STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2023-CP-22-00007
	)	
Elizabeth M. Powers and Edward A. Powers; Martha C. Green; Steven E. Basso; James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.,	)	**ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**
Plaintiffs,	)	
vs.	)	
Georgetown County; and Alliance for Economic Development for Georgetown County	)	
Defendants.	)	

THIS MATTER came before the Honorable William H. Seals, Jr. on April 6, 2023, on Motions to Dismiss filed by Defendants Georgetown County and Alliance for Economic Development for Georgetown County ("**Georgetown Alliance**"). Present at the hearing were H. Thomas Morgan, Jr., Esquire, appearing on behalf of Georgetown County, James K. Gilliam, Esquire, appearing on behalf of Georgetown Alliance, and Cynthia Ranck Person, Esquire, appearing on behalf of the Plaintiffs.

After careful consideration of the memoranda submitted by the parties, the arguments raised by counsel, and the relevant authorities, the Court grants Defendants' Motions to Dismiss and dismisses the Amended Complaint in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

In this case, Plaintiffs seek to invalidate zoning ordinances enacted by the Georgetown County Council pertaining to a planned development district, known as the Mercom Planned

Development ("**Mercom PD**"). Most of Plaintiffs' claims challenge the validity of two Ordinances passed by Georgetown County Council in 2022 (Ordinances 22-36 and 22-37) that amended the permitted uses on Parcel Three of the Mercom PD.

The Mercom PD is located in Pawleys Island. Currently, the Mercom PD consists of three separate parcels of land totaling 28.4 acres. Parcel One (consisting of 6.373 acres) is owned by Waccamaw Land). Parcel Two (consisting of 7.388 acres) is owned by Barn on Petigru, LLC. Parcel Three (consisting of 14.449 acres) is owned by the Georgetown Alliance.

Historically, Georgetown County has permitted a number of different uses on the Mercom PD. In 2008, the Georgetown County Council approved the creation of the Mercom PD (then knowns as Pawley's Island Business Park). As initially created, the Mercom PD allowed for various uses, including non-residential resort service, offices, and warehouses. In 2015, Georgetown County Council enacted Ordinance 2015-41 and expanded the uses permitted on the Mercom PD to include a technology park, general offices, warehouses, restaurants, and suite lodging.

On August 16, 2022, the Georgetown Alliance submitted an application to the Georgetown County Planning Commission ("**Planning Commission**") to allow for commercial and high-density residential uses on Parcel Three of the Mercom PD. The Planning Commission reviewed the application and recommend denial to the Georgetown County Council. On November 8, 2022, the Georgetown County Council reviewed the application and voted to approve it through the adoption of Ordinances 22-36 and 22-37.

Ordinance 22-36 formally amended the Georgetown County Comprehensive Plan ("**Comprehensive Plan**") and the Future Land Use Map ("**FLU Map**") to allow for high-density residential use on Parcel Three of the Mercom PD. Ordinance 22-37 amended the Mercom PD to

allow for commercial and ninety multifamily units on Parcel Three, conditioned upon 20% of the units being restricted as affordable housing for at least five years.

On January 6, 2023, Plaintiffs filed this lawsuit against the Defendants. The original Complaint was never served upon the Defendants and no responsive pleadings were filed. Plaintiffs then filed their Amended Complaint on February 6, 2023. In the Amended Complaint, Plaintiffs seek the following declaratory relief from this Court:

- Declaring that the classification of the Mercom PD as a planned development district was null and void from inception because it only contemplated a single use.
- Declaring that Georgetown County maintains a statutory mandate under Ordinance 1703 to initiate proceedings to revert all planned development districts upon which construction has not begun within two years of approval to its former zoning classification that conforms with the Comprehensive Plan.
- Declaring that the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code § 6-29-310, *et seq.* requires zoning ordinances to be made in accordance with the Comprehensive Plan.
- Declaring that Georgetown County Council violated Ordinance 1701 by enacting Ordinances 22-36 and 22-37.
- Declaring that an application to amend a planned development district must be brought by all owners of the planned development.
- Declaring that Ordinances 22-36 and 22-37 constitute unlawful spot zoning.

