

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY

William H. Seals, Jr., Circuit Court Judge

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Appellate Case No. 2023-000615

**RECEIVED**  
JUL 25 2023  
SC Court of Appeals

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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.

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RECORD ON APPEAL

VOLUME II

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## INDEX

ITEM	PAGE
<b>I. ORDER ON APPEAL</b>	
Order Denying Motion to Dismiss of Goff Trust, dated June 3, 2022 .....	3
<b>II. DECISION</b>	
Law Clerk's Email, dated May 25, 2022 and Lawyer's Response, dated May 26, 2022 ....	9
<b>III. PLEADINGS</b>	
Respondents' (Plaintiffs) Summons and Complaint .....	11
Appellant's (Defendant) Answer, Defenses, Counterclaim and Complaint .....	135
Georgetown County and Georgetown County Council's (Defendants) Answer .....	175
<b>IV. MOTIONS AND MEMORANDA</b>	
Appellant's (Defendant) Motion to Dismiss, dated January 25, 2022 .....	193
Appellant's (Defendant) Memorandum of Law in Support of Motion to Dismiss, dated January 25, 2022 .....	199
Appellant's (Defendant) Reply to Plaintiffs' (Respondents') Unfiled Response to Motion to Dismiss, dated February 23, 2022 .....	219
Respondents' (Plaintiffs) Memorandum of Law in Opposition to Motion to Dismiss, by Defendant Goff Trust, dated February 25, 2022 .....	227
Appellant's Reply to Respondents' (Plaintiffs) Opposition to Motion to Dismiss, Benjamin F. Goff, Trustee as a Defendant, dated March 8, 2022 .....	240
Respondent Georgetown County Council's (Defendants) Motion to Dismiss, dated April 11, 2022 .....	254
Respondent Georgetown County Council (Defendants) and Respondents (Plaintiffs) Stipulation of Dismissal, dated April 28, 2022 .....	256
Respondent Georgetown County Council (Defendants) and Respondents (Plaintiffs) Stipulation of Dismissal, dated May 5, 2022 .....	258
Appellant's (Defendant) Stipulation of Dismissal, dated April 30, 2022 .....	260
Georgetown County lawyer's Letter to Lower Court, dated May 4, 2022 .....	263

**V. HEARING TRANSCRIPT**

Transcript of Record Before the Honorable Steven H. John, Judge, May 19, 2022 .....265

**VI. EXHIBITS/ OTHER MATERIALS/DOCUMENTS**

Public Index (Court Docket) .....283

Minutes\_2021\_10\_26\_Meeting (220) .....293

Minutes\_2021\_11\_9\_Meeting (221) .....302

Minutes\_2021\_12\_14\_Meeting (222) .....308

Planning Commission Resolution .....316

Ordinance 21-24 .....317

Ordinance 21-25 .....318

Appellant’s Proposed Zoning Amendment, dated June 2, 2021 .....319

Planning Department Report to Georgetown County Planning Commission,  
dated July 15, 2021 .....323

Appellant’s Letter to Judge Steven H. John, dated May 16, 2022 .....326

Appellant’s Letter to Judge Steven H. John, dated June 1, 2022 .....327

Respondents’ lawyer (KIG) Email to Goff Trust, dated February 7, 2022 .....331

Respondents (KIG) Letter to Benjamin F. Goff, Trustee,  
dated February 15, 2022 .....333

Respondents (KIG) Letter to S.C. Secretary of State’s Office,  
dated February 15, 2022 .....334

Appellate Case No. 2022-000811, Initial Appellant Brief .....335

**VII. CERTIFICATE OF COUNSEL**

Certificate of Counsel .....394

<b>STATE OF SOUTH CAROLINA</b>	:	<b>IN THE COURT OF COMMON PLEAS</b>
<b>COUNTY OF GEORGETOWN</b>	:	<b>FIFTEEN JUDICIAL CIRCUIT</b>
	:	
<b>Ernest F. Middleton, III et al.,</b>	:	<b>CASE NO. 2022 CP 2200032</b>
	:	
<b>Plaintiffs</b>	:	<b>ORDER DENYING</b>
<b>v.</b>	:	<b>MOTION TO DISMISS OF</b>
<b>Georgetown County and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004,</b>	:	<b>DEFENDANT GOFF TRUST</b>
	:	
<b>Defendants</b>	:	
	:	

On May 19, 2022, the court heard a Motion to Dismiss filed by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff Trust." Benjamin F. Goff, Trustee, appeared *pro se* on behalf of Defendant Goff Trust and Cynthia R. Person, Esquire appeared as attorney for Plaintiffs.

**I. BACKGROUND & PROCEDURAL HISTORY**

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

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

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

**II. STANDARD OF REVIEW**

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

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

**III. FINDINGS**

**A. Service of Process**

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

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

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

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

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

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

#### **B. Standing**

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

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

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

**C. Failure to State a Cause of Action**

**1. Justiciability**

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

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

**2. Necessary Parties**

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

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

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

**IV. ORDER**

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

\_\_\_\_\_  
Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

\_\_\_\_\_, 2022  
At Chambers, South Carolina



Georgetown Common Pleas

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

So Ordered

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

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

 **JUNO** Message Center

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

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

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

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

---

Dear All,

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

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

Respectfully,

Madeline

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

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# JUNO Message Center

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

To: SJohnLC@sccourts.org

Cc: goff-chem@juno.com

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

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

---

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

Cindy Person

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

**KEEP IT GREEN ADVOCACY, INC.**

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795

KIG.Advocacy@gmail.com

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

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

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

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

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

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

Dear All,

Â

The Motion to Dismiss is denied.Â A fair reading of the pleadings establishes a cause of action as against this Defendant.Â This is based solely on the contents of the pleadings as required by a motion under 12(b)(6).Â This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant.Â 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.

Â

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

Â

Respectfully,

Â

Madeline

Â

Madeline A. Bowers

Law Clerk to the Honorable Steven H. John

Resident Circuit Court Judge, Fifteenth Judicial Circuit Chief Administrative Judge, Court of Common Pleas

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Â

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|                                                    |   |                              |
|----------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                            | : | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN                               | : | FIFTEENTH JUDICIAL CIRCUIT   |
|                                                    | : |                              |
| Ernest F. Middleton, III, and Joyce J. Middleton,  | : |                              |
| Michael J. Farrar and Diana Farrar, Robert E. Hunt | : |                              |
| and Jeane M. Sullivan, The Colony Homeowners       | : | CASE NO.:                    |
| Association, Inc., and Keep It Green, Inc.,        | : |                              |
|                                                    | : |                              |
| Plaintiffs,                                        | : |                              |
| v.                                                 | : | SUMMONS                      |
|                                                    | : |                              |
| Georgetown County, Georgetown County Council,      | : |                              |
| Louis Morant, Lillie Jean Johnson, Raymond         | : | 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 recusal: Chairman Louis Morant.

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

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

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

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

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

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

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

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

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

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

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

Sec. 2-519 - Motions to Reconsider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### JURISDICTION, STANDING AND VENUE

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

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

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

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

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

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

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

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

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

### COUNT I

#### DECLARATORY JUDGMENT

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

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

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

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

COUNT II

DECLARATORY JUDGMENT

Motions to Reconsider were Improper, Invalid and Void

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

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

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

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

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

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

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

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

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

### COUNT III

#### DECLARATORY JUDGMENT

##### Approval of Ordinances was a Violation of County Law

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

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

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

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

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

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

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

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

COUNT IV

DECLARATORY JUDGMENT

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

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

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

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

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

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

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

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

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

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

COUNT V

DECLARATORY JUDGMENT

Unlawful Spot Zoning

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

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

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

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

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

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

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

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

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

#### COUNT VI

#### DECLARATORY JUDGMENT

#### Violation of South Carolina Freedom of Information Act

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

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

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

156. Defendants violated the requirements of FOIA as follows:

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

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

**PRAYER FOR RELIEF**

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

Respectfully submitted,

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

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



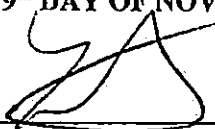
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

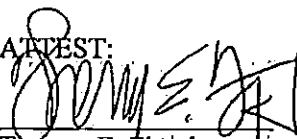
ORDINANCE NO. 21-25

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 1/2 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 1/2 ACRE RESIDENTIAL (R-1/2) TO 10,000 SQUARE FEET RESIDENTIAL (R-10) AS REFLECTED ON THE ATTACHED MAP.

DONE, RATIFIED AND ADOPTED THIS 9<sup>th</sup> 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 :  
 : S.S.  
COUNTY OF BROWARD :

---

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.

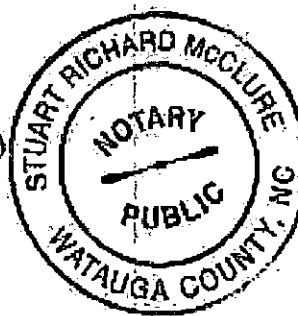
*Ernest F. Middleton III*  
ERNEST F. MIDDLETON, III

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

Subscribed and sworn before me on this 29<sup>th</sup> day of December, 2021.

*Stuart Richard McClure*  
NOTARY PUBLIC

(SEAL)



My commission expires: 05/13/2023



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.

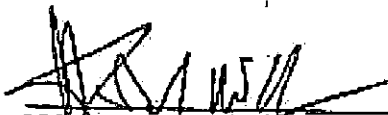
g. Expense and aggravation of possibly listing and selling our home and purchasing and moving to another home.

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

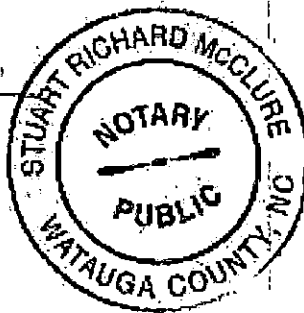
  
\_\_\_\_\_  
JOYCE J. MIDDLETON

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

Subscribed and sworn before me on this 29<sup>th</sup> 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:

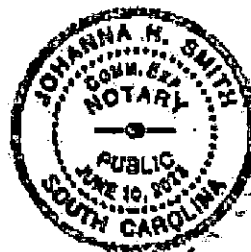
- a. Loss of our \$23,000 premium payment for our 1/2 acre lot that adjoins property zoned R -1/2 acre for lots similar in size to ours;
- b. Decrease in the value of our property;
- c. Increase in traffic at a dangerous intersection with U.S. Highway 17 at a location already prone to frequent serious 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: 6/10/22

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.

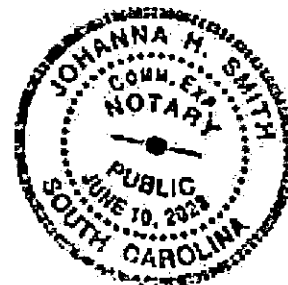
I hereby set my hand and seal this 29 day of December, 2021.

*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



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.

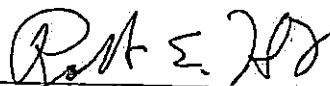
18. Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to the Goff rezoning.

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.

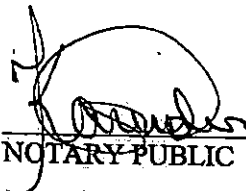
I hereby set my hand and seal this 30 day of December, 2021.



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

KAREN ELDER  
Notary Public  
State of South Carolina  
My Commission Expires April 11, 2029



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.

*Jeanne M Sullivan*  
JEANNE M. SULLIVAN

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

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

*Karen Elder* (SEAL)  
NOTARY PUBLIC KAREN ELDER

My commission expires: 04/11/2029

**KAREN ELDER**  
Notary Public  
State of South Carolina  
My Commission Expires April 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*  
 \_\_\_\_\_  
 MARY ELIZABETH KLEIN  
 Secretary

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 6<sup>th</sup> day of January, 2022.

*Kiana Moulzon*  
 \_\_\_\_\_ (SEAL)  
 NOTARY PUBLIC

My commission expires: 7/12/31

**KIANA MOUZON**  
 Notary Public  
 State of South Carolina  
 My Commission Expires Jul 12, 2031

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 area 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=12.79AC/A1=56/B1=1.42/14.77 Acres

Plat Book / Page: 1679/229

Current Zoning Classification: R-1/2

Proposed Zoning Classification: ~~R-1/2~~ 10 gcs

**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

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2. Indicate the reasons for the proposed changes:

NA

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**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](mailto: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

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### 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 APPLICATIONS & 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.

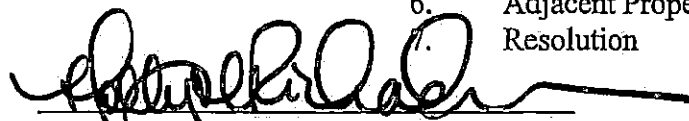
**FINANCIAL IMPACT:** Not applicable for Planning Commission

**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

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 | Opposed: Mrs. Bundy |
| Mr. Davis             |                     |
| Mr. Weaver            |                     |
| Mr. Graham            |                     |
| Mr. Weaver            |                     |
| Mrs. Hamby            |                     |

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

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

**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.

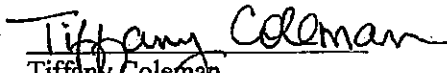
**IX. ADJOURNMENT**

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



**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL

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

**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            |
|--------------------------|----------------------------------------------------|-----------------|
| <input type="checkbox"/> | <u>Ordinance No. 21-24 FLU 3138 Ocean Highway.</u> | Ordinance       |
| <input type="checkbox"/> | <u>FLU Map</u>                                     | Ordinance       |
| <input type="checkbox"/> | <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#2022CP2200032

**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 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 8,036 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              |
|----------------------------------------------------------------------------------|-------------------|
| <input type="checkbox"/> <u>Ordinance No. 21-25 Rezoning 3138 Ocean Highway</u>  | Ordinance         |
| <input type="checkbox"/> <u>Application and Attachments</u>                      | Backup Material   |
| <input type="checkbox"/> <u>Application and Attachments</u>                      | Backup Material   |
| <input type="checkbox"/> <u>Location Map</u>                                     | Backup Material   |
| <input type="checkbox"/> <u>Zoning Map</u>                                       | Backup Material   |
| <input type="checkbox"/> <u>FLU Map</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Aerial Map</u>                                       | Backup Material   |
| <input type="checkbox"/> <u>Resolution</u>                                       | Resolution Letter |
| <input type="checkbox"/> <u>Letter from applicant</u>                            | Backup Material   |
| <input type="checkbox"/> <u>Correspondence</u>                                   | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 1</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 2</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 3</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 4</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 5</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Letter from Applicant - Benjamin Goff</u>            | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 6</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 7</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>KIG Correspondence - Goff Rezoning</u>               | Backup Material   |
| <input type="checkbox"/> <u>Applicant Benjamin Goff - Correspondence 8.23.21</u> | Backup Material   |
| <input type="checkbox"/> <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**

104

Georgetown County Council  
October 26, 2021  
Page 2

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 happened 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.

Georgetown County Council  
 October 26, 2021  
 Page 6

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.

Georgetown County Council  
October 26, 2021  
Page 7

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



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

**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 |



**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL

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

**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 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 8,030 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              |
|-------------------------------------------------------------------------------------------|-------------------|
| <input type="checkbox"/> <u>Ordinance No. 21-25 Rezoning 3138 Ocean Highway</u>           | Ordinance         |
| <input type="checkbox"/> <u>Application and Attachments</u>                               | Backup Material   |
| <input type="checkbox"/> <u>Application and Attachments</u>                               | Backup Material   |
| <input type="checkbox"/> <u>Location Map</u>                                              | Backup Material   |
| <input type="checkbox"/> <u>Zoning Map</u>                                                | Backup Material   |
| <input type="checkbox"/> <u>FLU Map</u>                                                   | Backup Material   |
| <input type="checkbox"/> <u>Aerial Map</u>                                                | Backup Material   |
| <input type="checkbox"/> <u>Resolution</u>                                                | Resolution Letter |
| <input type="checkbox"/> <u>Letter from applicant</u>                                     | Backup Material   |
| <input type="checkbox"/> <u>Correspondence</u>                                            | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 1</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 2</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 3</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 4</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 5</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Letter from Applicant - Benjamin Goff</u>                     | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 6</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 7</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>KIG Correspondence - Goff Rezoning</u>                        | Backup Material   |
| <input type="checkbox"/> <u>Applicant Benjamin Goff - Correspondence 8.23.21</u>          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 8</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Planning Director Memo 082421</u>                             | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 9</u>                                          | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 10 9.14.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 11 9.14.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 12 9.14.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 13 9.14.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 14 9.14.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 15 9.30.21</u>                                 | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 16 10.12.21</u>                                | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 17</u>                                         | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 18 10.21.21</u>                                | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 19 10.22.21</u>                                | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 20 10.25.21</u>                                | Backup Material   |
| <input type="checkbox"/> <u>Applicant Letter Benjamin Goff Correspondence 21 10.25.21</u> | Backup Material   |
| <input type="checkbox"/> <u>Correspondence 22 10.25.21</u>                                | Backup Material   |
| <input type="checkbox"/> <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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk to Council

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, AFIRMATIVE 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 19 AM 10:32

ALMA Y. WHITE

**ANSWER, AFIRMATIVE 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 SCRCP 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 SCRC 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 SCRCP 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 SCRCP 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 SCRCP 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 SCRCP 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 SCRC P 8 and SCRC P 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 (INSUFFICIENCY OF PROCESS)**

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

**FIFTHTEENTH DEFENSE (INSUFFICIENCY 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 SCRPC 19(a)2(i).

47. Plaintiffs' Complaint was not served on Goff Trustee as required by SCRCF 4(a) or SCRCF 12(b)(5) and no Proof of Service was filed as required by SCRCF 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 Trustee 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. 1, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF GEORGETOWN

) C/A No. 2022-CP-22-00032

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

Plaintiffss,

vs.

ANSWER

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.

TO: CYNTHIA RANCK PERSON, ESQ., ATTORNEY FOR PLAINTIFFS, AND PLAINTIFFS:

Defendant Georgetown County (hereinafter "Defendant")<sup>1</sup> hereby answers Plaintiffs'

Complaint and allege as follows.

**FOR A FIRST DEFENSE**

1. Defendant denies each and every allegation of the Complaint, except those allegations herein specifically admitted, qualified or explained. Further, the answering Defendant specifically denies that it violated any constitutional or statutory right belonging to Plaintiffs.

<sup>1</sup> Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas, and Bob Anderson, in their capacities as elected members of Georgetown County Council are contemporaneously filing a Motion to Dismiss. Should that Motion be denied, the undersigned counsel will represent these Defendants and answer in accordance with the South Carolina Rules of Civil Procedure.

Finally, Defendant expressly denies that Plaintiffs are entitled to a jury trial on these declaratory judgment causes of action.

2. Paragraph 1 is admitted inasmuch that Ordinances 21-24 and 21-25 (hereinafter "ordinances") were approved and adopted by Georgetown County Council (hereinafter "Council") on November 9, 2021. All other allegations are denied, and Defendant demands strict proof thereof.

3. Paragraph 2 is admitted inasmuch as Ordinance 21-24 amends the Georgetown County Comprehensive Plan, Future Land Use Map (hereinafter FLUM), to redesignate tax map parcel 04-0418-011-00-00 ("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. All other allegations are denied, and Defendant demands strict proof thereof.

4. Paragraph 3 is admitted inasmuch as Ordinance 21-25 amends 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. All other allegations are denied, and Defendant demands strict proof thereof.

5. Paragraph 4 is denied, and Defendant demands strict proof thereof.

6. Paragraph 5 is admitted upon information and belief.

7. Paragraph 6 is admitted upon information and belief. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

8. Paragraph 7 is admitted upon information and belief.

9. Paragraph 8 is admitted.

10. Paragraph 9 is admitted upon information and belief that Plaintiffss Ernest F. Middleton and Joyce J. Middleton ("Middletons") are adult individuals residing at 359 Southgate

Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

11. Paragraph 10 is admitted upon information and belief that Plaintiffss Michael J. Farrar and Diana Farrar (“Farrars”) are adult individuals residing at 367 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendants demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

12. Paragraph 11 is admitted upon information and belief that Robert E. Hunt and Jeane M. Sullivan (“Hunt/Sullivan”) are adult individuals residing at 351 Southgate Court, Pawleys Island, Georgetown County, South Carolina, which directly adjoins the Goff Parcel. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

13. Paragraph 12 is admitted upon information and belief that Keep It Green, Inc. (“KIG”) is a nonprofit corporation, organized and existing under the laws of the State of South Carolina and having the address of P.O. Box 3312, Pawleys Island, Georgetown County, South Carolina. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said

documents are denied in their entirety and Defendant demands strict proof thereof.

14. Defendant is without sufficient information as to the allegations of Paragraph 13, and, therefore, denies the same and demands strict proof thereof.

15. Paragraph 14 is admitted.

16. Defendant is without sufficient information as to the allegations of Paragraph 15, and, therefore, denies the same and demands strict proof thereof.

17. Defendant is without sufficient information as to the allegations of Paragraph 16, and, therefore, denies the same and demands strict proof thereof.

18. Defendant is without sufficient information as to the allegations of Paragraph 17, and, therefore, denies the same and demands strict proof thereof.

19. Defendant is without sufficient information as to the allegations of Paragraph 18, and, and therefore, denies the same and demands strict proof thereof.

20. Paragraph 19 is admitted insomuch as the text of S.C. Code Section 15-53-80. All other allegations are denied, and Defendant demand strict proof thereof.

21. Paragraph 20 is admitted.

22. Paragraph 21 is denied in its entirety and Defendant demands strict proof thereof.

23. Paragraph 22 is denied in its entirety and Defendant demands strict proof thereof.

24. Paragraph 23 is admitted upon information and belief.

25. Paragraph 24 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

26. Paragraph 25 is admitted in so much as the Goff Parcel is a vacant, unimproved parcel of land and is located on U.S. Highway Route 17 in South Pawleys Island, South Carolina. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

27. Paragraph 26 is admitted insomuch as the property was zoned R-12 acre. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

28. Paragraph 27 is admitted insomuch as Low Density is defined in the Comprehensive Plan as “no more than 2 dwelling units per acre.” All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

29. Paragraph 28 is admitted upon information and belief.

30. Paragraph 29 is denied, and Defendants demand strict proof thereof.

31. Paragraph 30 is denied, and Defendants demand strict proof thereof.

32. Paragraph 31 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

33. Paragraph 32 is admitted.

34. Paragraph 33 is admitted insomuch as the zoning change application form states that “the burden of proving the need for the proposed amendment rests with the applicant.” All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

35. Paragraph 34 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

36. Paragraph 35 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in

their entirety and Defendant demands strict proof thereof.

