STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Civil Action No. 2022-CP-22-00912
COUNTY OF GEORGETOWN)	
)	
Michael T. Green and Carrie J. Green;)	
Julian P. Rutledge and Melvin L. Rutledge;)	
Patricia S. Grate; Carlethia B. Jenkins;)	
Frances Jo Baker; Parkersville Planning &)	
Development Alliance, Inc.; Keep It Green,)	
Inc.; and Preserve Murrells Inlet, Inc.,)	**ORDER**
)	
Plaintiffs,)	
vs.)	
)	
Georgetown County; Laine CRE, LLC;)	
TriStar Land, LLC; and Samuel J. Nesbit)	
On behalf of the heirs of Will Nesbit,)	
)	
Defendants.)	
)	

This matter came before the Court on November 7, 2023, upon Plaintiffs' Motion to Alter or Amend filed July 28, 2023. Present at the hearing were several of the Plaintiffs, along with their attorneys, Cynthia Ranck Person, Esquire and Patrick F. Hubbard, Esquire. Appearing on behalf of Defendant Georgetown County was attorney H. Thomas Morgan, Jr., Esquire.

Based upon the memoranda submitted by the parties, the arguments raised by counsel, and the relevant authorities, the Court denies Plaintiffs' Motion to Alter or Amend Judgment pursuant to SCRCP, Rule 59(e).

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint on October 24, 2022, seeking Declaratory Judgment against Georgetown County, Laine CRE, LLC, TriStar Land, LLC, and Samuel J. Nesbit on behalf of the heirs of Will Nesbit. In early 2022, Defendant Laine CRE, LLC, and TriStar Land, LLC, entered into a contract with the Nesbit heirs to purchase both parcels, contingent upon approval of applications for land development of two site plan proposals for multi-family developments in

Georgetown County, South Carolina. The developments were proposed to be constructed on two different parcels. Parcel one is approximately 6.87 acres and Parcel 2 is approximately 13.69 acres.

The applications for site plan review (the "Applications") at issue in this case were submitted for consideration on July 19, 2022. Compl. ¶ 40. The Applications were reviewed by the Georgetown County Planning Commission at a public hearing held August 18, 2022. Compl. ¶ 2. At the hearing, the Planning Commission voted to deny the Applications before forwarding them to the Georgetown County Council for review, as is required under Georgetown County Ordinances for these types of developments. Compl. ¶ 4. At a Council meeting held September 27, 2022, the County Council voted to approve the Applications. Compl. ¶ 5.

Plaintiffs then brought suit seeking declaratory judgment based upon the following: (1) that the Planning Commission's decision to deny the Applications on August 18, 2022, was valid and final; (2) that County Council had no authority to render the September 27, 2022, decisions approving the Applications; (3) that Georgetown County ordinances requiring site plan review by County Council are void and unenforceable; (4) that the approval of the Applications was a violation of state and county law; (5) that Georgetown County has a statutory mandate to bring zoning ordinances and land use regulations into compliance with Georgetown County's Comprehensive Plan; and (6) that Georgetown County has a statutory mandate to consider compliance with the Comprehensive Plan in decision making processes. Compl. ¶¶ 123–134. Plaintiffs also challenge, in the alternative, that they are simultaneously bringing an appeal of the County's decision to approve the Applications. Compl. ¶ 136.

In response, Defendant Georgetown County, along with Defendants Laine CRE, LLC and Tristar Land, LLC, filed their motion to dismiss on December 21, 2022. Defendant Samuel J. Nesbit ("Nesbit"), on behalf of the heirs of Will Nesbit, filed a motion to dismiss on March 27,

2023. On June 23, 2023, the Court heard lengthy arguments on the two Motions to Dismiss. The Court issued its ruling on July 18, 2023, dismissing Defendants Laine CRE, LLC and Tristar Land, LLC, and Defendant Nesbit, and granting Defendant Georgetown County's Motion to Dismiss on all of Plaintiff's causes of action except as to Count VII of the Complaint (finding "Plaintiffs have the right to appeal the County's decision to the Circuit Court in accordance with South Carolina law.").