STANDARD OF REVIEW

When deciding a motion to dismiss for failure to state a claim, "[t]he question is whether, in the light most favorable to the [nonmoving party], and with every doubt resolved in his behalf, the [pleading] states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)). Dismissal pursuant to Rule 12(b)(6), SCRCP, is appropriate when "the facts alleged in the complaint do not support relief under any theory of law." *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163,

170, 763 S.E.2d 426, 430 (2014) (quoting *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003)) (internal quotations omitted). A court may consider exhibits attached to a pleading when deciding a motion to dismiss. *See* Rule 10(c), SCRCP ("A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."); *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) ("[B]y virtue of Rule 10(c), SCRCP, the attachment became a part and parcel of the complaint.").

Cases that present legal questions, and do not involve facts, are well suited for dispositive motions. *See Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005) ("When the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss.") (internal quotations omitted).

ANALYSIS

I. The zoning ordinances pertaining to the Mercom PD do not deprive Plaintiffs of any constitutional right, and the ordinances therefore cannot be invalidated.

The Amended Complaint does not allege that the zoning ordinances deprive the Plaintiffs of their constitutional rights. Courts are quite limited in their authority to review and invalidate zoning decisions made by local governing bodies. Courts may only do so after finding that the ordinances violated the constitutional rights.

"Courts have no prerogative to pass upon the wisdom of the municipality's decision unless such decision is 'so unreasonable as to impair or destroy a citizen's constitutional rights.'" *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (quoting *Hampton v. Richland Cnty.*, 292 S.C. 500, 503, 357 S.E.2d 463, 465 (Ct. App. 1987)). "Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of constitutional rights."

Knowles, 305 S.C. at 224, 407 S.E.2d at 642. Constitutional rights are violated when a zoning ordinance deprives an individual of their property without due process of law. *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243-44 (2002). "Of course, *if the court finds a violation of constitutional rights*, it may invalidate the ordinance. A court may not, however, substitute its judgment for that of the local zoning ordinance." *Bear Enters. v. Cnty. of Greenville*, 319 S.C. 137, 141-42, 459 S.E.2d 883, 886 (Ct. App. 1995) (emphasis added).

"It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances or regulations." *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 300, 37 S.E.2d 601, 611 (2013). "In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003). "There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application . . . ." *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965).

"A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1992). Zoning ordinances must be upheld so long as the propriety of the local governing body's decision is "fairly debatable." *Knowles*, 305 S.C. at 223, 407 S.E.2d at 642. "The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon [the challenger] to show the arbitrary and capricious character of the ordinance through clear and convincing evidence." *Dunes*, 401 S.C. at 298, 37 S.E.2d at 610 (quoting *Willoughby*, 306 S.C. at 422, 412 S.E.2d at 425 (internal quotation marks omitted)).

In the Amended Complaint, Plaintiffs fail to allege that any zoning decision as it pertains to Mercom PD deprives the Plaintiffs of their constitutional rights. Because these allegations are absent from the Amended Complaint, the Amended Complaint fails as a matter of law in its quest to invalidate the zoning ordinances. In addition, the law greatly limits the power of the judicial branch to invalidate ordinances. This Court cannot (and will not) substitute its judgment for that of the legislative body of Georgetown County. Plaintiffs quite clearly disagree with the political decisions made by Georgetown County Council as it relates to the zoning decisions affecting the Mercom PD. Political disagreement, however, is an insufficient basis to invalidate ordinances. Plaintiffs' remedy in such instance does not rest in Court, but through the democratic process.

II. The Georgetown County Comprehensive Plan is not the law, and the alleged failure of County Council to adhere to the Comprehensive Plan cannot serve as a basis to invalidate the zoning ordinances at issue.

