

the validity of the ordinances governing the approval process for the application, the authority of Georgetown County Council to review a land development application, and the approval of the application under County and State law.

The major subdivision application at issue was submitted by Covington Homes. The approved subdivision application allows construction of six new duplexes (twelve units total) on Pawley's Island, South Carolina. The parcel of land in the proposed development consists of approximately 2.01 acres of vacant land and was purchased by Covington Homes on April 7, 2022. On December 20, 2022, Covington Homes submitted a major subdivision application to the Georgetown County Planning Commission ("Planning Commission") for review. A public hearing was held on January 19, 2023, at which time the Planning Commission voted to recommend denial of the application. The application and the Planning Commission's recommendation was then forwarded on to the Georgetown County Council ("County Council") for its consideration, as is required under Georgetown County Ordinances concerning multifamily developments like the one proposed in the application. At a council meeting held February 14, 2023, the County Council voted to approve the application.

On March 10, 2023, Plaintiffs filed this lawsuit against Defendants. In the Complaint, Plaintiffs seek the following declaratory judgment relief from this Court:

- Declaring that the Georgetown County Ordinances requiring site plan review by County Council are void and unenforceable.
- Declaring that County Council had no authority to render the February 14, 2023, decision approving the subdivision application.
- Declaring that the Planning Commission's decision to deny the subdivision application on January 19, 2023, was final, valid, and binding.
- Declaring that the Georgetown County Zoning Ordinances allowing high density on land parcels designated by the Comprehensive Plan as medium density are void and unenforceable.

- Declaring that the approval of the subdivision application was a violation of State and County law.
- Declaring that Georgetown County has a statutory mandate to bring its Zoning Ordinances and Land Use Regulations into Compliance with the Comprehensive Plan.
- Georgetown County has a statutory mandate to consider compliance with the Comprehensive Plan in decision making processes.

In the alternative, Plaintiffs purport to bring an appeal of County Council's decision to approve the application. Defendants timely filed the subsequently filed their respective Motions to Dismiss.

STANDARD OF REVIEW

When deciding a motion to dismiss for failure to state a claim, the "Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003); *see also Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (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."). When deciding whether to grant a motion to dismiss, a court may consider exhibits attached to a pleading. *See* Rule 10(c), SCRCPP ("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), SCRCPP the attachment became a part and parcel of the complaint."). Dismissal pursuant to Rule 12(b)(6), SCRCPP, 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*, at 202, 584 S.E.2d at 416).

Cases which present legal questions, and do not involve factual disputes, are well-suited for dispositive motions. *See Madison v. Am. Home Prods. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) (“Where . . . 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.”); *Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005); *see also Palmer v. State*, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019) (finding that the circuit court did not err in dismissing the case pursuant to Rule 12(b)(6), SCRPC even though the underlying issue was a novel one, because the underlying dispute was purely one of constitutional interpretation).

ANALYSIS

I. The Georgetown County Ordinances requiring site plan review by County Council do not deprive Plaintiffs of any constitutional right and the ordinances therefore cannot be invalidated.

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

“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. A decision is fairly debatable when it is “not so unreasonable as to impair or destroy [a] citizen’s constitutional rights.” *Id.* at 224, 143 S.E.2d at 643 (internal quotations omitted). “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 quotations omitted). Ultimately, the process for invalidating an ordinance functions as a two-step process: first, a court must determine whether the county had the power to adopt the

ordinance, and second, a court must determine whether the ordinance is consistent with state law. *McKeown v. Charleston County Bd. of Zoning Appeal*, 347 S.C. 203, 207, 553 S.E.2d 484, 486 (Ct. App. 2001) (citing *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000)). An ordinance is valid unless it conflicts with state law, and for there to be a conflict, the ordinance and state law must contain express or implied conditions that are inconsistent and irreconcilable. *McKeown*, 347 S.C. at 207, 553 S.E.2d at 486 (citing *Wrenn Bail Bond Serv., Inc. v. City of Hanahan*, 335 S.C. 26, 29, 515 S.E.2d 521, 522 (1999)).

