

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	Case No.: 2021-CP-18-02238
)	
Virginia B. Crum, Elizabeth Crum-Huffman,)	
Fred Crum, Sr., Mattie Middlebrooks, Lula)	
Bryant, Wilhemenia King, Juanita Hill, and)	
Hazel Parson-Starks,)	
)	ORDER
)	
Plaintiffs,)	
)	
vs.)	
)	
Dorchester County, Ashley River Lumber)	
Company, Inc., and Joe Henry Branton, Sr.,)	
)	
)	
Defendants.)	
)	

INTRODUCTION

The undersigned was appointed by order of the circuit court dated October 26, 2023, as special referee in this matter pursuant to Rule 53(c), SCRCF, to decide this case with finality as a circuit court judge sitting without a jury. Plaintiffs Virginia B. Crum, Elizabeth Crum-Huffman, Fred Crum, Sr., Mattie Middlebrooks, Lula Bryant, Wilhemenia King, Juanita Hill, and Hazel Parson-Starks (“Plaintiffs”) initiated this action against Defendants Dorchester County, Ashley River Lumber Company, Inc. (“ARLC”), and Joe Henry Branton, Sr. (“Branton”) (“Defendants”) on December 30, 2021. Plaintiffs seek a declaration that Dorchester County’s ordinance rezoning the subject property is invalid. The Defendants’ contend the ordinance is valid because is consistent with Dorchester County’s comprehensive plan. A nonjury trial was held before the undersigned on December 18, 2023. After careful consideration of the record, law, evidence presented at trial, arguments of counsel, and all matters submitted, this Court makes the following

findings of fact and conclusions of law pursuant to Rule 52(a), SCRCPP, and enters judgment accordingly, pursuant to Rule 58, SCRCPP.

I. FINDINGS OF FACT

The Parties

1. The Plaintiffs listed below are residents of Coburn Town or the Town of Ridgeville, adjacent to the subject property:
 - a. Virginia B. Crum is a resident, property owner, and taxpayer in Dorchester County owning real property and residing at 115 Crum Lane, Ridgeville, South Carolina.
 - b. Elizabeth Crum-Huffman is a resident, property owner, and taxpayer in Dorchester County owning real property and residing at 109 Crum Lane, Ridgeville, South Carolina.
 - c. Fred Crum, Sr. is a property owner and taxpayer in Dorchester County owning real property at 341 Coburn Town Road, Ridgeville, South Carolina.
 - d. Mattie Middlebrooks is a property owner and taxpayer in Dorchester County owning real property at 324 Coburn Town Road, Ridgeville, South Carolina.
 - e. Lula Bryant is a resident, property owner, and taxpayer in Dorchester County owning real property at 109 Coburn Town Road, Ridgeville, South Carolina.
 - f. Wilhemenia King is a resident, property owner, and taxpayer in Dorchester County owning real property and residing at 281 Coburn Town Road, Ridgeville, South Carolina.
 - g. Hazel S. Parson-Starks is a resident, property owner, and taxpayer in Dorchester County owning real property and residing at 138 Horseshoe Street, Ridgeville,

South Carolina and served for seventeen years as the Mayor of the Town of Ridgeville.

- h. Juanita Hill is a resident, property owner, and taxpayer in Dorchester County owning real property and residing at 303 S Railroad Avenue, Ridgeville, South Carolina.
2. All of the properties listed above are located in Coburn Town, an historic African American settlement community adjacent to the properties that are the subject of this action, or the Town of Ridgeville. (Pls' Exs. 15, 23, 27, 30, 31, 33; TR. 62-65, 86-88.)
3. The Defendants Branton and ARLC own the following properties in unincorporated Dorchester County near the Town of Ridgeville: (1) 449 Campbell Thickett Road, Ridgeville, SC 29472, TMS No. 109-00-00-003; (2) Campbell Thickett Road, Ridgeville, SC 29472, TMS No. 109-00-00-0141; and (3) South Railroad Avenue, Ridgeville, SC 29472, TMS No. 109-00-00-002 (collectively, the "Branton Property"). (Pls' Exs. 3, 8, 9.) Together, the parcels comprising the Branton Property exceed 176 acres. (*Id.*)
4. The Defendant Dorchester County is a local government with planning and zoning authority over unincorporated areas in its jurisdiction under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (S.C. Code Ann. §§ 6-29-310, *et seq.*) (the "Act").

The Comprehensive Plan

5. Under the Act, Dorchester County is required to establish a comprehensive plan to serve as a guide for development and redevelopment of its area of jurisdiction. (S.C. Code Ann. § 6-29-510.) The Act requires comprehensive plans to include various planning elements,

including a land use element that considers existing and future land uses by categories.

(Id.)