Many of Plaintiffs' arguments rest on the misguided assertion that the Comprehensive Plan acts as a binding standard that the County must follow when approving a land use decision, such as a zoning ordinance. Plaintiffs argue that zoning ordinances must be "made in accordance with Georgetown County Comprehensive Plan." Pls. Am. Compl. ¶ 130. Alternatively, Defendants assert that the Comprehensive Plan is merely "an expression of goals, objectives, and policies for current and future land us in the County." *See* Def. Georgetown County Mem. Supp. Mot. Dismiss 7. This Court finds that a county's comprehensive plan exists to supply guiding principles in a county's zoning and land use decisions, but it is not, by itself, an authoritative standard which must be strictly construed and applied.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code § 6-29-310, *et seq.* (the "**Planning Act**") grants the authority to local governments in South Carolina to create planning commissions within their jurisdiction. S.C. Code § 6-29-320.

When created, a planning commission is charged with the responsibility to "develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable, to *guide* the development and redevelopment of its area of jurisdiction." S.C. Code § 6-29-510(A) (emphasis added). This planning process, when it is created, is a comprehensive plan, consisting of a collection of planning elements, such as a "statement of needs and goals," a "housing element," and a "land use element," among others. S.C. Code § 6-29-510. Once a comprehensive plan has been adopted, the planning commission is permitted to "prepare and recommend to the governing body . . . for adoption regulations governing the development of land within the jurisdiction." S.C. Code § 6-29-1130(A). The governing body in Georgetown County is the County Council, which has the authority to then enact land development regulations and zoning ordinances. These zoning ordinances and land use regulations, along with South Carolina statutes, set the required standards and procedures for making land use decisions in the County.

The goals and objectives of a county's comprehensive plan are effectively implemented through the county's zoning ordinances and land use regulations. *See Sinkler v. County of* Charleston, 387 S.C. 67,75-76, 690 S.E.2d 777, 781 (2010); *see also* S.C. Code § 6-29-720(A). But the comprehensive plan itself does not set the standard by which a planning commission or a county council must make its land use decisions. Approval or denial of an application for a zoning amendment must be made on the basis of the existing zoning ordinances and applicable land use regulations.[1]

[1] Plaintiffs point out that the Planning Commission's recommendation to deny the zoning amendment was made "on the basis that it conflicted with the Comprehensive Plan and FLU maps." Pls. Am. Compl. ¶ 11. Although the providence of the Planning Commission's decision is not directly in question in this case, the Court makes note that a decision of the Planning Commission to deny a zoning application based solely on the reason that it conflicts with the

The Comprehensive Plan is purported on its face to "guide future development and redevelopment within the County." Pls. Ex. 14, at 1. Additionally, the Comprehensive Plan makes clear that the future land use maps, otherwise known as the FLU maps, are included to "identify and recommend locations where different types of uses are encouraged to grow." *Id.* By its own terms, the Comprehensive Plan is intended to guide Georgetown County's land use decisions. This structure aligns with the requirements of the Planning Act and is similar to other comprehensive plans already reviewed by the courts. *See, e.g.*, *McClanahan*, 350 S.C. at 441, 567 S.E.2d, at 243 (reiterating that Richland County's Comprehensive Plan "is only guideline"); *see also Sinkler v. County of* Charleston, 387 S.C. 67, 75–76, 690 S.E.2d 777, 781 (2010) (agreeing with the trial court's analysis that the challenged ordinance should be evaluated in relation to the requirements of the Planning Act and Charleston County's zoning and land development regulations).

Based upon the terms of the Planning Act itself, along with the established practices of the counties in this state and prior treatments by the courts, it is evident that a county's comprehensive plan exists to guide the land use decisions of a county. The effect of that guidance is to aid and better focus the crafting and adoption of zoning ordinances and land use regulations in a county. Ultimately, the land use decisions of a county are governed by the adopted zoning ordinances and land use regulations, which are limited only by the terms of the Planning Act and other applicable state statutes. The courts cannot interject authority into a planning process which was never

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Comprehensive Plan, would, on its own, likely be considered arbitrary, and would constitute an abuse of discretion on the part of the Planning Commission. The County Council is well within its authority to reach a determination contrary to the Planning Commission's recommendation, particularly where that recommendation is arbitrary. *See* Op. S.C. Att'y Gen., 2021 WL 1832308 (April 5, 2021) (indicating that the General Assembly intended a county's governing body to consider their local planning commission's recommendations but that they were not necessarily bound by that recommendation in its entirety).

intended by the General Assembly or by Georgetown County. The Comprehensive Plan is a guideline, not binding law. *McClanahan*, 350 S.C. at 441, 567 S.E.2d, at 243.

