI
1	Reynolds	Jody	444	Linden Cir.	PI
1	Reynolds	Todd	444	Linden Cir.	PI
1	Rhoads-Vived	Karen	146	Grace Bay Ct.	PI
1	Riccio	Nicholas	48	Heston Ct.	PI
1	Ringer	Bill		448 Country Club Drive	PI
1	Ringer	Lynn		448 Country Club Drive	PI
1	Rodgers	Traci	1	Half Shell Ct.	PI
1	Runde	Anissa	366	Lakeshore	PI
1	Sauls	Aubrey		73 Bradford Court	PI
1	Sauls	Carolynn	73	Bradford Ct.	PI
1	Schiess	Sandra	50	Jerry Ct.	PI
1	Scoggins	John	34	Tulip Tree Ct.	PI
1	Scoggins	Marty	34	Tulip Tree Ct.	PI
1	Scott	Donna		30 Revolution Ct.	PI
1	Scott	Greta	453	Tradition Club Dr.	PI
1	scott	robert		453 tradition club dr	PI
1	Shelley	Robert	165	Old Cedar Loop	PI
1	Smargiassi	Lisa	35,	Oleander	PI
1	Smith	Dianne		310 Sweetgum Dr	PI
1	Smith	Favor		310 Sweetgum Dr	PI
1	Smith	Dana		559 Willcox Ave	MI
1	Snyder	Ralph		41 Tulip Tree Court	PI
1	Sprogis	EJ	338	Sweetgum	PI
1	Starkey	Sharon	308	Lumbec Cir.	PI

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1	Stewart	Valerie	84	Melrose Dr.	PI
1	Sullivan	Daniel		420 Aspen Loop	PI
1	Sutula	Michael		356 crooked oak drive	PI
1	Sutula	Patti	356	Crooked Oak Drive	PI
1	Sweeney	Cheryl	239	Ashcraft Cir.	PI
1	Swisshelm	Diana	191	Goodson Lp.	PI
1	Taylor	Diane	163	Osprey Watch Cir. 2C	PI
1	Taylor	John	163	Osprey Watch Cir. 2C	PI
1	Tebben	Robin	255	Linden Cir.	PI
1	Tebben	William	255	Linden Cir.	PI
1	Towse	J J	87	Lakes at Litchfield Dr.	PI
1	Towse	Richard	87	Lakes at Litchfield Dr.	PI
1	Turner	Mike	95	Snowbell Lane	PI
1	Vanderslice	David	186	Cayman Lp.	PI
1	Vegliante	Jean	1434	Hawthorn Dr.	PI
1	Velo	Diane		114 Hawthorn Drive	PI
1	Verostek	Michael	275	Parkview	PI
1	Verostek	Stephanie	275	Parkview	PI
1	Vicas	Mary		362 Historic Lane	PI
1	Vicas	Michael		362 Historic Lane	PI
1	Walczyk	Penny	77	Deacon Dr.	PI
1	Walczyk	Stanley	77	Deacon Dr.	PI
1	Walsh	Kimberly		3957 MI Rd	MI
1	Ward	Norm	56	Alexander Glennie Dr.	PI
1	Warren	Linda	1506	Tradition Club Dr.	PI
1	Webb	Gary	308	Lumbee Cir.	PI
1	Weinreich	Gary	9	Orchard Ave.	MI
1	Werkheiser	Cheryl	275	Oleander	PI
1	Wesdorp	Karen	20	Crosswind Tr.	PI
1	West	Robert		545 Crooked Oak Dr.	PI
1	Williamson	Susanne	245	Windover Dr.	PI
1	Wittig	Linda		137 Tradition Club Drive	PI
1	Wittig	Robert	137	Tradition Club Dr.	PI
1	Woods	Kendall	29	Crab Trap Ct.	PI
1	Yoder	Rebecca		4840 Moss Creek Loop	MI

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2	Allen	John		561-A Golden Bear Dr	PI
2	Anderson	Dawn		181 Turtle Creek Drive	PI
2	Angell	Susan		46 Susannah Lane	PI
2	Arroyo	Annette		182 Widgeon Drive	PI
2	Arroyo	Ed		182 Widgeon Drive	PI
2	Azgour	Myriam		329 Otter run rd	PI
2	Babb	Lois Virginia		135-2 Tanglewood	PI
2	Benincasa	Carol	222	Southgate Ct.	PI
2	Benincasa	Phil	222	Southgate Ct.	PI
2	Bertolucci	Lawrence		272 Savannah Drive	PI
2	Bodiford	ANNETTE		968 TYSON DR	PI
2	Budzinski	Carol		222 Widgeon Drive	PI
2	Canterbury	Cynthia		168 Savannah Drive	PI
2	Cappelmann	Judy		355 Navigators	PI
2	Casey	Pete	255	Old Augusta Dr.	PI
2	Cawood	Mark		187 Southgate Ct	PI
2	Charlton	Ron		PO box 1998	G
2	Cheley	Carol		285 Southgate Court	PI
2	Christian	Chad	773	Tyson	PI
2	Ciminel	Robert	29	Green Wing Teal Ln.	PI
2	Clark	Cheryle Fay		76 Stillwood Drive, Unit 1	PI
2	Clark	James		2225 Peachtree Street	G
2	Clark	Lisa		217 Egret Run Lane 924	PI
2	Clayton	David	113	Massick Ln.	PI
2	Clayton	Lisa	113	Massick Ln.	PI
2	Cole	Carol	418	Old Augusta Dr.	PI
2	Cole	Edward		251 Emerson Loop	PI
2	Cole	Gayle		251 Emerson Loop	PI
2	Cole	Warner	418	Old Augusta Dr.	PI
2	Cooper	Elaine	240	Gray Mans Loop	PI
2	Cooper	William	240	Gray Mans Loop	PI
2	Cottrell	Bob	715	Blue Stem Dr.	PI
2	Cottrell	Marilyn	715	Blue Stem Dr.	PI
2	Cox	Kelly	192	Old Plantation Dr.	PI
2	Crawford	Nancy		714 Hagley Dr	PI

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2	Crichton	Mary Beth	100	Sandwedge Loop	PI
2	Cross	Karla		431 Brace Dr	PI
2	Cunha	Richard	47-3	Twelve Oaks Dr.	PI
2	Cumie	Anne		70 Pintail Ct	PI
2	Decker	Judy	23	gleneagle Ln.	PI
2	Decker	Rose	88	Southgate Ct.	PI
2	Decker	Rose	88	Southgate Ct.	PI
2	DeFuria	Margaret	987	Blue Stem Dr.	PI
2	Dellasega	Peggy		404 Bonnyneck Drive	G
2	DeNunzio	Cara	221	Doral Dr.	PI
2	Derouen	Alice		298 Southgate Court	PI
2	Deveau	Fay		98 Savannah Drive	PI
2	DEVEAU	JAMES		98 SAVANNAH DR	PI
2	DeVey	Mary		55 Fennel Ct	G
2	Dimesky	Denali	196	Red Tail Hawk Loop	PI
2	Dimesky	Linda	196	Red Tail Hawk Loop	PI
2	Dimesky	Robert	196	Red Tail Hawk Loop	PI
2	Durham	Melissa		195 Kings River Rd	PI
2	Eastman	David	158	Safe Harbor Ave.	PI
2	Eisenberg	Peter	324	Muirfield Dr.	PI
2	Eldreth	Sally	270	Keithland Dr.	PI
2	Erzmoneit	Teresa	95-2	Weehawka Way	PI
2	Evans	Regina		175 Colony Club Drive	G
2	Fabrey	Robert	46	Gervais Way	PI
2	Farrar	Diana	367	Southgate Ct.	PI
2	Farrar	Michael	367	Southgate Ct.	PI
2	Faulk	Richard	649	Savannah Dr.	PI
2	Feehly	Michael	44	Savannah Dr.	PI
2	Ferri	Deann	51	Hussey Ct.	PI
2	Ferri	Ken	51	Hussey Ct.	PI
2	Finley	Charles Michael &	485	OLD Augusta Dr.	PI
2	Fishburne	Sarah	57	Sweet Water Ct.	PI
2	Formato	Jacqueline	117-4	Whitetail Way	PI
2	Fountain	Donna	672	Masters Dr.	PI
2	Foy	Rachel		307 Southgate Ct	PI