6. Dorchester County adopted its existing comprehensive plan in 2018. (Pls' Ex. 1; TR. pp. 107-108.) The comprehensive plan includes a future land use map that designates areas by future land use category. (Pls' Ex. 1.) These categories are: (1) Natural Riparian Corridor; (2) Environmental Conservation; (3) Rural Neighborhood; (4) Low Density Traditional Neighborhood; (5) Medium Density Traditional Neighborhood; (6) Employment/Mixed Use; (7) Transit Oriented Development; (8) Rural Crossroads; and (9) Village Crossroads.

(Id.)

7. The broad community engagement process required by law for each local government's comprehensive plan by the Act resulted in several "Visionary Statements" guiding the findings of the Comprehensive Plan including these:

- a. "Our values are reflected in our preserved downtowns and historic neighborhoods..."
- b. "We preserve our fragile natural environment and protect our rural qualities and character. New developments support our desires to protect our waterways, breathe clean air and conserve natural resources."
- c. "We walk on accessible sidewalks.... Our rural areas have unique zoning that allows our citizens to enjoy the benefit of land ownership while also promoting conservation, land preservation, and context sensitive development."
- d. "We support new industries. Plentiful educational options, workforce development, access to capital, economic incentives and a culture that values homegrown businesses make our economy strong."

Pls' Ex. 1, page 25.

8. The community selected their preferred settlement type for each area of Dorchester County and the area at issue in this case around Ridgeville was identified as Area 8 and the general land use described as follows: " Plan for transit ready suburban residential, commercial, and employment growth around Ridgeville, while supporting existing rural character." Pls' Ex. 1, page 27.
9. The future land use designations for the area at issue in this case were Employment Mixed Use and Transit Oriented Development. Pls' Ex. 1, page 28.
10. According to the comprehensive plan, "providing jobs closer to where people live is a high priority" for areas designated for Employment/Mixed-Use development. (Pls' Ex. 1.) Similarly, the comprehensive plan provides those areas designated for Transit Oriented development "should support employment, commercial uses, institutions and high levels of urban design." (*Id.*) Consistent with these goals, the comprehensive plan provides that areas designated for both Employment/Mixed-Use and Transit Oriented development should include "[a]llocation of land for employment uses of all types including light industrial, office, [and] commercial businesses." (*Id.*) In fact, the Employment/Mixed Use and Transit Oriented future land use categories are the only categories that envision future light industrial uses. (*Id.*; TR. pp. 132-133.)
11. The Comprehensive Plan lists several steps to initiate implementation of the Plan. Some of the steps are:
 - "Coordinate the Plan with Capital Improvement Plans (CIP) and the Strategic Plan";
 - "...create alignment between Staff, Departments, Planning Commission and County Council with recommendations of the Comprehensive Plan";

"Use the vision, goals and strategies of the Comprehensive Plan to influence future planning efforts..." Pls' Ex. 1, page 71.

12. The Comprehensive Plan lists several action items that are important to consider, some of the action items are:

"Implementing plans to preserve the historic and vital neighborhoods that exist in the County that surround historic towns...";

"Sustaining existing commercial areas and providing /promoting areas and sites for adequate and compatible growth and expansion"

"Providing land and infrastructure to sustain and promote industrial growth"

"Pursuing zoning and development controls for the areas of the County designated as

"Absence of Control".

Pls' Ex. 1, page 75.

13. In addition to containing a future land use element, Dorchester County's comprehensive plan also contains an economic development element, as required by S.C. Code Ann. § 6-29-510(D)(2). (Pls' Ex. 1; TR. pp. 126-1279) The economic development element, in relevant part, provides:

- Dorchester County is committing to creating the diverse job opportunities to enable its citizens to enjoy a quality of life, to bring young people back to it and to attract new people that will help spur the economy with new businesses, employment, ideas and spirit... It has recognized and moved forward with plans to capitalize on the region's economic prosperity and more specifically the opportunities associated with Volvo being located just across I-26 from Ridgeville. Its current unemployment rate of 3.6% suggests that its citizens are employed. The question is whether those jobs are providing the income needed and at what cost, in terms of commuting time and lost County revenue. According to S.C. Department of Employment & Workforce "In-Commuters" measure at 30.3%, while Out-Commuters measure 50.9%. 18.9% work and live within the County. Most of the people are commuting to Charleston County and Berkeley County for their job and are spending money for lunch and other items while there during the day...

Continuing to work with and support the towns that make up the County by providing places for all income levels to live, work, entertain themselves and gather will expand opportunities further.

(Pls' Ex. 1.)

14. To implement the economic development goals established in the comprehensive plan, it also identifies specific strategies that should be implemented. As relevant to this case, these strategies include (a) “[p]lann[ing] for employment related uses to be located adjacent to existing towns such as St. George, Ridgeville and Harleysville as a mechanism to distribute jobs County-wide, take advantage of Volvo Plant location and to support the economic development of the towns that make up the County;” and (b) “[p]rioritiz[ing] jobs creating uses over residences to increase jobs to housing balance, grow tax base and reduce commute times.” (Pls' Ex. 1.)