In sum, the Comprehensive Plan is not the law; it is a guideline, and it cannot work to invalidate the 2022 Ordinances enacted by Georgetown County pertaining to the Mercom PD.

III. Mercom PD is a valid planned development district.

Plaintiffs challenge the 2008 Ordinance creating the Mercom PD and assert that the Mercom PD was null and void from inception because the Mercom PD contemplated only a single use. The Court disagrees.

Planned Development Districts are the creation of the Planning Act. *See* S.C. Code § 6-29-740 (declaring that planned development districts may be created by local governing bodies to "allow flexibility in development that will result in improved design character, and quality of new mixed developments"). The General Assembly conveyed broad authority to local governing bodies in their establishment of these types of districts, such as the ability to provide for variations from other ordinances and regulations. *See* S.C. Code § 6-29-740. In reviewing challenges to zoning ordinances, the "fairly debatable" standard applies. *See Knowles*, 305 S.C. at 223, 407 S.E.2d at 642 (Zoning ordinances must be undisturbed if the propriety of the governing body's decision is "fairly debatable.").

Initially, Plaintiffs' characterization of the Mercom PD as a single use planned development district is inaccurate. The 2008 Ordinance creating the Mercom PD contemplated multiple uses on the PD, including non-residential resort services, offices, and warehousing. From there, in 2015, Georgetown County enacted Ordinance 2015-41 and expanded the uses permitted on the Mercom PD to include a technology park, general offices, warehouses, restaurants, and suite lodging. The Mercom PD was amended once again in 2022 to permit commercial uses and

high-density housing on Parcel Three, in addition to the other uses permitted within the PD. Thus, contrary to Plaintiffs' assertions, a simple review of the ordinances creating and amending the Mercom PD reveal that it never contemplated just one use, but rather, the PD has always contemplated a number of various uses.

Even if the Court were to view the creation of the Mercom PD as a single use—which it does not given the multiple uses identified in the 2008 Ordinance—the 2015 amendment clearly contemplated even more uses, as did the 2022 amendments. In sum, the Mercom PD functions exactly as the General Assembly envisioned, and there is nothing illegal, unconstitutional, or invalid to declare regarding the Mercom PD. *See* S.C. Code § 6-29-740 (noting that the purpose of planned development districts is to deviate from the zoning and regulations that would typically apply to allow development that promotes and protects the public health, safety, and general welfare).

In addition, Plaintiffs' arguments that the Mercom PD was null and void from inception is statutorily barred at this juncture. *See* S.C. Code § 6-29-760(D) ("No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission."). Given that Plaintiffs are challenging zoning regulations from 2008 and 2015, and the established procedures for approving the regulations were followed, the time for Plaintiffs to challenge such actions has long passed.[2]

[2] Plaintiffs do not allege that the notice and other procedural arguments were not followed in 2008 and 2015 when the Mercom PD was created and amended. The only challenge asserted is that the PD was permitted for a "single use."

For all of the foregoing reasons, the Court finds that Mercom PD is a valid planned development district.

IV. Ordinance 1703 does not require Georgetown County to initiate proceedings to revert all planned development districts upon which construction has not begun within two years of approval to its former zoning classification that conforms with the Comprehensive Plan.