37. Paragraph 36 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

38. Paragraph 37 is denied, and Defendant demands strict proof thereof.

39. Paragraph 38 is denied, and Defendant demands strict proof thereof.

40. Paragraph 39 is denied, and Defendant demands strict proof thereof.

41. Paragraph 40 is denied, and Defendant demands strict proof thereof.

42. Paragraph 41 is denied, and Defendant demands strict proof thereof.

43. Paragraph 42 is denied, and Defendant demands strict proof thereof.

44. Paragraph 43 is denied, and Defendant demands strict proof thereof.

45. Paragraph 44 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

46. Paragraph 45 is denied, and Defendant demands strict proof thereof.

47. Paragraph 46 is denied, and Defendant demands strict proof thereof.

48. Paragraph 47 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

49. Paragraph 48 is denied, and Defendant demands strict proof thereof.

50. Paragraph 49 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

51. Paragraph 50 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in

their entirety and Defendant demands strict proof thereof.

52. Paragraph 51 is admitted insomuch as proposed amendments must be in accordance with the Comprehensive Plan. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

53. Paragraph 52 is denied, and Defendant demands strict proof thereof.

54. Paragraph 53 is admitted.

55. Paragraph 54 is admitted.

56. Paragraph 55 is admitted insomuch as prior to the public hearing, the County received letters in opposition to the proposed Goff Parcel amendments. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

57. Paragraph 56 is admitted insomuch as residents attended the public hearing and six (6) individuals spoke on the record. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

58. Paragraph 57 is admitted insomuch as Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

59. Paragraph 58 and all subparts are denied and Defendant demands strict proof thereof.

60. Paragraph 59 is denied, and Defendant demands strict proof thereof.

61. Paragraph 60 is denied, and Defendant demands strict proof thereof.

62. Paragraph 61 is denied, and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

63. Paragraph 62 is denied, and Defendant demands strict proof thereof.

64. Paragraph 63 is denied, and Defendant demands strict proof thereof.

65. Paragraph 64 is admitted.

66. Defendant is without sufficient information as to the allegations of Paragraph 65, and, therefore, denies the same and demands strict proof thereof.

67. Paragraph 66 is admitted.

68. Defendants are without sufficient information as to the allegations of Paragraph 67, and, therefore, denies the same and demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

69. Paragraph 68 is admitted insomuch as members of the community spoke on the record. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

70. Paragraph 69 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

71. Paragraph 70 is denied, and Defendant demands strict proof thereof.

72. Paragraph 71 is denied, and Defendant demands strict proof thereof.

73. Paragraph 72 is denied, and Defendant demands strict proof thereof.

74. Paragraph 73 is denied, and Defendant demands strict proof thereof.

75. Paragraph 74 is denied, and Defendant demands strict proof thereof.

76. Paragraph 75 is admitted.

77. Paragraph 76 is admitted insomuch as letter of oppositions were sent prior to the Third Reading. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves

reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

78. Paragraph 77 is admitted inasmuch as a petition was submitted. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

79. Paragraph 78 is admitted inasmuch as individuals spoke on the record at the Third Reading. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendants demand strict proof thereof.

80. Paragraph 79 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

81. Paragraph 80 is denied, and Defendant demands strict proof thereof.

82. Paragraph 81 is denied and Defendant demands strict proof thereof.

83. Paragraph 82 is admitted inasmuch as Section 2-486 requires a majority of members present in order to adopt an ordinance. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

84. Paragraph 83 is denied, and Defendant demands strict proof thereof.

85. Paragraph 84 is denied, and Defendant demands strict proof thereof.

86. Paragraph 85 is denied, and Defendant demands strict proof thereof.

87. Paragraph 86 is denied, and Defendant demands strict proof thereof. Further

answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

88. Paragraph 87 is denied, and Defendants demand strict proof thereof.

89. Paragraph 88 is admitted inasmuch as Council went into executive session. All remaining allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

90. Paragraph 89 is admitted inasmuch as Ordinances were not listed as items on the November 9, 2021, published agenda. All remaining allegations deemed unaddressed by the foregoing are denied and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

91. Paragraph 90 is denied, and Defendant demands strict proof thereof.

92. Paragraph 91 is admitted inasmuch as Section 2-519 states "A motion to reconsider any action taken by 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. . . ." All remaining allegations deemed unaddressed by the foregoing are denied and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

93. Paragraph 92 is denied, and Defendant demands strict proof thereof.

94. Paragraph 93 is denied, and Defendant demands strict proof thereof.

95. Paragraph 94 is denied, and Defendant demands strict proof thereof.

96. Paragraph 95 is admitted.

97. Paragraph 96 is denied, and Defendant demands strict proof thereof.

98. Paragraph 97 is denied, and Defendant demands strict proof thereof.

99. Paragraph 98 is denied, and Defendant demands strict proof thereof.

100. Paragraph 99 is denied, and Defendant demands strict proof thereof.

101. As to Paragraph 100, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

102. Paragraph 101 is denied, and Defendant demands strict proof thereof.

103. Paragraph 102 is denied, and Defendant demands strict proof thereof.

104. Paragraph 103 is denied, and Defendant demands strict proof thereof.

105. Paragraph 104 is denied and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

106. Paragraph 105 is denied, and Defendant demands strict proof thereof.

107. Paragraph 106 is denied, and Defendant demands strict proof thereof.

108. Paragraph 107 is denied, and Defendant demands strict proof thereof.

109. Paragraph 108 and its subparts are denied, and Defendant demands strict proof thereof.

110. Paragraph 109 is denied, and Defendant demands strict proof thereof.

111. As to Paragraph 110, Defendant admits Paragraph 110 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

112. Paragraph 111 contains legal conclusions that do not require a response. To the extent a response is deemed necessary, Defendant denies the same and demands strict proof

thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

113. Paragraph 112 is admitted.

114. Paragraph 113 is denied, and Defendant demands strict proof thereof.

115. Paragraph 114 is denied, and Defendant demands strict proof thereof.

116. Paragraph 115 is denied, and Defendant demands strict proof thereof.

117. Paragraph 116 is denied, and Defendant demands strict proof thereof.

118. As to Plaintiffs' Count I, Defendant denies the merits of the cause of action in its entirety and demands strict proof thereof.

119. As to Paragraph 117, Defendant admits Paragraph 117 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

120. Paragraph 118 and all subparts are denied, and Defendant demands strict proof thereof.

121. As to Plaintiffs' Count II, Defendant denies the merits of the cause of action in its entirety and demands strict proof thereof.

122. As to Paragraph 119, Defendant admits Paragraph 119 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

123. Paragraph 120 is denied, and Defendant demands strict proof thereof.

124. Paragraph 121 admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

125. Paragraph 122 is denied, and Defendant demands strict proof thereof.

126. Paragraph 123 is denied, and Defendant demands strict proof thereof.

127. Paragraph 124 is denied, and Defendant demands strict proof thereof.

128. Paragraph 125 is denied, and Defendant demands strict proof thereof.

129. Paragraph 126 is denied, and Defendant demands strict proof thereof.

130. Paragraph 127 is denied, and Defendant demands strict proof thereof.

131. As to Plaintiffs's Count III, Defendant denies the merits of the cause of action in its entirety and demands strict proof thereof.

132. As to Paragraph 128, Defendant admits Paragraph 128 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

133. Paragraph 129 is denied, and Defendant demands strict proof thereof.

134. Paragraph 130 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

135. Paragraph 131 is denied, and Defendant demands strict proof thereof.

136. As to Paragraph 132, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

137. Paragraph 133 is denied, and Defendant demand strict proof thereof.

138. Paragraph 134 is denied, and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

139. Paragraph 135 is denied, and Defendant demands strict proof thereof. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

140. As to Plaintiffs' Count IV, Defendants denies the merits of the cause of action in its entirety and demands strict proof thereof.

141. As to Paragraph 136, Defendant admits Paragraph 136 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

142. Paragraph 137 is denied, and Defendant demands strict proof thereof.

143. Paragraph 138 is admitted. Further answering, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

144. Paragraph 139 is denied, and Defendant demands strict proof thereof.

145. As to Paragraph 140, Defendant craves reference to the documents identified by Plaintiffs and all allegations not in conformance with said documents are denied in their entirety and Defendant demands strict proof thereof.

146. Paragraph 141 is denied, and Defendant demands strict proof thereof.

147. Paragraph 142 is denied; and Defendant demands strict proof thereof.

148. Paragraph 143 is denied, and Defendant demands strict proof thereof.

149. As to Plaintiffs' Count V, Defendant denies the merits of the cause of action in its entirety and demands strict proof thereof.

150. As to Paragraph 144, Defendant admits Paragraph 144 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by

reference all above responses and defenses.

151. Paragraph 145 is denied, and Defendants demand strict proof thereof.

152. Paragraph 146 contains legal conclusions that do not require a response from Defendant. To the extent a response is deemed necessary, Defendant craves reference to the laws of the State of South Carolina. All allegations deemed unaddressed by the foregoing are denied in their entirety and Defendant demands strict proof thereof.

153. Paragraph 147 is denied, and Defendant demands strict proof thereof.

154. Paragraph 148 is denied, and Defendant demands strict proof thereof.

155. Paragraph 149 is denied, and Defendant demands strict proof thereof.

156. Paragraph 150 is denied, and Defendant demands strict proof thereof.

157. Paragraph 151 is denied, and Defendant demands strict proof thereof.

158. Paragraph 152 is denied, and Defendant demands strict proof thereof.

159. As to Plaintiffs's Count VI, Defendant deniesthe merits of the cause of action in its entirety and demands strict proof thereof.

160. As to Paragraph 153, Defendant admits Paragraph 153 incorporates by reference, per Rule 10(c), all above paragraphs in Plaintiffs' Complaint; Defendant similarly incorporates by reference all above responses and defenses.

161. Paragraph 154 is denied, and Defendant demands strict proof thereof.

162. Paragraph 155 is denied, and Defendant demands strict proof thereof.

163. Paragraph 156 and all subparts a-d are denied, and Defendant demands strict proof thereof.

164. Plaintiffs' Prayer for Relief is denied in its entirety, and Defendant demands strict proof thereof.

**FOR A SECOND DEFENSE**

165. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

166. Plaintiffs' Complaint fails to state a claim for which relief shall be granted pursuant to Rule 8 and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, must be dismissed as a matter of law.

**FOR A THIRD DEFENSE**

167. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

168. Defendant denies that any constitutional right of Plaintiffs has been violated and deny that it is, in any way, responsible for any willful, arbitrary, capricious, or malicious acts toward Plaintiffs such that Plaintiffs' Complaint must be dismissed as a matter of law.

**FOR A FOURTH DEFENSE**

169. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

170. That Defendant expressly denies that any acts or failures to act, as described in the Complaint, were committed or omitted maliciously, in bad faith, or in a grossly negligent manner, and, therefore, Defendant is immune from suit.

**FOR A FIFTH DEFENSE**

171. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

172. That at all times relevant hereto, the Defendant was engaged in the performance of its official duties, and at no time violated any clearly established constitutional rights which were known or should have been known to it; and therefore, it is entitled to immunity as a matter of law.

**FOR A SIXTH DEFENSE**

173. All admissions, denials, and allegations set forth above are incorporated herein as

if repeated verbatim.

174. Defendant pleads qualified immunity from suit under the holding of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as a complete bar to any liability.

**FOR A SEVENTH DEFENSE**

175. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

176. Georgetown County is a political subdivision of the State of South Carolina, and as such is immune from liability for any and all losses allegedly resulting from action taken pursuant to comprehensive planning and zoning processes and other governmental functions in accordance and as set forth in the South Carolina Tort Claims Act, §15-78-10 *et seq* of the Code of Laws of the State of South Carolina, 1976 as amended and all of the exceptions.

177. Defendant specifically pleads, but not limited to, provisions of South Carolina Code §15-78-60(1)(2)(3)(4)(5)(12)(13)(20)(23) as a complete bar to the recovery by the Plaintiffs herein.

178. Therefore, Defendant pleads South Carolina Code of Laws, §15-78-10, *et seq.*, as a complete bar to Plaintiffs' claims.

**FOR AN EIGHTH DEFENSE**

179. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

180. Defendant enjoys legislative immunity for its acts in passing the ordinances at issue in this lawsuit and, therefore, are immune from suit.

**FOR A NINTH DEFENSE**

181. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

182. Plaintiffs have not negated every conceivable rational basis for Defendant's

treatment of the subject property nor shown how Defendant lacked a rational basis for its decision regarding the passing of the Ordinances and, as such, Plaintiffs' Complaint must be dismissed as a matter of law.

**FOR A TENTH DEFENSE**

183. All admissions, denials, and allegations set forth above are incorporated herein as if repeated verbatim.

184. Defendant's investigation into the facts of this case has not been completed and, therefore, Defendant reserves any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendants prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

**SMITH | ROBINSON**  
**Smith Robinson Holler DuBose and Morgan, LLC**

By: s/H. Thomas Morgan, Jr.  
H. Thomas Morgan, Jr., SC Bar No. 73585  
Rachel Lee, SC Bar No. 104184  
ATTORNEYS FOR DEFENDANT GEORGETOWN  
COUNTY  
935 Broad Street  
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April 11, 2022

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
 15TH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-2200-032

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

MOTION AND ORDER INFORMATION

Plaintiff, )

FORM AND COVERSHEET

vs. )

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

Defendant. )

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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>Cynthia Ranck Person, Bar No. 105126<br>Address:<br>P.O. Box 1922, Pawleys Island, SC 29585<br>Phone: 570-971-8636 Fax _____<br>E-mail: klg.advocacy@gmail.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Defendant's Attorney:<br>Benjamin F. Goff, Trustee, Pro Se, Bar No. _____<br>Address:<br>18 Powers Farm Road, Randolph, MA 02368<br>Phone: 781-986-0635 Fax 781-986-0635<br>E-mail: goff-chem@juno.com Other: _____ |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                     |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                     |
| Nature of Motion: _____<br>Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                     |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                     |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                     |
| <i>Benjamin F. Goff, Trustee, Pro Se</i><br>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | January 25, 2022<br>Date submitted                                                                                                                                                                                  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                     |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                     |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____ |                                                                                                                                                                                                                     |

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

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

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

Plaintiffs

) MOTION TO DISMISS

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,

) BENJAMIN F. GOFF, SR., TRUSTEE  
) AS A DEFENDANT

FILED  
CLERK OF COURT  
2022 JAN 25 PM 1:55

Defendants

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

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

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

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

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


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

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

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

Respectfully Submitted,  
The Defendant

Date: *January 25, 2022*

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



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

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

#### **STANDARD FOR REVIEW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

The 2013 Home Rule Handbook cited the following opinions:

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

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

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

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

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

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

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

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

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

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

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

The Georgetown County Council Rules of Procedure states as follows:

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

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

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

## ARGUMENT

### I. PLANTIFFS LACK STANDING:

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

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

Under the Hunt test:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **CONCLUSIONS**

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

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

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

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

Respectfully Submitted,  
The Defendant

Date: *JANUARY 25, 2022*


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

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

STATE OF SOUTH CAROLINA  
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' UNFILED  
) RESPONSE TO MOTION TO DISMISS

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,

) BENJAMIN F. GOFF, SR, TRUSTEE  
) AS A DEFENDANT  
)

Defendants

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

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

**INTRODUCTION**

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

## STATEMENT OF FACTS

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

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

#### ARGUMENT

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

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

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

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

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

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

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


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

#### CONCLUSION

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

Respectfully Submitted;  
The Defendant

Date: February 23, 2022

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

#### Exhibits:

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

Exhibit A

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

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

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

Dear Sir or Madam:

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

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

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

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

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

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

Thank you for your kind attention.

Very truly yours,



Cynthia Ranck Person, Esquire

Enclosures

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29585

*A nonprofit public interest law firm.*

*Exhibit B*

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

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

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

Dear Mr. Goff

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

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

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

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

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

Thank you for your kind attention.

Very truly yours,



Cynthia Ranck Person, Esquire

Enclosures

**JUNO Message Center**

*Exhibit C*

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

**To:** goff-chem@juno.com

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

**Subject:** Middleton v. Georgetown County

Acceptance of Serv... (14KB)

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Good afternoon, Mr. Goff:

I hope you are well.Å

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

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

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

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

Sincerely,  
Cindy Person

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

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

|                                                    |   |                                |
|----------------------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                            | : | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF GEORGETOWN                               | : | 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. 2022 CP 2200032       |
| Association, Inc., and Keep It Green, Inc.,        | : |                                |
|                                                    | : |                                |
| Plaintiffs,                                        | : |                                |
|                                                    | : |                                |
| v.                                                 | : | <b>PLAINTIFFS' MEMORANDUM</b>  |
|                                                    | : | <b>OF LAW IN OPPOSITION TO</b> |
| Georgetown County, Georgetown County Council,      | : | <b>MOTION TO DISMISS BY</b>    |
| Louis Morant, Lillie Jean Johnson, Raymond         | : | <b>DEFENDANT GOFF TRUST</b>    |
| Newton, Steve Goggans, Everett Carolina, John      | : |                                |
| Thomas and Bob Anderson, in their capacities as    | : | Declaratory Judgment           |
| 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                                         | : |                                |

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO  
MOTION TO DISMISS BY DEFENDANT GOFF TRUST**

Plaintiffs submit this Memorandum of Law in opposition to a *pro se* Motion to Dismiss pursuant to S.C.R.Civ.P 12(b)(6) and supporting Memorandum filed on January 25, 2022, by Defendant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 (hereinafter "Defendant Goff Trust").

**SUMMARY OF ISSUES**

1. **Standing.** Plaintiffs' Complaint clearly establishes multiple sources of standing for each of the Plaintiffs for each cause of action.
  - a. **Statutory Standing.** When the legislature has conferred standing by statute, proof of separate constitutional or other standing is not required. In the present case, all Plaintiffs have statutory standing as follows:

i. **South Carolina Comprehensive Planning Enabling Act, Section 6-29-760(C):**

This statute confers standing to contest zoning ordinances or amendments on “owners of adjoining land or their representatives.” As clearly set forth in Plaintiffs’ Complaint Paragraphs 1-18, 113(a), 117-156, and supporting affidavits and exhibits, all Plaintiffs are either adjoining landowners or representatives and all claims involve the contesting of zoning ordinances or amendments.

ii. **South Carolina Uniform Declaratory Judgments Act, Section 15-53-30:**

This statute confers standing on “any person whose rights are affected by a municipal ordinance.” As clearly set forth in Plaintiffs’ Complaint Paragraphs 1-18, 28-30, 113(b), 117-156, and supporting affidavits and exhibits, this broad statutory provision confers standing on all Plaintiffs for all claims relating to the municipal ordinances in question.

iii. **South Carolina Freedom of Information Act, Section 30-4-100:**

This statute confers standing on “any citizen of the State” to enforce FOIA provisions. As clearly set forth in Plaintiffs’ Complaint Paragraphs 5-22, 113(c), 153-156 and supporting affidavits and exhibits, all Plaintiffs are citizens of the State and have standing to enforce FOIA violations.

- b. **Associational Standing.** In addition to statutory standing, Plaintiff Keep It Green, Inc. (KIG) has associational standing as provided under South Carolina Law. As clearly set forth in Plaintiffs’ Complaint Paragraphs 5-18, 116 and supporting affidavits and exhibits, as at least one KIG member has standing in his or her own right, the interests at stake are germane to KIG’s purpose, and participation of all individual landowners is not required.

- c. **Constitutional Standing.** Under South Carolina law, it is not necessary to inquire beyond statutory standing; however, as clearly set forth in Plaintiffs' Complaint Paragraphs 1-18, 28-30, 114, and supporting affidavits and exhibits, all Plaintiffs nonetheless have alleged proper constitutional standing by establishing injury in fact, caused by the improper approval of the ordinances in question, and that injury is redressable by a favorable decision of this court.
- d. **Public Importance Standing.** South Carolina law also provides for a public importance exception to standing. In addition to the above, as clearly set forth in Plaintiffs' Complaint, Paragraphs 1-18, 24-27, 31-109, 115, and supporting affidavits and exhibits, all Plaintiffs have standing pursuant to the public importance doctrine in that future guidance by this court is necessary to determine the validity of the county's repeated disregard of explicit language in the Comprehensive Plan that restricts density increases in the South Waccamaw Neck. This issue 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.
2. **Justiciability.** In order to state a cause of action under the Uniform Declaratory Judgments Act, Plaintiffs need only plead an "actual controversy." As hereinafter set forth, Plaintiffs' complaint, including affidavits and exhibits, contains allegations that far exceed the minimum requirements to establish an actual controversy regarding the validity of Ordinances 21-24 and 21-25.
3. **Necessary Parties.** As clearly set forth in Plaintiffs' Complaint Paragraph 19-27, under the Uniform Declaratory Judgments Act, any person who has a claim or interest that would be affected by the requested declaration must be made a party to the action. The Goff Trust

owns the property that is the subject of the ordinances in question and under the Act must be made a party.

## LEGAL ARGUMENT

### I. Standard of Review and Matters Properly Considered

In the context of a Motion to Dismiss, all of the allegations in Plaintiffs' Complaint and supporting affidavits and exhibits must be accepted as true. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Doe v. Marion, 373 S.C. 390, 398, 645 S.E.2d 245, 247-248 (S.C. Supreme Ct. 2007) (citations omitted) (emphasis added).

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint...." Id. (emphasis added). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Id. (emphasis added). See also Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (S.C. Supreme Ct. 2007).

South Carolina law is very clear that the purpose of a Motion to Dismiss under Rule 12(b)(6) is for "the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (S.C. Supreme Court 2019).