15. In January 2020, Dorchester County amended the future land use map in its comprehensive plan. (Pls' Ex. 2.; TR. pp. 108-110, 133-134.) The ordinance adopting the amendment explained that the amendment to the map was “needed to support existing economic development and the continued economic growth of the County.” (Pls' Ex. 2.) Pursuant to this amendment, the largest portion of the Branton Property is designated for Employment/Mixed Use development, and a small portion of the property closer to the Town of Ridgeville is designated for Transit Oriented development. (*Id.*; TR. p. 111.) The comprehensive plan's future land use map was specifically amended with the help of the County's economic development department to change the future land use designation for the Property in 2020 so that it could be used for future economic development projects. (*Id.* at pp. 109, 133-134.) As the County's Planning Director explained, the Branton Property's proximity to the rail line made it a very good candidate for an economic development project. (*Id.* at p. 121.) Significantly, this was a motivating factor in

County Council's decision to change the land use designation for the Branton Property in the comprehensive plan's future land use map. (*Id.* at pp. 133-134.)

The Branton Property

16. Prior to the rezoning that is the subject of this case, the Branton Property was zoned Agricultural Residential (AR). Despite the zoning, part of the Branton Property had been utilized for many years as a sawmill, which is considered a heavy industrial use under the County's zoning code. (*Id.* at pp. 111-112.) As one of the neighbors testified at trial, the sawmill utilized various heavy machinery and loud equipment to move and cut lumber, which was delivered on large trucks hauling timber. (*Id.* at pp. 77-79.)

17. As stated above, the Branton Property is adjacent to and has direct access to a rail line. (Def. Branton and ARLC's Ex. 1.) The residents of Coburn Town use Coburn Town Road, which intersects the Branton Property, as one means of accessing the community. (TR. pp. 73-76.) Coburn Town Road crosses the railroad near the Branton Property; however, it is an ungated crossing. (*Id.*)

18. The Branton Property is also directly across Campbell Thicket Road from Lieber Correctional Facility. (Def. Branton and ARLC's Ex. 1; TR. pp. 81-83.) Lieber is a maximum-security prison that houses some of the state's most violent prisoners. (*Id.*) In recent years, Lieber has experienced prison escapes by dangerous prisoners, and the Branton Property and other nearby properties have been used as staging areas for drones to smuggle contraband into the prison. (*Id.*)

The Rezoning

19. In early 2021, Branton and ALRC applied to have the Branton Property rezoned from AR to Industrial (I), which would have brought ALRC's non-conforming use as a sawmill into zoning compliance. (Pls' Exs. 7-9.) The County's planning staff reviewed the rezoning

application and prepared a staff report, which serves as a recommendation to the Planning Commission and County Council. (Pls' Ex. 13; TR. pp. 122-123.)

20. In the staff report, the planning staff recommended rezoning the Branton Property to an Industrial classification only for the parcel where the then-existing sawmill was located. (Pls' Ex. 13; TR. pp. 112-113.) However, the planning staff further explained that if such use ceased, then it could support rezoning that parcel as Commercial Light Industrial (CLI). (*Id.*; Pls' Ex. 13.) The planning staff also explained that it supported rezoning the other two parcels as CLI instead of Industrial. (*Id.*; TR. pp. 112-113.) According to the planning staff, CLI zoning would protect the existing residential character of the neighboring residential neighborhood by providing buffers. (Pls' Ex. 13; TR. p. 136.)

21. The planning staff and its report also took into consideration the Branton Property's proximity to the prison and rail in supporting the rezoning to CLI. (Pls' Ex. 13; TR. p. 120.) The staff report stated: "Considering its proximity to existing rail and prison, staff sees this area developing more successfully as a place of employment with an opportunity for economic development as compared to higher density residential at the time." (Pls' Ex. 13.) Dorchester County's planning director explained during trial that it is preferential to see economic development uses utilize rail and that there is often conflict between residential uses and rail. (TR. p. 120.) She further explained that it was not prudent to put residential units close to a correctional facility. (*Id.*)

22. The rezoning request first came before the Dorchester County Planning Commission at its July 8, 2021, meeting. Pls' Ex. 12. At that meeting the Planning Commission deferred action on the applications so that the resident Council member from the area could hold a public meeting on the request. Pls' Ex. 14. Dorchester County's planning director testified

that she could not recall a similar deferral during her employment with the County. (TR. p. 122.)