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2	Frankiewicz	Joseph	196	Minnow Dr.	PI
2	Franklin	Betsy	153	Reef Run Rd.	PI
2	Frappier	Andrea	37	CARNOUSTIE Ct.	PI
2	Frappier	Robert	37	CARNOUSTIE Ct.	PI
2	Gabriel	Kathleen	217	Camden Circle	PI
2	Gabriel	Lawrence	217	Camden Circle	PI
2	Glazier	Laura	196	Hopeland St.	PI
2	Glynn	Fran		95 Hamby Dr	PI
2	Godley	Michael	38	CARNOUSTIE Ct.	PI
2	Hager	Eric		190 Live Oak Lane	PI
2	Hamby	Marlajean	54	Percival Ct.	PI
2	Harrington	Randi	62	Sweet Water Ct.	PI,
2	Hassell	Amanda		419 Otter Run Road	PI
2	Hawley	Melissa	305	Bannockburn Dr.	PI
2	Henderson	Fran	61	Inlet View Ln.	PI
2	Henderson	Melodie	61	Inlet View Ln.	PI
2	Hengst	Rainer	273	Camden Circle	PI
2	Hill	Rosemary	90	Pintail Ct.	PI
2	Hines	David	100	Southgate Ct.	PI
2	Hines	Stacy	100	Southgate Ct.	PI
2	Holmes	Dauvid	93	Whitetail Way	PI
2	Holmes	Janet	93	Whitetail Way	PI
2	holmes	janet		93 Whitetail Way, Unit 3	PI
2	Hunt	Bob	351	Southgate Ct.	PI
2	Hunt	Diane		67 Camden Circle	PI
2	Hutchinson	Avis	125	Mourning Dove Dr.	PI
2	Hutchinson	Rita		173 Savannah Dr	PI
2	Jarvis	Robert	123	Southgate Ct.	PI
2	Johnson	Cynthia	1026	Doral Dr.	PI
2	Johnson	Wendy	95-4	Weehawka Way	PI
2	Jones	Martha	459	Brace Dr.	PI
2	Kennedy	Linda	90	Stillwood Dr.	PI
2	Kim	L Leasure		263 Arcadia Rd	PI
2	Kimbrel	Howard		225 Laurel oak rd.	PI
2	Kitzi	Sally	719	Blue Stem Dr.	PI

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2	Klein	MaryBeth	332	Widgeon Dr.	PI
2	Krebs	Jill		905 Hagley Dr	PI
2	Kreml	Nancy		165 Old Tram Way	PI
2	Kremzner	Catherine	88	Woodbourne Lane	PI
2	Kuenzle	John		450 Brace dr	PI
2	Kuenzle	Laurent		450 Brace dr	PI
2	LANE	JOSEPH		764 KINGS RIVER ROAD	PI
2	LANE	Linda		764 KINGS RIVER ROAD	PI
2	Lee	Michelle		86 Lake Trl	PI
2	Lindsay	Marie	272	Old Waccamaw Dr.	PI
2	Loniewski	Cindy		122 Southgate Court	PI
2	Loveland	Richard		184 Stillwood Dr, Unit 1	PI
2	Luers	Phil	137	Red Tail Hawk Loop	PI
2	LYON	SAMUEL		329 Otter run rd	PI
2	Mackie	Stephen		135-1 Tanglewood Drive	PI
2	Macmanus	Thomas	379	Golden Bear	PI
2	Marlow	Molly		207 Blockade Drive, gate	PI
2	Martin	Dawn	75	Weehawka Way	PI
2	Martin	Faye		43 Pintail Ct	PI
2	Mayhew	Jason	239	Red Tail Hawk Loop	PI
2	Mazzaroni	Lisa		598 Camden Circle	PI
2	Mazzaroni	Pete		598 Camden Circle	PI
2	McCormack	Pauline		19 Green Wing Teal lane	PI
2	McGann	Kristine	87	Ocean Lakes Lp.	PI
2	McKoy	Adriana	445	Old Waccamaw Dr.	PI
2	McKoy	Adriana		445 old waccamaw drive	PI
2	Mckoy	Victor	445	Old Waccamaw Dr.	PI
2	Mercer	Mary H. (Molly)	73	Inlet View Ln.	PI
2	Middleton	Ernie		Southgate Ct.	PI
2	Middleton	Joyce		Southgate Ct.	PI
2	Miller	Edward		46 Susannah Lane	PI
2	Minck	Susan		84 Rice Planters Way	G
2	Moore	Kim		71 D DaGullah Way	PI
2	Moore	Leslie	490	Blockade Dr.	PI
2	Moore	Mary Ann	39-2	Weehawka Way	PI

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2	Morrison	Stephen	352	Muirfield Dr.	PI
2	Mur	Karen	982	old plantation Dr.	PI
2	Muravnick	Charles	298	Savannah Dr.	PI
2	Nubson	Har		268 Reef Run Road	PI
2	Oberg	Dale	13	Whitetail Way	PI
2	Oneil	Sydney	616	old plantation Dr.	PI
2	Osborn	Nancy	36	Hagley Retreat Dr.	PI
2	Parsons	Janet	582	OLD Augusta Dr.	PI
2	Pearce	Anna		404 Bannockburn Rd	PI
2	Peters	Carol	591	OLD Augusta Dr.	PI
2	Peters	Thom	591	OLD Augusta Dr.	PI
2	Peterson	Pamela	223	Keithland Dr.	PI
2	Pettus	William	72-3	Whitetail Way	PI
2	Phillips	Cynthia	72-1	Whitetail Way	PI
2	Piver	Selma	953	Doral Dr.	PI
2	Pohlmann	Susan		201 Clamdigger Loop	PI
2	Porter	Catherine	136	DAGULLAH Way	PI
2	Potts	Paul	120	Clamdigger Loop	PI
2	Potts	Tammie	120	Clamdigger Loop	PI
2	Price	Cebert		115 Widgeon dr	PI
2	Ramsey	Della	139	Snow	PI
2	Ravalli	Charles	561	Golden Bear Dr.	PI
2	Reece	Thomas		920 Hagley Dr	PI
2	Reed	Holly		424 Ocean Lakes Loop	PI
2	Reed Jr	Edwin	307-2	Golden Bear Dr.	PI
2	Reese	Karen	133	Muirfield Dr.	PI
2	Rhodes	Sally	66	Otter Run Rd.	PI
2	Rider	Hope	60	Crane Dr. Unit D	PI
2	Rincione	Joe	53	Redwing Ct.	PI
2	Rizzo	Bernard	65	Great Egret Ct.	PI
2	Rizzo	Ruth		65 Great Egret court	PI
2	Robbins	Anne	196	Minnow Dr.	PI
2	Robinson	Andrea		2770 Luvan Blvd	G
2	Rodgers	Nancy	182	Minnow Dr.	PI
2	Romanoff	Mike	237	OLD Augusta Dr.	PI

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2	Romanoff	Paula	237	OLD Augusta Dr.	PI
2	Rovner	Jerry	746	Savannah Dr.	PI
2	Rudd	Nancy		613 Golden Bear Dr.	PI
2	Rush	Ann	41	St. Croix	PI
2	Rush	Mark	41	St. Croix	PI
2	Santucci	Steve	110	Southgate Ct.	PI
2	Schindler	Waltraud	1097	Doral Dr.	PI
2	Schooler	Jane		235 Southgate Ct	PI
2	Schultz	Brandon	35	Georgeanna Ct.	PI
2	Schuster	Jan	32	Sawgrass Lp.	PI
2	Session	Joan	76	Southgate Ct.	PI
2	Shah	Maggie		1265 old plantation Dr	PI
2	Shari	Smith		414 Rybolt Rd	PI
2	Shaw	Sandra	167	blockade Dr.	PI
2	Short	Justin	165	Half Moon Tr.	PI
2	Singer	Madeline		45 Old Augusta Drive	PI
2	Skotnicki	Robert		34 Allison Drive	PI
2	Smith	Anne	20	Pintall Ct.	PI
2	Smith	Carol	76	Widgeon Dr.	PI
2	Smith	Joan			G
2	Smith Goodman	Meta		316 Castaway Key Drive	PI
2	Snelson	Mark		2068 Waterford Rd.	PI
2	Sole	Mel		47 Grey Fox Loop	PI
2	Spry	Victoria	1119	Blue Stem Dr.	PI
2	Stevens	Baker		227 pinehurst lane	PI
2	Stines	Holly		127 Heather Dr.	PI
2	Stines	Nick		127 Heather Dr.	PI
2	Sullivan	Dennis	64	Georgetown Dr.	PI
2	Sullivan	James	137	Green Wing Teal Ln.	PI
2	Sullivan	Jeane	351	Southgate Ct.	PI
2	Sullivan	Katharine	64	Georgetown Dr.	PI
2	Swartz	Amy	61	Widgeon Dr.	PI
2	Swartz	James	61	Widgeon Dr.	PI
2	Tassie	Mark	77	Redwing Ct.	PI
2	Tate	Amy		208 Gray Mans Loop	PI

