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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Circuit Court Case No. 2023-CP-22-00210

Kendrick A. Bryant and Keisha Bryant Sherman on behalf of the heirs of Ernest Bryant; Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison; Lucille Grate; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.

Appellants,

v.

Georgetown County; Covington Homes, LLC

Respondents.

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July 10, 2024

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Orders/Judgments

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL
COUNTY OF GEORGETOWN	)	CIRCUIT
	)	CIVIL ACTION NO.: 2023-CP-22-00210
Kendrick A. Bryant and Keisha Bryant	)	
Sherman on behalf of the heirs of Ernest	)	
Bryant; Benjamin Dennison and Willie	)	
Dereef, Jr. on behalf of the heirs of Limerick	)	
Dennison; Lucille Grate; Parkersville	)	
Planning & Development Alliance; Keep It	)	ORDER GRANTING DEFENDANTS'
Green; and Preserve Murrells Inlet, Inc.,	)	MOTIONS TO DISMISS
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Georgetown County and Covington Homes,	)	
LLC,	)	
	)	
Defendants.	)	

THIS MATTER came before the Honorable Kristi F. Curtis on July 13, 2023, on Motions to Dismiss filed by Defendants Georgetown County and Covington Homes, LLC ("Covington Homes"). Present at the hearing were H. Thomas Morgan, Jr., Esquire, and Sydney J. Douglas, Esquire, appearing on behalf of Defendant Georgetown County, James K. Gilliam, Esquire, and Taylor K. Voegel, Esquire, appearing on behalf of Defendant Covington Homes, and Cynthia Ranck Person, Esquire, and F. Patrick Hubbard, 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 Complaint in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

In this case, Plaintiffs seek to invalidate, or in the alternative, appeal, the approval of a major subdivision application in Georgetown County, South Carolina. Plaintiffs' claims challenge

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), SCRPC ("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), SCRPC the attachment became a part and parcel of the complaint."). Dismissal pursuant to Rule 12(b)(6), SCRPC, 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

Electronically signed on 2023-09-19 13:12:11 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2200210

Kendrick A Bryant et al
PLAINTIFF(S)

Georgetown County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend the Court's Order of September 19, 2023 is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/22/2023 .

F. Patrick Hubbard for Kendrick A Bryant, Willie Dereef, Jr, Benjamin Dennison, Keisha Bryant Sherman, Limerick Dennison, Ernest Bryant Est, Limerick Dennison Est, Ernest Bryant, Preserve Murrells Inlet Inc, Keep It Green, Parkersville Planning & Development Alliance, Lucille Grate

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

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

Case Number: 2023CP2200210

Type: Order/Electronic Form 4

So Ordered

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

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Pleadings

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Kendrick A. Bryant and Keisha Bryant	:	CASE NO.
Sherman on behalf of the heirs of	:	
Ernest Bryant; Benjamin Dennison and	:	SUMMONS
Willie Dereef, Jr. on behalf of the heirs	:	
of Limerick Dennison; Lucille Grate;	:	Declaratory Judgment
Parkersville Planning & Development	:	Appeal from Georgetown County Council
Alliance; Keep It Green; and Preserve	:	
Murrells Inlet, Inc.	:	Jury Trial Demanded
Plaintiffs	:	
v.	:	
	:	
Georgetown County; Covington	:	
Homes, LLC	:	
Defendants	:	
	:	
	:	

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at P.O. Box 1922, Pawleys Island, SC 29585, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully submitted,

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

KEEP IT GREEN ADVOCACY, INC.
P.O. Box 1922
Pawleys Island, SC 29585
(843) 325-7795
(570) 971-8636
kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

March 10, 2023
Pawleys Island, South Carolina

ROA 23

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Kendrick A. Bryant and Keisha Bryant	:	CASE NO.
Sherman on behalf of the heirs of	:	
Ernest Bryant; Benjamin Dennison and	:	COMPLAINT
Willie Dereef, Jr. on behalf of the heirs	:	(Civil Action)
of Limerick Dennison; Lucille Grate;	:	
Parkersville Planning & Development	:	Declaratory Judgment
Alliance; Keep It Green; and Preserve	:	Appeal from Georgetown County Council
Murrells Inlet, Inc.	:	
	:	
Plaintiffs	:	Jury Trial Demanded
v.	:	
	:	
Georgetown County; Covington	:	
Homes, LLC	:	
	:	
Defendants	:	
	:	
	:	

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint seeking Declaratory Judgment against Defendants named herein, and an Appeal from a decision by Georgetown County Council on February 14, 2023, approving a land development subdivision application as follows:

I.

INTRODUCTION & OVERVIEW

1. This Complaint involves two existing Georgetown County ordinances that Plaintiffs contend are void as conflicting with South Carolina state law, and a land development decision that was based on the two invalid ordinances.

2. This case arises in the context of a land development application requesting approval of a high density multi-family subdivision on a parcel of vacant land in the heart of a

minority community in Pawleys Island, Georgetown County, South Carolina, zoned as General Residential ("GR") and designated by the Georgetown County Comprehensive Plan and Maps, (hereinafter "Comprehensive Plan"), as "Medium Density."

3. The high density subdivision application was denied by Georgetown County Planning Commission after public hearing on January 19, 2023, on the basis that it conflicted with the Comprehensive Plan residential density requirements, *inter alia*. No appeal of this decision was filed by the applicant.

4. Thereafter, on February 14, 2023, Georgetown County Council reversed the decision of Planning Commission and approved the high density subdivision application without further input, review, consideration, or decision by Planning Commission.

First Ordinance that Conflicts with State Law
(County Council Site Plan Review)

5. Georgetown County GR Zoning Ordinance 607 contains provisions that require County Council to approve land development plans in certain cases of two-family, multi-family and townhouse developments.

6. Under the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Planning Act"), Section 6-29-1150, the South Carolina legislature explicitly set forth detailed procedures for the submission of development plans and conferred specific authority for making the decision to approve or disapprove development plans on the Planning Commission or designated staff. Staff decisions are appealable to the Planning Commission and Planning Commission decisions are appealable to the Circuit Court.

7. The plain language of the state Planning Act provides that the final county decision-maker on land development plans is the Planning Commission with appeal to the Circuit Court.

8. There is no provision in the Planning Act giving County Council, a legislative body, authority to make decisions on or to hear appeals of land development plans.

9. The GR Zoning Ordinance provisions requiring County Council to make the final decision on land development plans conflicts with and is pre-empted by the explicit provisions of state law which confer this decision on Planning Commission with appeal to Circuit Court.

10. Under fundamental principles of South Carolina law, county ordinances that conflict with state law are void.

11. The Georgetown County GR ordinance provisions that require site plan reviews by County Council are void as a matter of law.

12. County Council had no authority to hear or approve the subdivision application on February 14, 2023, and its decision is void as a matter of law.

Second Ordinance that Conflicts with State Law
(GR Density Provisions)

13. At all times pertinent hereto, the parcel in question was zoned General Residential (GR) and was designated by the Comprehensive Plan as "Medium Density."