Defendant Goff Trust raises a number of matters in its motion and memorandum that relate to the merits of the underlying claim and/or are otherwise extraneous or irrelevant. Many of Defendant's arguments imply questions of fact which are not proper to consider. Under South

Carolina law, the court's review is limited to the face of the complaint and whether it properly states a cause of action. Accordingly, arguments relating to the merits and questions of fact are not proper in the context of a Motion to Dismiss pursuant to Rule 12(b)(6), and may not be considered.

## II. Standing

“In its most basic sense, standing refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right ... and may be acquired (1) by statute, (2) under the principle of constitutional standing, or (3) via the public importance exception to general standing requirements.” Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (S.C. Supreme Ct. 2020) (citations omitted).

### A. Statutory Standing

Under South Carolina law, once statutory standing has been established for all parties and all causes of action, it is not necessary to inquire further.

“Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and . . . [t]he traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.” Preservation Society of Charleston, supra. at 210, 486 (citations omitted). In other words, “[t]he concept of Article III [constitutional] standing as applied in the federal courts does not limit a state’s ability to statutorily formulate [its own] standing criteria.” Id. at 210-211, 486 (citations omitted).

In Preservation Society of Charleston, the South Carolina Supreme Court reviewed a long list of South Carolina cases confirming that “it is unnecessary to address constitutional standing or the public importance exception when the basis for the independent concept of statutory

standing exists.” Id. at 210, 486 (citations omitted). One of the most frequently cited cases in support of this principle is Freemantle v. Preston, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (S.C. Supreme Ct. 2012), which held that “[t]he traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.”

In Freemantle, the Supreme Court specifically noted that once the criteria of statutory standing have been met, “[n]othing more is required” for standing. Id. at 195, 45. In other words, “the appellant did not have to show that he had a personal stake in the outcome of the matter.” Preservation Society of Charleston at 210, 486.

The following statutes confer standing upon Plaintiffs in this case:

**1. Comprehensive Planning Enabling Act, Section 6-29-760(C)**

The South Carolina Comprehensive Planning Enabling Act (hereinafter “CPEA”), S.C. Code Ann., Section 6-29-760(C), states that in the context of a zoning ordinance or amendment, “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment.” According to the plain language of this statute, the two simple requirements for statutory standing are: (1) being an adjoining landowner or the representative of an adjoining landowner, and (2) contesting a zoning ordinance or amendment.

Complaint Paragraphs 5-11, 28-30 and supporting affidavits and exhibits establish that Plaintiffs Middleton, Farr, Hunt/Sullivan, and Colony Homeowners’ Association (CHA) are owners of land that directly adjoins the Goff Trust parcel. Complaint Paragraphs 17, 18, 56, 65, 68, 76, 78, 113(a) and supporting affidavits and exhibits establish that Plaintiff KIG is and has been the representative of these adjoining landowners. Paragraphs 18 and 113(a) further allege that Plaintiff KIG represents the interests of all adjoining landowners, even those not specifically named in the complaint. Accordingly, the first requirement has been established for all Plaintiffs.

All causes of action in Plaintiffs' Complaint contest the validity of zoning ordinances 21-24 and 21-25. Accordingly, the second requirement for statutory standing under CPEA has been met as well.

The standing inquiry should end at this point as statutory standing has been established for all Plaintiffs and all causes of action.

## **2. Uniform Declaratory Judgments Act**

South Carolina Uniform Declaratory Judgments Act (hereinafter "UDJA"), S.C. Code Ann., Section 15-53-30, states "[a]ny person . . . whose rights . . . are affected by a . . . municipal ordinance . . . may have determined any question of . . . validity arising under the . . . ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder."

Under the UDJA, statutory standing is very broad and extends to any person whose rights are "affected" by a municipal ordinance. Standing is not limited to adjoining landowners. South Carolina courts have interpreted this provision and the word "affected" very liberally to include residents in the vicinity of a land use issue who are impacted by traffic, enjoyment, recreational uses, and aesthetics, as well as organizations whose members are affected in these ways. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 113, 825 S.E.2d 721, 731 (Ct. of App. 2019) and Preservation Society of Charleston, *supra*.

In the present case, Plaintiffs have specifically set forth in Complaint Paragraphs 5-18, 28-30 and supporting affidavits that they and their members 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.

The United States Supreme Court in Friends of the Earth, Inc. v. Laidlaw Environmental Services Inc., 528 U.S. 167, 170, 120 S.Ct. 693, 697, 145 L.Ed.2d 610 (2000), faced with a similar issue, found that “recreational, aesthetic, and economic interests” were sufficient to establish standing on nearby residents who had had been so “affected.” That same case also found that an organization has standing when its members have been “affected” in those same ways.

All causes of action in the Complaint are raised under the UDJA and, accordingly, all Plaintiffs have established standing with respect to all claims.

### **3. Freedom of Information Act**

South Carolina Freedom of Information Act (hereinafter “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.”

The South Carolina Supreme Court has held that

[t]he legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required.

Freemantle v. Preston, 398 S.C. 186, 195, 728 S.E.2d 40, 45 (S.C. Supreme Court 2012). See also Preservation Society of Charleston *supra.* at 210-211, 486.

Standing under FOIA is very broad. In this case, Complaint Paragraphs 5, 6, 9-12 set forth that all Plaintiffs are citizens of South Carolina. Based on that fact alone, Plaintiffs have standing to request declaratory judgment to enforce the provisions of FOIA as requested in Count VI of the Complaint.

### B. Associational Standing

The South Carolina Supreme Court has adopted the associational standing criteria set forth by the United States Supreme Court in Friends of the Earth, Inc., *supra.* at 170, 697.

[A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Preservation Society of Charleston, *supra.* at 211, 487.

In addition to and independent of statutory standing, Plaintiff KIG has met the criteria for associational standing as follows: (a) at least one of its members is an affected person who has standing in his or her own right (Complaint Paragraphs 5-18, 116, and supporting affidavits and exhibits); (b) the interests at stake fall squarely within KIG's purpose of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck by monitoring county land use decisions, zoning change requests and proposed development for compliance with proper law and procedure (Complaint Paragraphs 12-18, 116, and Exhibit 10); and (c) neither the claim asserted nor the relief requested requires the participation of individual landowners as monetary damages are not being requested (Complaint Paragraphs 116-156).

In Preservation Society of Charleston, the Petitioners were found to have standing as community and neighborhood organizations comprised of members who owned property near, but not necessarily adjoining, the land use at issue. Similarly, many members of Plaintiff KIG own property that either adjoins or is located in the vicinity of the Goff Trust parcel.

There are many sound public policy reasons behind the concept of associational standing. “[I]t promotes judicial economy and efficiency by avoiding repetitive and costly independent

actions by individual members, and it allows members who would have standing in their own right to pool their financial resources and legal expertise to help ensure complete and vigorous litigation of the issues.” Preservation Society of Charleston, supra., at 211, 487.

### C. Constitutional Standing

Although it is not necessary to inquire beyond statutory standing, Plaintiffs’ Complaint alleges proper constitutional standing for all Plaintiffs.

In Preservation Society of Charleston, supra., the South Carolina Supreme Court, quoting the United States Supreme Court in Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), stated that constitutional standing

contains three elements: (1) the plaintiff must have suffered an “injury in fact,” i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision.

Id. at 210, 486 (citations omitted).

As set forth above, Plaintiffs complaint alleges the following injuries in fact: loss of premium payments, decrease in property values, overburdened infrastructure, increase in traffic, increase in stormwater and flooding, negative impact on character, aesthetics and enjoyment of their property, precedent for similar zoning changes in vicinity that would exacerbate all these injuries. Plaintiffs’ Complaint alleges that these injuries were caused by the improper approval ordinances 21-24 and 21-25 that more than doubled residential density and cut lot sizes in half on contiguous or nearby land; and that the injury is redressable by a favorable decision of this court declaring that these ordinances are improper, null and void.

#### D. Public Importance Standing

When a matter is of public importance, standing may be conferred by that fact alone.

[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. In cases falling within the ambit of important public interest, standing is conferred without requiring the plaintiff to show he has an interest greater than other potential plaintiffs . . . . For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.

Freemantle, *supra*. at 44, 193.

In the present case, future guidance by the court is necessary to determine the validity of these two ordinances which involve and are evidence of Georgetown County's repeated disregard of explicit language in the Comprehensive Plan that restricts density increases in the South Waccamaw Neck. The issues in this case have 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. Accordingly, public importance standing is appropriate.

#### III. Justiciability

"A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Farmer v. CAGC Insurance Company, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted). See also Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 354 815 S.E.2d 446, 452(S.C. Supreme Ct. 2018). "The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to

rights, status and other legal relations.” Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (S.C. Supreme Ct. 2013) (citations omitted).

A justiciable controversy is defined as “an existing controversy or at least the ripening seeds of a controversy.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423-424, 593 S.E.2d 462, 467 (S.C. Supreme Ct. 2004) (citations omitted), and an “actual controversy as opposed to one that is contingent, hypothetical, or abstract.” Jowers, supra. at 354, 452.

In the present case, Plaintiffs’ Complaint enumerates the particulars of this “actual controversy” involving the alleged invalidity of two ordinances and sets forth the bases for this declaratory judgment action by pleading all the concrete facts pertaining to the who, what, where, when, why and how of this controversy.

- A. Paragraph 1 identifies the two ordinances in question, 21-24 and 21-25.
- B. Paragraphs 2 and 3 explain the effect of these ordinances and attach copies.
- C. Paragraph 4 sets forth the “actual” controversy, i.e., 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 parcel in question and contiguous parcels.
- F. Paragraphs 31–52 set forth the application details 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 reiterated here in response to this motion.
- I. Paragraphs 117–156 set forth six separate counts under the UDJA requesting the court to declare the ordinances null, void and of no force or effect for reasons set forth.

There is nothing contingent, hypothetical or abstract about the controversy in this case. Plaintiffs' Complaint clearly and unequivocally sets forth far more than the minimum required to establish an "actual controversy" as contemplated by UDJA.

**IV. 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.

**V. Conclusion**

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the Motion to Dismiss of Defendant Goff Trust.

Respectfully submitted,

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

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ATTORNEY FOR PLAINTIFFS

February 25, 2022  
Pawleys Island, South Carolina



is a real and substantial controversy and appropriate for judicial intervention. With regard to the passage of the ordinances, the actions of Georgetown County Council are "fairly debatable." Sections 6-29-720 of the South Carolina Code's Enabling Act provides deference and flexibility to local governing bodies on the passage of ordinances.

#### **STATEMENT OF ISSUES**

1. The Complaint does not state any facts, if any, that constitutes a cause of action against Goff Trust as required by South Carolina Rules of Procedure (SCR) 12(b)(6).
2. In a proper case, Goff Trust should be joined pursuant to 19(a)2(i) as an involuntary plaintiff as opposed to a defendant.
3. The plaintiffs or organizations, have not demonstrated an injury-in-fact or a legitimate public importance at the filing of the Complaint; therefore, the plaintiffs lack standing.
4. The plaintiffs' affidavits cite and imply that they paid a premium for the lots proximal to Goff Trust; therefore, they are retroactively injured by the Goff Trust ordinances.
5. The Colony subdivision was rezoned to 8,000 sq. ft., R-8 medium density; whereas, the Goff Trust parcel was rezoned to 10,000 sq. ft., R-10 medium density.
6. The Complaint lacks a justiciable controversy and the alleged facts are unsupported and contrived to create a false controversy that is "fairly debatable".
7. Concurrent with the approval and adoption of the Goff Trust Ordinances 21-24 and 21-25 to R10 medium density, four commercial parcels at Litchfield Landing, Ordinances 21-26 and 21-27, were approved and adopted to R10 medium density without any opposition from the individuals, groups and organizations who opposed the Goff Trust ordinances.
8. Ordinance 21-24 and Ordinance 21-25 meets the requirements of Section 6-29-720 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.

9. The Model Rules of Parliamentary Procedures (Model Rules) created for county governments by the South Carolina Association of Counties are the pre-emptive authority for resolving issues not addressed by County Councils' rules and procedures or Roberts Rules of Order Newly Revised (RONR).
10. RONR states: Changing One's Vote. "A member has the right to change his vote up to the time the result is announced, after that he can make the change only by permission of the assembly, which can be given by unanimous consent (p. 52), or by the adoption of a motion to grant the permission, which is undebatable".
11. RONR states: Assembly's Prerogative in Judging Voting Procedures. "Unless the bylaws provide otherwise, the assembly itself is the judge of all questions arising which are incidental to the voting and counting of votes".

## **ARGUMENT**

### **INSUFFICIENCY OF SERVICE OF PROCESS**

Specifically, the plaintiffs' lawyer failed to serve the process as required under South Carolina Rules of Procedure 4(a) and file proof of service as required under South Carolina Rules of Procedure 5(d) after filing the Summons and Complaint on January 7, 2022. The Plaintiffs' lawyer wanted Benjamin F. Goff, Trustee, to file an "Acceptance of Service" that would negate the requirements for proof of service. Failing that, the Plaintiffs' lawyer involved the South Carolina Secretary of State's Office to solve that problem.

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

COMPLIANCE WITH COMPREHENSIVE PLAN ENABLING ACT

South Carolina Local Government Comprehensive Planning Enabling Act of 1994,

Section 6-29-720. Zoning districts; matters regulated; uniformity; zoning techniques states:

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it: (1) "cluster development" or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel; . . .

The court recognizes that a holistic reading of the Enabling Act indicates its purpose is to provide the flexibility and ability for a local governing authority to make local decisions regarding zoning. See S.C. Code Ann. §§ 6-29-720(C) & 740 (Supp. 2007); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 119, 221 S.E.2d 848, 850 (1976) (noting a predecessor to the Enabling Act of 1994 was broad in its scope and gave municipalities much authority in the field of zoning). A reviewing court should practice judicial restraint and not supplant its judgment for the local governing authority's judgment.

Specifically, the South Carolina Supreme Court stated: "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.”

The SC Supreme Court has stated that, “[w]e cannot insinuate our judgment into a review of the City Council’s decision, but must leave that decision undisturbed if the propriety of that decision is even fairly debatable.” See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (citation omitted) and *Lenardis v. City of Greenville*, 316 S.C. 471, 472, 450 S.E.2d 597, 598 (Ct. App. 1994) (citation omitted).

SC Supreme Court: “The County Council’s decision was not arbitrary or capricious, as required by the applicable scope of review. See *Bear Enters. v. County of Greenville*, 319 S.C. 137, 141-42, 459 S.E.2d 883, 886 (Ct. App. 1995) (stating the reviewing court will focus on whether the municipal zoning authority’s decision was arbitrary or capricious). County Council reviewed the Planning Department report and the Planning Commission recommendation and minutes and received a public briefing, with questions and answers, for the second and third readings. Accordingly, County Council’s decision was neither arbitrary nor capricious.”

In a case decided by the SC 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 SC Code Ann. Section 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. Similarly, the Zoning Regulations of Georgetown County South Carolina was not violated in the approval and adoption of Ordinance 21-24 and Ordinance 21-25 or Ordinance 21-26 and Ordinance 21-27.

With respect to judicial review of zoning ordinances, the SC 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. *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 allegations contained in the Plaintiffs' Complaint are fairly debatable.

The SC 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 record in this case contains such evidence as to preclude our 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).

#### PLAINTIFFS COLLECTIVELY LACK STANDING

Section 6-29-760(C) (2004) of the South Carolina Code provides "[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party."

The SC Supreme Court has rejected competitor's assertion that standing exists when alleged damages flow from increased or perceived unfair competition. See *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 86, 644 S.E.2d 58, 60-61 (2007) and 4 Rathkopf's *The Law of Zoning and Planning* § 63.34 (4th ed. 2005) ("[G]enerally, persons whose only complaint is that the rezoning or grant of special permit or variance would create competition with them in the conduct of their business have been held not to have standing to litigate the validity of the zoning action."). Further, "a person whose sole interest for objecting to a zoning board's action is to prevent competition with his or her business is not a person aggrieved, and therefore does not have standing to challenge a zoning decision in court." See 83 Am. Jur. 2d *Zoning and Planning* § 926 (2003). Where, as here, the potential injury or prejudice is only an increase in business competition, such injury or prejudice is insufficient to confer standing. A competitor challenging legislative or executive action solely to protect its own economic interests lacks standing. Neither the fact that parties may suffer reduced incomes or be put out of business by more vigorous or appealing competition, nor the fact that properties on which such businesses are operated would thus depreciate in value, give rise to a standing to sue." The zoning ordinance is not part of a regulatory scheme to protect against competitive injury, and thus competition is not the kind of direct injury which gives rise to standing in a zoning case." As stated or implied in their

affidavits, the Colony plaintiffs admittedly are engaged in the competitive business of protecting and increasing home and property value through the economics of supply and demand.

In *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001), the state supreme court adopted the “stringent standing test” applied by the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) for determining constitutional standing. Under that test, an organization seeking redress for an injury to the organization itself (so-called “individual standing”) must carry the burden of demonstrating each of the following three elements:

(1) The plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) “concrete and particularized” and (b) “actual or imminent,” not “conjectural or hypothetical.” (2) There must be a causal connection between the injury and conduct complained of—the injury has to be “fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court.” (3) It must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Id.* at 601, 550 S.E.2d at 291 (quoting *Lujan*).

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

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

determine when an organization can sue in a representative capacity on behalf of its members.

Under the Hunt test:

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

“Standing is assessed at the time the action is commenced,” not thereafter. See Clark v. Trailer Corp., 242 F.3d 388 (10th Cir. 2000) (citing Lujan); see also Associated Credit Union v. Pinto, 677 S.E.2d 789, 791 (Ga. Ct. App. 2009) (“[A]s a general rule, ‘standing must be determined at the time at which the plaintiff’s complaint is filed in order to place an actual case or controversy within the purview of the court.’ Put more succinctly, the plaintiff must be able to show that he has been harmed at the time that the complaint is filed.” (citation omitted)); See Boulware, 422 S.C. at 7, 809 S.E.2d at 226.

A significant number of the purported membership of the organization (“Keep It Green, Inc.”) lack standing to sue the County Council. None can claim an “injury-in-fact” for the successful rezoning of the Goff parcel. The plaintiffs’ reply memorandum states that “at least one member has standing”. Therefore, the organization fails the Hunt test since it lacks standing to sue in a representative capacity on behalf of all of its constituent members.

It is improper for a plaintiff to retroactively attempt to correct the standing defect by seeking substitution or by amending its pleading. See Clark, 242 F.3d at 388; see also Perdue v. Lake, 647 S.E.2d 6, 8 (Ga. 2007) (“[A] plaintiff must have standing on the date that his or her action is filed. Subsequent amendments of a complaint which seek to confer standing based on events occurring after the initial complaint was filed cannot cure this jurisdictional defect.”). The

plaintiffs admit that the complaint is premature. The plaintiffs' complaint does not pass the Hunt test to qualify for standing. The adjacent Colony plaintiffs who have statutory standing have not demonstrated an injury-in-fact from the adopted ordinances to warrant standing-to-sue.

To the extent plaintiffs seek to bring this action on its own behalf to redress injury to the organization itself (individual standing), plaintiffs cannot satisfy the Lujan test. Plaintiff has failed to allege any facts showing it will be injured because of the Goff Trust ordinances. The plaintiffs fail to allege a particularized injury to itself, but merely asserts generalized issues suffered by the public as a whole, which are insufficient to establish standing. See Carnival, 407 S.C. at 76, 753 S.E.2d at 851. The plaintiffs in their affidavits stated that they paid an extra premium when they acquired the properties that are contiguous to the Goff parcel, therefore, have been harm by the ordinances. The plaintiffs pretend injury-in-fact does not meet the necessary legal burden or the requirements for standing to bring this lawsuit against Goff Trust and/or the County Council and its members.

#### COMPLAINT LACKS A JUSTICIABLE CONTROVERSY

The South Carolina Declaratory Judgment Act (SCDJA) "is remedial and procedural in nature and does not create substantive rights or duties." See Felts v. Richland County, 299 S.C. 214, 383 S.E.2d 261, 262-63 (Ct. App. 1989). For a party to state a claim under the act, a justiciable controversy must be demonstrated. See Graham v. See State Farm Mutual Automobile Ins. Co., 319 S.C. 69, 459 S.E.2d 844, 845-46 (1995); See Orr v. Clyburn, 277 S.C. 536, 290 S.E.2d 804, 807 (1982). A justiciable controversy is "a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." See Pee Dee Elec. Coop v. Carolina Power & Light Co., 279 S.C. 764, 301 S.E.2d 761, 761 (1983). The concept of justiciability encompasses the doctrines of ripeness,

mootness, and standing. See Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002).

S.C. Const. art. I, § 3, provides that no person shall be deprived of property without due process of law. "Appellant has not been deprived of due process of law because he was not deprived of his property due to the adoption of the Plan, nor due to the manner of the Plan's adoption. Appellant's claim in this regard is not justiciable because it is not ripe for review." See Waters v. South Carolina Land Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996) ("A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute."). Plaintiffs have not been deprived of property or sustained any injury to same.

The Complaint wantonly misstates the results of a valid legislative action at the Georgetown County Council meeting on October 26, 2021, the passage of Ordinances 21-24 and 21-25, and characterizes an administrative action on November 9, 2021 as an apparent controversy necessitating judicial intervention in the legislative process.

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

**PLAINTIFF CANNOT INVOKE THE PUBLIC IMPORTANCE EXCEPTION**

In general, a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result

of that action, a direct injury has been sustained, or there is an immediate danger that a direct injury will be sustained. See *Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013). Under the public importance exception, standing may be conferred upon a party “when an issue is of such public importance as to require its resolution for future guidance.” See *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Thus, it is insufficient for plaintiffs simply to state that the case involves a matter of public importance. The criteria for application of the public importance analysis are the need for “future guidance” from the court. See *ATC*, 380 S.C. at 199, 669 S.E.2d at 341 and *Bodman*, 403 S.C. at 68, 742 S.E.2d at 366.