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2	Tate	Robert		208 gray mans loop	PI
2	Thomason	James	51	Georgetown Dr.	PI
2	Thompson	Claudia		120 Dagullah Way Unit E	PI
2	Tolley	Judy	93	Whitetail Way	PI
2	Trinka	Jill	48-3	Twelve Oaks Dr.	PI
2	Turner	Rebecca	31	Saint Croix Ln.	PI
2	Umble	Christine	93	Whitetail Way 2	PI
2	Umble	Robert	93	Whitetail Way 2	PI
2	Walker	Jann	207-1	Golden Bear Dr.	PI
2	Ward	Carol	360	Southgate Ct.	PI
2	Waymire	Brian	18	Cameron Ct.	PI
2	Wedam	Karen	129	Grey Fox Lp.	PI
2	Westendarp	Henry	162	Widgeon Dr.	PI
2	Wheeler	Grace	93-4	Whitetail Way	PI
2	Wheeler	Richard	93-4	Whitetail Way	PI
2	Wheeling	Mary Catherine		59 Percival Court	PI
2	Wheeling	Mary Jane		59 Percival Court	PI
2	Wheeling	Ron		59 Percival Court	PI
2	Whitmire	JD		286 Southgate Court	PI
2	Wiethoff	William	55	Weehawka Way	PI
2	Wiley	Sarah	96	Voyagers Dr.	PI
2	Wilkinson	Sarah	60	Legacy Ct.	PI
2	Wilkinson	Walter	60	Legacy Ct.	PI
2	Willis	Deborah	55	Weehawka Way	PI
2	Willis	Ken		1265 Old Plantation Drive	PI
2	Witt	Mary	601	Debordieu Blvd.	G
2	Yaniga	Karen	142	Rybolt Rd.	PI
2	Younts	Patty	191	Rybolt Rd.	PI
3	Beattie	Raejean		494 Hopswee Rd.	G
4	Klopp	Jene		117 Cannon St.	G
4	Miller	Tracey		328 Queen Street,	G
4	Noble	Beverly		601 Highmarket St	G
4	Olmstead	Nancy		723 Highmarket St	G
6	Adams	Leonard	126	Harbor Club Dr.	PI
6	Aiken	Robin		89 Woodmont Lane	PI

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6	Allen	Christine		118 Pembroke Lane	PI
6	Allen	Everett		240 Portrush Loop	PI
6	Anderson	Donald		403-6 Red Rose Boulevard	PI
6	Anderson	Judith		51 Pond View Drive	PI
6	Anderson	Marianne		55/1 Highgrove Court	PI
6	archer	Paul		233 muirfield drive	PI
6	Ballew	Bill		153 Ospray Watch Circle	PI
6	Bandy	Amelia		127 old barge dr	PI
6	Bandy	Harper		127 old barge dr	PI
6	Bandy	Jack		127 old barge dr	PI
6	Bandy	John		127 old barge dr	PI
6	Bandy	Madalyn		127 old barge dr	PI
6	Bandy	Thomas		127 old barge dr	PI
6	Bang	Robert		157 MACKINLEY CIR	PI
6	Barksdale	Don		26 OLDE CANAL LOOP	PI
6	Barksdale	Nicole		26 OLDE CANAL LOOP	PI
6	Basso	Steven		40 Majors Ct	PI
6	Beckner	Maureen		95 Sand Castle Court	PI
6	Beckwith	Charles		777 Tidewater Circle	PI
6	Bender	Caroline		4430 Rice Field Rd	MI
6	Black	Dean		256 Otter Run Rd	PI
6	Black	Terri		256 Otter Run Rd	PI
6	Blouin	Andre		37 Wood Duck Ct	PI
6	Blount	David		18 Prestwick Drive	PI
6	Bode	Cindy		240 Shore Line Dr	PI
6	Bode	Keith		240 Shore Line Dr	PI
6	Bogan	Sharon		358 Doral	PI
6	Bride	Nancy		51 Coleman Court	PI
6	Brown	Kathy	396	Blue Stem Dr.	PI
6	Brown	Ragon		48, Grace Bay Ct	PI
6	Bruno	Frank		196 club circle	PI
6	Buettner	William		921 Doral Drive	PI
6	Burgess	Michael		215 Carrington Drive	PI
6	Burgess	Noreen		215 Carrington Dr	PI
6	Cafaro	Michael		219 Parish Road	PI

District	Last Name	First Name	Number	Street	City
6	Campbell	John		234 Carrington Dr.	PI
6	Capone	Cindy		4 Lauren Dr	NJ
6	Carber	Robert		219 black Duck rd	PI
6	Carlson	Betty		914 Doral Dr.	PI
6	Caruso	Linda	53	Bentley Ct.	PI
6	Caswell	Linda	1960	Club Circle	PI
6	Cavanaugh	Karen	223	Hamby Dr.	PI
6	Cawley	Debbie	14	Harvest Ct.	PI
6	Chaffee	Sarah		749 Fieldgate	PI
6	Chalk	Eleonor	953	Heritage Dr.	PI
6	Chandler	Barbara	222	MACKINLEY CIR.	PI
6	Chandler	Carl	222	MACKINLEY CIR.	PI
6	Chattos	David	45	Dornoch Dr.	PI
6	Chick	Tamara	237	Arcadia Rd.	PI
6	Choate	Alicia	2798	Waverly	PI
6	Choate	Bill	2798	Waverly	PI
6	Chrissy	Shea		338 Winston Cir	PI
6	Cipolla	Laurie	37	Parkglen Dr.	PI
6	Citrano	Kristen	55	Tidelands Tr.	PI
6	CL	Denman		55 Seagrove Court	PI
6	Cleary	Jennifer	26	Red Maple Dr.	PI
6	Clifford	Terry	1185	Oatland Lake Rd.	PI
6	Clover	Roberta	105	Prestwick Dr.	PI
6	Coblentz	Patti	121	Rapture Ct.	PI
6	Cook	Alexis	250	Rice Mill Dr.	PI
6	Cosgrove	Kevin	74	Society Rd.	PI
6	Cotter	Leigh		146 palisades loop	PI
6	Coward	JANICE		65 Woodmont Lane	PI
6	Cowen	Diane	1028	Heritage Dr.	PI
6	Cowieson	Su	176	Portrush Loop	PI
6	Cowieson	Thomas	176	Portrush Loop	PI
6	Crandall	Colette	227	Tidewater Circle	PI
6	Crandall	Craig	227	Tidewater Circle	PI
6	Cribb	Ernest	88	Pawleys Creekside Loop	PI
6	Cunningham	Raymond		671 Norris Drive	PI