14. "Medium Density" is defined by the Comprehensive Plan to allow a maximum of five (5) residential units per acre.

15. GR Zoning Ordinance 607 allows a maximum residential density of sixteen (16) units per acre.

16. The South Carolina Planning Act specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction,” and provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.” S.C. Code, Section 6-29-720(A) & (B).

17. The plain language of the state law requirement that zoning ordinances be in accordance with the Comprehensive Plan is mandatory and unconditional.

18. The GR zoning ordinance, which allows high density, i.e., a maximum residential density of sixteen (16) units per acre, is not in accordance with the Comprehensive Plan designation of this parcel as "Medium Density" which allows a maximum of five (5) units per acre.

19. To the extent that the GR zoning ordinance permits residential density of more than five (5) units per acre on land parcels designated as "Medium Density" by the Comprehensive Plan, it conflicts with the state law requirement that zoning "must be in accordance with the comprehensive plan."

20. Under fundamental principles of South Carolina law, county ordinances that conflict with state law are void.

21. The residential density provisions of the GR zoning ordinance that allow more than five (5) units per acre on land designated "Medium Density" by the Comprehensive Plan are void as a matter of law.

22. The County Council decision of February 14, 2023, was based on invalid provisions of the GR ordinance and is void as a matter of law.

23. For the reasons set forth herein, Plaintiffs submit as follows:

- a. The February 14, 2023, decision by County Council to approve the subdivision site plan application is void and of no force or effect.
- b. The February 14, 2023, decision by County Council to approve the subdivision site plan application was arbitrary, capricious, and otherwise improper as set forth more particularly hereinafter.

- c. The January 19, 2023, decision of Planning Commission to deny the subdivision application is the final decision from which no appeal to the Circuit Court was filed, and therefore, is the valid and binding decision.
- d. GR zoning ordinance provisions that allow high residential density on land designated by the Comprehensive Plan as Medium Density are void as a matter of law, and land development decisions based thereon are null, void and of no force or effect.

II.

LAND PARCEL AT ISSUE

24. The parcel of land upon which the subdivision was proposed is owned by Covington Homes, LLC, (hereinafter "Covington Homes"), and was acquired by Deed dated April 7, 2022, Tax Map No. 04-0204-025-03-00, recorded in Georgetown County Deed Book 4332, Page 243, having the address of 319 Petigru Drive, and consisting of 2.01 acres of vacant forested land, including wetlands, hereinafter "Covington Homes parcel."

25. The Covington Homes parcel is located in the heart of one of the oldest and most historically significant African American neighborhoods of Pawleys Island, Georgetown County, South Carolina, known as Fraserville.

26. The Covington Homes parcel was designated as "Medium Density" by the Georgetown County Comprehensive Plan at the time Covington Homes acquired it on April 7, 2022.

27. On or about December 20, 2022, Covington Homes and its agent Bryan Lenertz, submitted a Major Subdivision Application requesting approval to construct twelve (12) multi-family high density duplex units with infrastructure including driveways, sidewalks, and parking

areas, on approximately 1.5 net buildable acres for a net residential density of 7.74 units per acre, which significantly exceeds the medium density limitation of 5 units per acre.

28. Public hearing on this Major Subdivision Application was scheduled before Planning Commission on January 19, 2023.

III.

PARTIES

Plaintiffs

29. Plaintiffs, Kendrick A. Bryant and Keisha Bryant Sherman, on behalf of the heirs of Lazarus and/or Ernest Bryant, are adult individuals having an address of 300 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and own and reside on three parcels of land consisting of approximately 5 acres that directly adjoin the Covington Homes parcel, identified as Georgetown County Tax Map Nos. 04-0416-020-00-00, 04-0416-020-01-00, 04-0416-020-02-00, by deeds recorded in the Office of Recorder of Deeds for Georgetown County. Kendrick A. Bryant and Keisha Bryant Sherman have signed an Affidavit attached hereto as Exhibit "1," and incorporated herein by reference.

30. Plaintiffs, Benjamin Dennison and Willie Dereef, Jr., on behalf of the heirs of Limerick Dennison, are adult individuals having addresses of 92 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina, and 132 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina, respectively, and own and reside on three parcels of land consisting of approximately 9.2 acres that directly adjoin the Covington Homes parcel, identified as Georgetown County Tax Map Nos. 04-0416-018-00-00, 04-0416-018-01-00, 04-0416-018-02-00, by Deed dated February 21, 1882, recorded in Deed Book H, Page 97, in the Office of Recorder of Deeds for Georgetown County. Benjamin Dennison and Willie Dereef, Jr., have

signed Affidavits attached hereto as Exhibits "2," and "3," respectively which are incorporated herein by reference.

31. Plaintiff, Lucille Grate, is an adult individual who resides at 328 Petigru Drive, Pawleys Island, Georgetown County, South Carolina, and owns and lives on land directly across Petigru Drive from the Covington Homes parcel, identified as Tax Map No. 04-0157-005-00-00, by Deed recorded in Deed Book 1305, Page 196, in the Office of Recorder of Deeds for Georgetown County. Lucille Grate has signed an Affidavit attached hereto as Exhibit "4," and incorporated herein by reference.

32. Plaintiff, Parkersville Planning & Development Alliance, (hereinafter "Parkersville PDA"), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address c/o Rev. Johnny A. Ford, President, 511 Petigru Drive, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by Johnny A. Ford, President of Parkersville PDA, who personally resides approximately 750 feet from the Covington Homes parcel, is attached hereto as Exhibit "5," and incorporated herein by reference.

33. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American communities of Parkersville and Fraserville, which are the oldest minority settlements in the Waccamaw Neck area of Georgetown County.

34. The Parkersville PDA represents residents of Parkersville and Fraserville in the promotion of housing, land use, and economic development that fits within the character, infrastructure, and needs of the community.

35. The Parkersville PDA was formed to represent and speak for the minority community which has been substantially and negatively impacted by county land use decisions and zoning ordinances that conflict with the Comprehensive Plan or otherwise have allowed

undesirable and harmful commercial or other encroachment into the residential Parkersville/Fraserville community such as garbage dumps, recycling centers, storage facilities, electric substations, transformers and the like. This pattern of decision-making has had permanent detrimental and discriminatory impact on this traditional historical minority neighborhood.

36. The Parkersville PDA represents the interests of the named Plaintiffs herein as well as many other residents and landowners in the vicinity of the proposed high density subdivision at issue in this case that threatens to continue a pattern of permanent and detrimental impact to this historical minority community.

37. Plaintiff, Keep It Green, (hereinafter “KIG”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of P.O. Box 3312, Pawleys Island, Georgetown County, South Carolina. Affidavit signed by Duane Draper, Chairman of KIG and resident of Pawleys Island, is attached hereto as Exhibit “6,” and incorporated herein by reference.