In their Complaint, Plaintiffs allege that certain provisions of Georgetown County's Zoning Ordinance 607 governing General Residential zones ("Ordinance 607") are void and unenforceable. However, amongst the allegations contained in the thirty-five-page Complaint, Plaintiffs fail to allege that the Ordinance works to deprive them of their constitutional rights. Because these allegations are absent from the Complaint, it fails as a matter of law in its quest to invalidate Ordinance 607. The specific provisions challenged direct that certain major developments, such as the one proposed in this case, are to have "a site plan reviewed by the Planning Commission" and then "approved by County Council." Georgetown County Zoning Ordinance § 607.4025 (2011); *see also* § 607.40254 (directing that the Planning Commission is to review the proposed site plan and "to forward its recommendation to County Council for final approval").

In an attempt to invalidate this process, Plaintiffs' Complaint references certain sections of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310, *et seq.* (the "Planning Act") dealing with land development regulations, which are used to specify requirements of a development such as lot size and street specifications among many others, as well as zoning. *See* Compl. ¶¶ 6, 16, 51, 120, 124, 130, 126; S.C. Code Ann. §§

6-29-720, 1120, 1150. Plaintiffs argue that these sections of the Planning Act limit the final approval of all development plans to come from the Planning Commission or designated staff and require the terms of the Georgetown County Comprehensive Plan (“Comprehensive Plan”) to be binding and supersede Ordinance 607.¹ Compl. ¶¶ 5–22, 120, 126. Defendants argue that this interpretation is too narrow in that it ignores both the expressed legislative purposes included in Articles Seven and Five of the Planning Act and the legislative determinations of the County’s governing body in enacting the procedures for approving development plans in a general residential district. Def. Georgetown County’s Mem. Supp. Mot. Dismiss 5; Def. Covington Homes’ Mem. Supp. Mot. Dismiss 8.

The creation and regulation of zoning districts is within the purview of the governing body of a county. S.C. Code Ann. § 6-29-720(A). First, the plain language of Section 6-29-1120 makes clear that the General Assembly intended to leave the crafting of the procedural process for approving development plans to the governing bodies of counties. *See* S.C. Code Ann. § 6-29-1120(A) (“The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff”). The challenged ordinances provide the procedural process for development plans to be approved through submission to the planning commission. *See* Georgetown County Zoning Ordinance 607. Second, the enumerated purpose of Article Seven of the Planning Act is to provide counties with the ability to create regulations with broad authority in order to carry out the stated purposes of the Planning Act, such as the promotion of public health and safety, good order, and “progressive development of land.” S.C. Code Ann. § 6-29-1120. The provisions of

¹ The authority of the Comprehensive Plan and its alleged conflict with Ordinance 607 is addressed in detail in Section II, *infra*.

Article Five of the Planning Act state that zoning ordinances are to serve similar purposes which are to “further the public welfare in any other regard specified by the governing body.” S.C. Code Ann. § 6-29-710. These are purposes directly within the purview and responsibility of the governing body of a county. The governing body of Georgetown County is the County Council, not the Planning Commission.

It is within the County Council’s authority to determine the terms of the development regulations and zoning ordinances used to carry out the purposes enumerated in the Planning Act. *See* S.C. Code Ann. § 6-29-760, 1130. It is likewise within the authority of the County Council to enact zoning ordinances which include additional procedural safeguards, such as a requirement for additional oversight and approval for larger and more use intensive developments, where such safeguards function to protect and promote the intended purposes of the Planning Act and good land use principles within the County. For these reasons, the Court finds no conflict between Ordinance 607 and the Planning Act and therefore finds it is valid.

In addition to finding there is no conflict between the challenged ordinance and state law, this Court also finds that challenges on other grounds challenges are subject to the statute of limitations and now barred. *See* S.C. Code Ann. § 6-29-760(D) (requiring a challenge to the “validity of a regulation or map, or amendment to it” to be brought within sixty days from the date of the decision of the governing body). Plaintiffs have not made any allegations as to any defects in notice nor challenged County Council’s authority to initially enact Ordinance 607 or the procedures used to do so and the facts, as alleged, establish that the Ordinance was validly enacted at its inception. The sixty-day deadline for challenges to the Ordinance’s validity has now long since passed. Challenges to an ordinance’s validity have repeatedly been held to the sixty-day requirement by South Carolina courts, most recently in *Ani Creation, Inc. v. City of Myrtle Beach*

Bd. of Zoning Appeals. __ S.C. __, 890 S.E.2d 748, 755 (finding the appellants had failed to timely challenge the propriety of two allegedly inconsistent readings of the ordinance or take any sort of formal action involving the validity of the ordinance until over four months after the ordinance became effective, and, as a result, they were barred from challenging the ordinance’s validity under section 5-7-270). Therefore, any challenges as to the validity of Ordinance 607 are now statutorily barred.