On July 28, 2023, Plaintiffs filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, alleging the Court's Order did not address the following issues: (1) the role of the South Carolina Comprehensive Planning Enabling Act, (2) the denial of due process resulting from the adoption of the 2011 amendments to Section 607 of Georgetown County's "General Residential District" (GRD) provisions, (3) the interpretation and application of the Enabling Act provision that "regulations must be made in accordance with the comprehensive plan for the jurisdiction," (4) the elements that constitute a cause of action for Declaratory Judgment, and (5) statutory standing and public importance standing for all parties and all causes of action, and associational standing for the nonprofit entity parties.

STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a party to file a motion under Rule 59(e) when it is believed that "the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Similar to its federal counterpart, Rule 59(e), SCRCP, is the appropriate vehicle by which a party may request a court to reconsider its judgment. *Id.* at 21, 602 S.E.2d at 778 ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those

words from the rule."). While the reconsideration aspect of 59(e) motion may be discretionary, when a party believes that issues or arguments which have sufficiently been raised have not been ruled on, it is required that the party file a 59(e) motion "in order to preserve it for appellate review." *Id.* at 24, 602 S.E. 2d at 780. Additionally, a motion made under 59(e) may not be used to bring forth new theories or arguments which could have been raised earlier but were not. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

ANALYSIS

Plaintiffs' Motion argues the Court's Order granting Defendants' Motion to Dismiss, in substantial part (the "Order"), fails to address five issues. Although Plaintiffs' Motion does not expressly state as much, the Court takes notice that their Motion essentially requests the Court to reconsider its judgment and analysis as it pertains to those issues and arguments. Upon reconsideration of all arguments and issues raised by Plaintiffs, this Court finds that all necessary issues were properly addressed and ruled upon in the Order and finds no misunderstanding or failure to fully consider any of those issues. A reconsideration of the issues only confirms this Court's analysis and findings that all the Plaintiffs' causes of action, other than the appeal of County Council's decision, must be dismissed as a matter of law. As such, there are no grounds upon which this Court may alter or amend its judgment and therefore must deny Plaintiffs' 59(e) motion.

Plaintiffs first allege in their motion that the role of the South Carolina Comprehensive Planning Enabling Act (the "Planning Act") was not addressed in the Court's Order. This issue took a central role in the Court's analysis and determination to grant Defendants' Motion to Dismiss. The Order discusses the role and limits of the Planning Act in relation to a county's authority to enact ordinances and land use regulations, as well as its comprehensive plan. *See* Order

7–10. In support of their Motion, Plaintiffs set forth new arguments citing case law from Rhode Island and other explanations relating to Planned Development Districts. Pls.' Mot. Alter Am. J. 2–4. The Court notes that this case does not involve a Planned Development District and has found that South Carolina law is well enough developed and established as to have no need for Rhode Island law to be considered persuasive. Additionally, Plaintiffs' reliance on *Sinkler v. County Charleston*, 387 S.C. 67, 690 S.E.2d 777 (2010), is misplaced in this instance as the facts and relevant provisions of law are readily distinguishable. Plaintiffs argue that the holding in *Sinkler* essentially requires that a governing body is limited to a determination made by the county's planning commission because a governing body has no authority to venture beyond to contradict the provisions of the Planning Act. Pls.' Mot. Alter Am. J. 2–4. While the Court generally agrees that a county does not have free rein to contradict a statutory provision which is directly implicated by the county's actions, such a scenario is not at issue in this case. The holding in *Sinkler* is far more nuanced and narrower than Plaintiffs allege and the zoning ordinances at issue in this case are within the permissible authority of a county, as was thoroughly explained in the Order. Order 7–10. Moreover, it must be stated that these points of argument and analysis made by Plaintiffs are not appropriately included in Plaintiffs' 59(e) motion as they were neither cited, explained, or offered to this Court prior to its judgment.

Second, Plaintiffs argue that the issue as to whether there has been a denial of due process resulting from the adoption of the 2011 amendments to Section 607 of Georgetown County's "General Residential District" (GRD) provisions was not addressed. This issue was adequately reviewed by the Court and addressed in the Order.[1] The Order specifically states, "Plaintiffs not

[1] The Court makes note that issue was not sufficiently plead in the Complaint, nor raised in Plaintiffs' Response to Defendants' Motion to Dismiss, nor argued at the June 23, 2023, hearing. The lack of facts plead, or arguments raised, as to a denial of any constitutional right was an

only fail to specifically identify which ordinances they are seeking to challenge, but also fail to allege that any of those ordinances work to deprive the Plaintiffs of their constitutional rights." Order 6. The Court goes on to state, "Because these allegations are absent from the Complaint, it fails as a matter of law in its quest to invalidate the ordinances at issue." *Id.* The Court finds no reason to disturb its conclusion on this matter.