Plaintiffs' characterization of Ordinance 1703 is inaccurate. The Ordinance does not state that property automatically reverts if construction does not commence within two years after zoning approval; rather, Ordinance 1703 says that the Planning Commission "shall initiate proceedings to return the zoning of the property to its original classification, or to such classification as the Planning Commission deems consistent with the Comprehensive Plan." Under the plain language of Ordinance 1703, there is no automatic reversion, but instead, a procedure wherein the property may go back to its original classification or may not. The Court cannot give Plaintiffs the declaratory relief they seek because there is no support for it under a plain reading of Ordinance 1703.

V. The Planning Act does not require zoning ordinances to be made in strict accordance with the Comprehensive Plan.

Plaintiffs allege that the Planning Act requires all zoning ordinances and amendments to be made in accordance with the Comprehensive Plan. Plaintiffs have taken this to mean that there may be no deviations from the terms of the Comprehensive Plan. This Court disagrees for several reasons. First, as set forth in Section II, *supra*, the Comprehensive Plan is not the law; rather it is only a guideline. Moreover, Plaintiffs' reading of the Planning Act is far too narrow. In creating planned development districts, the General Assembly granted flexibility to local governments in making zoning decisions. Georgetown County applied the flexibility of the Planning Act to create and amend the Mercom PD.

Planned developments "may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses." S.C. Code § 6-29-740. Additionally, amendments to planned developments are similarly permitted to facilitate continued flexibility in usage. "Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation form the planning commission." S.C. Code § 6-29-740.

This Court finds the prescribed process for amendment to a planned development district was followed by Georgetown County. The Planning Commission reviewed the proposed amendments to Parcel Three of the Mercom PD and made its recommendation to County Council. The County Council then voted to adopt the amendments pursuant to the body's legislative authority. The determination by County Council to adopt the amendments cannot now be overturned by this Court for failure to adhere to the Comprehensive Plan.

VI. Georgetown County Council did not violate Ordinance 1701 by enacting Ordinances 22-36 and 22-37 pertaining to Parcel Three of the Mercom PD.

Ordinance 1701 states: "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." This section necessitates that any one of the listed factors by itself, or in combination with others, may justify County Council's approval for amending a zoning ordinance. Fundamentally, this process requires a decision by County Council. That decision is one which involves the exercise of the County's legislative powers. County Council, as the collection of elected representatives of the citizens of Georgetown County, wields the County's legislative powers, which must be liberally construed. S.C. Code § 4-9-25.

Courts cannot impress upon the wisdom or folly of a county's discretionary exercise of its legislative powers. *Dunes W. Golf Club*, 401 S.C. at 300, 37 S.E.2d at 611; *Sloan*, 356 S.C. at 555, 590 S.E.2d at 351. Plaintiffs' disagreement with County Council's opinion that these zoning ordinances are justified by public necessity, convenience, general welfare, or good zoning practices is not the purview of the courts. In this instance, judicial review may only ask whether there has been, or imminently will be, a deprivation of constitutional rights or whether procedural due process has been violated. This Court finds neither of those scenarios are present here. Therefore, Georgetown County Council's decision to adopt Ordinances 22-36 and 22-37 must remain free from judicial interference.

VII. The owners of Parcel One and Parcel Two of Mercom PD were not required to join the application to amend the uses allowed for in Parcel Three.

Plaintiffs challenge the validity of the application to amend the uses on Parcel Three of the Mercom PD. Plaintiffs argue that under Ordinance 619.50, the other two parcel owners of the Mercom PD (the owner of Parcel One and Parcel Two) were required to join the application to amend the uses on Parcel Three of the Mercom PD. Plaintiffs make this argument, even though the application submitted only sought to amend the uses on Parcel Three, not on the other two Parcels.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where a statute's meaning is "plain and unambiguous, and coveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has not right to impose another meaning." *Id.*

Pursuant to Ordinance 619.50, the owner or owners of the "area proposed" must submit the application for a proposed amendment. The "area proposed" for the residential plans included only Parcel Three, which is owned by Georgetown Alliance. The other two Parcels were not part

of the "area proposed" to be amended in the Alliance's application. Thus, this Court finds that the plain and unambiguous language of Ordinance 619.50 required only the owner of Parcel Three[3] to submit the application to amend the uses on Parcel Three. In addition, the Court finds it appropriate to give deference to Georgetown County's construction of its Ordinances. Clearly, Georgetown County Council accepted the Alliance's application and determined that the application did not require the other parcel owners of the Mercom PD. This construction is perfectly reasonable given the plain and unambiguous text of Ordinance 619.50.