38. Plaintiff, Preserve Murrells Inlet, Inc., (hereinafter “PMI”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of 4510 Richmond Hill Drive, Murrells Inlet, Georgetown County, South Carolina. Affidavit signed by Leon L. Rice, III, President of PMI and resident of Murrells Inlet, is attached hereto as Exhibit “7,” and incorporated herein by reference.

39. KIG and PMI are citizens’ organizations comprised of thousands of residents of the Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of land use decisions, zoning changes, increased residential density, and inappropriate

development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life, and other matters of safety and general welfare in the Waccamaw Neck.

40. The Waccamaw Neck is a part of northeast Georgetown County defined by its unique geographic configuration as a long narrow peninsula between the Atlantic Ocean and the Waccamaw River that includes the areas of Parkersville/Fraserville, Pawleys Island, Litchfield, North Litchfield, Murrells Inlet and Garden City.

41. KIG primarily focuses on the southern Waccamaw Neck (Parkersville/Fraserville, Pawleys Island, Litchfield, North Litchfield) and PMI primarily focuses on the northern Waccamaw Neck (Murrells Inlet & Garden City).

42. Part of the missions of KIG and PMI involves monitoring county land use decisions, zoning change requests, and proposed development in the Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan for the purpose of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck for the benefit of present and future generations.

43. KIG and PMI began as grassroots responses by citizens of the Waccamaw Neck to a number of zoning changes, approved and/or recommended for approval by Georgetown County, that increased residential density in conflict with the Georgetown County Comprehensive Plan and had a negative impact on the safety and general welfare of citizens and surrounding landowners.

44. Parkersville PDA, KIG and PMI are nonprofit corporations that are independent of one another and managed by separate volunteer Boards of Directors.

45. Parkersville PDA, KIG, and PMI represent the interests of thousands of citizens of the Waccamaw Neck, hundreds of whom reside in the vicinity of the Covington Homes parcel.

46. Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs herein as well as other adjoining landowners or landowners who reside in the immediate vicinity of the Covington Homes parcel or other areas of the Waccamaw Neck where zoning is not in compliance with the Comprehensive Plan as required by state law and as set forth hereinafter, and who would have standing to challenge these and other decisions.

Defendants

47. The South Carolina Uniform Declaratory Judgments Act, S.C. Code, Section 15-53-80 requires that

“[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard.”

Accordingly, the following parties are required to be named as Defendants in this action for declaratory relief.

48. Defendant Georgetown County (hereinafter “County”), 129 Screven Street, Georgetown, South Carolina, is one of the forty-six counties of the State of South Carolina and is a body politic incorporated pursuant to the South Carolina Constitution, Article VII, Sec. 9, South Carolina Code Ann. § 4-1-10 (Supp. 2015).

49. Defendant Georgetown County is comprised of and/or controls the Georgetown County Council, the Georgetown County Planning Commission and the Georgetown County Planning Department, its agents, representatives and employees.

50. Defendant, Covington Homes, LLC, owner of the Covington Homes parcel, is a limited liability company organized and existing under the laws of the State of South Carolina, having a business address of 4210 River Oaks Drive, Suite 5, Myrtle Beach, Horry County, South Carolina, 29579, and a registered agent name and address of Gregory B. Harrelson, at 4210 River Oaks Drive, Suite 5, Myrtle Beach, Horry County, South Carolina 29579.

IV.

APPLICABLE LAW

A. SOUTH CAROLINA STATE LAW

51. The following are the relevant provisions of the South Carolina Planning Act that require zoning and land development to be in accordance with the Comprehensive Plan.

- a. Planning Act, Section 6-29-720(B), governs planning and zoning and specifically requires that zoning regulations “must be made in accordance with the comprehensive plan for the jurisdiction.”
- b. Planning Act, Section 6-29-720(A), provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.”
- c. Planning Act, Section 6-29-540, requires that the “location, character, and extent” of new development must be compatible “with the comprehensive plan of the community.”
- d. Planning Act, Section 6-29-1110, *et seq.*, governs land development regulations and sets forth definitions as well as procedures for local governments to follow in

regulating land development within their jurisdictions. One of the specifically articulated legislative intents of Article 7 is to “assure” that proposed development is “in harmony with the comprehensive plan” of the municipality or county. (Planning Act, Section 6-29-1120(5)).

52. As set forth above, the South Carolina legislature has made it abundantly clear throughout the South Carolina Planning Act that zoning and land development are required to be consistent with the Comprehensive Plan.

B. GEORGETOWN COUNTY COMPREHENSIVE PLAN

i. General

53. The “Introduction” to the original Georgetown County Comprehensive Land Use Plan enacted in August of 1997, which is currently in effect, specifically recognizes and reinforces the requirements of the South Carolina Planning Act and states as follows:

“In order for local ordinances regulating land use to be valid, they must be adopted in accordance with a locally adopted [comprehensive] plan ... [and] once the Plan is adopted, no [development] ... may be constructed or authorized ... until the location, character and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan for the community.” (page 1-4)

ii. Covington Homes Parcel & Adjoining Land

54. The current Comprehensive Land Use Plan, including maps, was enacted by County Council on March 10, 2015, by Ordinance number 2015-05, and specifically designates the Covington Homes parcel as “Medium Density,” which limits net residential density to a maximum of 5 units per acre.

55. All parcels of land that adjoin the Covington Homes parcel are designated by the Comprehensive Plan as “Medium Density” residential.

56. All residential areas of the traditional Parkersville/Fraserville minority community are designated by the Comprehensive Plan as “Medium Density,” or “Low Density,” (maximum of two (2) units per acre).

iii. Density Increases Restricted in South Waccamaw Neck

57. The Comprehensive Land Use Plan specifically states as follows with respect to residential density in the South Waccamaw Neck:

“The overriding issue in the Pawleys-Litchfield area is population density. The general concept of allowing higher density to prevent sprawl is no longer applicable in this area. The key now is to limit the number of new residential units that are added so that the impacts of additional development (i.e. increased traffic congestion, increased storm water runoff, greater pressures on our overall infrastructure) are minimized as much as possible.”

(Comprehensive Land Use Plan, Page 23). A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “8,” and incorporated herein by reference.

58. The Comprehensive Plan further states as follows with respect to the South Waccamaw Neck:

“Density increases in new development should only be allowed if open space is provided by use of planning tools: as part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc.”

(Comprehensive Land Use Plan, Page 25). A copy of this portion of the Comprehensive Plan is attached hereto as Exhibit “9,” and incorporated herein by reference.

59. The clear intention of this provision is to restrict density increases in new development and allow them only when there is a corresponding density decrease or elimination (*i.e.*, by creating “open space”) through use of one of the enumerated planning tools which are specifically designed to offset a density increase.

60. None of these exceptions or planning tools apply to the Covington Homes subdivision application, and, therefore, density is limited to a maximum of 5 units per acre as designated by the Comprehensive Plan.