23. Thereafter, a community meeting was held on July 23, 2021, to address questions and concerns of residents who live in the area and to help explain the different zoning classifications being requested.
24. The Dorchester County planning staff led the meeting and received questions and comments from those who attended, including the Plaintiffs and other residents of Coburn Town who opposed a rezoning that would allow incompatible uses, including industrial uses and distribution warehousing on this site adjacent to their homes and their community. The planning staff prepared slides showing what uses would be allowed in various zoning categories, Pls' Ex 5.
25. A petition was circulated and signed expressing disapproval and opposition to the proposed zoning change. Pls' Ex. 15. The signatures of many of the Plaintiffs and residents of the nearby African American settlement community of Coburn Town are listed on the petition opposing the rezoning. Pls' Ex. 15.
26. The questions posed by those in attendance and answers given by the County planning staff were captured in a memo prepared by the county staff. Pls' Ex. 17.
27. The rezoning request came before the Planning Commission again at its August 12, 2021, meeting. The County planning staff issued a report on the rezoning request, similar to its earlier report prepared before the July meeting, addressing each of the 3 parcels separately based on the specific characteristics and location of each parcel in relation to Coburn Town. Pls' Exs 13 and 18.
28. The staff report identified the future land use designation for these parcels as identified in

the Dorchester County Comprehensive Plan as follows:

The 2018 Comprehensive Plan Future Land Use Map designates this area/parcels with two settlement types:

- i. Employment/ Mixed Use Development. Providing jobs closer to where people live is a high priority. Settlements in these areas should promote job- oriented uses along with a mix of residential uses that allow people to walk and bike to work. Densities in these settlement types are to be medium to high, with a broad mix of affordability. Developments should be highly walkable and include parks, amenities, connected streets, neighborhood retail, employment, and institutions.
- ii. Transit Ready/Transit Oriented Development. The highest level of density should occur in this settlement type to support future transit opportunities. They should be “transit ready” and include the attributes of Transit Oriented Development. These areas are located along the rail line and adjacent to existing towns. Developments in these areas should include urban block sizes, buildings fronting pedestrian oriented streets, a high mix of uses-both vertical and horizontal- and include urban amenities. These areas should support employment, commercial uses, institutions, and high levels of urban design. Plaintiffs' Exhibit 18, page 2.

29. The staff identified the surrounding land uses, including the Plaintiffs’ homes and community, as rural, residential, and needing to be protected. Pls' Ex 18, pages 2-3.

30. The staff then made specific recommendations for the rezoning of each of the three parcels as follows:

TMS#109-00-00-002

Although this property is adjacent to a railroad, it is also adjacent to an existing residential community that needs to be protected. It also has direct access to a road that is not built to manage this type of use which will likely produce large volumes of heavy truck traffic and would not mix well with the existing residential settlement in the area. While staff can support uses that will utilize the existing rail infrastructure, to protect the existing residential character, we only support (CLI) Commercial Light Industrial zoning which would limit heavy industrial uses such as manufacturing plants and resource extraction operations. Staff had some early discussions about this parcel possibly developing as residential which could be supported by the Comprehensive Plan, but the applicant submitted for the parcel to be rezoned for Industrial use to support Economic Development in the area.

In addition, staff also encourages the County to require assurances from the applicant to show how they plan on accessing the site and that no truck traffic would directly take access from Coburn Town Road. Coburn Town Road is a narrow, ditch-section, rural residential road with no pedestrian facilities and staff has concerns with the introduction of truck traffic onto this road. Staff would like to see access to the site provided from School Street, and steps should be taken to prohibit truck traffic down Coburn Town Road.

TMS#109-00-00-003

This tract contains Ashley River Lumber which is an established use with direct access to rail and takes direct access from Campbell Thicket Road. Staff can support (I) Industrial zoning as requested for existing Ashley River Lumber to bring the existing use into zoning compliance, however, if the existing use goes away staff can support CLI to match adjacent parcels to allow for similar zoning/uses. This parcel takes direct access off Campbell Thicket Road, has access to the rail line and is directly across from the prison. Staff would need assurance regarding no future access being taken from Coburn Town Road for this parcel as well.

TMS#109-00-00-141

This parcel does not have direct access to rail and is adjacent to an existing residential community that needs to be protected. It also has direct access to roads that are not built to manage this type of land use and would not mix well with the existing residential settlement in the area. Staff recognizes that the parcel is directly across from the prison, but to protect the existing residential character, we only support (CLI) Commercial Light Industrial zoning which would limit heavy industrial uses such as manufacturing plants and resource extraction operations.

31. Finally, addressing all parcels, staff stated: “School Street, Coburn Town Road, and Thicket Road are all state roads, and the County does not have the final authority on the aforementioned actions regarding access. The application shall address these concerns prior to third reading to maintain staff support as indicated.”

32. In addition, staff also encourages the County to require assurances from the applicant to show how they plan on accessing the site and that no truck traffic would directly take access from Coburn Town Road. Coburn Town Road is a narrow, ditch-section, rural residential road with no pedestrian facilities and staff has concerns with the introduction of truck traffic onto this road. Staff would like to see access to the site provided from Campbell

Thicket Road like existing Ashley River Lumber, and steps taken to prohibit truck traffic down Coburn Town Road. Pls' Ex 18, pages 2-3.