In *ATC*, the court rejected plaintiff standing argument to invoke the public importance exception by arguing that the matter of zoning is important to the public. The Court noted that “[o]f course zoning is a matter of public importance, but the same may be said of most legislative and executive actions.” Although the Court agreed that “the matter of zoning is important to the public,” it emphasized that “[f]or a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” See *ATC*, 380 S.C. at 199, 669 S.E.2d at 341.

#### INSUFFICIENT FACTS TO CONSTITUTE A CAUSE OF ACTION

A motion to dismiss should be granted under Rule 12(b)(6) when the complaint fails to state facts sufficient to constitute a cause of action. In deciding a motion to dismiss, all pleadings are to be construed in a light most favorable to the plaintiff; however, in this instant complaint, the alleged facts by the plaintiffs are speculative conclusions and contrived evidentiary facts. The court need not adopt a party’s legal conclusions based on those alleged facts. See *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293, 296 (1981); *HH Hunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010); *Charleston Cnty. Sch. Dist. v. Laidlaw*

Transit, Inc., 348 S.C. 420, 425, 559 S.E. 2d 362, 364-65 (Ct. App. 2001). An allegation of a mere legal conclusion is insufficient to state a cause of action. See Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Smith v. Ashmore, 184 S.C. 316, 192 S.E. 565 (1937). Lacking any facts that constitutes a cause of action, Goff Trust designation as an “involuntary plaintiff” rather than “defendant” will allow protection of the trust’s interest pursuant to SCR 19(a)2(i).

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” See Power v. McNair, 255 S.C. at 154, 177 S.E.2d at 553; Graham v. State Farm Mutual Automobile Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) and Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002).

#### FURTHERANCE OF A CIVIL CONSPIRACY

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. The Colony plaintiffs state in the affidavits that they signed the “1000 Plus Signatures Petition” submitted to the County Council.

The plaintiffs objected to the approval of the Goff Trust parcel, Ordinances 21-24 and 21-25, from R-1/2 low to moderate density to R-10 medium density; whereas, four parcels at Litchfield Landing, Ordinances 21-26 and 21-27, were approved from commercial to R-10

medium density without any opposition from the plaintiffs who opposed the Goff Trust ordinances. Presumably, the alleged improper procedures of the Planning Department, Planning Commission and County Council applied to the Goff Trust parcel were not accorded to the Litchfield Landing parcels; therefore, the stated problematic issue of increase residential density on the Waccamaw Neck is being selectively applied.


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 combined and collective actions in opposition to Ordinance 21-24 and Ordinance 21-25 and the Complaint support a civil conspiracy claim.

#### CONCLUSION

The plaintiffs' challenge to County Council's legal authority failed to demonstrate that Ordinance 21-24 and Ordinance 21-25 enacted on October 26, 2021 conflicted with the SC Enabling Act, County Zoning Regulations or County Council Rules of Procedure; that County Council's decision was arbitrary and unreasonable; that the rezoning violated plaintiffs' constitutional rights; or that the administrative action on November 9, 2021 was improper or violated applicable laws, rules, procedures. This court should decline to substitute its judgment for that of the County Council; therefore, the Complaint should be dismissed.

Respectfully Submitted,  
The Defendant

Date: March 8, 2022

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

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

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

Plaintiffs, )

vs. )

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

Defendants. )

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

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

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

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

**RESPECTFULLY SUBMITTED,**

**SMITH | ROBINSON**

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

By: s/H. Thomas Morgan Jr.

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

Rachel Lee, SC Bar No. 104184

ATTORNEYS FOR DEFENDANTS

GEORGETOWN COUNTY COUNCIL, LOUIS

MORANT, LILLIE JEAN JOHNSON,

RAYMOND NEWTON, STEVE GOGGANS,

EVERETT CAROLINA, JOHN THOMAS, AND

BOB ANDERSON, IN THEIR CAPACITIES AS

ELECTED MEMBERS OF GEORGETOWN

COUNTY COUNCIL

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April 11, 2022

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF GEORGETOWN )

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

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

Plaintiffs, )

vs. )

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

Defendants. )

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

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

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

**WE SO STIPULATE:**

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Raymond Newton, Steve Goggans, Everett  
Carolina, John Thomas and Bob Anderson, in their  
capacities as elected members of Georgetown  
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STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF GEORGETOWN )

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

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

Plaintiffs, )

vs. )

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

Defendants. )

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

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

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

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Raymond Newton, Steve Goggans, Everett

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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

) STIPULATION OF DISMISSAL OF  
) DEFENDANTS, BENJAMIN F. GOFF,  
) SR., TRUSTEE AND THE BENJAMIN F.  
) GOFF 2004 REVOCABLE TRUST,  
) DATED, JUNE 18, 2004

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

FILED  
GEORGETOWN COUNTY, S.C.  
2022 MAY -3 AM 11:09  
ALMA Y. WHITE  
CLERK OF COURT

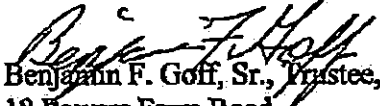
**STIPULATION OF DISMISSAL OF DEFENDANTS  
BENJAMIN F. GOFF, SR., TRUSTEE AND THE BENJAMIN F. GOFF 2004  
REVOCABLE TRUST, DATED JUNE 18, 2004**

The parties hereby stipulate, pursuant to South Carolina Rules of Civil Procedure, Rule 41, to the dismissal, without prejudice, of any and all claims against Defendants Benjamin F. Goff, Sr., Trustee and the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004 ("Goff Trustee"). As trustee and owner, an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, was submitted to the Georgetown County Planning Department and it resulted in the approval and adoption of Ordinances Number 21-24 and 21-25 by the Georgetown County Council. 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. The email further stated the willingness of the Plaintiffs to agree to dismissal without prejudice of the Goff Trustee's Motion to Dismiss, dated January 25, 2022, pending an agreement between all parties. Plaintiffs' Complaint does not state any

wrongdoing by Goff Trustee in the procedural approval and adoption of the Ordinances. This dismissal has no effect on remaining claims and defendants or claims by Goff Trustee. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Sec. 15-53-10.

Respectfully Submitted,  
The Defendants

Date: April 30, 2022

  
Benjamin F. Goff, Sr., Trustee, Pro Se  
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781-986-0635 (Tel)  
goff-chem@juno.com

Attached: Exhibit A

*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)

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Good afternoon, Mr. Goff:

I hope you are well.

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

# SMITH ROBINSON

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CAMDEN 935 Broad Street, Camden, SC 29020  
P: 803.432.1992 F: 803.432.0784

Reply To: Camden

May 4, 2022

**VIA EMAIL**

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

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

Dear Judge Culbertson:

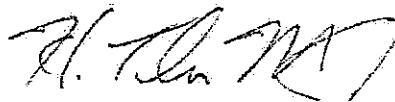
I hope this correspondence finds you and your staff well. Rachel Lee and I represent the Defendants in the above-referenced case filed by Plaintiff Keep It Green Advocacy, Inc., represented by Cindy Ranck Person.

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

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

Very truly yours,

SMITH ROBINSON HOLLER  
DuBOSE AND MORGAN, LLC



H. Thomas Morgan, Jr.

HTM/sr

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

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) FIFTEENTH JUDICIAL CIRCUIT  
2022-CP-22-00032

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

VS. )

TRANSCRIPT OF RECORD

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

May 19, 2022

Virtual Courtroom via Webex

B E F O R E:

THE HONORABLE STEVEN H. JOHN, JUDGE

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

CYNTHIA RANCK PERSON, ESQ.  
Attorney for the Plaintiffs

BENJAMIN F. GOFF  
Pro Se Defendant

BONNIE M. BRITT  
Official Court Reporter

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I N D E X

(WHEREUPON, there were no witnesses called.)

E X H I B I T S

(WHEREUPON, there were no exhibits introduced.)

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

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

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

8 MS. PERSON: I represent all plaintiffs.

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

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

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

18 MR. GOFF: Yes, sir.

19 THE COURT: All right, sir.

20 MR. GOFF: To the survey?

21 THE COURT: Service.

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

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

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

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

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

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

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

16 MR. GOFF: That is correct.

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

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

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

21 MR. GOFF: Okay.

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

24 MR. GOFF: I was not properly served.

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

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

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

5 THE COURT: So ---

6 MR. GOFF: And I maintain that.

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

10 MR. GOFF: That's correct.

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

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

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

1 owns property in South Carolina.

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

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

7 MS. PERSON: In Massachusetts.

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

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

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

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

14 THE COURT: Okay. So ---

15 MS. PERSON: And so ---

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

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

23 THE COURT: All right.

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

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

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

5 THE COURT: From the Secretary of State?

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

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

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

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

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

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

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

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

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

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

15 THE COURT: All right, sir.

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

1 THE COURT: All right, sir.

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

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

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

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

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

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

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

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

1 is the case. Thank you.

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

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

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

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

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

19 THE COURT: Yes.

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

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

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

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

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

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

6 THE COURT: I understand.

7 MS. PERSON: Okay.

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

10 MS. PERSON: Yeah.

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

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

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

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

1 selective in nature. Thank you very much.

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

3 And thank you, Ms. Person

4 MS. PERSON: Thank you, Your Honor.

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

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

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

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

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

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

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

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

8 Ms. Person, I appreciate it.

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

11 MS. PERSON: Thank you, Your Honor.

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

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

18 MR. GOFF: Thank you.

19 THE COURT: Thank you.

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

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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 of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Georgetown County, South Carolina, on the 19th day of May 2022.

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

August 19, 2022

Bonnie M. Britt  
Official Court Reporter

## JUNO Message Center

**From:** <Courtmail22\_DoNotReply@sccourts.org>

**To:** <goff-chem@juno.com>

**Cc:** <jlawrence@gtcounty.org>

**Sent:** Wed, Apr 27, 2022 11:25 AM

**Subject:** Motion "MDISMS-Motion/Dismiss Benjamin F Goff Sr TR/Pro Se" for Case "2022CP2200032-Ernest F Middleton III , plaintiff, et al VS Georgetown County , defendant, et al" was added to a Motions Roster for 5/19/2022 at 1:30 PM

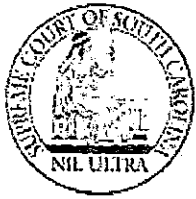
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|---|------------|---------------|------------|-------------|------------------|--------------|----------------------|------------|--------------|
| Anderson, Bob   | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Benjamin F Goff 2004 Revocable Trust Dated June 18 2004 | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Benjamin F Goff Sr Tr                                   | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Carolina, Everett                                       | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Colony Homeowners Association Inc                       | Plaintiff  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Farrar, Diana   | Plaintiff  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Farrar, Michael J                                       | Plaintiff  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Georgetown County                                       | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Georgetown County Council                               | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Georgetown County Council Members                       | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Goggans, Steve  | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Hunt, Robert E  | Plaintiff  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |
| Johnson, Lillie   | Defendant  | 2022CP2200032 | 01/07/2022 | Appeal      |                  | Common Pleas | Special-Comp/Oth 699 |            | Common Pleas |

|                         |           |                      |            |        |  |              |                      |  |              |
|-------------------------|-----------|----------------------|------------|--------|--|--------------|----------------------|--|--------------|
| Keep It Green Inc       | Plaintiff | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Middleton III, Ernest F | Plaintiff | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Middleton, Joyce J      | Plaintiff | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Morant, Louis           | Defendant | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Newton, Raymond         | Defendant | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Sullivan, Jeane M       | Plaintiff | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |
| Thomas, John            | Defendant | <u>2022CP2200032</u> | 01/07/2022 | Appeal |  | Common Pleas | Special-Comp/Oth 699 |  | Common Pleas |



# Georgetown County Fifteenth Judicial Circuit Public Index



[Georgetown County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

|  |               |                   |   |                    |                 |
|--|---------------|-------------------|---|--------------------|-----------------|
| <input type="button" value="Switch View"/>   |               |                   |   |                    |                 |
| <b>Ernest F Middleton III , plaintiff, et al VS Georgetown County , defendant, et al</b> |               |                   |   |                    |                 |
| 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         |              |              |
|--|---|---------------------|------------------|---------------|--------------------|--------------|--------------|
| Click the  icon to show associated parties.                                      |   |                     |                  |               |                    |              |              |
| Name   | Address   | Race                | Sex              | Year Of Birth | Party Type         | Party Status | Last Updated |
| <input type="checkbox"/> Anderson, Bob(Inactive)                                 |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input type="checkbox"/> Benjamin F Goff 2004 Revocable Trust Dated June 18 2004 |   |                     |                  |               | Defendant          |              | 05/03/2022   |
| <input checked="" type="checkbox"/> Benjamin F Goff Sr Tr                        |   |                     |                  |               | Defendant          |              | 05/23/2022   |
| <input checked="" type="checkbox"/> Benjamin F Goff Sr Tr                        | 18 Powers Farm Road Randolph MA 02368                                     |                     |                  |               | Defendant Pro Se   |              | 05/03/2022   |
| <input type="checkbox"/> Carolina, Everett(Inactive)                             |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input checked="" type="checkbox"/> Colony Homeowners Association Inc            |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input checked="" type="checkbox"/> Farrar, Diana                                |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input checked="" type="checkbox"/> Farrar, Michael J                            |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input checked="" type="checkbox"/> Georgetown County                            |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input type="checkbox"/> Georgetown County Council(Inactive)                     |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input type="checkbox"/> Georgetown County Council Members(Inactive)             |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input type="checkbox"/> Goggans, Steve(Inactive)                                |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input checked="" type="checkbox"/> Hunt, Robert E                               |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input type="checkbox"/> Johnson, Lillie(Inactive)                               |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input checked="" type="checkbox"/> Keep It Green Inc                            |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input checked="" type="checkbox"/> Lee, Rachel Elizabeth                        | 2530 Devine Street Third Floor Columbia SC 29205                          |                     |                  |               | Defendant Attorney |              | 02/22/2022   |
| <input checked="" type="checkbox"/> Middleton, Ernest F III                      |   |                     |                  |               | Plaintiff          |              | 06/02/2022   |
| <input checked="" type="checkbox"/> Middleton, Joyce J                           |   |                     |                  |               | Plaintiff          |              | 01/07/2022   |
| <input type="checkbox"/> Morant, Louis(Inactive)                                 |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input checked="" type="checkbox"/> Morgan, H. Thomas Jr.                        | PO Drawer 39 Smith Robinson Holler Dubose Morgan, LLC Camden SC 290210039 |                     |                  |               | Defendant Attorney |              | 02/22/2022   |
| <input type="checkbox"/> Newton, Raymond(Inactive)                               |   |                     |                  |               | Defendant          |              | 05/05/2022   |
| <input checked="" type="checkbox"/> Person, Cynthia Ranck                        | 56 Pampus Place Pawleys Island  |                     |                  |               | Plaintiff          |              | 01/07/2022   |

|   |          |  |  |  |           |            |
|---|----------|--|--|--|-----------|------------|
|   | SC 29585 |  |  |  | Attorney  |            |
| <input checked="" type="checkbox"/> Sullivan, Jeane M |          |  |  |  | Plaintiff | 01/07/2022 |
| Thomas, John(Inactive)                                |          |  |  |  | Defendant | 05/05/2022 |

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# Georgetown County Fifteenth Judicial Circuit Public Index



[Georgetown County Home Page](#)
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[SC.GOV Home Page](#)

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 |
|-------------------------|--|--------|---------------|------------------|-----------------|-----------|
| 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 |                 |           |
| 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 |                 |           |
| Benjamin F Goff Sr Tr   | 6/23/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |               | 05/27/2022-14:47 |                 |           |
| Benjamin F Goff Sr Tr   | 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 |                 |           |

|                           |  |        |  |                  |                  |  |
|---------------------------|--|--------|--|------------------|------------------|--|
| Lee, Rachel Elizabeth     | 6/23/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/27/2022-14:47 |                  |  |
| Lee, Rachel Elizabeth     | 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 |                  |  |
| Person, Cynthia Ranck     | 6/23/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/27/2022-14:47 |                  |  |
| Benjamin F Goff Sr Tr     | NEF(05-27-2022 01:03:35 PM) Order/Electronic Form 4          | Filing |  | 05/27/2022-13:03 |                  |  |
| Benjamin F Goff Sr Tr     | Order/Electronic Form 4/Motion to Dismiss Denied             | Order  |  | 05/27/2022-13:03 |                  |  |
| Benjamin F Goff Sr Tr     | Motion/Judgment on the Pleadings/Exhibit A/Pro Se            | Motion |  | 05/23/2022-12:25 |                  |  |
| Benjamin F Goff Sr Tr     | Letter/Letter  | Filing |  | 05/19/2022-11:20 |                  |  |
| Middleton, Ernest F III   | NEF(05-18-2022 08:59:17 AM) Service/Certificate Of Servi...  | Filing |  | 05/18/2022-11:01 |                  |  |
| Middleton, Ernest F III   | NEF(05-18-2022 08:54:53 AM) Motion/12 (B) in lieu of Ans...  | Filing |  | 05/18/2022-09:44 |                  |  |
| Middleton, Ernest F III   | Service/Certificate Of Service                               | Filing |  | 05/18/2022-08:59 |                  |  |
| Middleton, Ernest F III   | Mot to Dismiss Def Counterclaim/Strike Other Matters/Person  | Motion |  | 05/18/2022-08:54 |                  |  |
| Person, Cynthia Ranck     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Person, Cynthia Ranck     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Benjamin F Goff Sr Tr     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Benjamin F Goff Sr Tr     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Lee, Rachel Elizabeth     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Lee, Rachel Elizabeth     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| Morgan, H. Thomas Jr.     | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 05/13/2022-13:09 |                  |  |
| 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           | 5/19/2022 MOTION Roster/Notice of Case Roster Publication Se | Action |  | 04/27/2022-11:24 |                  |  |

|                           |  |        |  |                  |                  |  |
|---------------------------|--|--------|--|------------------|------------------|--|
| Ranck                     |  |        |  |                  |                  |  |
| 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 |                  |  |
| Benjamin F Goff Sr Tr     | 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 |  | 04/27/2022-11:23 |                  |  |
| Lee, Rachel Elizabeth     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/27/2022-11:23 |                  |  |
| Morgan, H. Thomas Jr.     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/27/2022-11:23 |                  |  |
| Person, Cynthia Ranck     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/27/2022-11:23 |                  |  |
| Person, Cynthia Ranck     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Person, Cynthia Ranck     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Morgan, H. Thomas Jr.     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Morgan, H. Thomas Jr.     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Lee, Rachel Elizabeth     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Lee, Rachel Elizabeth     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Benjamin F Goff Sr Tr     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Benjamin F Goff Sr Tr     | 5/19/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/26/2022-15:06 |                  |  |
| Benjamin F Goff Sr Tr     | Answer/Answer & Counterclaim/Complaint                       | Filing |  | 04/18/2022-10:32 |                  |  |
| Benjamin F Goff Sr Tr     | Service/Certificate Of Service/H Thomas Morgan Jr            | Filing |  | 04/18/2022-10:32 |                  |  |
| Benjamin F Goff Sr Tr     | Service/Certificate Of Service/Cynthia Ranck Person          | Filing |  | 04/18/2022-10:32 |                  |  |
| Georgetown County         | NEF(04-11-2022 04:23:12 PM) Answer/Answer                    | Filing |  | 04/11/2022-16:58 |                  |  |
| Georgetown County Council | NEF(04-11-2022 04:19:07 PM) Motion/Dismiss                   | Filing |  | 04/11/2022-16:42 |                  |  |
| Georgetown County         | Answer/Answer  | Filing |  | 04/11/2022-16:23 |                  |  |
| Georgetown County         | Motion to Dismiss/Morgan                                     | Motion |  | 04/11/2022-16:19 | 05/04/2022-16:19 |  |
| Benjamin F Goff Sr Tr     | NEF(04-07-2022 08:39:42 AM) Order/Electronic Form 4          | Filing |  | 04/07/2022-08:40 |                  |  |
| Benjamin F Goff Sr Tr     | Order/Electronic Form 4/Motion to Dismiss Party Continued    | Order  |  | 04/07/2022-08:39 |                  |  |
| Person, Cynthia Ranck     | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/28/2022-09:16 |                  |  |
| Benjamin F Goff Sr Tr     | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/28/2022-09:16 |                  |  |
| Lee, Rachel Elizabeth     | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/28/2022-09:16 |                  |  |
| Morgan, H. Thomas Jr.     | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/28/2022-09:16 |                  |  |
| Benjamin F Goff Sr Tr     | Reply To Plts Opp To Motion To Dismiss                       | Filing |  | 03/14/2022-08:36 |                  |  |
| Benjamin F Goff Sr Tr     | Certificate Of Service/H Thomas Morgan Jr Esq                | Filing |  | 03/14/2022-08:36 |                  |  |

|                                   |  |        |  |                  |  |  |
|-----------------------------------|--|--------|--|------------------|--|--|
| Benjamin F Goff Sr Tr             | Certificate Of Service/Cynthia Ranck Person Esq              | Filing |  | 03/14/2022-08:36 |  |  |
| Person, Cynthia Ranck             | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/02/2022-12:34 |  |  |
| Morgan, H. Thomas Jr.             | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/02/2022-12:34 |  |  |
| Lee, Rachel Elizabeth             | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/02/2022-12:34 |  |  |
| Benjamin F Goff Sr Tr             | 3/31/2022_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/02/2022-12:34 |  |  |
| Benjamin F Goff Sr Tr             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-17:00 |  |  |
| Benjamin F Goff Sr Tr             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-16:58 |  |  |
| Benjamin F Goff Sr Tr             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-16:55 |  |  |
| Lee, Rachel Elizabeth             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-16:55 |  |  |
| Morgan, H. Thomas Jr.             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-16:55 |  |  |
| Person, Cynthia Ranck             | 3/4/2022_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 03/01/2022-16:55 |  |  |
| Benjamin F Goff Sr Tr             | Reply to Plts Unfiled Resp to Mot to Dismiss Def/Exh A-C     | Filing |  | 02/28/2022-08:32 |  |  |
| Benjamin F Goff Sr Tr             | Service/Certificate Of Service/Thomas Morgan Jr              | Filing |  | 02/28/2022-08:32 |  |  |
| Benjamin F Goff Sr Tr             | Service/Certificate Of Service/Cynthia Ranck Person          | Filing |  | 02/28/2022-08:32 |  |  |
| Middleton, Ernest F III           | NEF(02-25-2022 06:42:50 PM) Service/Certificate Of Servi...  | Filing |  | 02/28/2022-08:29 |  |  |
| Middleton, Ernest F III           | Service/Certificate Of Service                               | Filing |  | 02/25/2022-18:42 |  |  |
| Georgetown County                 | NEF(02-25-2022 01:32:47 PM) Service/Acceptance Of Servic...  | Filing |  | 02/25/2022-15:16 |  |  |
| Benjamin F Goff Sr Tr             | NEF(02-25-2022 01:42:05 PM) Service/Certificate Of Servi...  | Filing |  | 02/25/2022-15:11 |  |  |
| Benjamin F Goff Sr Tr             | Service/Certificate Of Service                               | Filing |  | 02/25/2022-13:42 |  |  |
| Georgetown County Council Members | Service/Acceptance Of Service on Georgetown County Council M | Filing |  | 02/25/2022-13:32 |  |  |
| Georgetown County Council         | Service/Acceptance Of Service on Georgetown County Council   | Filing |  | 02/25/2022-13:32 |  |  |
| Carolina, Everett                 | Service/Acceptance Of Service on Everett Carolina            | Filing |  | 02/25/2022-13:32 |  |  |
| Newton, Raymond                   | Service/Acceptance Of Service on Raymond Newton              | Filing |  | 02/25/2022-13:32 |  |  |
| Goggans, Steve                    | Service/Acceptance Of Service on Steve Goggans               | Filing |  | 02/25/2022-13:32 |  |  |
| Johnson, Lillie                   | Service/Acceptance Of Service on Lillie Johnson              | Filing |  | 02/25/2022-13:32 |  |  |
| Morant, Louis                     | Service/Acceptance Of Service on Louis Morant                | Filing |  | 02/25/2022-13:32 |  |  |
| Georgetown County                 | Service/Acceptance Of Service on Georgetown County           | Filing |  | 02/25/2022-13:32 |  |  |
| Anderson, Bob                     | Service/Acceptance Of Service on Bob Anderson                | Filing |  | 02/25/2022-13:32 |  |  |
| Thomas, John                      | Service/Acceptance Of Service on John Thomas                 | Filing |  | 02/25/2022-13:32 |  |  |
| Middleton, Ernest F III           | NEF(02-25-2022 12:36:49 PM) Memo/Memo in Opposition          | Filing |  | 02/25/2022-12:57 |  |  |
| Middleton, Ernest F III           | Memo/Memo in Opposition                                      | Filing |  | 02/25/2022-12:36 |  |  |
| Middleton,                        | Service/Certificate Of Service                               | Filing |  | 02/25/2022-      |  |  |