District	Last Name	First Name	Number	Street	City
6	Cunningham	Susan		671 Norris Drive, Unit 1C	PI
6	Curtiss	Lorie	659	Chapman Loop	PI
6	D'Amour	Beverly	270	Pinehurst Ln.	PI
6	D'Amour	Peter	270	Pinehurst Ln.	PI
6	Darrow	Douglas		431 Hawthorn Drive	PI
6	Darrow	Jane		431 Hawthorn Drive	PI
6	Dave	Chattos		45 Dornoch Dr	PI
6	David	Henry	376	Dornoch Dr.	PI
6	David	Lorraine	376	Dornoch Dr.	PI
6	Davis	Gene		224 Berwick Dr	PI
6	Davis	Sandy	344	Heritage Dr.	PI
6	Dawidowicz	David	145	Winston Cir.	PI
6	Dawidowicz	Jolee	145	Winston Cir.	PI
6	Della cloppa	Maria	1069	Club Circle	PI
6	Denman	Christopher	55	Seagrove Ct.	PI
6	DeOliveira	Kathleen		195 Pembroke Ln	PI
6	Diem	Michael	393	Great Lakes Rd.	PI
6	DiMaria	Ryan	134	Red Maple Dr.	PI
6	Diperrì	Christina	141	Parkglen Dr.	PI
6	Donat	Dennis	15	Flat Boat Ln.	PI
6	Dore	Joan		174 Ellington	PI
6	Dorsey	Gary	61	Berkshire Lp.	PI
6	Dorsey	Susan	61	Berkshire Lp.	PI
6	Drake	Heather		292 Clearwater Drive	PI
6	Drake	Mary Jane		169-4 Red Rose Blvd.	PI
6	Draper	Duane	321	Aspen Loop	PI
6	Draper	Lesley		321 Aspen Loop	PI
6	Duffy	Patrick	749	Club Circle	PI
6	Dugas	Mary		18 High Grove Ct Unit 2	PI
6	Durdan	Donald	97	Vintage Dr.	PI
6	Dzik	John	327	Red Rose Blvd.	PI
6	Dzik	Suzanne	327	Red Rose Blvd., Unit 5	PI
6	Eckard	Joyce	621	Tucker Rd.	PI
6	Edwards	Don	127	Carrington Dr. Unit 402	PI
6	Erickson	Mary	59	Knight Cir. - Unit 1	PI

District	Last Name	First Name	Number	Street	City
6	Estes	Deanne	82	Castaway Key Dr.	PI
6	Faissler	John	329	Shore Rush Dr.	PI
6	Faissler	Rosemary	329	Shore Rush Dr.	PI
6	Farrell	Rosemary	1113	Heritage Dr.	PI
6	Fege	Hartmut		19 Bent Tree Ln	PI
6	Fege	Mary Jo		19 Bent Tree Ln.	PI
6	Fellinger	Eric	101	Ellington Ln.	PI
6	Ferraro	Lawrence	251	Berry Tree Rd.	PI
6	Ferraro	Margaret	251	Berry Tree Rd.	PI
6	Finch	James	26	Baldwin Lp.	PI
6	Finch	Jane	26	Baldwin Lp.	PI
6	Fiorentino	Sherri	125	Parish Rd.	PI
6	Fisher	James		14290 Ocean Hwy	PI
6	Fitzsimmons	Michael		1 Norris Drive	PI
6	Fleming	Jenni	119	Olde Canal Loop	PI
6	Flynn	Silvia	91	Wentworth Pl.	PI
6	Frankosky	Lori		15 Sportsman Drive	PI
6	Freyburger	Thomas	280	Red Maple Dr.	PI
6	Gailey	Kelley		57 Great Lakes Rd.	PI
6	Gallant	Marjorie	54	Waterville Ln.	PI
6	Gallimore	Nancy	184	Myrtle Ave.	PI
6	Gallo	Trudy	130	Harbor Club Dr.	PI
6	Gaouette	Richard		78 Grace Bay Court	PI
6	Garrett	Casimira	731	Aspen Loop	PI
6	Gee	Bogan		85 Heron Way	PI
6	George	Walter	1087	Heritage Dr.	PI
6	Geraghty	Beth	236	Vintage Dr.	PI
6	Gerzina	Joseph	111	Clancurry Pl.	PI
6	Girolamo	Pete		343 congressional drive	PI
6	Goddu	Marc/Marlene	33	Ellington Ln.	PI
6	Goggins	Deborah		136 Clearwater Drive	PI
6	Goldfine	Brenda	58	Tall Pines Way	PI
6	Goldfine	Hali	1142	Club Circle	PI
6	Goldfine	Marc	1142	Club Circle	PI
6	Grayson	Letty	68	Partridge Ln.	PI

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6	Greco	Carmelo	383	Oatland Lake Rd.	PI
6	Greco	Joan	383	Oatland Lake Rd.	PI
6	Greco	Joseph	30	Wood Duck Ct.	PI
6	Grembowitz	Doreen	63	Summer Duck Ln.	PI
6	Grembowitz	Robert	63	Summer Duck Ln.	PI
6	Griffith	George	16	golf View Cr.	PI
6	Hallock	Andrew	24	Wexford Ln.	PI
6	Hammond	Sandra	168	Brown Pelican Lp.	PI
6	Haney	Rich	105	Berkshire Lp.	PI
6	Hanick	John	403	Heston Pt.	PI
6	Hardgrave	Nancy		127 Carrington Drive	PI
6	Hardy	Debra	111	Clancurry Pl.	PI
6	Harrison	Lorraine	110	Grackle Ln.	PI
6	Harrison	Ron	110	Grackle Ln.	PI
6	Harrison	Vernon		236 GREENFIELD RD	PI
6	Hart	Deborah	275	Castaway Key Dr.	PI
6	Harvey	Anne	613	Aspen Loop	PI
6	Harvey	Lance	455	Shore Rush Dr.	PI
6	Hassen	Jennifer	930	Preservation Cir.	PI
6	Hassen	Ron	930	Preservation Cir.	PI
6	Hawkinson	Elaine	29	Abington Ct.	PI
6	Hawks	Billy		480 Greenfield Rd	PI
6	Hayes	Virginia	105	Birkdale Lp.	PI
6	Hays Donat	Pam	15	Flat Boat Ln.	PI
6	hazzard	alice		19 hook dr.	PI
6	Healey	Gail		74 riverbirch lane	PI
6	Heird	Joy	249	Hawthorn Dr.	PI
6	Hensley	Camilla		169-3 Red Rose Blvd.	PI
6	Hofmann-Sablack	Julie	77	Weatherboard Ct.	PI
6	Howard	Lunda	36	Greenbriar Ave.	PI
6	Howe	Amy	72	Enclave Pl.	PI
6	Hudson	Merry	271	Hawthorn Dr.	PI
6	Hudson	Micjael	271	Hawthorn Dr.	PI
6	Hughes	Kathleen	94	Portrush Loop	PI
6	hughey	dan		314 Sundial Drive	PI

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6	hughey	kris		314 Sundial Drive	PI
6	Iman	Sandra	35	Parkland Ct.	PI
6	Iman	Sandra		35 Parkland Court	PI
6	Jacobus	John		225 Carrington Drive	PI
6	Jacobus	Lynda		225 Carrington Drive	PI
6	Jafarace	Leslie		14323 Ocean Hw.Ste 4129	PI
6	James	Anita		225 Mackinley Circle	PI
6	Jones	Patricia	74-2	Highgrove Ct.	PI
6	Joye	Lauren	412	Arcadia Rd.	PI
6	Kaiser	Kerstin	10993	Ocean Highway 2603	PI
6	Kalisky	Ken	356	Tidewater Circle	PI
6	Kalisky	Sherry	356	Tidewater Circle	PI
6	Kearney	John	337	Aspen Loop	PI
6	Keating	Paul		142 Berkshire Loop	PI
6	Keesee	Jennifer		729 Hawthorn Dr.	PI
6	Kelley	Grace	130	Comfort Ln.	PI
6	Kelly	Tara	357	Castaway Key Dr.	PI
6	Kennedy	Adrienne	200	Baskervill Dr.	PI
6	Kennerly	Charlotte	155	Berkshire Lp.	PI
6	Kennerly	Jerry	155	Berkshire Lp.	PI
6	Kilby	Carol		293 Myrtle Ave	PI
6	Kilby	Tom		293 Myrtle Avenue	PI
6	Kim	Maria	182	Club Circle	PI
6	Kim	Mike	182	Club Circle	PI
6	Kinder	Heather	57	Olde Canal Loop	PI
6	Kinzie	Greg		115 Pembroke Lane	PI
6	Kinzie	Mary	115	Pembroke Ln.	PI
6	Kirk	Mary	96	Tall Pines Way	PI
6	Kitchen	Ruth	10	Red Squirrel Ln.	PI
6	Klein	Mike	289	Tall Pines Way	PI
6	Knarr	Nancy	11326	Ocean Highway	PI
6	Knause	Patricia	65	Weatherboard Ct.	PI
6	Kohler	Jane	1435	Club Circle	PI
6	Kohler	Kerry	480	Westfield Dr.	PI
6	Kolesac	Chester	233	CARRINGTON Dr.	PI