Lastly, 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 clearly disagree with the land use decisions made by the County Council, but these disagreements are rooted in politics, not the law. Political disagreement is an insufficient basis to invalidate ordinances. The courts have no place in politics. When impressed with political disputes, relief may be sought through the democratic process, not the judiciary.

II. The Georgetown County Comprehensive Plan is not binding, and the alleged failure of County Council to adhere to the Comprehensive Plan can neither serve as a basis to invalidate Ordinance 607 nor void the approval of the application at issue.

Much of the Complaint and Plaintiffs’ arguments rest on the assertion that the Comprehensive Plan acts as a binding standard that the County must follow when making a land use decision, such as a zoning ordinance or the approval of a subdivision application. Plaintiffs have argued that the development proposed in the application conflicts with the Comprehensive Plan and therefore cannot be approved because the terms of the Comprehensive Plan must be strictly adhered to. Compl. ¶¶ 13–22, 85, 95, 126–28. Alternatively, Defendants assert that the Comprehensive Plan is merely “an expression of goals, objectives, and policies for current and future land use in the County.” Def. Georgetown County’s Mem. Supp. Mot. Dismiss 7. It is pointed out that the expressed terms of the Comprehensive Plan make it clear that it is intended to set out

goals for Georgetown County's land development. *Id.* at 8 (citing Pls.' Ex. 8). This Court finds that a county's comprehensive plan, when adopted, functions 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.

Plaintiffs take issue with Defendants' characterization of their position regarding the authority of the Comprehensive Plan. They claim they haven't argued the terms of the Comprehensive Plan are binding, but instead are claiming the Planning Act requires the terms of the Comprehensive Plan to be adhered to. Pls.' Mem. Opp. Mot. Dismiss 6. This is a distinction without a difference. Whether the authority comes from state law or from the County's legislative powers, Plaintiffs are asking this Court to strictly apply the terms of the Comprehensive Plan to the County's land use decisions. This is much too narrow a reading of the Planning Act and would ultimately infringe on the enumerated responsibilities and powers granted to the County by the General Assembly.

The Planning Act grants the authority to local governments in South Carolina to create planning commissions within their jurisdiction. S.C. Code Ann. § 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 Ann. § 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 Ann. § 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 Ann. § 6-29-1130(A) (emphasis added). 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 Ann. § 6-29-720(A). But the comprehensive plan itself does not beget a rigid standard by which a planning commission or a county council must make its land use decisions. *See Ani Creation, Inc. v City of Myrtle Beach Bd. of Zoning Appeals*, __ S.C. __, 890 S.E.2d 748, 752 (2023) (describing a comprehensive plan as setting forth future objectives). Approval or denial of an application for a zoning amendment or a major subdivision must be made on the basis of the existing zoning ordinances and applicable land use regulations of the County. 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 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, because the Comprehensive Plan is not a legally binding standard, a perceived violation of its terms cannot substantiate a legal claim for relief. Through this conclusion, it follows that there is no mandate or requirement for the County to amend its zoning ordinances and land use regulations so that they imitate the terms of the Comprehensive Plan. Likewise, the approval of the application did not violate state or county law, the Planning Commission's recommendation was not binding as per the terms of Ordinance 607, and County Council had the authority to review the Planning Commission's recommendation and render its decision. Accordingly, all of Plaintiffs' claims must be dismissed with prejudice as a matter of law.