## Georgetown County Fifteenth Judicial Circuit Public Index



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[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

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](#)

#### Summary

|             |          |                            |          |              |        |
|-------------|----------|----------------------------|----------|--------------|--------|
| Fine/Costs: | \$300.00 | Total Paid for fine/costs: | \$300.00 | Balance Due: | \$0.00 |
|-------------|----------|----------------------------|----------|--------------|--------|

#### Costs

| Description                         | Cost Code | Amount  | Charge Action | Disbursed Amount |
|-------------------------------------|-----------|---------|---------------|------------------|
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |
| SCJD Filing Fee Proviso \$50 / \$25 | SCJDPV    | \$50.00 |               | \$50.00          |
| Civil Filing Fee State 56%          | CVFFST    | \$56.00 |               | \$56.00          |
| Civil Filing Fee County 44%/100%    | CVFFCN    | \$44.00 |               | \$44.00          |
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |
| Motion/Order Filing Fee \$25        | MOTION    | \$25.00 |               | \$25.00          |

#### Payments

| Payment Date | Receipt Number | Entered By | Transaction Type Code | Payment Amount |
|--------------|----------------|------------|-----------------------|----------------|
| 06/02/2022   | 52379          | C22CKINDER | WV                    | \$25.00        |
| 05/23/2022   | 52306          | c22agrate  | PY                    | \$25.00        |
| 05/18/2022   | 52266          | C22AGRATE  | PY                    | \$25.00        |
| 04/28/2022   | 52107          | C22LLESAN  | PY                    | \$25.00        |
| 04/11/2022   | 51957          | C22LLESAN  | PY                    | \$25.00        |
| 01/25/2022   | 51326          | c22ckinder | PY                    | \$25.00        |
| 01/07/2022   | 51196          | C22CKINDER | PY                    | \$150.00       |

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.

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

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

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Clerk to Council

Georgetown County Council held a Regular Council Meeting on Tuesday, December 14, 2021, at 5:30 PM in the County Council Chambers, 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 Raymond Newton moved for approval of the meeting agenda, to include a recommendation to move the following reports forward on the meeting agenda: Item 15a, Holiday Art Contest Winners; Item 15b, nonprofit spotlight, as well as a Proclamation honoring Midway Fire-Rescue Chief Doug Eggiman upon the occasion of his retirement. 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

**PUBLIC COMMENTS:**

Fred Williams

Mr. Williams stated that he was speaking on behalf of the *West End Citizens Council* regarding the welfare of the citizens residing in that area. He stated that the Howard Center has never been utilized as it was intended, and this trend needs to be reversed. The facility is not serving the children of the West End as was initially intended, and Mr. Williams requested to meet with County Council in order to discuss and resolve the issue.

Janette Graham

Ms. Graham, President of the *Howard Alumni Association*, expounded upon Mr. Williams' comments stating that this endeavor started over ten years ago, and has not yet come to fruition. She questioned why children living on the West End are requested to go to the Beck Gym to use the recreational facilities, and asked why they are always placed "last" and "least".

**MINUTES:**

Regular Council Meeting - October 26, 2021

Councilmember Raymond Newton moved for approval of the minutes of the October 26, 2021 council meeting. 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

Regular Council Meeting - November 9, 2021

Councilmember Everett Carolina moved for approval of meeting minutes of November 9, 2021. Councilmember Bob Anderson offered a second. Upon a call for discussion on the motion from the Chairman, there was none.

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

**CONSENT AGENDA:**

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

*Procurement #21-040 Rebid, Big Dam Swamp Recycle Center-General Contractor – County Council awarded a Construction Contract to Maverick Construction Services, LLC for the base bid amount, plus option #1, for a total project cost of \$418,964.33.*

*Procurement #21-049, Roll-Off Truck for Collections – County Council approved issuance of a Purchase Order to Triple T Freightliner in the amount of \$171,089.00, inclusive of sales tax and delivery.*

*Procurement #21-070, County Fire-EMS Ambulance Remount CERP - County Council approved issuance of a Purchase Order to Fraser of Houston, TX in the amount of \$154,234.00*

County Council adopted its Annual Meeting Schedule for 2022.

**PUBLIC HEARINGS:**

Ordinance No. 21-32

A public hearing was held on 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. No individual came forward to speak for, or against Ordinance No. 21-32, and Chairman Morant ordered the public hearing closed.

Ordinance No. 21-36

County Council held a public hearing on 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. There were no public comments, and the Chairman closed the public hearing.

Ordinance No. 21-38

A public hearing was held on Ordinance No. 21-38, an Ordinance to Amend the FY2021/2022 Operating Budget of Georgetown County. There were no public comments pertaining to Ordinance No. 21-38, and Chairman Morant closed the public hearing.

Ordinance No. 21-39

County Council held a public hearing on Ordinance No 21-39, an ordinance 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. No individual came forward to speak for, or against, Ordinance No. 21-39. The Chairman ordered the public hearing closed.

**BOARDS AND COMMISSIONS:**

Building Code Board of Appeals

Councilmember Lillie Jean Johnson moved for the appointment of Mr. Terry Reed to represent Council District 4 on the Building Code Board of Appeals. Councilmember Steve Goggans seconded the motion. Chairman Morant called for discussion, and no discussion occurred.

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

**RESOLUTIONS:**

Proclamation No. 21-34

Councilmember Bob Anderson moved to adopt Proclamation No. 21-34 in honor of Midway Fire-Rescue Chief Doug Eggiman upon the occasion of his retirement following more than three decades of exceptional public safety service. Councilmember Everett Carolina seconded 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 |                 |

A framed proclamation was presented to Chief Eggiman, with gratitude for his 36 years of life saving public service to the citizens of the Waccamaw Neck.

Resolution No. 21-35

A motion was made by Councilmember Bob Anderson, and seconded by Councilmember Raymond Newton, for adoption of Resolution No. 21-53, a Resolution 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 (2) Other Matters Relating Thereto. 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. 21-32

Councilmember Bob Anderson moved for third reading 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 Everett Carolina seconded the motion. 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

Ordinance No. 21-36

Councilmember Lillie Jean Johnson moved for third 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 Raymond Newton seconded 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. 21-38

A motion was made by Councilmember Steve Goggans, seconded by Councilmember Everett Carolina, for third reading approval of Ordinance No. 21-38, an Ordinance to Amend the FY 2021/2022 Operating Budget of Georgetown County. 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

**ORDINANCES-Second Reading:**

Ordinance No. 21-39

Following a report from Holly Richardson, Planning & Code Enforcement Director, Councilmember Raymond Newton moved for second reading approval of Ordinance No. 21-39, an ordinance 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. Councilmember Bob Anderson seconded the motion. Chairman Morant called for discussion, and there was none.

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

Ordinance No. 21-40

Following a report from Holly Richardson, Planning & Code Enforcement Director, and Councilmember Raymond Newton moved for seconded reading approval of 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). Councilmember Bob Anderson offered a second on the motion. 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-First Reading:**

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

Ordinance No. 21-41 – An Ordinance Authorizing (1) the Execution and Delivery of a Second Amendment to an Existing Fee In Lieu of Tax and Incentive Agreement by and Among Georgetown County, South Carolina (The “County”), G2 Composites, LLC (as Successor in Interest to MHG OZ FUND I, LLC), and Eagle Commercial, LLC (as Successor in Interest to MHG OZ FUND II, LLC) to Effect Certain Modifications Thereto; and (2) Other Matters Relating Thereto.

Ordinance No. 21-42 – An Ordinance to Adopt a Redistricting Plan for Georgetown County, South Carolina

**COUNCIL BRIEFING & COMMITTEE REPORTS:**

*No reports.*

**BIDS:**

*No reports.*

**REPORTS TO COUNCIL:**

Recognition – 2021 Holiday Art Contest Winners

*(Presentation of this report was moved forward on the meeting agenda)*

Chairman Louis Morant and Mr. Austin Beard of Anderson Brothers Bank recognized students who submitted winning art entries in Georgetown County's 2021 Holiday Art Contest. Students received monetary awards for their achievements, as presented by Mr. Beard, courtesy of Anderson Brothers Bank. Additionally, the winning entry, submitted by Makayla Javoroski, a 9<sup>th</sup> grader at Waccamaw High School, was duplicated as Georgetown County's annual holiday card.

1<sup>st</sup> PLACE – Makayla Javoroski – 9<sup>th</sup> Grader at Waccamaw High School

2<sup>nd</sup> PLACE – Gracy Potwin – 12<sup>th</sup> Grader at Waccamaw High School

3<sup>rd</sup> PLACE – Ellisyn Byrdic – 6<sup>th</sup> Grader at Rosemary Middle School

*Honorable Mention* – Kennedi Collins – 12<sup>th</sup> Grader at Carvers Bay High School

Following the presentation, Chairman Morant expressed appreciation, on behalf of Georgetown County, to Mr. Beard for the prizes awarded to students which were sponsored by Anderson Brothers Bank

Nonprofit Spotlight – Bibleway Community Learning Center

*(This report we presented earlier during the meeting)*

In accordance with Georgetown County and the Bunnellé Foundation's partnership to spotlight local nonprofits during each County Council meeting, a presentation was made by Brittany Grayson on behalf of the Bibleway Community Learning Center. Bibleway Community Learning Center is dedicated to providing high quality childcare services to infants and young children through a nurturing and caring environment that honors the unique value of each child as a gift from God.

Accommodations Tax Advisory Committee - Funding Recommendations

Kathy Grace, Chair of the Accommodations Tax Advisory Committee presented funding recommendations on behalf of the Accommodations Tax Advisory Committee. Following the report, discussion ensued, and Ms. Grace responded to questions from members of County Council.

Councilmember John Thomas moved to approve the Accommodations Tax Committee's funding recommendations, as amended to award additional funding as follows:

- (1) Georgetown County Sheriff - \$65,000 *(bringing total award to \$253,758)*
- (2) Midway Fire Rescue - \$1,800 *(bringing total award to \$11,400)*
- (3) Litchfield Beautification Foundation - \$6,000 *(bringing total award to \$27,350)*
- (4) Murrells Inlet 2020, Inc. - \$6,000 *(bringing total award to \$31,200)*
- (5) Pawley Island Highway Beautification Program - \$6,000 *(bringing total award to \$27,000)*

Councilmember Bob Anderson seconded the motion. Upon a call for discussion on the motion 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

Request for Approval of Broadband Grant Agreement between Georgetown County and Horry Telephone Cooperative

Following a report from County Administrator, Angela Christian, a motion was made by Councilmember Lillie Jean Johnson for approval of a broadband agreement, as proposed, between Georgetown County and Horry Telephone Cooperative. Councilmember Raymond Newton seconded the motion. There was no discussion following the motion.

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

Acceptance of Grant Funding from North Eastern Strategic Alliance (NESA) and MOU with Santee Electric Cooperative, Inc. regarding the same.

Following a report from County Administrator, Angela Christian, and Councilmember Raymond Newton moved to accept grant funding from NESA, in the amount of \$392, 500, and enter into a MOU with Santee Electric Cooperative Inc. regarding the same. Councilmember Bob Anderson offered a second on the motion. No discussion followed the motion.

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. 21-37 - 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:**

Councilmember John Thomas made a motion to move into Executive Session to receive Legal Advice and Discussion Regarding Contractual Matters Relating to the Possible Sale or Lease of County Properties Pursuant to S.C. Code Ann. §30-4-70(a)(2), and a Legal Briefing Regarding Litigation Involving Georgetown

County pursuant to S.C. Code Ann. § 30-4-70(a)(2). Councilmember Lillie Jean Johnson seconded the motion.

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

County Council moved into executive Session at 6:32 PM.

**OPEN SESSION:**

Following Executive Session, Councilmember Raymond Newton made a motion to return to Open Session at 7:48 PM. Councilmember Bob Anderson seconded the motion. No discussion followed the motion.

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

Chairman Louis Morant noted that during Executive Session, County Council was briefed on two legal matters as previously disclosed. No votes were taken by County Council during Executive Session.

Being no further business to come before County Council, Councilmember Steve Goggans made a motion to adjourn the meeting at 7:49 PM, seconded by Councilmember Everett Carolina.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk to Council

**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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

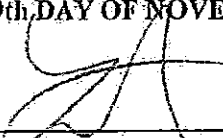
ORDINANCE NO: 21-24

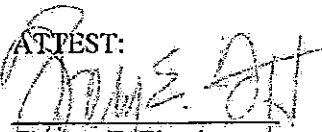
AN ORDINANCE TO AMEND THE COMPREHENSIVE PLAN, FUTURE LAND USE MAP, REGARDING TMS NUMBER 04-0418-011-00-00 LOCATED AT 3138 OCEAN HWY IN GEORGETOWN FROM LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL

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

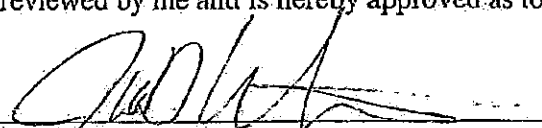
To amend the Comprehensive Plan, Future Land Use Map, to reflect the redesignation of tax map parcel 04-0418-011-00-00 located at 3138 Ocean Hwy in Georgetown from low density residential to medium density residential, as reflected on the attached map.

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)


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

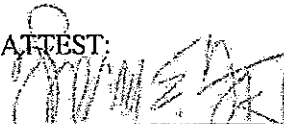
ORDINANCE NO. 21-25

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).

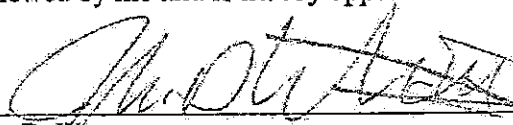
BE IT ORDAINED BY THE COUNTY COUNCIL MEMBERS OF GEORGETOWN COUNTY, SOUTH CAROLINA, IN COUNTY COUNCIL ASSEMBLED TO AMEND THE ZONING MAP OF GEORGETOWN COUNTY, SPECIFICALLY TMS NUMBER 04-0418-011-00-00 LOCATED AT 3138 OCEAN HWY IN GEORGETOWN FROM ½ ACRE RESIDENTIAL (R-1/2) TO 10,000 SQUARE FEET RESIDENTIAL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

DONE, RATIFIED AND ADOPTED THIS 9<sup>th</sup> 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)*

REZ-0-21-28323

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 area 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=12.79Ac/A1=54/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](mailto:csargent@georgetowncountysc.org) or include with your application.

**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'.  
**COMMENT: NOT RELEVANT.**
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.  
**COMMENT: NOT RELEVANT.**
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. **COMMENT: NOT RELEVANT.**

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. **COMMENT: NOT RELEVANT.**
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. **COMMENT: AMBIGUOUS AS TO A CONCLUSION OR SUPPORTING RECOMMENDATION FOR THE PROPOSED ZONING AMENDMENT.**

**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

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

Revision Date:

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

May 16, 2022

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

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

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


Dear Judge John:

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

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

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

Respectfully,

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

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

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

June 1, 2022

**BY FIRST CLASS MAIL**

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

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

Dear Judge John:

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

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

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

2022 JUN -9 PM 2: 22  
ALMA Y. WHITE  
CLERK OF COURT


Council Rules of Procedure in the approval and adoption of Goff Trustee/Trust's ordinances. The Plaintiffs are seeking to have the Court render the Goff Trustee/Trust ordinances "null and void" because of an alleged violation of the County Council Rules of Procedure by the Georgetown County Council and elected Council members. However, the Plaintiffs' attorney and the attorney for the Georgetown County Council have agreed to a Stipulation of Dismissal without prejudice of the Georgetown County Council and Council members as Defendants in their capacities as elected members of the Georgetown County Council, removing them from the Complaint as Defendants. In essence, the Stipulation of Dismissal is an admittance that the Georgetown County Council and Council members' approval and adoption of Ordinances 21-24 and 21-25 was proper and consistent with County Council Rules of Procedure, Roberts Rules of Order and the Model Rules of Parliamentary Procedure for South Carolina Counties, Third Edition.

The Court's pending motion decision is inconsistent with the submitted facts and the intent of the Plaintiffs' Complaint for joining Goff Trustee/Trust, which was required by the Section 15-53-80 of the Uniform Declaratory Judgment Act. In that there was no wrongdoing by Goff Trustee/Trust, they should not have been named as Defendants. With the previous admittance of "no claims against Goff Trustee/Trust", the motion decision and proposed Order as suggested by the Court would be inadvertent and contrary to the admitted facts of the case; therefore, the Court should reconsider the pending motion decision that a cause of action exists for Goff Trustee/Trust as Defendants.

Pursuant to SCRCF Rule 19(a)(2)(i), without the Georgetown 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. The dismissal from the Plaintiffs' Complaint of the Georgetown County Council and Council members, at whom the allegations in the Complaint are directed, necessitates granting the Goff Trustee/Trust's Motion to Dismiss and/or dismissal of the Plaintiffs' Complaint.

Assuredly, the Plaintiffs' Complaint does not state any facts that constitutes a cause of action against Goff Trustee/Trust as required by SCRCF 12(b)(6). A fair reading of all pleadings, replies and documents filed in this legal action would indicate that Goff Trustee/Trust should not be Defendants. Consequently, without the Georgetown County Council and Council members, the Plaintiffs' Complaint is a "non-suit" and should be dismissed in its entirety pursuant to SCRCF Rule 41.

Respectfully,

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

cc: Cynthia Ranck Person, Esq.

Attachments: Exhibits A and B

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,  
Cynthia 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

 **JUNO** Message Center

*Exhibit B*

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

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

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

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

---

Dear All,

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

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

Respectfully,

Madeline

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

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

# JUNO Message Center

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

: 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.: 2022 CP 2200032

Plaintiffs,

v.

ACCEPTANCE OF SERVICE

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

ACCEPTANCE OF SERVICE

I, Benjamin F. Goff, Sr., Trustee, hereby accept and acknowledge receipt and service of a filed copy of the Summons and Complaint in the above captioned matter upon me on behalf of Defendant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Benjamin F. Goff, Sr., Trustee

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29585

*A nonprofit public interest law firm.*

*Exhibit B*

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

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

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

Dear Mr. Goff

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

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

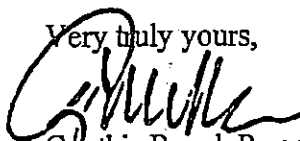
As soon as the county defendants have officially accepted service and their attorney has entered an appearance, I will contact them about this.

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

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

Thank you for your kind attention.

Very truly yours,



Cynthia Ranck Person, Esquire

Enclosures

Exhibit A

Keep It Green Advocacy, Inc.

P.O. Box 1922  
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire  
Chief Legal Counsel & Executive Director

Email:  
kig.advocacy@gmail.com

February 15, 2022

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

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

Dear Sir or Madam:

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

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

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

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

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

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

Thank you for your kind attention.

Very truly yours,

  
Cynthia Ranck Person, Esquire

Enclosures

THE STATE OF SOUTH CAROLINA

**RECEIVED**

APPEAL FROM GEORGETOWN COUNTY

SEP 06 2022

Court of Common Pleas

**SC Court of Appeals**

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

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

v.