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6	Kollet	Angela		455 Muirfield Drive	PI
6	Kominsky	Donna	437	Red Rose Blvd.	PI
6	Kovac	Sharyn	39	golf View Cr.	PI
6	Kreiser	Doug	247	Castaway Key Dr.	PI
6	Kriha	George and Bon	48	Tall Pines Way	PI
6	Krupinkas	Cheryl		144 Beaver pond loop unit	PI
6	Kulish	Deborah		182 Society Lane	PI
6	Kurtz	Thomas		34 Cherbourg Pl	PI
6	Lagarenne	Paul	192	Palisade Lp.	PI
6	Lake	Nancy	24	Golf Club Cir.	PI
6	Landed	Laurel	44	Lazy Ln.	PI
6	Landed	Laurel		44 Lazy Lane	PI
6	Lannen	Thomas	194	Tall Pines Way	PI
6	Lawrey	Marylee	147	Domocho Dr.	PI
6	Lazzara	Joyce	320	Chapman Lp.	PI
6	Lazzara	Mariene	121	Ellington Ln.	PI
6	LeDuc	Robert	14	Wood Creek Lp.	PI
6	LeDuc	Susan	14	Wood Creek Lp.	PI
6	Lee	Denise		51 Lupton Lane	PI
6	Lee	Thomas	51	Lupton Ln.	PI
6	Leeton	Felix		147 Congressional Drive	PI
6	Liebmann	Al		53 Bentley ct	PI
6	Long	Larry	320	Pinehurst Ln.	PI
6	Loperfido	Debrahy		104 pond view drive	PI
6	Loperfido	Deborah		104 Pond View Dr	PI
6	Low	Daniel C Low sr	311	Hawthorn Dr.	PI
6	Lowry	Kristin		163 angel oak drive	PI
6	Luria	Nancy	1185	Oatland Lake Rd.	PI
6	Lytle	Pat	215	Pinehurst Ln.	PI
6	Macklen	Patricia	293	Hawthorn Dr.	PI
6	Magyera	Rosemary	53	Oakmont Dr.	PI
6	Magyera	Stephen	53	Oakmont Dr.	PI
6	Marchal	Andrea	1056	Oatland Lake Rd.	PI
6	Marron	Catherine	7	Wood Duck Ct.	PI
6	Marron	Ralph	7	Wood Duck Ct.	PI

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6	Marshall	Judith	827	Club Circle	PI
6	Martin	Patricia		91 Parkglen Drive	PI
6	Mathers	Jon	571	Aspen Loop	PI
6	Maxwell	Judy	145	Salt Marsh Cir. 16-D	PI
6	May	Kathy	137	Dornoch Dr.	PI
6	May	Robert	137	Dornoch Dr.	PI
6	McAlpine	Dennis	16	Flat Boat Ln.	PI
6	McCaw	Susan	19-2	Hamstead Pl.	PI
6	McClain	Janet	27	Chapel Creek Rd.	PI
6	McClain	Mike	27	Chapel Creek Rd.	PI
6	McClam	Tricia	41	Tralee Lp.	PI
6	McClellan	Amanda		50 Marsh Grass Way	PI
6	McGinnis	Frank		79 Coleman ct.	PI
6	McGuire	Diane	123	Clearwater Dr.	PI
6	McKeon	Deborah	1083	Club Circle	PI
6	McKeon	James	1083	Club Circle	PI
6	McKone	Donald	2	Wentworth Pl.	PI
6	McLaren	Goffinet	157	Windy Ln.	PI
6	McNeil	Daniel	396	Blue Stem Dr.	PI
6	McNeil	Terry	396	Blue Stem Dr.	PI
6	Meachim	Nancy	169	Berwick Dr.	PI
6	Meade	Charles	940	Doral Dr.	PI
6	Meade	Deborah D.	940	Doral Dr.	PI
6	Medley	Ellen	158	Oatland Lake Rd.	PI
6	Mehaffie	Linda		736 Heritage Ave	PI
6	Melere	Forrest		972 HERITAGE DR	PI
6	Meyer	Marilyn	30	Siddons Place	PI
6	Meyer	Philip	30	Siddons Place	PI
6	Mia	Loser		392 Fieldgate Circle	PI
6	Mikels	Jill	396	Blue Stem Dr.	PI
6	Miles	Billy	55	Lupton Ln.	PI
6	Miller	Helen	390	Pinehurst Ln.	PI
6	Miller	Patricia	137	Clearwater Dr.	PI
6	Miller	Stoney	2826	Waverly	PI
6	Mills	Pamela	130	Puffin Dr.	PI

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6	Mokar	MaryAnn		17 Pawleys Pl. Dr.	PI
6	Molloy	Adrienne	242	Carrington Dr.	PI
6	Molloy	Daniel	242	Carrington Dr.	PI
6	Moodie	Jean	55	Saint Annes Pl.	PI
6	Mooney	Jo		147 Woodville circle	PI
6	Moore	Elizabeth	984D	Algonquin Dr.	PI
6	Moran	Holly	73	Society Rd.	PI
6	Morman	David	44	Westchester Pl.	PI
6	morrison	sherry		233 muirfield drive	PI
6	Morrow	Kathleen	30	Wentworth Pl.	PI
6	Morrow	Thomas	30	Wentworth Pl.	PI
6	Morton	Barbara	271	Baskervill Dr.	PI
6	Munson	Charles	108	Greenbriar Ave.	PI
6	Munson	Patricia	108	Greenbriar Ave.	PI
6	Murdaugh	Cissy	489	Heston Point Dr.	PI
6	Naccarato	Marcella		38 St. Annes Pl.	PI
6	Najim	Terry	19	Black Duck Rd.	PI
6	Nelson	Nancy	199	huntington Lake Cir.	PI
6	Ness	Pamela	242	Domoch Dr.	PI
6	Neumann	David	15	Hamby Dr.	PI
6	Newbrough	Karen		5096 Spanish Oaks Ct.	MI
6	Newcomb	Lee	769	Tucker Rd.	PI
6	Nichols	Don	438	River Oaks Cir.	PI
6	Nichols	Robert	321	Woodville Cir.	PI
6	Nofal	Joseph	381	Sportsman	PI
6	O'Donoghue	Jean	44	Westchester Pl.	PI
6	Odom	Lynn		52 Olde Canal Loop	PI
6	ODonovan	Judy	377	Dornoch Dr.	PI
6	Oleary	Kathleen	38-1	Knight Circle	PI
6	Paris	Jonathan		749 Fieldgate Circle	PI
6	Parker	John	168	MackKinley Circle	PI
6	Parker	Suzanne		168 MacKinley Circle	PI
6	Parker	Suzanne	168	MacKinley Circle	PI
6	Pate	John		333 Norris Dr	PI
6	Patrick	Frazier	181	Rice Mill Drive	PI

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6	Pavek	Gary	319	Old Pointe Road	PI
6	Pavek	Susan	319	Old Pointe Road	PI
6	Payne	Carol	245	Old Cypress Cir.	PI
6	Payne	Sondra	97	Portrush Lp.	PI
6	Pelletier	Robert	44	Hamby Dr.	PI
6	Perreault	Annette		221-5 Red Rose Blvd.	PI
6	Perrin	Illa	314	Tall Pines Way	PI
6	Phillips	Deborah	171	Fairway Ln.	PI
6	Philo	Elisabeth		511 Hawthorn Drive	PI
6	Pierce	Tiffany	13474	Ocean Highway	PI
6	Pysar	Margaret	38	Deer Moss Ct.	PI
6	Pysar	Richard	38	Deer Moss Ct.	PI
6	Raley	Sam	189	Angel Oak Dr.	PI
6	Rana	Mary	106	Dunning Rd.	PI
6	Rees	John	211	Mackinley Circle	PI
6	Reeve	Connie	596	Arcadia Rd.	PI
6	Richey	Dean	23	Palisade Lp.	PI
6	Rieman	Ed	158	Avian Dr. Unit 202	PI
6	Rieman	Lori	158	Avian Dr. Unit 202	PI
6	Ries	Jan	524	Reserve Dr.	PI
6	Ries	W.	524	Reserve Dr.	PI
6	Rigby	William	302	Sundial Dr.	PI
6	Ritchie	Madeleine		126 Inlet Point Drive 14C	PI,
6	Rohr	Michael	147	Dornoch Dr.	PI
6	Rowland	Janel	678	Heritage Dr.	PI
6	Ruf	Christine	74	Tall Pines Way	PI
6	Ruffcorn	Gary	24	Old Pointe Road	PI
6	Ruffcorn	Wendy	24	Old Pointe Road	PI
6	Rulli	Mary	89	Knight Circle	PI
6	Runac	Pamela	35	Ruddy Duck Ln.	PI
6	Russell	Lynne		1075 Waverly Rd	PI
6	Russell	Robin Lucia		38 St. Annes Pl.	PI
6	Sablack	Scott	77	Weatherboard Ct.	PI
6	Saleeby	Kary	252	Portrush Loop	PI
6	Salkeld	Julie	1624	Club Circle	PI