61. Density restrictions were deliberately included in the Comprehensive Plan because the South Waccamaw Neck was then and is now facing unprecedented population growth resulting in critically overburdened infrastructure, increasing volumes of traffic that exceed road design capacity, increasing numbers of serious and life-threatening motor vehicle accidents, increasing flooding and stormwater problems as a consequence of clear cutting and filling in wetlands, as well as other environmental and safety challenges resulting from overdevelopment of the limited geographic space of the South Waccamaw Neck.

C. GEORGETOWN COUNTY ORDINANCES

i. General Residential Ordinance

62. GR Zoning Ordinance 607 permits a range of residential uses and a range of residential densities, including both medium and high density, up to a maximum of sixteen (16) units per acre.

63. Determination of the maximum permissible residential density on a particular parcel within a GR Zoning District, should consider the provisions of all applicable land use regulations, including but not limited to:

- a. The residential density permitted by the Comprehensive Plan as set forth above (in this case 5 units per acre);
- b. The conditions and limitations set forth within the GR zoning ordinance itself, including proposed use, design, and setback requirements; and

- c. The requirements of all other applicable laws, ordinances, and/or development regulations, including those set forth below that dictate mandatory application of the most restrictive regulation in the case of conflict.

- ii. Ordinances Require Application of Most Restrictive Regulation

64. According to the following Georgetown County ordinances, when there is a conflict between or among zoning or land development regulations, the most restrictive applies.

- a. Section 1800 of the Georgetown County Zoning Ordinance provides:

“in case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future ordinance of the County of Georgetown, the most restrictive shall in *all* cases apply.”

- b. Article I, Section 10, of the Georgetown County Development Regulations states:

“Whenever this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements, the provisions of this Ordinance shall govern. When the provisions of any other statute impose higher standards, the provisions of such statute shall govern.

65. In the present case, as the most restrictive regulation, the Comprehensive Plan "Medium Density" designation limits density to a maximum of 5 units per acre on the Covington Homes Parcel.

V.

COUNTY DECISION PROCESS

A. PLANNING COMMISSION PROPERLY DENIED

66. The Georgetown County Planning Commission held a public hearing on the Covington Homes major subdivision application on January 19, 2023, and after considering the evidence, including considerable testimony from interested parties, voted to deny the application

on the basis of its inconsistency with the Comprehensive Plan density restrictions, as well as flooding, stormwater and traffic, and general detriment to the neighbors and community.

67. The Planning Commission decision was proper in all respects and no appeal of the decision to deny was filed by Covington Homes.

68. The Planning Commission decision to deny should be the final and binding decision.

B. COUNTY COUNCIL IMPROPERLY REVIEWED & APPROVED

i. No Authority

69. The Covington Homes subdivision application was placed on the County Council agenda for February 14, 2023, under the heading “Reports to Council” as agenda item 14(a), “Site Plan Review,” pursuant to the ordinance provisions cited hereinabove. A copy of the February 14, 2023, County Council agenda is attached hereto as Exhibit “10,” and incorporated herein by reference.

70. Georgetown County ordinances requiring site plans to be approved by County Council are void and unenforceable for the following reasons:

- a. They are inconsistent with explicit provisions of state law as set forth hereinabove.
- b. They violate the doctrine of separation of powers.
- c. They reserve to County Council arbitrary power without the guidance of uniform rules and regulations.
- d. They do not articulate any standards by which the County Council should decide to approve or disapprove the decision by Planning Commission.
- e. They violate the South Carolina Planning Act and other law.

71. Accordingly, County Council did not have authority to hear, review or approve this land development application, or to review, modify, or reverse the decision of Planning Commission, and its decision to approve is void as a matter of law.

ii. Improper, Arbitrary & Capricious

72. Even if Council had possessed the authority to hear and make a decision on this subdivision application, which is specifically denied, the details, substance, and merits of the plan and its compliance or noncompliance with all applicable laws and regulations including South Carolina state law, the Georgetown County Comprehensive Plan, the GR ordinance and other land development regulations was not addressed or considered by Council in any way.

73. In fact, the information packet submitted to council by the Planning Department for its consideration did not include all pertinent facts and neglected to include any information about the Comprehensive Plan designation of the Covington Homes parcel. Please see Agenda Request Form and packet attached hereto as Exhibit "11," and incorporated herein by reference.

(a) Erroneous Instructions

74. County Council was specifically instructed in the Agenda Request Form as well as during the February 14, 2022, meeting, that its review was "limited to compliance with the land use regulations of the County, as the use has already been properly designated by establishment of the zoning district."

75. This instruction improperly made the predetermined conclusion that the use was "properly" designated by the establishment of the zoning district, and prevented Council from reviewing state law to determine whether the use was, in fact, "properly" designated, which is Council's very duty and responsibility.

76. Where, as in the present situation, the established zoning district is not in accordance with the Comprehensive Plan as required by state law, the use is not "properly" designated.

77. Council was instructed not to and/or otherwise did not consider the following critical matters:

- a. Whether the county ordinance requiring Council to review this land development application was void as conflicting with explicit provisions of state law.
- b. Whether the county GR zoning ordinance density provisions, which Council was instructed to follow as its sole consideration, were void as conflicting with the mandatory state law requirement that zoning ordinances must be in accordance with the Comprehensive Plan.
- c. County Zoning Ordinance 1800, and Land Use Regulation Article I, Section 10, requiring application of the most restrictive regulation.
- c. Whether the proposed land development was in accordance with the Comprehensive Plan as required by state and local law.
- d. Inconsistency of the proposed high density development with the Comprehensive Plan designation of this parcel as "Medium Density."
- e. That all adjoining parcels are designated by the Comprehensive Plan as "Medium Density."
- f. The findings of Planning Commission after consideration of evidence presented at a public hearing and the specifically articulated reasons set forth by Planning Commission as the basis for its decision to deny the subdivision application.

- d. Land development regulations that specifically allow consideration of flooding, stormwater, traffic, infrastructure, character of the neighborhood, and detriment to the community.

78. Council was advised by the Planning Director at the meeting on February 14, 2023, and in written materials submitted to Council, that the proposed subdivision complied with all county ordinances and regulations and that the Planning Department recommended approval.

79. Essentially Council was asked to rubber stamp the Planning Department recommendation and bypass the Planning Commission decision, the Public Hearing, the Comprehensive Plan inconsistencies, and the requirements of the South Carolina Planning Act.

80. County Council has been repeatedly advised that Georgetown County would be vulnerable to lawsuits by Developers if it does not approve land development applications based on the zoning ordinance alone, without regard to state law requirements, without regard to whether the zoning ordinance is in accordance with the Comprehensive Plan, without regard to whether the proposed land development conforms to the Comprehensive Plan, and without regard to many other legitimate considerations such as flooding, stormwater, traffic, infrastructure, character of the surrounding neighborhood and detriment to adjoining landowners and the community.