33. Numerous speakers appeared to oppose the rezoning application. Pls' Ex. 20, pages 2-3. The only speakers in support of the rezoning application were Mr. Branton, the owner, and Dorchester Council Member Bailey, who would later be voting on the rezoning as a member of Dorchester County Council, stating that “the Economic Development Board is in need of land for commercial/ industrial sites.” Pls' Ex. 20, page 3.

34. Commissioner Pratt then made a motion to recommend approval based on the staff's recommendation of a rezoning to Commercial Light-Industrial District (CLI), and further suggested based on staff's recommendation that the applicant consider access points for management of ingress / egress and traffic control. After a second the Commission voted 5-0 to recommend approval with consideration for access management of the sites. Pls' Ex. 20, page 3, and Pls' Ex. 21.

35. Following the August 12, 2021 Planning Commission meeting, the property owners agreed to modify their application to seek CLI instead of Industrial zoning based on the recommendations of the planning staff and Planning Commission. (Pls' Exs. 22, 24.) As a result, the rezoning application proceeded to County Council for review based on that modified request, and the rezoning application received first reading at County Council's meeting on September 7, 2021. (*Id.*)

36. In the public comments period, many area residents and Plaintiffs in this case spoke against the rezoning. Pls' Ex. 23, pages 2-3.

37. The motion passed 6-1, with the resident Council Member, Councilwoman Holman who conducted the community meeting and heard the opposition of the residents, voting

- against. Pls' Ex. 23, page 5.
38. At the October 4, 2021, Dorchester County Council meeting, several residents appeared to speak against the rezoning, even though it was not on the agenda for action at that meeting, Pls' Ex. 27, page 2, and Council also received written comments expressing opposition to the rezoning application. Pls' Ex. 26.
39. At the October 18, 2021, Council meeting a public hearing was held on the rezoning request before the Council Planning, Development, and Building Committee. Pls' Exs. 28 and 29. Ten speakers appeared and spoke against the rezoning request, including many of the Plaintiffs. Pls' Ex. 30, pages 4-5.
40. Bryan Kizer, an employee of Stantec, the engineering firm hired by the rezoning request applicant acknowledged the concerns expressed by the community and explained some benefits of the rezoning. Pls' Ex. 30, pages 5.
41. After the public hearing, Councilwoman Holman, who represents the district where this property and the Coburn Town community is located, made a motion to deny the request to rezone the property. The motion failed for lack of a second. Pls' Ex. 30, page 5.
42. Councilman Friddle, seconded by Councilman Chinnis, moved to approve the rezoning request. The motion passed, 6-1, with Councilwoman Holman voting against. Pls' Ex. 30, page 5.
43. On November 1, 2021, Dorchester County Council considered third and final reading the rezoning application from "Agricultural Residential District (AR) to Commercial Light-Industrial District (CLI)." Pls' Ex. 33.
44. During the public comments period, seven speakers spoke against the rezoning; none spoke in favor of it. Council voted 6-1 in favor of final reading of the rezoning request,

with Councilwoman Holman voting against. Pls' Ex. 33, page 2.

45. The Employment/ Mixed Use future land use designation as the name implies allows “mixed uses”. This designation’s “Settlement Character” includes “homes, townhomes and multifamily”, “allocation of land for employment use of all types including industry, light industry, office and commercial” and several other “Settlement Characters”. Commercial Light Industrial zoning is compatible with many but not all of the expected uses in the Employment/Mixed Use future land use designation. Pls’ Ex. 1, page 34.

46. Likewise, CLI zoning is compatible with some but not all of the Transit Oriented Development future land use designation “Settlement Characters” as described in the Comprehensive

47. Dorchester County Ordinance 04-13 provides in Section 7.9.2 that “zoning of CLI land is not encouraged except as an extension of an existing CLI district, adjacent to industrial districts, or where the proposed district is isolated from existing or planned residential uses.” Section 7.9.1 provides that the intent of the CLI district is accommodate the location of compatible light-industrial uses and to reserve areas of the County where light-industrial businesses can locate with limited impact on traffic and the community character of residential neighborhoods. Defendant’s Ex. 2. This ordinance does not prohibit the CLI designation for the subject property as long as it is consistent with the Comprehensive Plan.

Declaratory Judgment

48. Following the rezoning, Plaintiffs initiated this action seeking a declaratory judgment to invalidate the rezoning of the Branton Property on the grounds that it was inconsistent with Dorchester County’s comprehensive plan and constituted illegal spot zoning. Although

Plaintiffs challenge the rezoning, they have neither challenged the procedures by which the Branton Property was rezoned nor claimed that they were denied an opportunity to be heard. As noted above, the Plaintiffs and other citizens were afforded and took advantage of many opportunities to voice their opposition to the rezoning. (Pls' Exs. 20, 25, 30, 35.)