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

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

INITIAL APPELLANT BRIEF

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

TABLE OF CONTENTS

TABLE OF CONTENTS . . . . . PAGE i

TABLE OF AUTHORITIES . . . . . PAGE ii

STATEMENT OF ISSUES ON APPEAL . . . . . PAGE 1

STATEMENT OF THE CASE . . . . . PAGE 2

STATEMENT OF FACTS . . . . . PAGE 5

ARGUMENT . . . . . PAGE 7

    I. APPEALABLE INTERLOCUTORY ORDER . . . . . PAGE 7

    II. RESPONDENTS' LAWYER ADVOCATE/ADVISOR/MEMBER . . . . . PAGE 14

    III. APPELLANT AND TRUST NAMED AS DEFENDANTS . . . . . PAGE 15

    IV. ORDER CONFLICTS WITH LAWYER'S ADMITTANCES . . . . . PAGE 18

    V. NO FACTS FOR A CAUSE OF ACTION AGAINST APPELLANT . . . . . PAGE 21

    VI. LEGISLATIVE IMMUNITY VOIDS COMPLAINT . . . . . PAGE 25

    VII. COUNTY COUNCIL'S MOTION TO DISMISS NOT HEARD . . . . . PAGE 29

    VIII. COUNTY'S AND RESPONDENTS' STIPULATION OF DISMISSAL . . . . . PAGE 32

    IX. NO CONSTITUTIONAL ISSUES INVOLVING ORDINANCES . . . . . PAGE 34

    X. INSUFFICIENCY OF SERVICE OF SUMMONS/COMPLAINT . . . . . PAGE 35

    XI. RESPONDENTS LACK STANDING . . . . . PAGE 37

    XII. COMPLAINT LACKS A JUSTICIABLE CONTROVERSY . . . . . PAGE 40

    XIII. THIRD READING ALLEGATIONS ARE FAIRLY DEBATABLE . . . . . PAGE 42

    XIV. ORGANIZED AND COMBINED OPPOSITIONS . . . . . PAGE 47

CONCLUSION . . . . . PAGE 49

CERTIFICATE OF SERVICE . . . . . PAGE 50

## TABLE OF AUTHORITIES

| <b>Cases:</b>  | <b>Page(s)</b> |
|--|----------------|
| ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199,<br>669 S.E.2d 337, 341 (2008)  | 39             |
| Baird v. Charleston Cty., 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999)  | 39             |
| Bear Enters. v. County of Greenville, 319 S.C. 137, 141-42,<br>459 S.E.2d 883, 886 (Ct. App. 1995)   | 26, 43         |
| Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298,<br>551 S.E.2d 588, 589 (Ct. App. 2001)   | 37             |
| Bibco Corp. v. City of Sumter, 332 S.C. 45, 504 S.E.2d 112 (1998)  | 34             |
| Bob Jones Univ., Inc. v. City of Greenville, 243 S.C. 351, 360,<br>133 S.E.2d 843, 847 (1963)  | 26, 27, 35, 42 |
| Bodman v. State, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013)   | 39, 40         |
| Bogan v. Scott-Harris, 523 U.S. 44, 48-49 (1998)   | 25             |
| Brown v. Weathers, 251 S.C. 67, 160 S.E. (2d) 133 (1968)   | 8              |
| Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996)   | 41, 42         |
| Carnival Corp. v. Historic Ansonborough Neighborhood Association,<br>407 S.C. 67, 77, 753 S.E.2d 846, 851 (2014)                             | 38             |
| Campbell, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008)  | 13             |
| Carolina All. for Fair Employment v. S.C. Dep't of Labor, Licensing, &<br>Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999) | 40             |
| Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 425,<br>559 S.E. 2d 362, 364-65 (Ct. App. 2001)                          | 22             |
| Charleston Cnty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5,  |                |

|  |            |
|--|------------|
| 437 S.E.2d 6, 8 (1993)   | 16         |
| City of Rock Hill v. Harris, 391 S.C. 149, 152, 154,<br>705 S.E.2d 53, 54 (2011)                               | 34         |
| Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.,<br>371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) | 37         |
| Coverdell v. Mid-South Farm Equipment Ass'n, 335 F.2d 9, 12-13<br>(6th Cir.1964)                               | 16         |
| DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293, 296 (1981)  | 22         |
| Dunbar v. City of Spartanburg, 266 S.C. 113, 119,<br>221 S.E.2d 848, 850 (1976)                                | 43         |
| Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555,<br>658 S.E.2d 80, 85-86 (2008)                   | 13, 16, 21 |
| Felts v. Richland County, 299 S.C. 214, 383 S.E.2d 261, 262-63<br>(Ct. App. 1989)                              | 41         |
| Foster v. Taylor, 210 S.C. 324, 333, 42 S.E.2d. 531, 536 (1947)  | 28         |
| Georgetown Cty. League of Women Voters v. Smith Land Co.,<br>393 S.C. 350, 359, 713 S.E.2d 287, 292 (2011)     | 37         |
| Graham v. See State Farm Mutual Automobile Ins. Co., 319 S.C. 69,<br>459 S.E.2d 844, 845-46 (1995)             | 41         |
| Hampton v. Richland County, 292 S.C. 500,<br>357 S.E.2d 463 (Ct. App.1987)                                     | 27         |
| Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)  | 13, 16     |
| Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002)  | 41         |
| Holliday v. Holliday, 235 S.C. 246, 111 S.E. (2d) 205 (1959)   | 8          |

|   |        |
|---|--------|
| HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 635,<br>699 S.E.2d 699, 705 (Ct. App. 2010)              | 22     |
| Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333 (1977)  | 37     |
| Imbler v. Pachtman, 424 U.S. 409, 427-28 (1976)   | 26     |
| Island Car Wash, Inc. v. Norris, 292 S.C. 595,<br>358 S.E.2d 150 (Ct. App. 1987)                          | 49     |
| James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010)                                       | 42     |
| J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 166,<br>519 S.E.2d 561, 563 (1999)     | 14     |
| Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986)  | 22     |
| Knowles v. City of Aiken, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991)                                   | 35, 42 |
| LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 70,<br>370 S.E.2d 711, 713 (1988)                   | 47     |
| Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13,<br>344 S.E.2d 379, 383 (Ct. App. 1986)           | 48     |
| Lenardis v. City of Greenville, 316 S.C. 471, 472,<br>450 S.E.2d 597, 598 (Ct. App. 1994)                 | 42, 44 |
| Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136,<br>119 L. Ed. 2d 351, 364 (1992) | 37, 38 |
| McClanahan v. Richland County, 350 S.C. 433,<br>567 S.E.2d 240 (Ct. App. 2002)                            | 42     |
| McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564,<br>626 S.E.2d 884, 886 (2006)                    | 47     |
| Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 148,                                    |        |

|  |            |
|--|------------|
| 694 S.E.2d 525, 529 (2010)   | 13, 16, 17 |
| Mid-State Distributors, Inc., v. Century Importers, Inc., 310 S.C. 330,<br>426 S.E.2d 777 (1993)               | 9          |
| Mikell v. County of Charleston, 375 S.C. 552,<br>654 S.E.2d 92 (Ct. App. 2007)                                 | 25         |
| Orr v. Clyburn, 277 S.C. 536, 290 S.E.2d 804, 807 (1982)   | 41         |
| Paradis v. Charleston County School District, 433 S.C. 562, 574,<br>861 S.E.2d 774 (SC Sup. Ct. 2021)          | 47         |
| Pee Dee Elec. Coop v. Carolina Power & Light Co., 279 S.C. 764,<br>301 S.E.2d 761, 761 (1983)                  | 41         |
| Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp., 358 S.C. 460, 477,<br>596 S.E.2d 51, 60 (2004)          | 41         |
| Pendergrass v. Martin, 275 S.C. 413, 272 S.E. (2d) 172 (1980)  | 9          |
| Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230,<br>489 S.E.2d 630 (1997)                   | 34         |
| Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006)  | 47         |
| Richardson v. McGill, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979)  | 25         |
| Rochester v. Holiday Magic, Inc., 253 S.C. 147, 169 S.E. (2d) 387 (1969)                                       | 8          |
| Rush v. City of Greenville, 246 S.C. 268, 276,<br>143 S.E.2d 527, 531 (1965)                                   | 34         |
| Rushing v. City of Greenville, 265 S.C. 285, 217 S.E.2d 797 (1975)   | 27, 42     |
| Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.,<br>345 S.C. 594, 550 S.E.2d 287 (2001) | 38, 41     |

|   |        |
|---|--------|
| Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.,<br>361 S.C. 117, 120-21, 603 S.E.2d 905, 907 (2004)               | 21     |
| S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 7,<br>809 S.E.2d 223, 226 (2018)   | 42     |
| S.C. Pub. Int. Found. v. Courson, 420 S.C. 120, 125,<br>801 S.E.2d 185, 187 (Ct. App. 2017)                                   | 29     |
| Simon v. Flowers, 231 S.C. 545, 99 S.E. (2d) 391 (1957)   | 8      |
| Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 466,<br>636 S.E.2d 598, 605 (2006)                               | 8      |
| Smith v. Ashmore, 184 S.C. 316; 192 S.E. 565 (1937)   | 22     |
| Smith v. Georgetown County Council, 292 S.C. 235,<br>355 S.E.2d 864 (Ct.App.1987)   | 27, 43 |
| South Carolina Life and Accident and Health Ins. Guar. Ass'n v.<br>Liberty Life Ins. Co., 344 S.C. 436, 545 S.E.2d 270 (2001) | 43     |
| Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013)   | 16     |
| Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544,<br>627 S.E.2d 687, 689 (2006)                                     | 13     |
| Tenney v. Brandhove, 341 U.S. 367, 372 (1951)   | 25     |
| Town of Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1992)   | 27     |
| Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110,<br>662 S.E.2d 40, 41 (2008)                                  | 21     |
| Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424, 427 (1996)  | 42     |
| Waters v. South Carolina Land Resources Conservation Comm'n,  |        |

|  |  |
|--|--|
| 321 S.C. 219, 467 S.E.2d 913 (1996)  | 42   |
| WDW Props. v. City of Sumter, 342 S.C. 6, 10,<br>535 S.E.2d 631, 632 (2000)      | 14   |
| Williams v. Condon, 347 S.C. 227, 242-43,<br>553 S.E.2d 496, 505 (Ct. App. 2001) | 26   |
| <b>Federal and State Constitution and Statutes:</b>                              |  |
| U.S. Const. amend. XIV, § 1. Due Process   | 29   |
| Fed.R.Civ.P. 17(a)   | 16, 17                                     |
| Fed.R.Civ.P. 17(b)   | 16   |
| S.C. Const. art. I, § 3  | 40   |
| S.C. Code Ann. § 14-3-330  | 7, 8, 9                                    |
| S.C. Code Ann. § 6-29-720  | 44   |
| S.C. Code Ann. § 6-29-760(C)   | 40   |
| S.C. Code Ann. § 15-53-10  | 32   |
| S.C. Code Ann. § 15-53-80  | 2, 6, 10, 11,<br>15, 16, 18, 30,<br>31, 34 |
| S.C. Code Ann. § 15-53-70  | 33, 40                                     |
| <b>South Carolina Rules of Civil Procedure:</b>                                  |  |
| Rule 4(a), SCRCPP  | 2, 35, 36                                  |
| Rule 4(d), SCRCPP  | 2, 36                                      |
| Rule 5(a), SCRCPP  | 29, 37                                     |
| Rule 5(d), SCRCPP  | 2, 35, 36                                  |

|  |              |
|--|--------------|
| Rule 12(b)(5), SCRCF   | 2, 35, 36    |
| Rule 12(b)(6), SCRCF   | 2, 3, 5, 18  |
|  | 21, 23, 29   |
|  | 31, 33       |
| Rule 19(a)(2), SCRCF   | 2, 6, 10, 17 |
|  | 18, 20, 34   |
| Rule 41(a)(B), SCRCF   | 9, 32, 33    |
|  | 34, 43, 44   |
| Rule 41(b), SCRCF  | 25, 32       |
| Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules,                  |              |
| S.C. R. Prof'l. Cond. 1.8(l)   | 7, 14        |
| Rule 3.3 - Candor toward the Tribunal, S.C. R. Prof'l. Cond. 3.3                   | 18           |
| <b>Other Authorities:</b>  |              |
| The South Carolina Association of Counties   |              |
| Model Rules of Parliamentary Procedure for   |              |
| South Carolina Counties, 3 <sup>rd</sup> Ed.                                       | 43, 44       |
| Robert's Rules of Order Newly Revised 9 <sup>th</sup> Ed. and 12 <sup>th</sup> Ed. | 44           |
| Georgetown County Council Rules of Procedure                                       | 45           |
| Unpublished Op. Atty. Gen., dated March 21, 2000                                   | 44           |
| The 2021 Supplement to the 2013 Home Rule Handbook                                 | 44           |
| IV Scott, Trusts § 280 (1989)  | 16           |
| Norman J. Singer, Sutherland Statutory Construction § 46.03 (5th ed. 1992)         | 17           |

## **STATEMENT OF ISSUES ON APPEAL**

1. Whether the Lower Court erred in finding that the Respondents' Complaint, fairly read, constituted a cause of action, where none was stated or existed, against the Appellant?
2. Whether the Lower Court erred in finding a fairly read cause of action against the Appellant when the Respondents' lawyer stated in the motion hearing Transcript that "we don't think that he did something wrong"?
3. Whether the Lower Court erred in not finding that the Appellant should be a party-in-interest or an involuntary plaintiff as opposed to a defendant?
4. Whether the Lower 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 Respondents?
5. Whether the Lower Court erred in not dismissing the Respondents' Complaint in its entirety based on the Stipulation of Dismissal which dismissed any and all claims against the defendants, County Council and elected members?
6. Whether the Lower Court erred in not dismissing the Respondents' Complaint with no injury-in-fact that was concrete particularized, imminent or actual and lacking standing?
7. Whether the Lower Court erred in continuing the litigation against the Appellant and Georgetown County with no remaining claims after the stipulated dismissal of any and all claims against the County Council and elected members?
8. Whether the Lower Court erred in allowing the Respondents' lawyer to serve in the role of advocate and advisor in authoring the Order on Appeal?
9. Whether the Lower Court erred in naming and considering the Appellant's Trust as a Defendant in the Court Docket and Order on Appeal, when a trust cannot sue or be sued?

## STATEMENT OF THE CASE

On January 7, 2022, the Respondents 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 Trustee of the Benjamin F. Goff 2004 Revocable Trust, questioning the validity of Ordinances 21-24 and 21-25. Rather than making the Appellant a party-in-interest in accordance with S.C. Code Ann. § 15-53-80, the Appellant, Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust, the applicant and property owner, was made a Defendant. Although named as a Defendant in the complaint, the Appellant 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), SCRCPP.

Despite knowing the Appellant’s residential address, the Appellant was not served with the Summons and Complaint pursuant to Rule 4(a), SCRCPP and Rule 12(b)(5), SCRCPP. The Appellant appeared pursuant to Rule 4(d), SCRCPP, voluntary appearance is equivalent to personal service. Before filing a proof of service with the Court as required by Rule 5(d), SCRCPP, the Respondents’ lawyer initiated a serving through the Secretary of State’s Office to belatedly serve the Summons and Complaint and provide proof of service to the Lower Court.

A Rule 12(b)(6), SCRCPP Motion to Dismiss Benjamin F. Goff, Sr., Trustee (Appellant) as a Defendant was filed on January 25, 2022. In addition to the failure to state a cause of action against the Appellant, the Complaint lacked a justiciable controversy and injuries-in-fact to have standing. The Appellant’s Motion to Dismiss the Appellant as a Defendant was heard, May 19, 2022. On or about May 25, 2022, the Appellant was informed by the Lower Court in an email that the motion was denied and a fair reading indicated a cause of action against the Appellant as a Defendant and directed the Respondents’ lawyer to prepare an Order for the Lower Court.

The Appellant Motion to Dismiss him as a Defendant was heard on May 19, 2022, in which he alleged that the Complaint failed to meet the requirements of the Uniform Declaratory Judgment Act (UDJA) and pursuant to Rule 12(b)(6), SCRPC the Respondents' Complaint does not state any facts that constitute a cause of action against the Appellant. However, in the Order on Appeal, dated June 3, 2022, the Appellant's constitutional rights to apply to rezone private property, has been determined by the Lower Court's Order to remain as a defendant with a fairly read and unstated cause of action in the Respondents' Complaint.

The allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected members, specifically, for violations of the South Carolina Comprehensive Planning Enabling Act, the Comprehensive Land Use Plan and the County Council Rules of Procedure in the approval and adoption of the Appellant's ordinances. The Respondents are seeking to have the Lower Court render the Appellant's ordinances "null and void" because of an alleged violation of the Georgetown County Council Rules of Procedure.

The Respondents' lawyer and the lawyer for the Georgetown County Council agreed to a Stipulation of Dismissal that dismissed any and all claims without prejudice against the Georgetown County Council and elected members as Defendants in their capacities as elected members of the Georgetown County Council. In essence, the Stipulation of Dismissal was an admittance that the Georgetown County Council and elected members' approval and adoption of Ordinances 21-24 and 21-25 was proper and consistent with County Council Rules of Procedure, Roberts Rules of Order and the Model Rules of Parliamentary Procedure for South Carolina Counties, Third Edition.

Additionally, it was an admittance that the legislative decisions of County Councils are not reviewable by the court. Without the County Council and elected members, as Defendants,

the County's and Respondents' lawyers seek to continue the litigation based on alleged constitutional violations. In essence, the Lower Court has concluded that a "fairly read" cause of action exists against the Appellant for the submitted application to rezone unimproved land, and the Appellant should remain as a Defendant without the County Council and elected members. A "fair reading" of the Respondents' Complaint filed in this litigation would indicate that the Appellant should not be a Defendant. Absent the Georgetown County Council and elected Council members, the Appellant will suffer substantial injury and irreparable harm.

On October 26, 2021, a Third Reading was conducted for Ordinance Nos. 21-24 and 21-25. The passage of the ordinances required the reliance on "The South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, Third Edition (Model Rules). This stemmed from a council member's decision at the Third Reading to abstain from voting on the referenced ordinances on which he previously provided a "yes" vote for passage at the Second Reading on August 24, 2021, stating the absence of a non-required plan.

On legal advice from the County Attorney the ordinances were passed based on "majority of members present and voting", as defined in the Model Rules. Also, other factors allowed the ordinances to pass under "majority of members present" based on the Georgetown County Council Rules of Procedure. According to the Model Rules, 2013 Home Rule Handbook, 2020 and 2021 Supplement and County Council Rules of Procedure, the referenced ordinances passed by "majority of members present and voting" and the "valid" majority of members present. Under state law and rules, ordinances adopted by majority vote at the third reading are in effect. The ordinances were codified on November 9, 2021 after allowing the abstaining member on October 26, 2021 to change his vote after a majority approved motion. These actions were in accordance with proper legislative rules and procedures and do not rise to constitutional or

administrative violations and with respect to Ordinances 21-24 and 21-25, they were legitimate legislative actions. Based on settled case law, the legislative actions of the County Council with regard to approval of ordinances are immune from judicial intervention. However, the Lower Court, in denying the Appellant's Motion to Dismiss him as a Defendant, claims a "fairly read" cause of action existed against the Appellant in the Order, dated June 3, 2022 when any and all claims against the County Council and elected members had been dismissed. The Respondents have stated in writings to the Appellant that her clients have no claims against the Appellant.

The Respondents' Complaint was contrived to overcome in the court their failed opposition to the approval and adoption of Ordinances 21-24 and 21-25. It is the furtherance of a civil conspiracy against the Appellant. In that, the Lower Court decided in the Order that the Appellant should remain a Defendant and that a cause of action exists against him in the case, the Appellant decided to appeal the Order denying the Appellant's Motion to Dismiss him as a Defendant and finding a fairly read cause of action to the Appellate Court on June 10, 2022.

#### **STATEMENT OF FACTS**

1. There are no facts stated in the Respondents' Complaint that constitutes a fairly read cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCF. See *Complaint* pp. 9 - 33.
2. A fair reading of all pleadings and exhibits filed in this legal action would not support a cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCF. See *Court Docket p. 1*.
3. Statements made by the Plaintiffs' lawyer in an Email message, a Letter and Transcript on Record summarily states that her clients have no specific claims against the Appellant. See *Email p. 1* (Feb 7, 2022); *Letter p. 1* (Feb 15, 2022); *and Transcript p. 12*.
4. Respondents' Complaint does not state any factual wrongdoing by the Appellant in the procedural approval and adoption of Ordinances 21-24 and 21-25. See *Complaint p. 9*.

5. The Respondents' Complaint did not allege any constitutional violations regarding the approval and adoption of Ordinances 21-24 and 21-25. See *Complaint pp. 9 - 33*.
6. The Appellant's rezoning application, designated as Case Number REZ-21-28323, met all requirements and was accepted by the Planning Department, recommended for approval by the Planning Commission and adopted into ordinances by the Georgetown County Council. See *Rezoning Application and Planning Department Report to Georgetown County Planning Commission pp. 1 - 4* (Jul 15, 2021).
7. The allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members, specifically, for violations the South Carolina Comprehensive Planning Enabling Act and the Comprehensive Land Use Plan. See *Complaint pp. 9 - 33*.
8. The Stipulation of Dismissal between the Respondents' and Georgetown County lawyers dismissed any and all claims against the Georgetown County Council and elected members and there are no remaining claims. See *Stipulation of Dismissal p. 1 - 2* (May 5, 2022).
9. Ordinances 21-24 and 21-25 was approved and adopted in accordance with County Council Rules of Procedure, Roberts Rules of Order, 9<sup>th</sup> Edition and the Model Rules of Parliamentary Procedure for South Carolina Counties, Third Edition on October 26, 2021 and codified on November 9, 2021. See *County Council Minutes pp. 7 and 2* (Oct 26, 2021 and Nov 9, 2021).
10. The Appellant's Trust has been inadvertently designated as a Defendant in the Court Docket and in the Order on Appeal. See *Court Docket p. 1 and Order on Appeal pp. 1 - 5*.
11. Pursuant to Rule 19(a)(2), SCRCPP, the Appellant 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), SCRCPP and Uniform Declaratory Judgment Act, (UDJA)*.