81. Georgetown County land use decisions have been consistently driven by a "fear of lawsuits by Developers" and not by proper and legitimate considerations such as consistency with state law and the Comprehensive Plan. As a result, citizens of the county, particularly those in minority communities, have suffered serious harm.

82. The Georgetown County land development decision-making process, as exemplified by this situation, obviates the need for a Planning Commission or a South Carolina legislature.

(b) Arbitrary & Capricious

83. Based on the above instructions, County Council voted to approve the Covington Homes high density subdivision on a parcel of land designated as Medium Density by its own Comprehensive Plan maps.

84. The following Council members voted to approve the development: Clint Elliott (District 1); Stella Mercado (District 6); Raymond Newton (District 5); Louis Morant (District 7); Lillie Jean Johnson (District 4). The following council members opposed the development: Bob Anderson (District 2); Everett Carolina (District 3).

85. The decision by Council and the underlying instructions which formed the basis of the decision are erroneous as follows:

- a. State law was deliberately not taken into consideration.
- b. The Comprehensive Plan was deliberately not taken into consideration notwithstanding the state law mandate that zoning ordinances and land development must be in accordance with the Comprehensive Plan.
- c. Conflict with the Comprehensive Plan density restrictions was disregarded.
- d. Other applicable laws were not considered including Georgetown County Zoning Ordinance, Section 1800, and Land Development Regulation, Article I, Section 10, requiring application of the most restrictive land development regulations.
- e. New development was approved without considering its compatibility with the comprehensive plan in violation of Planning Act, Section 6-29-540, which

provides that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.”

- f. New development was approved as complying with the GR zoning ordinance when details of the plans were not considered or discussed by Council and do not, in fact, comply with all applicable ordinances, including the GR ordinance.
- g. Development was approved without applying uniform standards or considering other applicable law.
- h. The decision by Council conflicts with its own ordinance 2015-05, *i.e.*, the Comprehensive Plan and maps.

86. The decision to allow a high density subdivision in contravention of the Comprehensive Plan residential density restriction sets a precedent for (a) ignoring the Comprehensive Plan in making future land use decisions, and (b) allowing high density land development on many acres of other land in Georgetown County that is designated as medium or low density by the Comprehensive Plan.

87. The cumulative incremental impact of density increases in the South Waccamaw Neck has had, would have, and is having devastating and far-reaching negative consequences to all citizens, and a disparate discriminatory impact on minority communities.

(c) No Public Hearing

88. Numerous adjoining landowners and neighboring residents attended the Council meeting on February 14, 2023, to express their opposition. No public hearing was provided and interested parties had no opportunity to present evidence. The only opportunity for input of any

kind was the very limited time afforded during the General Public Comment period at the beginning of the meeting.

89. Legal counsel for interested parties directed a letter to Council dated February 13, 2023, raising the matters that form the basis of this complaint, none of which were considered at the meeting. A copy of said letter is attached hereto as Exhibit “12,” and incorporated herein by reference. There were numerous letters of opposition and no letters in support.

VI.

DUTIES OF GEORGETOWN COUNTY WITH RESPECT TO ZONING AND LAND DEVELOPMENT

90. Defendant Georgetown County through its agents, representatives, employees, elected officials, boards and appointed officials has the following duties and responsibilities pursuant to the South Carolina Planning Act and local law:

- a. Duty to bring residential zoning ordinances and land development regulations into conformity with the current Georgetown County Comprehensive Plan as specifically required by Planning Act Sections 6-29-720 and 6-29-1120.
- b. Duty to bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the Comprehensive Plan as a condition of approval pursuant to Planning Act Sections 6-29-540, 6-29-720, and 6-29-1120, and Georgetown County Planning Commission Bylaws, Article V, Section 2, which states that “[a]ll zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan.”

91. South Carolina Planning Act, Section 6-29-340, mandates that it is the “duty” of the local planning commission to put these processes into place for the benefit and welfare of the public which it serves.

92. The duties identified in paragraphs 90 and 91 above, shall collectively be referred to as “required duties.”

93. The “Introduction” to the first Georgetown County Comprehensive Land Use Plan, adopted in August of 1997, states:

“One of the most important implementation measures is the immediate preparation of revisions to the Georgetown County Zoning Ordinance. The adoption of the Comprehensive Plan represents the direction or “blueprint,” but the actual governing laws and ordinances must change to reflect the goals and action items within the Plan. Once the Plan is adopted, the planning staff will immediately commence work on changes to the Zoning Ordinances.” (page 1-5 and 1-6)

94. More than twenty-five years after this language was adopted by Georgetown County ordinance, zoning ordinances have still not been revised or changed to be in accordance with the Comprehensive Plan as required by the South Carolina Planning Act and the Georgetown County Comprehensive Plan itself.

A. Existing Zoning Ordinances Conflict with Comprehensive Plan

95. To the extent that the GR zoning ordinance permits high density land development on land designated by the Comprehensive Plan and Maps as medium or low density, the zoning ordinance is in direct conflict with the Comprehensive Plan.

96. There are many existing zoning districts on parcels of land in the Waccamaw Neck that are in direct conflict with the Comprehensive Plan as they relate to residential density.

97. Under both state and local law, these conflicting zoning ordinances should have been brought into compliance with the Comprehensive Plan immediately upon its enactment.

Instead, conflicting zoning ordinances have been permitted to exist, in some cases for many decades, despite their inconsistency with the Comprehensive Plan and Maps.

98. The County's failure to perform its duty to bring residential zoning ordinances into compliance with the Comprehensive Plan has caused injury to the Plaintiffs herein, and put Plaintiffs and every other land owner in the Waccamaw Neck at risk of imminent harm and serious injury.

99. The County has repeatedly approved development pursuant to these conflicting zoning ordinances notwithstanding their inconsistency with the Comprehensive Plan density limitations.

100. These approvals have negatively affected the property rights of many land owners in the Waccamaw Neck.

101. Conflicting zoning ordinances and land use decisions are more prevalent in minority communities and have had a discriminatory impact on the minority population living in these communities.

B. Land Use Approval Process

102. In making zoning and land development decisions, Georgetown County does not consider compatibility with the Comprehensive Plan as a necessary part of the process.

103. There are many instances of approval of land development and zoning changes on the Waccamaw Neck that were inconsistent with density and other provisions of the Comprehensive Plan and Maps. These approvals have negatively affected the property rights and caused injury to many land owners in the Waccamaw Neck.

104. Approval of zoning changes and land development that conflict with the Comprehensive Plan are more prevalent in minority communities and have had a discriminatory impact on the minority residents of these communities.

C. Georgetown County Refuses to Comply

105. Georgetown County has repeatedly been requested by Plaintiff organizations and citizens to bring its zoning ordinances and land use approval processes into compliance with the Comprehensive Plan as required by the South Carolina Planning Act.

106. A letter dated September 2, 2022, attached hereto as Exhibit “13,” and incorporated herein by reference, was directed to Georgetown County by legal counsel for Plaintiff organizations and citizens specifically requesting compliance. Georgetown County has neither acknowledged nor responded to the letter.