49. Despite their opposition, Plaintiffs have failed to identify any certain or likely negative impacts on their property or way of life resulting from the rezoning. At trial, two of the Plaintiffs explained their opposition to the rezoning based on concerns about potential development, which was consistent with the reasons given during the rezoning process. (TR. pp. 65-68, 94-99.) Although Plaintiffs who testified expressed legitimate concerns about the development of the Branton Property under CLI zoning, they admitted that they did not know what actual impacts such development would have. (*Id.* at pp. 70-72, 81.)

II. CONCLUSIONS OF LAW

1. “The burden of establishing the invalidity of a zoning ordinance is on the party attacking it to establish by clear and convincing evidence that the acts of the [county] council were arbitrary, unreasonable, and unjust.” *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 279 (2023). “Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of citizens’ constitutional rights. In order to successfully assault a city’s zoning decision, a citizen must establish that the decision was arbitrary and unreasonable.” *Knowles v. Aiken*, 305 S.C. 216, 224, 407 S.E.2d 639, 642 (1991). As a result, a court cannot disturb a local government’s zoning decision “if the propriety of that decision is even ‘fairly debatable.’” *Id.* at 223, 407 S.E.2d at 642.

2. “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 owners of such property and to detriment of other owners.” *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 361, 133 S.E.2d 843, 848 (1963) (emphasis added). Spot zoning is “invalid where the ordinance does not form a part of the comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare.” *Knowles*, 305 S.C. at 222, 407 S.E.2d at 641-42. In reviewing spot zoning issues, upon a finding that spot zoning has occurred, a court is to closely scrutinize “(1) the adherence of the zoning as to the [local government’s] comprehensive plan; and (2) the promotion of the good of the common welfare but to only correct injustices which are clearly shown.” *Id.* at 223, 407 S.E.2d at 642. Even where spot zoning has occurred, a court cannot invalidate the zoning if its propriety is at least “fairly debatable.” *Id.* at 224, 407 S.E.2d at 642-43.
3. Here, Plaintiffs have failed to meet their heavy burden of establishing by clear and convincing evidence that the rezoning of the Branton Property should be invalidated. Dorchester County Council’s approval of the rezoning was not arbitrary or capricious, and at the very least, the propriety of its rezoning decision was fairly debatable.
4. The rezoning of the Branton Property to CLI was not arbitrary or capricious because it is consistent with Dorchester County’s comprehensive plan. As explained above, in 2020, Dorchester County Council specifically adopted an amendment to the comprehensive plan’s future land use map to designate the Branton Property for Employment/Mixed Use and Transit Oriented development. (TR. pp. 108-110, 133-134.) The purpose of this amendment was to ensure that properties identified as potential economic development sites and for employment uses by Dorchester County had been properly categorized in the

comprehensive plan, and Dorchester County had identified the Branton Property as property that should be used for economic development and employment uses because of its access to rail. (Pls' Ex. 2; TR. pp. 108-110, 133-134.) The Employment/Mixed Use and Transit Oriented land use categories were, indeed, the only two land categories that are consistent with light industrial uses. (TR. pp. 132-133.) As a result, the CLI zoning was consistent with the future land use element of the comprehensive plan.

5. Also, the rezoning of the Branton Property was consistent with the economic development element of the comprehensive plan. As outlined above, this element identified a need to reduce the proportion of residents that commute to work in Charleston and Berkeley Counties by providing more employment opportunities in Dorchester County. (Pls' Ex. 1.) As the comprehensive plan noted, this need would not only help expand and diversify the County's tax base, it would also reduce commute times and traffic. (*Id.*) To fulfill this need, the comprehensive plan adopted the "high priority strategies" of (1) "[p]lan[ning] for employment related uses to be located adjacent to existing towns such as St. George, Ridgeville, and Harleysville as a mechanism to distribute jobs County-wide, take advantage of Volvo Plant location and to support the economic development of the Towns that make up the County," (2) "[p]rioritiz[ing] jobs creating uses over residences to increase jobs to housing balances, grow tax base and reduce commute times." (*Id.*) By rezoning the Branton Property to CLI, Dorchester County was implementing the strategies for economic development that County Council adopted in the comprehensive plan, and the rezoning was, therefore, consistent with that plan. (TR. pp. 126-129.)
6. Plaintiffs attempted to show that the rezoning was not consistent with the comprehensive plan by eliciting testimony that a conceptual site plan for a potential distribution center did

not include some of the elements that the comprehensive plan state should be included in areas designated for the future land use categories of Employment/Mixed Use or Transit Oriented development, such as walkability and urban blocks. (*Id.* at pp. 150-153.) However, meeting every element of a designated future land use category is not required to be consistent with the comprehensive plan.