Lastly, even if the owners of Parcels One and Two took issue with the proposed amendment, they received notice of the proposed amendment, and they had the opportunity to be involved in the process and file an appeal after Georgetown County Council's decision. Thus, their constitutional rights were not violated, and even if they were, Plaintiffs would not have standing to bring those claims on behalf of the owners of Parcels One and Two. *Cf. State v. Chavis*, 261 S.C. 408, 411, 200 S.E.2d 390, 391 (1973) ("It is elementary that one has no standing to challenge the constitutionality of a statute unless his rights have been invaded and injuriously affected.") (emphasis added); *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 773 S.E.2d 728, 734 (Ga. 2015) (rejecting claimant's argument that because it was affected by the passage of a bill, it had an interest in ensuring compliance with notice procedures and holding claimant received notice and lacked standing to attack the lack of notice to another party); *In re Single Cnty. Ditch*, 361 N.E.2d 1353, 1356 (Ohio Ct. App. 1976) ("An appellant landowner has no standing . . . to complain of lack of notice (to other landowners) . . . when the record does not support a conclusion that the appellant did not receive notice . . . .").

[3] The Amended Complaint alleges that Georgetown Alliance submitted the application to amend the Mercom PD. *See* Am. Compl. ¶ 6.

VIII. County Council's decision to amend the uses on Parcel Three does not constitute unlawful spot zoning.

Plaintiffs allege that Ordinances 22-36 and 22-37 constitute unlawful spot zoning because the land surrounding Parcel Three is designated by the Comprehensive Plan as either commercial or medium-density residential. Defendants argue that the prior plans permitted more uses than just commercial uses, that the surrounding area is zoned largely as General Residential, which permits high-density uses, and the medium-density designation referred to by Plaintiffs is from the Comprehensive Plan, which is not binding law.

Planned development districts are designed to permit uses different from other surrounding areas. By their nature, they are made to permit mixed-uses not normally permitted to exist within the same zoning area and may provide for variations from other ordinances and regulations. *See* S.C. Code § 6-29-740. Additionally, broad authority is given to local governing bodies in the implementation of planned development districts. Courts apply the fairly debatable standard in reviewing planned development districts and the issue of spot zoning. In *Knowles*, the Supreme Court of South Carolina determined that even if the municipality's zoning ordinance was found to constitute spot zoning, the court could not invalidate the ordinance because its propriety was at a minimum "fairly debatable." 305 S.C. at 224, 407 S.E.2d at 643.

Initially, and as set forth in Section II above, the Comprehensive Plan is not the law; it is a guide. *McClanahan*, 350 S.C. at 441, 567 S.E.2d, at 243. This Court cannot invalidate a County Ordinance because it allegedly violates the Comprehensive Plan. In addition, Ordinances 22-36 and 22-37 specifically amended the Comprehensive Plan to allow for high-density residential use on Parcel Three of the Mercom PD. For this same reason, Plaintiffs' arguments that County Council violated the Comprehensive Plan by enacting Ordinances 22-36 and 22-37 fail. Finally,

the Court finds that Ordinances 22-36 and 22-37 satisfy the "fairly debatable" standard and cannot be invalidated by this Court.

CONCLUSION

For the foregoing reasons, this Court grants Defendants' Motions to Dismiss and dismisses the Amended Complaint in its entirety.

IT IS SO ORDERED.

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The Honorable William H. Seals, Jr.
Circuit Court Judge

Georgetown Common Pleas

Case Caption: Edward A Powers , plaintiff, et al VS Georgetown County , defendant, et al

Case Number: 2023CP2200007

Type: Order/Dismissal

IT IS SO ORDERED

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