107. At all times pertinent hereto, Georgetown County has failed and/or refused to perform the required duties as set forth herein.

108. Georgetown County’s continued failure and refusal to perform its required duties has caused harm and created a risk of imminent and future injury to Plaintiffs and other land owners in the Waccamaw Neck.

109. Georgetown County’s continued failure and refusal to perform its required duties has had a substantially greater negative impact on minority neighborhoods and minority land owners.

110. Georgetown County’s continued failure and refusal to perform its required duties sets a precedent for allowing development that does not conform to the Comprehensive Plan and maps.

111. Plaintiffs request that Georgetown County immediately bring the zoning of the Covington Homes parcel as well as all other non-compliant zoning and decision-making processes into compliance with the Comprehensive Plan and the South Carolina Planning Act.

JURISDICTION, STANDING AND VENUE

112. Paragraphs 1 through 111, above, are incorporated by reference as though fully set forth herein.

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

114. Venue is proper in Georgetown County as the property in question is situated in Georgetown County and all pertinent actions took place in Georgetown County.

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

- a. South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, states

“[a]ny person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

Plaintiffs’ rights and legal relations have been and are substantially affected by the County Council decision of February 14, 2023, the Planning Commission decisions of January 19, 2023, Georgetown County’s Zoning Ordinances, Land Development Regulations and Comprehensive Plan, and the South Carolina

Planning Act. Plaintiffs have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions.

- b. South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-1150 and 6-29-1155, states that any party in interest may appeal land development decisions. Rule 74, SCRCPP (“Procedure on Appeal to the Circuit Court”) governs appeals from “an inferior court or decision of an administrative agency or tribunal” to circuit court. Plaintiffs are parties in interest under the Planning Act.

116. Alternatively and in addition, Plaintiffs have constitutional standing pursuant to Article III of the United States Constitution inasmuch as (a) they have suffered an injury by virtue of land use decisions with respect to property that directly adjoins land owned by them or by someone they represent; (b) the injury was caused by the improper approval of subdivision applications and Georgetown County’s failure and refusal to perform required duties; and (c) the injury is redressable by a favorable decision of this court declaring that the approval of the subdivision applications by County Council is improper, null and void, and requiring Georgetown County to perform its required duties.

117. Alternatively and in addition, Plaintiffs have standing to challenge these ordinances pursuant to the public importance doctrine inasmuch as the decision in this case has potentially far-reaching, widespread, devastating and irreversible negative impact on the public welfare by serving as a precedent for similar land development decisions that would impact many acres in the Waccamaw Neck, and future guidance by this court is necessary to determine

the validity of Georgetown County's repeated disregard of the requirements of the South Carolina Planning Act and the Comprehensive Plan in the Waccamaw Neck.

118. Plaintiffs Parkersville PDA, KIG, and PMI have associational standing as follows: (a) at least one of the parties represented is an affected person who has standing in his or her own right; (b) the interests at stake are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual landowners and monetary damages are not being requested. Plaintiffs Parkersville PDA, KIG, and PMI represent the interests of the named Plaintiffs as well as other affected persons who own adjoining land or reside in the vicinity of the Petigru and Parkersville parcels and other land where zoning is not in compliance with the comprehensive plan or where land use decisions have been made that are not in compliance with the comprehensive plan. The issues in this case fall squarely within the mission and purpose of these citizens organizations as set forth above.

COUNT I

DECLARATORY JUDGMENT

Georgetown County Ordinances Requiring Site Plan Review by County Council are Void and Unenforceable

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

120. Pursuant to the provisions of the Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-10, *et seq.*, Plaintiffs seek declaratory judgment from this Court that the Georgetown County ordinances requiring land development plans to be approved by County Council are inconsistent with the explicit provisions of state law and are void, and of no force or effect.

COUNT II

DECLARATORY JUDGMENT

County Council Had No Authority to Render the February 14, 2023,
Decision Approving Subdivision Application

121. Paragraphs 1 through 120, above, are incorporated by reference as though fully set forth herein.

122. Plaintiffs seek declaratory judgment from this Court that the February 14, 2023, County Council decision to reverse the Planning Commission decision and approve the Covington Homes subdivision application is null, void, and of no force or effect.

COUNT III

DECLARATORY JUDGMENT

Planning Commission Decision to Deny
Subdivision Application on January 19, 2023, was Final, Valid and Binding

123. Paragraphs 1 through 122, above, are incorporated by reference as though fully set forth herein.

124. Plaintiffs seek declaratory judgment from this Court that the January 19, 2023, Planning Commission decision to deny this subdivision application is the valid, proper, and final decision as follows:

- a. The South Carolina Planning Act 6-29-1150 confers final decision-making authority on subdivision applications to Planning Commission whose decisions are appealable to the circuit court.
- b. Planning Commission properly voted to deny the subdivision applications after public hearing on January 19, 2023.

- c. The sole process for review, modification, or reversal of a Planning Commission approval or disapproval of a land development application is by appeal to the circuit court within thirty (30) days after mailing of the Notice of Decision.
- d. No appeal was taken by the applicant from this decision as provided in the Planning Act, and this decision stands as the final, valid and binding decision.

COUNT IV

DECLARATORY JUDGMENT

Georgetown County Zoning Ordinances Allowing High Density on Land Parcels Designated by the Comprehensive Plan as Medium Density are Void and Unenforceable

125. Paragraphs 1 through 124, above, are incorporated by reference as though fully set forth herein.

126. Plaintiffs seek declaratory judgment from this Court that the provisions of the Georgetown County zoning ordinances that allow high residential density on land designated by the Comprehensive Plan as Medium Residential Density are inconsistent with the explicit state law requirement that zoning ordinances must be in accordance with the Comprehensive Plan and are void, and of no force or effect.

COUNT V

DECLARATORY JUDGMENT

The Approval of the Subdivision Application was a Violation of State and County Law

127. Paragraphs 1 through 126, above, are incorporated by reference as though fully set forth herein.

128. Plaintiffs seek declaratory judgment from this Court that even if Council had authority to make decisions on the subdivision application, the February 14, 2023, decision to approve is null, void, and of no force or effect as follows:

- a. The approval of development that conflicts with the Comprehensive Plan and Maps violates the South Carolina Planning Act which requires development and zoning to be consistent with the Comprehensive Plan.
- b. The approval of development that violates county ordinance 2015-05 (Comprehensive Plan and Maps) is improper, null, void and of no force or effect.
- c. A development decision that fails to take compatibility of the Comprehensive Plan into consideration violates the Planning Act which requires consideration of compatibility with the comprehensive plan.
- d. The decision failed to consider Zoning Ordinance 1800 and Land Development Regulations, Article I, Section 10, which requires application of the most restrictive regulation.
- e. The decision failed to consider whether the details of the subdivision plans actually complied with the GR ordinance and other local land development ordinances.
- f. The decisions failed to consider other applicable law.