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6	Sammut	Suzanne		331 Castaway Key Drive	PI
6	Santopietro	Jill	1043	Club Circle	PI
6	Santopietro	Joyce	144	MacKinley Circle	PI
6	Santopietro	Tom	1043	Club Circle	PI
6	Saunders	Kim	234	Hunters Oak Ct.	PI
6	Saunders	Lary	234	Hunters Oak Ct.	PI
6	Schaefer	Karen		55 Portrait Ln	PI
6	SCHAEFER	Karen		55 Portrait Ln	PI
6	Scheeler	Donna	1050	Heritage Dr.	PI
6	Schemery	Mary	108	salt Marsh Cir. 24-C	PI
6	Schindler	Reinhardt		1097 Doral Drive	PI
6	Schoenig	Robert		46 Pawleys Place Drive	PI
6	Schroyer	Debra	354	Blue Stem Dr.	PI
6	Schroyer	Penny	354	Blue Stem Dr.	PI
6	Seelbach	William	354	WATERSEDGE Dr.	PI
6	Seward	Robert	114	Great Lakes Rd.	PI
6	Shattuck	John	100	Fieldgate Cir.	PI
6	Shattuck	Kim	100	Fieldgate Cir.	PI
6	Shaw	David	228	Harbor Club Dr.	PI
6	Sieffert	Eileen	629	Chapman Lp.	PI
6	Sieffert	Tom		629 Chapman Loop	PI
6	Simons	Charles	266	Clearwater Dr.	PI
6	Skotnicki	Starr	33	Regal Lane #2	PI
6	Slaughter	Chris	81	Hook Dr.	PI
6	Slomkowski	Luciann and Ed		242 Old Pointe Rd	PI
6	Smeak	John		61 Inlet Point Dr. Unit 17C	PI
6	Smith	Cathy		40-1 HIGH GROVE CT	PI
6	Smith	Dorothea	209	Portrush Loop	PI
6	Smith	Joel		45 Aspen loop	PI
6	Smith	Ken	85	Greenbriar Ave.	PI
6	Smith	Lisa	111	Porch Ln.	PI
6	Smith	Martha	334	Old Pointe Road	PI
6	Smith	Steve	111	Porch Ln.	PI
6	Solowinski	Eleanor		211 Pembroke Lane	PI
6	Sowell	Sara	190	Arcadia Rd.	PI

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6	Spadafora	Jennie	192	Palisade Loop	PI
6	Standish	Karen	593	Aspen Loop	PI
6	Stark	Lynette		1598 HAZELTINE CT	MI
6	Stein	Nancy	261	Berwick Dr.	PI
6	Stewart	Stephanie	1104	Club Circle	PI
6	Stripling	Robert Jackson		333 Norris Dr	PI
6	Stripling	Stella		333 Norris Dr	PI
6	Stroud	Christina	180	Duncan Ave.	PI
6	Stroud	Patrick	180	Duncan Ave.	PI
6	Stuckey	Christy	679	River Oaks Cir.	PI,
6	Such	David	230	Tall Pines Way	PI
6	Sullivan	Beverly	471	Cedar Dr.	PI
6	Swensen	Joan	30	Baldwin Lp.	PI
6	Tanner	Patricia		517 Pembroke Lane	PI
6	Tanner	Patricia	517	Pembroke Ln.	PI
6	Terrill	Pat	23	Preservation Cir.	PI
6	Thomas	Cynthia	321	Woodville Cir.	PI
6	Thomas	Jane		125 Angel Oak Dr.	PI
6	Treffer	Emerson	43	Aberdeen Way	PI
6	Treffer	Juanita	43	Aberdeen Way	PI
6	Trent	Daphne	27	Courtyard Cir	PI
6	Turek	Melissa		125 Wyndham Rd	PI
6	Turner	Michael	149	Old Pointe Road	PI
6	Urso	Joanne	278	Berwick Dr.	PI
6	Vagelakos	Joe	25	Sandy Pine St.	PI
6	VanDyne	Tom	320	Chapman Lp.	PI
6	Vega	Susan	80	Montrose Ln.	PI
6	Vignone	Ronald	103	golf View Ct.	PI
6	Voltumo	LuAnn	44	Carrington Dr.	PI
6	Walker	William	148	WILDFLOWER Tr.	PI
6	Ward	Keith		62 Seagrove Ct.	PI
6	Warner	Carroll	88	Parish Rd.	PI
6	Waters	Justin	235	Gilman Rd.	PI
6	Weaver	Kim	60	Winged Foot Ct.	PI
6	Weimer	Nancy		25 Pembroke Lane	PI

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6	Wetsel	Nancy	25	Staunton Pl.	PI
6	Wigley	William	30	Summer Duck Ln.	PI
6	Wilcox	John	305	Inverness Dr.	PI
6	Williams	Adelaide		105 Olde Canal Loop	PI
6	Williams	Ellen		18 Siddons Place	PI
6	Williams	Lee		77 Streater Lane	PI
6	Williamson	Maryann	113	Fairway Ln.	PI
6	Wise	Anne	71	Weatherboard Ct.	PI
6	Wuest	Ryan		239 ashcraft circle apt 132	PI
6	Wylie	Lexi		120 Costa Court	PI
6	Wynn	Katherine		181 Rice Mill Dr	Pawle
6	Wynn	Patrick		181 Rice Mill Dr	PI
6	Yarborough	Stanley		179 Parish Rd	PI
6	Yoder	Mary Lou	194	Pembroke Ln.	PI
6	Yorzinski	Virginia	103	HERON Way	PI
6	Zellner	Jennifer	15	Haverhill Pl.	PI
6	Zellner	Todd	15	Haverhill Pl.	PI
6	Zillner	Erik		120 Costa Ct	PI
6	Zukowski	Lawrence	1777	Club Circle	PI
7	Fogel	Laurette	815	Prince St.	G
7	Gore	Brigid	103	Beneventum Rd.	G
7	McGrogan	Kathy		134 Gov. Johnston Road	G
7	Myers	Bonnie	21	Swamp Fox Ln.	G
7	Shamrock	Vanessa	633	Robin Dr.	G
7	Strickland	Cindy		1732 David W Ray Dr	G
10	BALCER	MARGARET		53 S Florida St	WV
10	Capone	Anthony		4 Lauren Drive	NJ
10	Cholette	Lauren	751	East Christine Rd.	PA
10	Cobb	Barbara	208	Atlantic Ave.	PI
10	Cobb	Christine	127	Costa Ct.	PI
10	Franklin	Barbara		6605 Lakebend Way	NC
10	Geoffrion	Alfred	63	Northwoods Ct.	PI
10	Halper	Lynne	821	Longwood Bluffs Cir.	MI
10	Halper	Marvin	821	Longwood Bluffs Cir.	MI
10	Holland	Charles			PI

District	Last Name	First Name	Number	Street	City
10	Hollenhorst	Martha	1306	PO Box	PI
10	Hummel	Judy	1270	sharott Run Pl.	OH
10	Johnston	Mark		419 Mt. Valley Rd.	SC
10	Kay	Jeannie		1402 South Dixie Hwy	
10	Kessler	Lois	1708	Highland Ave.	PA
10	Kitchens	Sur	69	Wild Rice Dr.	PI
10	Lanford	Robin		106 Brighton Ct	SC
10	Lawler	Alison	635	chamberlin	MB
10	Litvin	Elisabeth	73	Wild Rice Dr.	PI
10	Litvin	John	73	Wild Rice Dr.	PI
10	Mayer	Gerard			PI
10	McCracken	Laurel		4515 Richmond Hill Dr	MI
10	Nixon	Tiffany		624 Fox Hollow Rd	MI
10	Nuzzo	Steven	1829	East 34th St.	NY
10	Reid	Keri		336 Star Hill Dr	NC
10	Schaefer	Karen		357 Green Spruce Dr	OH
10	Shannon	Maureen	127	Costa Ct.	PI
10	Shelton	Connie	4267	PO Box	PI
10	Stephens	Paula	69	Wild Rice Dr.	PI
	Hinds	Sims		89 Northwoods Ct	PI
	Joseph	Lauren		933 Willowbank Rd	G
	Wahlers	Greg			



crperson

Aug 15 1 min read

URGENT ACTION NEEDED!