7. Dorchester County's Planning Director testified that concept plans are not relied upon in making zoning decisions because the plans are speculative and could change to other of the various uses permitted under CLI zoning. (TR. pp. 113-116, 164-165.) Indeed, while one concept plan presented to the County showed a potential distribution center, the Branton Property could be developed for several different uses and not necessarily as a distribution center. (*Id.* at pp. 113-116, 167.)
8. Also, the Planning Director explained that the comprehensive plan is an aspirational document intended to guide zoning decisions and future development, but it is impractical and contrary to good planning practices to expect that each parcel of land would incorporate every aspect of the goals of the comprehensive plan. (TR. pp. 119-120, 130-132, 150-152.) For example, although the comprehensive plan provides that the Employment/Mixed Use land use category should promote walkability, it is not prudent to design industrial sites that are walkable because of safety hazards. (*Id.* at pp. 168.)
9. Regarding Plaintiffs' contention that CLI zoning of the Branton Property is inconsistent with the comprehensive plan because the proposed concept plan did not contain each and every settlement character and vision identified in the applicable future land use categories, this position is inconsistent with the intent of the comprehensive plan. It is impossible for each land parcel to be used in a manner that meets every settlement and character vision in

the applicable future land use category. Because the comprehensive plan calls for “allocation of land for employment uses of all types including industrial, light industry, office, and commercial” for Employment/Mixed Use future land uses, pursuant to Plaintiff’s reasoning any rezoning that did not permit industrial or light industrial would be inconsistent with the comprehensive plan.

10. The reality is that zoning decisions do not require the exacting consistency with the comprehensive plan that Plaintiffs contend because it would impractical, if not impossible, in most cases. As the Act states, comprehensive plans are intended to “guide development.” S.C. Code Ann. § 6-29-510(A). They are not intended to constrain development through overly stringent application. As one court has stated, the provisions of a comprehensive plan “are to be used as a planning guide, not a land use decision-making tool. In other words, strict adherence is not required. The plan is only a general blueprint and thus only general conformance is necessary.” *Oyster Growers Ass’n v. Moby Dick Corp.*, 115 Wn. App. 417, 429, 62 P.3d 912, 918 (Wn. Ct. App. 2003). Here, CLI zoning generally conforms to the County’s comprehensive plan future land use map because the Employment/Mixed Use and Transit Oriented land use categories support commercial and light industrial development envisioned for the Branton Property. Further, this rezoning provides zoning and development controls for three parcels previously designated as “Absence of Control” which the comprehensive plan recognizes as an important action item. As a result, Plaintiffs have failed to carry their heavy burden of proof that the rezoning is inconsistent with the comprehensive plan.

11. Plaintiffs also attempted to show that the rezoning was inconsistent with Section 7.9.2 of Dorchester County’s zoning code, which provides that the “zoning of CLI land is not

encouraged except as an extension of an existing CLI district, adjacent to industrial districts, or where the proposed district is isolated from existing or planned residential districts.” (Def. Dorchester County’s Ex. 2; TR. pp. 137-138.) However, as Dorchester County’s Planning Director testified, this provision only provides that CLI is not “encouraged” except when one of those circumstances exist, but it does not prohibit rezoning in the absence of those circumstances. (*Id.*) Thus, the rezoning did not violate Section 7.9.2. Moreover, the Planning Director further testified that there were extenuating circumstances relating to the rezoning of the Branton Property, such as its prior industrial use as a sawmill and its proximity to rail and the prison, that made the rezoning to CLI appropriate. (*Id.* at pp. 111-112, 138-139.) Similarly, the property’s proximity to rail and the prison makes it undesirable for residential uses. (*Id.* at p. 120.) Because the zoning code did not prohibit the rezoning to CLI, there was nothing arbitrary, capricious, or unlawful about County Council’s decision to rezone the property in such a fashion under these circumstances.

12. Two of the Plaintiffs also testified about their personal fears of how the rezoning and subsequent development of the Branton Property could affect their community and living conditions and why they believed it would be incompatible with the existing residential uses of their property. They testified about additional truck traffic, noise and other activities associated with light industrial facilities that would negatively impact their residential rural community. Change that impacts a person’s home and community are always concerning and this Court recognizes the significance and genuineness of the Plaintiffs fears and concerns. However, this Court is bound to follow the applicable law which requires evidence that the Council acted arbitrarily or unreasonably in passing the rezoning

application. Given that the procedures were followed and the rezoning is consistent with the comprehensive plan, the rezoning application must be accepted despite the validity of the Plaintiffs' fears and concerns. It is also noted that the plaintiffs have lived for years next to a sawmill that utilized loud machinery and equipment and timber-hauling trucks for its operations, a railroad, and a prison. (TR. pp. 77-79, 81-83.)