COUNT VI

DECLARATORY JUDGMENT

Georgetown County Has a Statutory Mandate to Bring Zoning Ordinances and
Land Use Regulations Into Compliance with Comprehensive Plan

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

130. Plaintiffs seek declaratory judgment from this Court that Georgetown County has a statutory mandate to bring residential zoning ordinances and land development regulations, including the Covington Homes parcel, into conformity with the current Georgetown County Comprehensive Plan as specifically required by Planning Act, Sections 6-29-720 and 6-29-1120.

COUNT VII

DECLARATORY JUDGMENT

Georgetown County Has a Statutory Mandate to Consider Compliance with
Comprehensive Plan in Decision Making Processes

131. Paragraphs 1 through 130, above, are incorporated by reference as though fully set forth herein.

132. Plaintiffs seek declaratory judgment from this Court that Georgetown County has a statutory mandate to bring its zoning and land development decision-making processes into compliance with state law which requires review for compatibility with the Comprehensive Plan as a condition of approval pursuant to Planning Act Sections 6-29-540, 6-29-720, and 6-29-1120, and Georgetown County Planning Commission Bylaws, Article V, Section 2, and the language of the Georgetown County Comprehensive Plan Introduction, and other applicable law.

COUNT VIII

APPEAL OF COUNTY COUNCIL DECISION

133. Paragraphs 1 through 132, above, are incorporated by reference as though fully set forth herein.

134. In the event this court finds that County Council had authority to render the February 14, 2023, decision on the subdivision applications, Plaintiffs appeal this decision for the reasons set forth hereinabove.

COUNT IX

ATTORNEYS FEES FROM GEORGETOWN COUNTY

135. Paragraphs 1 through 134, above, are incorporated by reference as though fully set forth herein.

136. Defendant Georgetown County acted without substantial justification with respect to the claims set forth herein and there is no special circumstance that would make the award of attorneys fees unjust. Citizens should not be forced to spend time and money or engage the services of attorneys in order to obtain the county's compliance with law.

137. S.C. Code 15-77-300 permits the award of attorneys fees in this circumstance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter judgment in their favor as set forth herein, declare as follows that:

- a. the February 14, 2023, County Council decision approving the subdivision application is null, void and of no force or effect;
- b. the Planning Commission decision of January 19, 2023, denying the subdivision application is the final, valid and binding decision;

- c. Georgetown County ordinances requiring approval by County Council of land development applications conflict with state law and are void, unenforceable, and of no force or effect;
- d. Georgetown County ordinances allowing high residential density on land designated by the Comprehensive Plan as Medium Density conflict with state law and are void, unenforceable, and of no force or effect;
- e. Georgetown County has a statutory mandate to bring zoning ordinances into compliance with the Comprehensive Plan and to consider compliance with the comprehensive plan in its land use decision making processes;
- f. Plaintiffs are entitled to costs and attorneys fees from Defendant Georgetown County pursuant to S.C. Code 15-77-300 ; and
- g. Such other relief as the court deems just and appropriate.

Respectfully submitted,

/s/ Cynthia Ranck Person

Cynthia Ranck Person, Esquire (SC Bar #105126)

KEEP IT GREEN ADVOCACY, INC.

P.O. Box 1922

Pawleys Island, SC 29585

(843) 325-7795

(570) 971-8636

kig.advocacy@gmail.com

ATTORNEY FOR PLAINTIFFS

March 10, 2023

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

We, KEISHA BRYANT SHERMAN and KENDRICK BRYANT, do hereby swear under oath as follows:

1. We are adult individuals residing at 300 Petigru Drive, Pawleys Island, Georgetown County, South Carolina.
2. We are Plaintiffs in the Complaint to which this Affidavit is attached. We have read the Complaint and the matters contained therein are true and correct to the best of our knowledge, information, and belief.
3. We are heirs of Lazarus Bryant and/or Ernest Bryant and we own three parcels of land that total approximately 5 acres that directly adjoins the Covington Homes Parcel which is the subject matter of the Complaint. Our land is in the Fraserville neighborhood of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Covington Homes Parcel. We, along with our relatives, reside in single family homes on this parcel and neighboring parcels.
4. The northern boundary line of our lot, which according to the county GIS map is approximately 415.8 feet in length is a shared boundary with the Covington Homes parcel. The Covington Homes Parcel contains significant wetlands, including a pond, which creates flooding and stormwater problems in the area during minor storms.
5. We received information that a subdivision has been proposed on the Covington Homes Parcel for 12 high density, multi-family duplex units on approximately 1.5 acres of land that adjoins our medium density property. We attended a Planning Commission meeting January 19, 2023, and our legal counsel submitted a letter and spoke on our behalf. Planning Commission denied the subdivision application.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on February 14, 2023. We attended this meeting and our legal counsel submitted a letter and spoke in opposition at that meeting. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.

KS KB

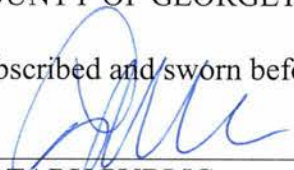
8. The County's decision to approve the subdivision has caused and will cause us injury as follows:
- a. Negative impact on character, aesthetics and enjoyment of our land.
 - b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
 - c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.
 - d. Increase in existing stormwater and flooding problems.
 - e. Decrease in the value of our property.
 - f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - g. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

We hereby set our hands and seals this 7th day of March, 2023.


KEISHA BRYANT SHERMAN

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 7th day of March, 2023


NOTARY PUBLIC

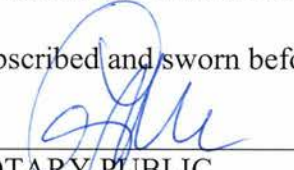
My commission expires: 6/8/2032




KENDRICK BRYANT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 7th day of March, 2023


NOTARY PUBLIC

My commission expires: 6/8/2032



ROA 59

STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, BENJAMIN DENNISON, do hereby swear under oath as follows:

1. I am an adult individual residing at 92 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina.
2. I am a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
3. I represent the heirs of Limerick Dennison and we own three parcels of land consisting of approximately 9.2 acres that directly adjoins the Covington Homes parcel which is the subject matter of the Complaint. Our parcels are identified as Georgetown County Tax Map Nos. 04-0416-018-00-00, 04-0416-018-01-00, 04-0416-018-02-00, by deed dated February 21, 1882, recorded in Deed Book H, Page 97, in the Office of Recorder of Deeds for Georgetown County. Our land is in the Fraserville neighborhood of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Covington Homes Parcel. We, along with our relatives, reside in single family homes on this parcel and neighboring parcels.
4. The northeast corner of our land touches the southwest corner of the Covington Homes parcel. The Covington Homes Parcel contains significant wetlands, including a pond, which creates flooding and stormwater problems in the area during minor storms.
5. We received information that a subdivision has been proposed on the Covington Homes Parcel for 12 high density, multi-family duplex units on approximately 1.5 acres of land that adjoins our medium density property. We understand Planning Commission denied the subdivision application on January 19, 2023.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on February 14, 2023. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.