WE NEED YOUR HELP to fight a REZONING request in Pawleys Island at a dangerous intersection on the east side of US 17 near the Hog Heaven curve.

1. Please ATTEND the County Council meeting on Tuesday, August 24, 2021, at 5:30 pm, Howard Auditorium, 1610 Hawkins St., Georgetown, and wear green. WE NEED A RECORD TURN-OUT!
2. Please EMAIL YOUR OPPOSITION to County Council at tfloyd@gtcounty.org by Sunday, August 22.
3. Please TELL EVERYONE YOU KNOW to do the same!

Details in the attached letter.



Goff Property Call to Action 8-15-21.pdf

Download PDF • 119KB





August 14, 2021

Dear Friends of Keep it Green:

YOUR HELP IS URGENTLY NEEDED to fight a **REZONING** request in Pawleys Island at a dangerous intersection on the east side of US 17 near the Hog Heaven curve.

WE NEED YOUR HELP to make our voices heard:

- Please **ATTEND** the County Council meeting on Tuesday, August 24, 2021, at 5:30 pm, Howard Auditorium, 1610 Hawkins St., Georgetown, and wear green. **WE NEED A RECORD TURN-OUT!** (If you wish to speak against this request, please contact us at: keepitgreen.pi@gmail.com for more information.)
- Please **EMAIL YOUR OPPOSITION** to County Council at tfloyd@gtcounty.org by Sunday, August 22.
- Please **TELL EVERYONE YOU KNOW** to do the same!

County Council will vote on a **ZONING CHANGE TO INCREASE DENSITY** on 14.77 acres along US 17 in Pawleys Island at a very dangerous intersection south of Pawleys Plantation.

1. This **VIOLATES** our comprehensive plan which states that increasing density is **NOT** appropriate in the Pawleys-Litchfield area.
 - Present zoning allows a maximum of 2 homes per acre.
 - The zoning change would allow up to 5 homes per acre.
 - This is **MORE THAN DOUBLE** the gross density!
2. This would create more **TRAFFIC, FLOODING & OVERBURDENED INFRASTRUCTURE**.
3. The applicant has shown **NO JUSTIFICATION**. Landowners have the right to use their land in accordance with the way it was zoned when they acquired it. This parcel was zoned R-1/2 acre when the applicant purchased it and we affirm his right to use his land as such. There is **NO LEGAL RIGHT** to change zoning to increase density.
4. **NEIGHBORING LANDOWNERS** have a right to rely on the way this property was zoned (R-1/2 acre) at the time they acquired their property. There is no right to a change that is detrimental to others.
5. This would jeopardize the **SAFETY** and general welfare of the public.
6. This would set a **DANGEROUS PRECEDENT** that puts every acre of available land on the Waccamaw Neck, including our **GOLF COURSES**, at risk of arbitrary zoning changes and inappropriate development.



Last Chance to Stop Increased Density on the Neck!

Two weeks ago County Council voted at second reading to allow an arbitrary zoning change in Pawleys Island from R-1/2 acre to R-10 which doubles gross density on a 14.77 acre parcel along the east side of US 17 on a very dangerous stretch of highway near from Hog Heaven. This decision was in spite of hundreds of letters in opposition and many outstanding speakers at public input. John Thomas and Bob Anderson, both from the Waccamaw Neck, voted against it and Steve Goggans, also of the Waccamaw Neck, voted in favor of the increased density along with the other council members.

Our county officials seem to have no regard for following our comprehensive land use plan which calls for no increased density. This was a request to rezone unsupported by any plan. This decision sets a dangerous precedent that would allow any landowner to request and be granted a zoning change for any reason or no reason and would permit all available land on the Waccamaw Neck to be re-zoned to increase density.

The people of the Waccamaw Neck should not have to beg our county officials to represent and protect us. We have a serious problem with council members failing to follow the overwhelming voice of the people with respect to issues affecting the neck.

There will be a third reading on September 14, at which time the County Council will have a final vote. Please email your opposition to tfloyd@gtcounty.org and please attend the meeting to help make our voices heard.



Help Save Our Community

Please join your friends and neighbors in signing the PETITION TO PROTECT & PRESERVE PAWLEYS ISLAND-LITCHFIELD.

If you have not already done so, please click [HERE](#) to SIGN THE PETITION asking our county to:

- DENY zoning change request to double residential density on 14.77 acres at 3138 Ocean Highway near Hog Heaven. (Public hearing rescheduled for October 26, at 5:30 pm. Details to follow in a week or so.)
- FOLLOW our land use plan and DENY all zoning change requests to increase density in Pawleys-Litchfield.
- INCLUDE strict language in the comprehensive land use plan revision to limit zoning changes that increase density.

Our county officials consistently turn a blind eye to our comprehensive plan and support agendas that favor developers and special interests. The residents of the Waccamaw Neck are growing weary of being ignored and effectively unrepresented.

This is a final push to make our voices heard and it is important for us to get as many signatures on this Petition as possible. Please tell your friends and neighbors.

NOTE: We have [traditional paper Petitions](#) for those who do not have access to a computer or are not on social media. If you wish to have a paper Petition to circulate among your friends and neighbors, please email us at keepitgreen.pi@gmail.com and we will see that you get a packet with everything you need. Every signature counts!

Thank you for your continued support of our work to protect our community.

Keep It Green Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

March 30, 2023

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

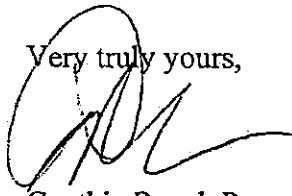
RE: Middleton v. Georgetown County, 2022-CP-2200-032

Dear Mr. Goff:

As directed by Judge Seals, enclosed please find proposed order.

Thank you for your kind attention.

Very truly yours,



Cynthia Ranck Person, Esquire

Appellant's Notes:

1) The Respondents' lawyer letter stated that the written order was sent to the Appellant at the direction of the trial court judge; 2) The Form 4 Order, Statement of Judgment by the Court, did not authorize the written order or the Respondents' lawyer to prepare the document; 3) The written order was not filed in the trial court; 4) Pursuant to Rule 208(1)(B)(ii), SCACR, the Appellant filed the written order with the Notice of Appeal because the Form 4 Order was reduced to writing and implied judicial authorization; 5) Pursuant to Rule 210 (c), SCACR, the Appellant included the written order in the Record on Appeal because it had been presented to the tribunal and implied judicial authorization; and 6) The written order only addressed the granted Motion to dismiss the Counterclaim Complaint/Motion to Strike and did not mention the reasons for the denial of the Motions for Judgment on the Pleadings and Summary Judgment.



Georgetown County Planning and Code Enforcement
129 Screven Street
Georgetown, SC 29440
(843) 545-3158

Memo

To: County Council
From: Holly Richardson
CC: Angela Christian, Theresa Floyd
Date: August 24, 2021
Re: Goff rezoning, Item 11d

Please take note of the following regarding **Item 11d**, rezoning request from Mr. Benjamin Goff for property on Denry Drive.