Third, Plaintiffs assert that the Court did not address the interpretation and application of one of the provisions of the Planning Act dealing with the compliance of regulations with the comprehensive plan. However, the Order explains in detail how the Planning Act must be interpreted and applied in reference to a County's land use decisions and zoning Ordinances. *See* Order 4–8. It is worth reiterating at this juncture that land development regulations, such as those termed in the provision of the Planning Act cited by Plaintiffs, deal with specifications and requirements of developments, such as setbacks and street specifications; land development regulations, while an integral part of land use planning, are not themselves zoning ordinances. *See* Order 6 (citing S.C. Code § 6-29-1120, 1150). The Order further goes on to devote an entire section to discuss and analyze the authority of the specific terms of a comprehensive plan in relation to the provisions of the Planning Act. *See* Order, Section II. This issue was therefore was addressed by the Order and the Court finds no reason to alter its findings.

Fourth, Plaintiffs assert that the Order fails to address the elements which constitute a cause of action for declaratory judgment. The Order exhaustively analyzes whether there exists a justiciable controversy, (Order 10–12), as is required for a party to establish a cause of action under

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argument raised by Defendants to support their Motion to Dismiss and was part of this Court's reasoning for granting Defendants' Motion to Dismiss. It is neither appropriate nor in the interest of justice for Plaintiffs to now take another bite at the apple through their 59(e) motion; 59(e) motions are not the proper vehicle for raising arguments or issues which could have been advanced at an earlier stage. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

the Uniform Declaratory Judgments Act. Order 10 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). The Court noted in its Order that 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. *Power* at 153–54, 177 S.E.2d at 553. Further, the Court correctly analyzed Plaintiffs' Complaint to ultimately reach the conclusion that, "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." Order 12. As such, there is no evidence that the Court failed to fully consider or rule upon this issue and, therefore, dismissal is appropriate.

As for the fifth issue raised by Plaintiffs relating to standing, the Court first notes that Defendants' Motion to Dismiss does not directly challenge the Plaintiffs' standing. Additionally, the issue of standing is not one which would need to be considered or resolved in order to dismiss the declaratory judgment actions pursuant to Rule 12(b)(6), SCRCP. Standing is an issue or subject matter jurisdiction which is a separate and distinct issue from whether a party has stated facts sufficient to constitute a cause of action. As such, the Court properly did not address standing in its Order and consideration of this issue would not be warranted given the disposition of the case.

The Court can find no area of misunderstanding of facts or law in its Order. The issues alleged to not have been addressed by Plaintiffs' 59(e) Motion, have fully and adequately been considered and ruled upon by the Court in its Order to the extent that those issues related to Defendants' Motion to Dismiss, which was the motion dealt with by the Order. The fifth issue raised by Plaintiffs involving standing was not raised or challenged by Defendants and it was not the subject of the Court's granting of dismissal as to Plaintiffs' causes of action for declaratory judgment. Therefore, none of the instances which could permit this Court to alter or amend its

judgment have occurred and this Court does not find any reasoning or justification to reconsider its ruling. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

CONCLUSION

For the foregoing reasons, Plaintiffs have failed to present sufficient justification for this Court to grant Plaintiffs' Motion to Alter or Amend the prior Order dismissing Plaintiffs' Complaint except for Count VII as to Defendant Georgetown County. Accordingly, Plaintiffs' Motion to Alter or Amend Judgment Pursuant to SCRCP, Rule 59(e) is hereby DENIED.

IT IS SO ORDERED.

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Judge Benjamin H. Culbertson
Circuit Court Judge

_____, 2023

Georgetown Common Pleas

Case Caption:	Michael T Green , plaintiff, et al VS Georgetown County , defendant, et al
Case Number:	2022CP2200912
Type:	Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148