12. The Order on Appeal does not state any allegation in the Respondents' Complaint that fairly read can be construed as a cause of action against the Appellant. See *Complaint* pp. 9 - 33.

13. The Respondents' lawyer, in authoring the Order on Appeal, served in the role of advocate and advisor in an adversarial proceeding. See *Rule 1.8(l), S.C. Rules Professional Conduct*.

14. The Respondents submitted a Petition containing more than one thousand (1,000) plus signatures of residents opposing Ordinances 21-24 and 21-25. See *Complaint* p. 18.

15. The Respondents' Affidavits do not state that they were deprived of property or due process of law or any constitutional guaranteed rights. See *Complaint* pp. 36 - 62.

## ARGUMENT

### I. APPEALABLE INTERLOCUTORY ORDER

**Standard of Review: The Order on appeal 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.**

**Citations:** In accordance with S.C. Code Ann. § 14-3-330 - Appellate jurisdiction in law case states in part: The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

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.

**Discussion:** An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a). An interlocutory order is appealable under subsection (1) only if it involves the merits, that is, "finally determines some substantial matter forming the whole or a part of some cause of action or defense...." See *Henderson v. Wyatt*, 8 S.C. 112 (1877). Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer.

The threshold issue is whether this Court of Appeals will consider this interlocutory appeal. This interlocutory appeal of the Lower Court Order is based on the grounds that it involves the merits of the legal action and the Appellant will suffer substantial harm to rights and prevents a judgment from which an appeal might be taken, if the order is not corrected until the case is over pursuant to S.C. Code Ann. § 14-3-330(1) and S.C. Code Ann. § 14-3-330(2)(a).

The right to appeal in this case is controlled by S.C. Code Ann. § 14-3-330 (1976 & Supp.1994). Only two of its provisions are potentially applicable to this matter. First, § 14-3-330(1) allows the appeal of an interlocutory order "involving the merits." To involve the merits, the order must "finally determine some substantial matter forming the whole or part of some

cause of action or defense...." See *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993).

Under S.C. Code Ann. § 14-3-330(2), an order which affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken is immediately appealable. An intermediate/interlocutory order is immediately appealable only if it involves the merits of the case or affects a substantial right. S.C. Code Ann. § 14-3-330 (1976). Such orders are reviewable after final judgment. See *Pendergrass v. Martin*, 275 S.C. 413, 272 S.E. (2d) 172 (1980). Moreover, this order effectively discontinues the lawsuit against the County Council and elected members and substitutes the Appellant, thus bringing the order under paragraph S.C. Code Ann. § 14-3-330(2)(a). The Order on appeal in this case, effect the merits and prevents a proper judgment from being rendered in the action from which an appeal might to taken, and the Appellant cannot seek review of the current order from the Lower Court.

The 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. That motion was apparently resolved with an agreement to file a Stipulation of Dismissal which dismissed any and all claims against the County Council and elected members with none remaining. The Stipulation of Dismissal did not involve and was not signed by the Appellant. All allegations in the Respondents' Complaint were directed at the County Council and elected members.

A letter, dated May 4, 2022, was sent to the Lower 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 the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-80.

The Appellant'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 appeal, the Appellant is challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Complaint. Effectively, the Lower 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, the Appellant 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 *Stipulation of Dismissal p. 1 - 2 (May 5, 2022)*.

In filing the Motion to Dismiss, the Appellant's sought the removal of the Trustee as a Defendant and to be designated a party-in-interest as required by the UDJA. Further, the Appellant's Motion to Dismiss addressed the inadequacy and futility of the Respondents' Complaint against the County Council because the validity of the Appellant's ordinances was being challenged. In the Complaint and Respondents' 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. The Appellant is a party-in-interest and the Respondents' lawyer clearly recognized that in the opposing motion and in an email, letter and the transcript, stating that her clients have no claims against the Appellant. See *Appellant's Motion. to Dismiss pp. 1 - 5; and Memo in Support Motion to Dismiss pp. 1 - 20*.

Respondents' lawyer states in an email that "my clients have no specific claims (causes of action) against you (Appellant), 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 Appellant's Trust is arguably a party-in-interest." In that only the Appellant is named as a Defendant in the Complaint, it translates into no claims against the Appellant's or Trust. For all legal purposes, the Appellant is owner of all assets within the trust; therefore, if the trust is definable as a party-in-interest, the Appellant should be a party-in-interest.

The Appellant's Trust, as a legal entity, was not sued and cannot be sued. The Respondents' lawyer views the Appellant and Appellant's Trust as independent actors, as does the Lower Court in the docket, and conflates them in the Order on Appeal. This is an error in the interpretation of federal and state laws, an abuse of discretion by the Lower Court and a violation of professional conduct by the Respondents' lawyer. *See Email p. 1* (Feb 7, 2022); *Letter p. 1* (Feb 15, 2022); *and Transcript p. 12*.

The Lower Court apparently interpreted the Appellant's motion as only to dismiss the entire Complaint and failed to recognize the specific request of removing the Appellant as a Defendant and to designate him as party-in-interest or involuntary plaintiff. Respondents' lawyer, in authoring the Order on appeal, capitulated to the Lower Court's guidance which sanctioned the Appellant as a Defendant with an implied fairly read cause of action. The Respondents' Complaint was solely directed at the County Council with no stated allegations against the Appellant, hence the fairly read statement. In viewing the Appellant as a defendant, the Lower Court abused its discretion with regards to the Section 15-53-80 and the Complaint.

The Lower Court Order, which was authored by the Respondents' lawyer, contradicts statements made by the lawyer in an email missive to the Appellant, dated February 7, 2022. The

Respondents' 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. However, there was an exception for similar rezoning ordinances adopted concurrently with the Appellant's ordinances. This Order raises questions of entitlement to equal protection under the law and whether the Appellant has any rights the Lower Court is bound to respect.

The interlocutory order involves the merits of the case and will affect the substantial rights of the Appellant in this litigation and in effect determine the outcome and prevent a judgment from which an appeal might be taken. It is obvious from statements in the unheard County Council's Motion to Dismiss that there is a tacit agreement between the County and Respondents' lawyers to continue the litigation that does not inure to the benefit of the Appellant. Given that County Council has legislative immunity that prevents arbitrary judicial intervention, this case should be terminated by the Court of Appeals.

With all allegations and claims in the Respondents' Complaint directed at the County Council and elected members having been dismissed, there are no remaining claims 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. The Appellant cannot defend against a phantom "fairly read" cause of action that is unstated and without a factual evidentiary basis. See *Complaint pp. 33 - 62*.

Contrary to the statement in the Stipulation of Dismissal, there are no remaining claims to adjudicate. There cannot realistically be any claims against the County since they have been dismissed against the County Council and elected members. The Appellant, who should not be a defendant, has been saddled with an unstated "fairly read" cause of action by the Lower Court

where none exists in the Respondents' Complaint. This Order on Appeal is tantamount to a final judgment against the Appellant from which an appeal will be difficult.

This Interlocutory Order denying the Appellant's motion to dismiss him as a defendant and finding a fairly read unstated cause of action should be reviewed as an abuse of discretion. See *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." See *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008).

In accordance with the plain language of the Uniform Declaratory Judgment Act, Section 15-53-80, the Appellant 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) (citation omitted).

"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. *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 the Appellant should be a Defendant and a fairly read and unstated cause of action exists is a question of law. An appellate court may decide questions of law with no particular deference to the trial court. In re *Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008) (citation omitted). "When an appeal involves stipulated or undisputed facts, an

appellate court is free to review whether the trial court properly applied the law to those facts.” See *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court is not required to defer to the trial court’s legal conclusions. See *J.K. Constr., Inc. v. W. Carolina Reg’l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

## **II. RESPONDENTS’ LAWYER ADVOCATE/ADVISOR/MEMBER**

**Standard of Review: This is an adversarial litigation by the Keep It Green organization and its members and associates against the Appellant.**

**Citation:** In Section 1,8(1), 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)*.

**Discussion:** The Respondents’ lawyer, a current or former board member and/or president of Keep It Green, Inc, a Respondent in the Complaint. The Respondents, in the compulsory Counterclaim Complaint, are alleged to have engaged in a civil conspiracy against the Appellant. See *Argument XIV, Infra*. The Lower Court judge’s clerk, in an email, dated May 25, 2022, requested the Respondents’ lawyer to prepare the Order for the motion hearing Judge. The Respondents’ lawyer, Cynthia Ranck Person, former chief executive officer and current board member of Keep It Green, Inc., represents the Respondents. 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 the Appellant’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 *Complaint pp. 9 – 33*. The Respondents' lawyer as an advocate and was invited to be an advisor by the trier of fact in preparing an Order that conflicted with previous admittances and failed to inform the court of the conflict, to the Appellant's knowledge, when solicited to prepare the Order on Appeal. See *Email p. 1* (May 25, 2022).

The Order, as written by Respondents' lawyer conflicted with her written and transcript statements stating that the Respondents had no claims against the Appellant and his presence was necessitated by the Declaratory Judgment Act. However, the Act does not mandate the designation of the parties as defendants; whereas, Rule 19(a)(2) states that in a proper case the Appellant should be an involuntary plaintiff to protect his interest. Additionally, the Order does not state the findings and directives as provided in the email from the judge's clerk; rather, it repeats of the Respondents' Motion in Opposition and willing concurs that the Appellant is a Defendant with an unspecified cause of action. See *Email p. 1* (Feb. 7, 2022); *Letter p. 1* (Feb. 15, 2022); *Transcript p. 12* (May 19, 2022); and *Email p. 1* (May 25, 2022).

The Order, authored by the Respondents' lawyer, as advocate, advisor, client and Keep It Green member, resulted in the Lower Court applying judicial authority to an adversarial statement of the case. Also, the Stipulation of Dismissal had dismissed any and all claims in the Complaint. This is an adversarial case in which the advocate appears to have assumed the role of advocate and advisor to the trier of fact(s). It is a clear and unambiguous violation of Rule 1.8(1).

### **III. APPELLANT AND TRUST NAMED AS DEFENDANTS**

**Standard of Review: The Uniform Declaratory Judgment Act does not compel a party with an interest to be named as a defendant as opposed to a party-in-interest. The intent of S.C. Code Ann. § 15-53-80 is to inform and allow a potentially affected party to protect an interest that might be impacted in a legal action against other defendants.**

**Citations:** S.C. Code Ann. § 15-53-80 states in part that:

“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.”

**Discussion:** In accordance with Fed.R.Civ.P. 17(a), the trustee, as the legal title holder of the trust’s property, is generally the real party-in-interest. Under Federal Rule of Civil Procedure 17(b), the capacity of a trust to sue or be sued is determined by the laws of the state where the court is located. See *Fed.R.Civ.P. 17(a) and (b)*. The overwhelming weight of authority holds that a trust, under state law, does not have the capacity to sue or be sued in its own name. See *Coverdell v. Mid-South Farm Equipment Ass’n*, 335 F.2d 9, 12–13 (6th Cir.1964) and *IV Scott, Trusts* § 280 (1989). Also see *Court Docket Case Parties p. 1*.

“An abuse of discretion occurs when the trial court’s decision is based upon an error of law or upon factual findings that are without evidentiary support.” See *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” See *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). “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) (citation omitted). If a statute is ambiguous, the courts must construe its terms. See *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Id.* at 128, 750 S.E.2d at 63 (citation omitted).

“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” See *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530 (quoting *Hodges v.*

*Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "If a statute's terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense." *Id.* (citation omitted). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed. 1992)). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.*

The Appellant, the sole trustee of the Appellant's Trust, for all legal purposes is the owner of all assets held. Under Fed.R.Civ.P. 17(a), the trustee, as the legal title holder of the trust's property, is generally the real party in interest with the power to prosecute or defend actions in the name of the trust. Accordingly, the Appellant's Trust should not be designated as a Defendant. In this litigation, the Interlocutory Order leaves the Appellant as a Defendant with an implied cause of action to defend claims specifically filed against the Georgetown County Council and elected members, all of whom have been dismissed from the lawsuit as Defendants.

The Appellant's Motion to Dismiss was predicated on being dismissed as a Defendant and designated as a party-in-interest in accordance with the Uniform Declaratory Judgment Act, Section 15-53-80 or Rule 19(a)(2), SCRPC which states that in a proper case the Appellant should be an involuntary plaintiff. It is an abuse of discretion and a disregard for the plain language of the Uniform Declaratory Judgment Act for the Appellant to remain designated as a Defendant. Maintaining the Appellant as a Defendant, naming the Appellant's Trust as a Defendant and creating a fairly read unstated cause of action against them is an abuse of discretion based upon errors of law and findings that are without factual evidentiary support. *See Order on Appeal pp. 1 – 6; Court Docket p. 1.*

#### IV. ORDER CONFLICTS WITH LAWYER'S ADMITTANCES

**Standard of Review: The Order on Appeal conflicts with written and recorded transcript statements and admittances made by Respondents' lawyer.**

**Citations:** 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), 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.”

**Discussion:** The Lower Court Order that was authored by the Respondent's lawyer and approved by the motion hearing judge. However, the Lower Court Order is inconsistent with the admitted facts and the intent of the Respondents' Complaint for joining the Appellant, which was required by S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act, which required he be made a party-in-interest. Pursuant to 19(a)(2), SCRPC, the Appellant should have been joined as an involuntary plaintiff as opposed to a Defendant. There was no wrongdoing by the Appellant stated in the pleadings; therefore, he should not have been named as a Defendant. Absence from the Order on Appeal are the specific guidance, contained in the directions provided to the Respondents' lawyer, from by the judge's clerk. The Lower Court 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."

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Respondents' 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."

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Respondents' 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."

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Respondents' 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 Transcript Page 12, Lines 10-15.

Respondents' Complaint does not state any wrongdoing by the Appellant in the procedural approval and adoption of the ordinances. Even though, the Appellant's Trust is not individually listed as a Defendant in the Respondents' Complaint, it has been defined as a Defendant by the Court. The Appellant 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.

The application met all requirements and was accepted by the Georgetown Planning Department, recommended for approval by the Planning Commission and adopted into ordinances by the County Council. Consequently, the Order on Appeal, as crafted by the Respondents' lawyer and approved by the Lower Court, does not reflect the case facts and admittances made in the written statements to the Appellant and the transcript in court. In accordance with Rule 19(a)(2)(i), SCRCF, the Appellant should be an involuntary plaintiff.

Whereas, the Uniform Declaratory Judgment Act mandates that all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Consequently, the Appellant should have been designated and as involuntary plaintiff or party-in-interest. The Appellant's motion was misconstrued as a motion to dismiss the 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 Respondents' lawyer. See *Email p. 1 (Feb 7, 2022)*; and *Letter p.1 (Feb 15, 2022)*.

It is disingenuous and a violation of professional conduct for the Respondents' lawyer to prepare an Order that defines the Appellant as a Defendant when the lawyer has stated otherwise in written communications. The Lower Court should have dismissed the Respondents' Complaint in its entirety as opposed to implying a cause of action against the Appellant to prolong this case. The unwillingness the Lower Court to redesignate the Appellant 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.

Any and all averments by the Appellant to dismiss the Complaint in its entirety were based on the lack of standing, a justiciable controversy and to protect his interest as a required party who was likely to be substantially harm by the litigation. In that any and all claims have been dismissed against the County Council and elected members, the Order on Appeal has targeted the Appellant with an unspecified cause of action. Having dismissed the County Council and elected members, the Respondents' lawyer, as the author, has disingenuously used the Order to support their Complaint and redirect the litigation towards the Appellant as a Defendant with an implied, unstated and unsupported cause of action. Absence the County Council and elected members, there are no remaining claims or defendants other than the Appellant.

#### **V. NO FACTS FOR A CAUSE OF ACTION AGAINST APPELLANT**

**Standard of Review: As required under Rule 12(b)(6), the complaint does not state any cause of action against the Appellant or any facts that can be construed as a cause of action against the Appellant and the Respondents' lawyer admitted in written statements and the transcript that her clients have no claims against the Appellant.**

**Citations:** The Appellate Court may review questions of law and abuse of discretion.

Rule 12(b)(6), SCRPC states as a defense, in law or fact to a cause of action: "failure to state facts sufficient to constitute a cause of action" should dismiss a complaint.

"An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." See *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008).

"Upon review of an action in equity, this Court may make factual findings based on its own view of the preponderance of the evidence." See *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 120-21, 603 S.E.2d 905, 907 (2004).

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. See *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

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

Nowhere, in the Respondents' Complaint is there any allegations of wrongdoing by the Appellant. The Respondents' lawyer has stated in an email message, letter and the transcript that her clients have no specific claims against the Appellant. "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, the Appellant was named as a Defendant in the Summons and Complaint, Court Docket and Order on Appeal. It is inconceivable that a "fair reading" of the Respondents' Complaint would conclude that a cause of action exists against the Appellant. With the previous admittances of no claims against the Appellant, the motion decision and Order by the Lower Court contradicts the reality, admitted facts and evidence in the case.

The Appellant only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. The application met all requirements and was accepted by the Planning Department, recommended for approval by the Planning Commission and adopted into ordinances by the Georgetown County Council.

In deciding a motion to dismiss, all pleadings are to be construed in a light most favorable to the plaintiff; however, in this instant complaint, the alleged facts by the Respondents are speculative conclusions and contrived evidentiary facts. The Respondents' Complaint does not state any facts that constitutes a cause of action against the Appellant as required by 12(b)(6), SCRPC. All allegations of wrongdoing in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members along with a request to nullify and void the Ordinances 21-24 and 21-25. Having stipulated to dismiss all claims against the County Council and elected members, the Appellant has been left as a party regardless of designation. On April 11, 2022, the lawyer for the County Council and elected members filed a Motion to Dismiss the Complaint based on legislative immunity relating 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 *County's Motion to Dismiss pp. 1 – 2.*

A Letter to Court, dated May 4, 2022, 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 Respondents' Complaint. With the real Defendants exonerated and protected by legislative immunity, this left the Appellant as the sole Defendant in a legal action in which he did nothing wrong. Absent the claims against the County Council, the Complaint is void. The Lower Court rejected the Respondents' lawyer transcript statement of no claims against Appellant. With the dismissal of the County Council and elected members, the Respondents should not be allowed to continue this litigation against the Appellant for exercising a constitutional right to petition for rezoning of private property. See *Transcript p. 12.*

A patently false and disingenuous statement in the Respondents' Complaint, Paragraph 33 states: "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.” This only statement of implication cannot credibly be seen as a “fairly read” cause of action against the Appellant. With regard to “need” the Proposed Zoning Amendment application states: “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.” There was no requirement to provide a “need” justification in or along with the application. As understood by all applicants, the burden of proving the “need” to the approving authorities is the sole responsibility of the applicant during the required public readings. See *Answer pp. 4 – 5*.

The Appellant submitted supporting letters to the Planning Department, Planning Commission and the County Council members in advance of each reading on the ordinances. The letters outlined the compatibility of the rezoning request with the current and future proposed Comprehensive Land Use Plan as required by the S.C. Comprehensive Planning Enabling Act. The ordinances were approved and adopted because the rezoning request was in concert with the goals and objectives of Planning Department, Planning Commission, the County Council and the County’s Future Land Use Map. The Appellant had the right and responsibility to support the approval and adoption of the ordinances as did the Respondents to oppose them within the bounds of civil discourse. Having loss at the County Council, the Respondents sought judicial intervention to void and nullify the ordinances based on false statements. See *Letters, Jul 15, 2021 pp. 1 - 2; Aug 4, 2021 pp. 1 – 4; Aug 24, 2021 pp. 1 - 3; and Oct 26, 2021 pp. 1 - 3*.

Other than as property owners exercising a constitutional right to rezone private property in accordance with the County rules, the Respondents’ Complaint did not state any facts that constitutes a cause of action against the Appellant. The Appellant should not be accountable for

the action of the Georgetown County Council, an elected legislative body having legislative immunity against judicial intervention into properly adopted ordinances. The Complaint is devoid of facts supporting a claim against Appellant and/or the County Council. Through the Stipulation of Dismissal, the Respondents have conceded to dismiss any and all claims and that the court cannot provide judicial relief because the County Council has legislative immunity with regard to the passage of the challenged ordinances. In the interest of justice, this Complaint should be dismissed in its entirety and any future litigation against Georgetown County exclude any effort to nullify the Ordinances 21-24 and 21-25.

#### **VI. LEGISLATIVE IMMUNITY VOIDS COMPLAINT**

**Standard of Review: The Lower 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.**

**Citations:** Pursuant to Rule 41(b), Involuntary Dismissal: Non-suit: The complaint should be dismissed, as requested, 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).

**Discussion:** 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).

S.C. Supreme Court: “The County Council’s decision was not arbitrary or capricious, as required by the applicable scope of review. See *Bear Enters. v. County of Greenville*, 319 S.C. 137, 141-42, 459 S.E.2d 883, 886 (Ct. App. 1995) (stating the reviewing court will focus on whether the municipal zoning authority’s decision was arbitrary or capricious). County Council reviewed the Planning Department report and the Planning Commission recommendation and minutes and received a public briefing, with questions and answers, for the second and third readings. Accordingly, County Council’s decision was neither arbitrary nor capricious.”

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 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).

The lawyer for Georgetown County and County Council filed a Motion to Dismiss the Plaintiffs' Complaint citing case laws that clothed the County Council with legislative immunity relating to enacting the challenged ordinances. Subsequent to the scheduled court hearing, the lawyers agreed to a Stipulation of Dismissal to dismiss the claims against the County Council and elected members as Defendants in the case. This was an affirmation by the Respondents that the approved and adopted ordinances were valid and beyond judicial intervention. The County Council and elected members' Motion to Dismiss was scheduled in the Court Roster for May 19, 2022, but was not heard by the Lower Court.

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 mandamas to perform a legislative duty or function.").

Accordingly, the Respondents' 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 Respondents in this litigation. Consequently, the Respondents' 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.