13. Further, regarding additional traffic and noise, Dorchester County's zoning code imposes conditions on development that would mitigate potentially adverse impacts. For example, Section 7.9.10 of the zoning code prohibits "[p]rimary access and vehicular traffic through the CLI district impacting residential neighborhoods" and requires various landscaping, buffering, and screening. (Def. Dorchester County's Ex. 2; TR. pp. 116-117.) Separate zoning code provisions require buffering between industrial and residential uses, which would be beneficial to the residents of Coburn Town. (TR. pp. 80-81, 122-123.) In contrast, if the Branton Property was developed for medium- to higher-density residential uses, which is also consistent with the applicable Employment/Mixed Use and Transit Oriented future land use categories, there would be less protection from associated adverse impacts. (*Id.* at pp. 122-123, 136, 150; Pls' Ex. 1.) For example, the Planning Director testified that there would be no buffer requirements between potential residential development on the Branton Property and the existing residences in Coburn Town. (TR. pp. 157-158.) Also, unlike light industrial or commercial development, residential development would not restrict vehicular access and use of Coburn Town Road through Coburn Town, which could mean additional traffic from 500-2,000 houses through Coburn Town. (TR. pp. 116-117, 165-166, 168-169.) Also, light industrial development could benefit Plaintiffs and other neighbors by providing (a) access to water and sewer service,

which they currently do not enjoy; (b) closer proximity to jobs; and (c) a new road for vehicular access to Coburn Town as an alternative to the ungated railroad crossing on Coburn Town Road. (*Id.* at pp. 76-77, 84, 130.) Thus, while light industrial development, on its face, may seem incompatible with the existing residential uses in Coburn Town, it may actually be less impactful on and provide more benefits to Plaintiffs and their neighbors than would residential development of the Branton Property. Given these competing factors, it is at least fairly debatable that County Council properly exercised its considerable discretion in approving the rezoning.

14. Overall, Plaintiffs have failed to present clear and convincing evidence that Dorchester County's decision to rezone the Branton Property was arbitrary and capricious. The comprehensive plan's designation of the property for Employment/Mixed Use and Transit Oriented development, as specifically approved by County Council, expressly contemplates potential light industrial and commercial uses permitted under CLI zoning. Furthermore, the industrial or commercial use of the Branton Property under CLI zoning is directly consistent with the economic development goals and strategies contained in the economic development element of the comprehensive plan.
15. Similarly, Plaintiffs have failed to present clear and convincing evidence that the rezoning of the Branton Property constitutes unlawful spot zoning.
16. First, this rezoning does not constitute spot zoning because it does not involve a small tract or parcel of land. Instead, it involves three separate parcels that collectively comprise approximately 176 acres. As a result, this situation does not present typical, traditional spot zoning. *See Ani Creation*, 440 S.C. at 282 (finding that creation of overlay zoning district covering large area did not constitute traditional spot zoning).


17. Second, the rezoning was not accomplished for mere private gain as Plaintiffs contend. Although the property owners will certainly benefit from the rezoning, there is ample evidence in the record demonstrating that County Council believed that rezoning the property to encourage economic development and employment uses would further the public welfare. Prior to any rezoning request by the property owners, County Council specifically identified the Branton Property as land that was uniquely situated for economic development opportunities because of its access to rail. And it expressly adopted an amendment to the County's comprehensive plan future land use map to ensure that it could be used for such purpose. Consistent with that designation, both the County's planning and economic development departments recognized the property's importance as a potential economic development site. Also, the Branton Property is adjacent to the Town of Ridgeville, which, according to the comprehensive plan, is an area where economic development should be planned and encouraged to locate jobs closer to where Dorchester County residents live. Given these facts, Plaintiffs' allegations that the rezoning was for mere private gain ring hollow, and the rezoning cannot be considered spot zoning for this reason as well. *See Knowles*, 305 S.C. at 223, 407 S.E.2d at 642 (rejecting argument that rezoning constitute spot zoning because it furthered the public welfare).
18. Third, and finally, even if it could be considered spot zoning, the rezoning is at the least fairly debatable, and it is not so unreasonable so as to impair or destroy citizens' constitutional rights. As discussed above, the rezoning to CLI is consistent with the comprehensive plan and furthers Dorchester County's economic development goals and strategies. Thus, the policy of judicial restraint militates against invalidating the rezoning ordinance adopted by County Council, whose members are elected by and accountable to

all voters of Dorchester County. *See Ani Creation*, 440 S.C. at 284 (rejecting spot zoning challenge because it was consistent with comprehensive plan and “fairly debatable” that city council enacted the ordinance to promote the public welfare); *Knowles*, 305 S.C. at 224, 407 S.E.2d at 642-43 (refusing to invalidate zoning, even if it constitutes spot zoning, because the power to zone is exclusively for the legislature, whose decisions should not be second guessed by the courts).

ORDER

THEREFORE, it is ordered that judgment be entered in favor of Defendants Dorchester County, Ashley River Lumber Company, Inc., and Joe Henry Branton, Sr. and that Plaintiffs’ request for declaratory judgment invalidating the ordinance rezoning the Branton Property and all other declarations sought in the Complaint are DENIED. Plaintiff’s 2nd cause of action for permanent injunction and mandamus and 3rd cause of action for attorney fees are DENIED. Defendants’ request for attorney fees pursuant to S.C. Code Ann. § 15-36-10 is DENIED.

AND IT IS SO ORDERED.



Franklin J. Smith, Jr., Special Referee

February 2, 2024