III. The Complaint fails to state facts sufficient to constitute a cause of action for declaratory judgment.

All but one of Plaintiffs' underlying claims seek relief under the Uniform Declaratory Judgments Act. *See* Compl. 29–35. To establish a cause of action under the Uniform Declaratory Judgments Act, the pleadings must establish the existence of a justiciable controversy. *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 553 (1970). For there to be a justiciable controversy, there must be a concrete issue, a definite assertion of legal rights, and a positive legal duty with respect to those rights which are being denied by the defendant. *Id.* at 153–54, 177 S.E.2d at 553. In other words, the dispute must be real and substantial, not contingent, hypothetical, or abstract. *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. App. 2018) (quoting *Power*, at 154, 177 S.E.2d at 553).

Plaintiffs have argued that the entirety of the allegations in the Complaint must be accepted as true and their veracity reviewed in the light most favorable to the Plaintiffs. Pls.' Mem. Opp'n 5. This Court takes no issue with Plaintiffs' characterization of the standard of review in this regard. However, it must be clarified that this presumption of truth cannot be taken so far as to create a presumption as to the sufficiency of legal conclusions used to allege a cause of action.

Where the law does not provide for a remedy under a given set of facts, the Court cannot simply create one because the facts may be presumed as true. The authority to create law is the hallmark of legislatures, not the judiciary.

At the heart of Plaintiffs' claims for declaratory judgment is the assertion that the Planning Act requires the comprehensive plan of a county to be strictly adhered to in a county's land use decisions and that it may be used as justification to deny development applications. The Court disagrees with this conclusion for several reasons. First, as set forth in Section II, *supra*, the Comprehensive Plan is not a law and is not intended to function as one; rather it is only a guideline. Moreover, Plaintiffs' reading of the Planning Act is far too narrow. Through the express terms of the Planning Act, the General Assembly provides counties with broad authority to create zoning and land use practices and procedures for the purposes stated in the Planning Act and "in any other regard specified by the governing body." S.C. Code Ann. § 6-29-710; *see* discussion *supra* Section I. Georgetown County Council, as the governing body for Georgetown County, has created procedures which require a heightened level of review for developments such as those at issue in this case. As this Court has already determined, the County is within the realm of its legislative authority to implement procedural safeguards in order to carry out the intended purposes of the Planning Act and promote good land use principles throughout the County.

The ordinances requiring County Council to review site plan applications for more intensive proposed developments are permissible under the law. Plaintiffs' alleged cause of action regarding the authority of the County Council to review the applications is entirely contingent upon the opposite being true and there has been no definite assertion of legal rights. Thus, the facts alleged in the Complaint fail to establish a justiciable controversy and therefore fail to sufficiently constitute a cause of action for declaratory judgment.

The remainder of the allegations seeking declaratory judgment are likewise dependent on Plaintiffs' interpretations of the Planning Act also being true. It has been well established by the courts in South Carolina that a comprehensive plan does not require strict adherence to its terms and therefore creates no legal duty by which to abide. Because there is an absence of a positive legal duty in this case and no definite assertion of legal rights, there are no legal rights which could even conceivably be denied as the result of Defendants' conduct. Therefore, Plaintiffs' additional claims for declaratory judgment fail to establish a justiciable controversy and therefore the Complaint fails to state facts sufficient to constitute a cause of action.

IV. The Complaint fails to state facts sufficient to constitute an effective appeal of County Council's decision.

Plaintiffs' purported appeal in the alternative must fail as well. Where a county council has made a decision based on the facts before it, a court must not disturb that finding unless it is arbitrary or unreasonable. *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 359, 133 S.E.2d 843, 847 (1963). A court must refrain from substituting its judgment for that of the reviewing body, even when it might disagree with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 173-74, 72 S.E.2d 66, 70 (1952). This Court has found that the County Council, by virtue of state law and valid ordinances, had the authority to review the application. As it has been determined, Ordinance 607 is a valid ordinance by which the County Council made its determination. Plaintiffs have not alleged any procedural defect other than the alleged inability of County Council to review the application. This Court has already concluded that County Council did have the authority to review the application. Therefore, this Court finds there have been no facts plead which could substantiate any arbitrary or unreasonable grounds by which to vacate County Council's approval of the application.

CONCLUSION

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

IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Circuit Court Judge



Georgetown Common Pleas

Case Caption: Kendrick A Bryant , plaintiff, et al VS Georgetown County ,
defendant, et al

Case Number: 2023CP2200210

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762