- The applicant did not submit a site plan for the project. No site plan or stormwater plan is required as part of a rezoning request. Site plans are only required for rezonings when the applicant is requesting a Planned Development or Flexible Design District. If the rezoning is approved, the applicant will submit a preliminary plan to the Planning Department. If the plan contains more than 10 lots, the subdivision plan will be reviewed by the Planning Commission for adherence to the Zoning Ordinance and Land Development Regulations.
- Current R1/2 AC zoning allows for the development of lots 20,000 SF and larger. Without a site plan it is difficult to determine the exact number of lots that would be permitted as this would depend on wetland determinations, infrastructure installation and need stormwater retention. Staff estimates the potential for 24-25 lots on this site with the current zoning.
- R-10 zoning allows for 10,000 SF lots. Without a site plan it is difficult to determine the exact number of lots that would be permitted depending on the same factors listed above. Staff estimates the potential for 38-40 lots on this site with the proposed zoning.
- The adjacent Colony development has been before Council several times. It was rezoned in 2007 from FA to PD to allow for 34 single family lots with a minimum lot size of 10,000 SF and a net density of 1.92 units per acre which is considered low density. In 2012, a new owner applied to rezone to R-6 for 6,000 SF lots and high density. The request was withdrawn. The PD was later amended in 2013 to allow for 49 lots with a minimum lot size of 8,000 SF and a net density of 2.75 units per acre which is considered medium density. The FLU map was changed from low to medium at that time.



Georgetown County Fifteenth Judicial Circuit Public Index



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Switch View

Ernest F Middleton III , plaintiff, et al VS Georgetown County , defendant, et al

Case Number:	2022CP2200032	Court Agency:	Common Pleas	Filed Date:	01/07/2022
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Mediator - Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Middleton, Ernest F III	ADR/Deferred per Order/No Docs	Action		10/31/2023-10:22		
Benjamin F Goff Sr Tr	Service/Proof Of Service/Georgetown County	Filing		04/26/2023-11:24		
Benjamin F Goff Sr Tr	Service/Proof Of Service/Keep It Green Advocacy	Filing		04/26/2023-11:23		
Benjamin F Goff Sr Tr	Appeal/Notice of Appeal	Filing		04/17/2023-08:52		
Benjamin F Goff Sr Tr	NEF(04-10-2023 03:05:54 PM) Filing/Other	Filing		04/10/2023-15:06		
Benjamin F Goff Sr Tr	Filing/Return Receipt	Filing		04/10/2023-15:05		
Middleton, Ernest F III	ADR/Notice of ADR	Action		04/09/2023-10:59	10/31/2023-10:59	
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Middleton, Ernest F III	Order/Extending ADR Deadline/10-31-23	Order		04/04/2023-09:32		
Middleton, Ernest F III	NEF(04-03-2023 03:50:51 PM) Motion/Enlarge Time	Filing		04/03/2023-16:11		
Middleton, Ernest F III	Motion/Extend ADR Deadline/Person	Motion		04/03/2023-15:50	04/04/2023-15:50	
Middleton, Ernest F III	Service/Certificate Of Service	Filing		04/03/2023-15:50		
Middleton, Ernest F III	NEF(03-24-2023 03:14:37 PM) Order/Electronic Form 4	Filing		03/24/2023-15:16		
Middleton, Ernest F III	Order/Electronic Form 4/See Form 4	Order		03/24/2023-15:14		
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Benjamin F Goff Sr Tr	Reply to Opposition Against Motion for Judgment/Appendix	Filing		03/09/2023-10:26		

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Benjamin F Goff Sr Tr	Letter/Letter	Filing		05/19/2022-11:20		
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Morgan, H. Thomas Jr.	5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		05/13/2022-13:09		
Georgetown County	NEF(05-04-2022 03:43:28 PM) Letter/Letter	Filing		05/05/2022-12:03		
Georgetown County Council	NEF(05-05-2022 09:51:18 AM) Stipulation Of Dismissal	Filing		05/05/2022-10:24		
Georgetown County Council	Stipulation Of Dismissal As to Some Defendants	Filing		05/05/2022-09:51		
Georgetown County	Letter/Resolved Motions to Dismiss	Filing		05/04/2022-15:43		
Benjamin F Goff Sr Tr	Service/Certificate Of Service	Filing		05/03/2022-11:15		
Benjamin F Goff Sr Tr	Service/Certificate Of Service	Filing		05/03/2022-11:08		
Benjamin F Goff Sr Tr	Stip Of Dism/B F Goff Sr&Benjamin F Goff 2004 Revoc Trust	Filing		05/03/2022-11:07		
Georgetown County Council	NEF(04-28-2022 04:04:24 PM) Motion/Dismiss	Filing		04/28/2022-16:36		
Georgetown County	Motion to Dismiss/Stipulation of Dismissal/Morgan	Motion		04/28/2022-16:04	05/05/2022-16:04	
Person, Cynthia Ranck	5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		04/27/2022-11:24		
Benjamin F Goff Sr Tr	5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		04/27/2022-11:24		
Morgan, H. Thomas Jr.	5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		04/27/2022-11:24		
Lee, Rachel Elizabeth	5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		04/27/2022-11:24		

Lee, Rachel Elizabeth	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Lee, Rachel Elizabeth	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Lee, Rachel Elizabeth	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Benjamin F Goff Sr Tr	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Benjamin F Goff Sr Tr	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Benjamin F Goff Sr Tr	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Morgan, H. Thomas Jr.	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Morgan, H. Thomas Jr.	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Morgan, H. Thomas Jr.	2/9/2023_MOTION_Roster/Notice of Case Roster Publication Sen	Action		01/13/2023-10:15		
Benjamin F Goff Sr Tr	Order/Court of Appeals	Filing		01/09/2023-14:01		
Benjamin F Goff Sr Tr	Remittitur From Court Of Appeals	Filing		01/09/2023-14:00		
Benjamin F Goff Sr Tr	Certificate Of Service/Mot of SJ/Keep it Green/12-29-22	Filing		01/06/2023-15:30		
Benjamin F Goff Sr Tr	Cert Of Serv/Mot of SJ/Smith Robinson Hollar/12-29-22	Filing		01/06/2023-15:30		
Benjamin F Goff Sr Tr	Memo/Memo in Support/Of Motion for Summary Judgement	Filing		01/06/2023-15:29		
Benjamin F Goff Sr Tr	Motion/Summary Judgment/Pro Se	Motion		01/06/2023-15:26	03/24/2023-15:26	
Keep It Green Inc	ADR/Alternative Dispute Resolution (Workflow)	Action		08/05/2022-10:19		
Benjamin F Goff Sr Tr	Proof of Service	Filing		06/15/2022-11:21		
Benjamin F Goff Sr Tr	Appeal/Notice of Appeal to Court of Appeals	Action		06/10/2022-15:02	01/09/2023-15:05	
Benjamin F Goff Sr Tr	Proof of Service	Filing		06/10/2022-15:02		
Benjamin F Goff Sr Tr	Notice of Appeal	Filing		06/10/2022-15:02		
Benjamin F Goff Sr Tr	Letter/Exhibit A-B	Filing		06/09/2022-14:22		
Middleton, Ernest F III	NEF(06-03-2022 12:19:21 PM) Order/Other	Filing		06/03/2022-12:19		
Middleton, Ernest F III	Order Denying Motion to Dismiss Defendant Goff Trust	Order		06/03/2022-12:19		
Middleton, Ernest F III	NEF(06-02-2022 09:34:20 AM) Proposed Order/Other	Filing		06/02/2022-09:52		
Middleton, Ernest F III	Order/Order Cover Sheet \$25.00	Filing		06/02/2022-09:34		
Benjamin F Goff Sr Tr	Service/Certificate Of Service/H Thomas Morgan Jr	Filing		06/01/2022-11:12		
Benjamin F Goff Sr Tr	Service/Certificate Of Service/Cynthia Ranck Person	Filing		06/01/2022-11:12		
Benjamin F Goff Sr Tr	Reply to Motion to Dismiss Countclaim/Motion To Strike Other	Filing		06/01/2022-11:11		
Benjamin F Goff Sr Tr	Letter/Letter	Filing		06/01/2022-11:11		
Person, Cynthia Ranck	6/23/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		05/27/2022-14:47		
Person, Cynthia Ranck	6/23/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		05/27/2022-14:47		
Morgan, H. Thomas Jr.	6/23/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		05/27/2022-14:47		
Morgan, H. Thomas Jr.	6/23/2022_MOTION_Roster/Notice of Case Roster Publication Se	Action		05/27/2022-14:47		

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable William H. Seals, Jr.

Appellate Case No. 2023-000615

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 and Georgetown County is a Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 21, 2023


Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
Pro Se for Appellant

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SC Court of Appeals