#### **VII. COUNTY COUNCIL'S MOTION TO DISMISS NOT HEARD**

**Standard of Review: Georgetown County filed a Rule 12(b)(6) Motion to Dismiss the Complaint in its entirety that was scheduled and not heard by the Lower Court; thereby, preventing a fair and necessary adjudication that should have ended the litigation and denying the Appellant procedural due process under the Fourteenth Amendment.**

**Citation:** In not hearing the County's Motion to Dismiss, the Appellant'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.

**Discussion:** The County's Motion to Dismiss the Respondents' 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 Respondents' lawyers. As stated in County's Rule 12(b)(6), SCRCF Motion to Dismiss, a complaint should be dismissed for the "failure to state facts sufficient to constitute a cause of action. *See County Motion to Dismiss p. 1 - 2 (April 11, 2022).*

The County's lawyer sent and filed a letter to the Honorable Judge Benjamin H. Culbertson 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. The Appellant was not a part of the discussion or agreement and was not served with the filings as required by Rule 5(a), SCRCF.

In lieu of proceeding with the Motion to Dismiss, the County and Respondents' lawyers apparently agreed in the Stipulation of Dismissal to dismiss any and all claims against the County Council and elected members and stated that they are not necessary parties under S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act. The Stipulation of Dismissal, which effectively removed the County Council and elected members as Defendants should not have prevented the Lower Court from hearing and ruling on the County Council's Motion to Dismiss. In essence, by not hearing the motion, the Appellant was denied due process and equal protection and has incurred a substantial risk of irreparable injury and 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 Respondents' Complaint in its entirety. Absence, a hearing and oral argument, the Appellant was denied his constitutional rights to due process of the law as required by the Fourteenth Amendment.

In the so-called resolution of the County's Motion to Dismiss and the agreed Stipulation of Dismissal, the County and Respondents dismissed without prejudice any and all claims against the Georgetown County Council and elected members. All of the allegations in the

Respondents' Complaint were directed at the County Council for approving and adopting the challenged ordinances. Having dismissed all claims against the County Council, the Respondents' Complaint became futile and moot. Therefore, neither the Appellant nor the County should continue as defendants in this action. The Appellant 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 Respondents' Complaint to void and nullify the Appellant's ordinances.

The S.C. Supreme Court has opined that county ordinances are not challengeable unless they are arbitrary and capricious. Additionally, the appellate courts have stated that controversies that are "fairly debatable" are not ripe for judicial intervention. With regard to the ordinances, the Respondents' Complaint alleges a violation of the County Council Rules of Procedure and those allegations are fairly debatable. See *Argument XIII, Infra*.

In lieu of challenging the County's Motion to Dismiss, the Respondents 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 Respondents' Complaint did not allege or specify any constitutional issues, but rather an administrative violation of the County Council Rules of Procedure. The Lower 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 Respondents 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 Appellant ordinances as opposed to those approved and adoption concurrently, before and after. If heard and ruled on by the Lower 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.

#### **VIII. COUNTY'S AND RESPONDENTS' STIPULATION OF DISMISSAL**

**Standard of Review: The Appellant was not a party to the agreement or informed regarding the Respondents and County Council lawyers' Stipulation of Dismissal and was not requested to sign the Stipulation of Dismissal at any time.**

**Citation:** Rule 41(a)(B), SCRCF 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), SCRCF states in part: Involuntary Dismissal: Non-suit, Effect Thereof; For failure of the plaintiff to prosecute and comply with these rules.

**Discussion:** A Stipulation of Dismissal pursuant to Rule 41, SCRCF between the County Council's and Plaintiffs' lawyer was filed on May 5, 2022, states that "The parties hereby stipulated, pursuant to Rule 41, SCRCF, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of the Georgetown County Council, in the above-captioned matter. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. Seq."

The Respondents' 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 Respondents' Complaint directed at the County Council and elected members, there are no remaining claims to litigate against the County or the Appellant. See *Stipulation of Dismissal p. 1 – 2* (May 5, 2022).

The Stipulation of Dismissal appeared predicated on Georgetown County and Respondents continuing the Complaint without the County Council and elected members to further litigate the purported constitutionality of the ordinances as implied in the County lawyer's Motion to Dismiss. With the Stipulation of Dismissal, the County lawyer's Motion to Dismiss was scheduled but not heard on May 19, 2022. In that the County and Appellant 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 Respondents' 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 Respondents' lawyer and the County Council's lawyer, submitted to the Court on May 5, 2022, essentially voided the Respondents' Complaint in accordance with settled case laws. This was an admittance of the lack of a justiciable controversy pursuant to S.C. Code Ann. § 15-53-70 and the futility of any and all claims to void and nullify the challenged ordinances. The Respondents effectively accepted the unquestioned validity of the ordinances and in fact, the futility of Complaint. It was exculpatory with respect to Appellant and ordinances.

The dismissal of the Georgetown County Council and elected members, at whom the allegations in the Complaint are directed, voided all allegations of procedural violations and

protects the validity of the Ordinances 21-24 and 21-25. Also, the Respondents have dismissed any and all claims against County Council and elected members and there are no remaining claims. This was tantamount to voiding all allegations regarding the approval and adoption of the ordinances; thereby, ending the Respondents' Complaint in its entirety. With the acceptance of the Stipulation of Dismissal, there are no remaining claims to prosecute; therefore, pursuant to Rule 41(b), SCRCP it should have been involuntarily dismissed as a non-suit in the Lower Court.

### **IX. NO CONSTITUTIONAL ISSUES INVOLVING ORDINANCES**

**Standard of Review: There are no allegations or claims in the complaint or statements in the affidavits or pleadings that the Respondents were deprived of property, due process of law or any constitutional rights of the United States or South Carolina.**

**Citations:** S.C. Code Ann. § 15-53-80, Parties, states in part:

“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.”

“[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).

**Discussion:** S.C. Code Ann. § 15-53-80 of the Uniform 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 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).

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 Respondents' Complaint did not allege deprivation of property or due process law violations or any challenge to the constitutionality of the ordinances. See *Complaint pp. 26 – 33; and Transcript pp. 1 - 17.*

#### **X. INSUFFICIENCY OF SERVICE OF SUMMONS/COMPLAINT**

**Standard of Review: The Respondents had the proper mailing and physical address of the Appellant and failed to properly or timely served the Summons and Complaint as**

**prescribed by Rule 4(a), SCRPC or file proof of service as required by Rule 5(d), SCRPC; therefore, an insufficiency of service of process in violation of Rule 12(b)(5), SCRPC.**

**Citations:** The service of a Summons and Complaint must adhere to the following rules:

Rule 4(a), SCRPC Summons: Issuance, states in part that “Copies of the original summons shall be served upon each defendant”; Rule 12(b)5, states: Insufficiency of service of process; and Rule 5(d), SCRPC: Filing, states in part that “The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.

Rule 4(d), Personal Service, states in part that “Voluntary appearance by defendant is equivalent to personal service”.

**Discussion:** Specifically, the Respondents’ lawyer failed to serve the process as required under Rule 4(a), SCRPC, failed Rule 12(b)(5), SCRPC and to file proof of service under Rule 5(d), SCRPC after filing the Summons and Complaint on January 7, 2022. Despite having the Appellant’s address in the Complaint, a traditional service through a Sheriff or Constable was not attempted. The Appellant appeared voluntarily with the filing of a Motion to Dismiss him as a Defendant in the Respondents’ Complaint on January 25, 2022. The Respondents’ lawyer wanted the Appellant to file an “Acceptance of Service” that would negate the requirements for proof of service. Failing that, the Respondents’ lawyer involved the South Carolina Secretary of State’s Office to solve that problem. The County Council and elected members who were served on January 7, 2022 filed their individual “Acceptance of Service” on February 25, 2022.

Although, a non-resident trustee, the name and address of the Appellant was known to the Respondents’ lawyer through the public records in Georgetown County and stated in the Complaint. Additionally, the Respondents and their lawyer were aware of the address in the Motion to Dismiss and the rezoning application. Consequently, the failure to properly serve the

Summons and Complaint on the Appellant amounted to gross negligence or deliberate intent along with naming the Appellant as a Defendant in the litigation. See *Complaint*, p. 7.

The Appellant did not receive any service of filings from the County's lawyer and none from the Respondents' lawyer, with exception of the belatedly served Summons and Complaint. The Appellant has obtained access to the filed documents from the Public Index. Neither the County nor Respondents' lawyers have complied with Rule 5(a), SCRPC with regards to serving of filed papers on the Appellant, including the Order on Appeal. See *Court Docket pp. 1 – 5*.

## **XI. RESPONDENTS LACKS STANDING**

**Standard of Review: Standing requires an injury-in-fact which is an invasion of a legally protected interest, concrete and particularized and actual or imminent and direct.**

**Citations:** "A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. To meet the stringent test for standing, "the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or hypothetical." See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992).

The courts have explained ripeness by defining what is not ripe, stating "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review." See *Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006).

**Discussion:** When an organization sues in its representative capacity on behalf of its constituent members ("associational standing"), it must be shown that its members have standing to sue in their own right. See *Georgetown Cty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 359, 713 S.E.2d 287, 292 (2011). Specifically, 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 on behalf of its members under the Hunt test:

[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect

are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

See *Hunt*, 432 U.S. at 343; see also *Beaufort Realty Co. v. Beaufort Cty.*, 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001); See *Georgetown Cty.*, 713 S.E.2d at 292 (citing *Hunt*). "To satisfy the third prong of this test, the organization must show that the right it seeks to vindicate is common to the membership and the interest of the harmed members in the proceedings derives from their membership." See *Georgetown Cty.*, 713 S.E.2d at 293.

In *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001), the state supreme court adopted the "stringent standing test" applied by the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) for determining constitutional standing. Under that test, an organization seeking redress for an injury to the organization itself (so-called "individual standing") must carry the burden of demonstrating each of the following three elements: (1) The plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) "concrete and particularized" and (b) "actual or imminent," not "conjectural or hypothetical." (2) There must be a causal connection between the injury and conduct complained of—the injury has to be "fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court." (3) It must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id. at 601, 550 S.E.2d at 291 (quoting Lujan)*. "In order for the injury to be 'particularized,' it must affect the plaintiff in a personal and individual way." *Id. at 602, 550 S.E.2d at 292 (quoting Lujan)*. Merely alleging an injury that all members of the public suffer from fails to establish the first prong requiring an individualized injury. See *Carnival Corp. v. Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 77, 753 S.E.2d 846, 851 (2014).

In their affidavits, the Respondents state that they were supposedly monetarily and retroactively injured by the unanticipated rezoning of the Appellant's property since they paid a premium for their neighboring and adjacent lots. Respondents fail to allege a concrete, particularized, actual or imminent injury to themselves but merely assert generalized grievances, against the Georgetown County Planning Department, Planning Commission, and County Council, supposedly suffered by the public as a whole, which are insufficient to establish standing. See *Carnival*, 407 S.C. at 76, 753 S.E.2d at 851 ("Plaintiffs fail to allege a particularized injury either to themselves or their members. Rather, they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing.").

In general, a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or there is an immediate danger that a direct injury will be sustained. See *Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013). Under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." See *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Therefore, it is insufficient for a Respondents to simply state that the case involves a matter of public importance. See *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); *Bodman*, 403 S.C. at 68, 742 S.E.2d at 366.

To establish standing against the Appellant, the Respondents 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 the Appellant 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. See *Complaint Affidavits pp. 36 - 62*.

The Respondents, who are neighboring adjacent property owners, state that they have statutory standing under S.C. Code Ann. § 6-29-760(C) of the South Carolina Comprehensive Planning Enabling Act. However, none of the Respondents who have demonstrated a concrete, particularized, actual or imminent injury-in-fact from the adopted ordinances to warrant standing-to-sue. They have not provided any evidence of payment that the so-called paid premiums, if any, were due to neighboring zoning status only or other marketing factors.

Statutory standing requires an injury-in-fact which is an invasion of a legally protected interest, concrete and particularized and actual or imminent. The adjacent Colony subdivision Respondents questionable injury-in-fact does not meet the necessary legal burden or the requirements for standing to sustain this lawsuit against the Appellant and/or the County Council and its elected members. See *Complaint pp. 36 - 62*.

## **XII. COMPLAINT LACKS A JUSTICIABLE CONTROVERSY**

**Standard of Review:** The Uniform Declaratory Judgment Act requires a justiciable controversy; whereas, the Respondents arbitrarily claim without stating a factual basis or citing evidence that the ordinances did not pass and that the County Council violated the Comprehensive Plan, County Rules of Procedure and the Freedom of Information Act.

**Citations:** The Uniform Declaratory Judgment Act and case law states:

S.C. Code Ann. § 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.”

The fact that Respondents brought its lawsuit under the SCDJA does not by itself confer standing as that act is remedial in nature. See *Bodman*, 403 S.C. at 67 & n.1, 742 S.E.2d at 366 & n.1; see also *Carolina All. for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999) (parties cannot by

consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.)

**Discussion:** S.C. Const. art. I, § 3, provides that no person shall be deprived of property without due process of law. As required for declaratory lawsuits, the Appellant has not denied the legal character or right to property of the Respondents. The Respondents' Complaint simply asserted that they have statutory standing without a justiciable controversy or injury-in-fact to bring this action due to the County Council's approval of Appellant's ordinances which is alleged to be a matter of wide concern and public importance.

The courts will not address the merits of any case unless it presents a justiciable controversy. See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). In *Byrd*, the Court stated, "Before any action can be maintained, there must exist a justiciable controversy," and, "This Court will not . . . make an adjudication where there remains no actual controversy." See *Id.*; see also *Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy."). "Justiciability encompasses . . . ripeness . . . and standing." See *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010). Standing is "a personal stake in the subject matter of the lawsuit." See *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001).

The Uniform Declaratory Judgment Act (UDJA) "is remedial and procedural in nature and does not create substantive rights or duties." See *Felts v. Richland County*, 299 S.C. 214, 383 S.E.2d 261, 262-63 (Ct. App. 1989). For a party to state a claim under the act, a justiciable controversy must be demonstrated. See *Graham v. See State Farm Mutual Automobile Ins. Co.*, 319 S.C. 69, 459 S.E.2d 844, 845-46 (1995); See *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804,

807 (1982). A justiciable controversy is “a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” See *Pee Dee Elec. Coop v. Carolina Power & Light Co.*, 279 S.C. 764, 301 S.E.2d 761, 761 (1983).

The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. See *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). “To determine if plaintiff has a justiciable controversy, standing must be assessed at the time the action is commenced, not at some later point.” See *S.C. Dep’t of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018). “To have standing, one must have a personal stake in the subject matter of the lawsuit; i.e., one must be the ‘real party in interest.’” See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424, 427 (1996) (“Plaintiffs have not been deprived of property or sustained any injury to same”).

“Appellant has not been deprived of due process of law because he was not deprived of his property due to the adoption of the Plan, nor due to the manner of the Plan's adoption. Appellant's claim in this regard is not justiciable because it is not ripe for review.” See *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 and *McClanahan v. Richland County*, 350 S.C. 433, 567 S.E.2d 240 (Ct. App. 2002).

### **XIII. THIRD READING ALLEGATIONS ARE FAIRLY DEBATABLE**

**Standard of Review: The allegations in the Complaint regarding the approval and adoption of Ordinances 21-24 and 21-25 are without merit and fairly debatable.**

**Citations:** The S.C. Supreme Court has stated that, “[w]e cannot insinuate our judgment into a review of the City Council's decision, but must leave that decision undisturbed if the propriety of that decision is even fairly debatable.” See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (citation omitted) and *Lenardis v. City of Greenville*, 316 S.C. 471, 472, 450 S.E.2d 597, 598 (Ct. App. 1994).

Accordingly, the SC Supreme Court will not overturn the action of [county council] if the decision is fairly debatable because the County Council's action is presumed to have been a valid exercise of power and it is not the prerogative of the Court to pass upon the wisdom of the decision. See *Rushing v. City of Greenville*, 265 S.C. 285, 288, 217 S.E.2d 797, 799 (1975); *Lenardis v. City of Greenville*, 316 S.C. 471, 472, 450 S.E.2d 597, 598 (Ct.App.1994).

The SC Courts have determined in multiple cases that: The SC Supreme Court has stated that: "We have long recognized the principal that the power to zone is exclusively for the legislature and that zoning decisions will not be interfered with when made in the exercise of the governing body's police power to accomplish the desired end unless there is a plain violation of the citizens' constitutional rights." See *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (internal citations omitted). "Rezoning is a legislative matter, and the court has no power to zone property." See *Bear Enters. v. County of Greenville*, 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct.App.1995). "The decision of the legislative body is presumptively valid, and the property owner has the burden of proving otherwise."

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

The court recognizes that a holistic reading of the Enabling Act indicates its purpose is to provide the flexibility and ability for a local governing authority to make local decisions regarding zoning. See S.C. Code Ann. §§ 6-29-720(C) & 740 (Supp. 2007); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 119, 221 S.E.2d 848, 850 (1976) (noting a predecessor to the Enabling Act of 1994 was broad in its scope and gave municipalities much authority in the field of zoning). A reviewing court should practice judicial restraint and not supplant its judgment for the local governing authority's judgment.

**Discussion:** The South Carolina Association of Counties Model Rules of Parliamentary

Procedure for South Carolina Counties states as follows:

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

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

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

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

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

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

Under the Home Rule Act, a county council must comply with the requirements of [§ 4-9-120, 1976 Code] in passing temporary as well as permanent ordinances. 1975-76 Op. Atty.

Gen., No. 4410. The 2013 Home Rule Handbook cited the following opinions:

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

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

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*.

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*)."

Ordinance 21-24 and Ordinance 21-25 pass by legislative action of the majority of members voting and/or present on October 26, 2021; whereas, the County Council on November 9, 2021, through an executive action, documented the adoption of the ordinances on that date with a 4-2 vote in favor with one recusal. Since the ordinances were in effect after approval at the Third Reading, this was a non-legislative act affecting the execution of ordinances rather than the substance of the ordinances. Without stating a factual and/or legal basis, the Respondents claim that the ordinances did not pass on October 26, 2021.

In accordance with the Model Rules and County Council Rules of Procedure, both ordinances were approved and adopted on October 26, 2021. The 2013 Home Rule Handbook states that "A time extension is not an amendment or revision of an ordinance. Instead, it is a non-legislative act affecting the execution of a law rather than the substance of the law. Therefore, a county council may, by resolution, extend the time set in ordinances for the county administrator to execute agreements. See *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.

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

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 Respondents 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. With respect to the ordinances, the allegations of the Respondents are fairly debatable.

The factual reality is that County Council Rules of Procedure which define passage the vote of the majority present did not include a rule for members abstaining from voting.

Assuming a quorum, defaulting to Roberts Rules of Order Newly Revised (RONR) does not resolve the arising issues. As in this case, the Model Rules are the preemptive authority in defining passage of an ordinance as the majority present and voting; therefore, Ordinances 21-24 and 21-25 pass on October 26, 2021 and were codified on November 9, 2021.

As stated by the County Council 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." At the County Council meeting on November 9, 2021, Ordinances 21-24 and 21-25, after a vote change by the abstaining councilman, were officially signed and adopted by the County Council Chairman, County Attorney and County Council Clerk.

#### **XIV. ORGANIZED AND COMBINED OPPOSITION**

**Standard of Review: The Respondents have engaged in an organized and combined action to oppose the ordinances and thereby injure the Appellant's property.**

**Citations:** "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).

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). 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).

**Discussion:** The Keep It Green organization and members expressed purpose is to prevent increases in residential land use and population density on the Waccamaw Neck in Georgetown County. See *Complaint pp. 4 - 5*. A petition exceeding 1000 plus signatures was submitted by Keep It Green to the County Council opposing the rezoning of the Appellant's property. See *Complaint p. 18*. According to their affidavits, the adjacent Colony subdivision Respondents are all members of the Keep It Green organization and all deny awareness that the ordinances had passed October 26, 2021. See *Complaint pp. 36 - 62; and Answer pp. 32 - 40*.

The Complaint contained several letters, as exhibits, addressed to the County Council ripe with unsupported statements, that demonstrate the extent of the organized and combined effort of the Respondents to cause proximal harm to the Appellant's property. See *Letter pp. 76 - 78* (Jul 14, 2021); *Letter pp. 89 - 90* (Aug 20, 2021); and *Letter pp. 94 - 100* (Oct 26, 2021).

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. The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to

injure the plaintiff.” See *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986). In order to establish conspiracy, a party must produce evidence "from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. See *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987). The Respondents’ Complaint itself is such evidentiary proof.

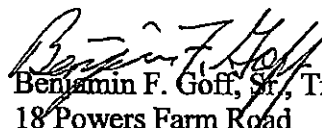
### CONCLUSIONS

Any and all claims in the Respondents’ Complaint have been dismissed against the County Council and elected members, who have legislative immunity and the Respondents’ Complaint does not state any claims against the Appellant. The Appellant should not have been named as a Defendant as opposed to an Involuntary Plaintiff or Party-in-Interest. It is an abuse of discretion by the Lower Court and an error in interpreting the statutes and laws for the Appellant to be a Defendant with a fairly read and unstated cause of action in this litigation.

The Respondents’ lawyer admitted in written statements and the hearing transcript that her clients have no claims against the Appellant. The Lower Court’s finding that a “fairly read” cause of action exists against the Appellant is not supported by the allegations, facts or evidence in the Respondents’ Complaint and other documents. This interlocutory Order affects the merits of the litigation and will prevent the appeal of a final judgment. The Order on appeal should be vacated by the Court of Appeals and the Respondents’ Complaint dismissed in its entirety.

Respectfully Submitted,  
The Appellant

Date: August 31, 2022

  
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THE STATE OF SOUTH CAROLINA

**RECEIVED**

SEP 06 2022

APPEAL FROM GEORGETOWN COUNTY

**SC Court of Appeals**

Court of Common Pleas

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

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

v.

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


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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Appellant Brief in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on August 31, 2022 to the following:

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Pro Se for Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable William H. Seals, Jr.

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Appellate Case No. 2023-000615

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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.

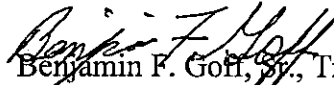
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CERTIFICATE OF COUNSEL

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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  
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JUL 25 2023  
SC Court of Appeals