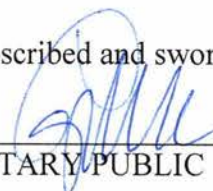
8. The County's decision to approve the subdivision has caused and will cause us injury as follows:
- a. Negative impact on character, aesthetics and enjoyment of our land.
 - b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
 - c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.
 - d. Increase in existing stormwater and flooding problems.
 - e. Decrease in the value of our property.
 - f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - g. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

I hereby set my hand and seal this 9th day of March, 2023.


BENJAMIN DENNISON

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 9th day of March, 2023.



NOTARY PUBLIC

My commission expires: 6/8/32



STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, WILLIE DEREFF, JR., do hereby swear under oath as follows:

1. I am an adult individual residing at 132 Ferguson Drive, Pawleys Island, Georgetown County, South Carolina.
2. I am a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
3. I represent the heirs of Limerick Dennison and we own three parcels of land consisting of approximately 9.2 acres that directly adjoins the Covington Homes parcel which is the subject matter of the Complaint. Our parcels are identified as Georgetown County Tax Map Nos. 04-0416-018-00-00, 04-0416-018-01-00, 04-0416-018-02-00, recorded in Deed Book H, Page 97, in the Office of Recorder of Deeds for Georgetown County on February 21, 1882. Our land is in the Fraserville neighborhood of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Covington Homes Parcel. We, along with our relatives, reside in single family homes on this parcel and neighboring parcels.
4. The northeast corner of our land touches the southwest corner of the Covington Homes parcel. The Covington Homes Parcel contains significant wetlands, including a pond, which creates flooding and stormwater problems in the area during minor storms.
5. We received information that a subdivision has been proposed on the Covington Homes Parcel for 12 high density, multi-family duplex units on approximately 1.5 acres of land that adjoins our medium density property. We understand Planning Commission denied the subdivision application on January 19, 2023.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on February 14, 2023. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.

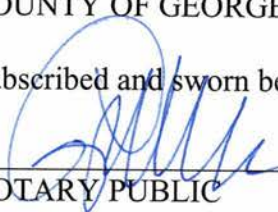
8. The County's decision to approve the subdivision has caused and will cause us injury as follows:
- a. Negative impact on character, aesthetics and enjoyment of our land.
 - b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
 - c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.
 - d. Increase in existing stormwater and flooding problems.
 - e. Decrease in the value of our property.
 - f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - g. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

I hereby set my hand and seal this 8th day of March, 2023.


WILLIE DEREEF, JR.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 8th day of March, 2023.


NOTARY PUBLIC

My commission expires: 6/8/2032



STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, LUCILLE GRATE do hereby swear under oath as follows:

1. I am an adult individual residing at 328 Petigru Drive, Pawleys Island, Georgetown County, South Carolina.
2. I am a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
3. I own and live on land directly across the street from the Covington Homes parcel which is the subject matter of the Complaint. My parcel is identified as Georgetown County Tax Map No. identified as Tax Map No. 04-0157-005-00-00, and is recorded in Deed Book 1305, Page 196. My land is in the Fraserville neighborhood of Pawleys Island and is designated as "Medium Density" by the Georgetown County Comprehensive Plan and Maps as is the Covington Homes Parcel. I reside in a single family home on this parcel.
4. The Covington Homes Parcel contains significant wetlands, including a pond, which creates flooding and stormwater problems in the area during minor storms.
5. We received information that a subdivision has been proposed on the Covington Homes Parcel for 12 high density, multi-family duplex units on approximately 1.5 acres of land that adjoins our medium density property. We understand Planning Commission denied the subdivision application on January 19, 2023.
6. Thereafter, we were notified that County Council had to approve the Planning Commission decision at a council meeting on February 14, 2023. County Council reversed the Planning Commission decision and voted to approve the subdivision application. We are challenging that decision along with other adjoining landowners.
7. Our legal counsel along with the Parkersville Planning and Development Alliance, and Keep It Green has and continues to advocate on our behalf and on behalf of other neighboring landowners with respect to this issue.

Exhibit 4

ROA 64

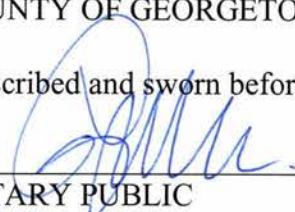
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 - b. Sets a precedent for future land development near our home that does not comply with the comprehensive plan.
 - c. Increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic.
 - d. Increase in existing stormwater and flooding problems.
 - e. Decrease in the value of our property.
 - f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - g. Sets a precedent for other medium density land in immediate neighborhood to be approved for high density development.

I hereby set my hand and seal this 8th day of March, 2023.


LUCILLE GRATE

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 8th day of March, 2023


NOTARY PUBLIC

My commission expires: 6/8/2032



STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, JOHNNY A. FORD, do hereby swear under oath as follows:

1. I am an adult individual residing in at 511 Petigru Drive, Pawleys Island, Georgetown County, SC.
2. I am the President and a member of the Board of Directors of Parkersville Planning & Development Alliance, Inc., (hereinafter "Parkersville PDA"), a nonprofit corporation organized and existing under the laws of the State of South Carolina, and located in, Pawleys Island, Georgetown County, SC. I am authorized by Parkersville PDA to make this Affidavit.
3. Parkersville PDA is a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. The mission of Parkersville PDA is to protect and preserve the history, culture, and character of the traditional African American community known as Parkersville and Fraserville which is two of the oldest settlements in the Waccamaw Neck area of Georgetown County.
5. Parkersville PDA represents residents and landowners of Parkersville and Fraserville in the promotion of housing, land use, and economic development that fits within the character, infrastructure and needs of the community. Many landowners in Parkersville and Fraserville are concerned about the impact of zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life and other matters of safety and general welfare.
6. Parkersville PDA was formed to represent and speak for the Parkersville and Fraserville minority community which has been negatively impacted by county land use decisions and zoning ordinances that conflict with the comprehensive plan or otherwise have allowed undesirable and harmful land use. This pattern of decision-making has had permanent detrimental and discriminatory impact on this traditional historical minority neighborhood.
7. There are parcels of land in the Parkersville and Fraserville community that are affected by zoning ordinances and land use decisions that do not comply with the comprehensive plan.

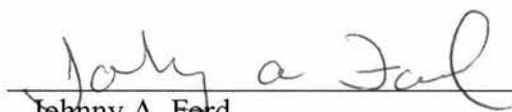
8. On September 2, 2022, legal counsel for Parkersville PDA and other citizens groups directed a letter to Georgetown County, (hereinafter “county”), formally requesting the county to comply with the mandates of the South Carolina Comprehensive Planning Enabling Act, (hereinafter “Planning Act”), S.C. Code Ann., Section 6-29-310, et seq., and other applicable law, and (a) immediately bring all residential zoning ordinances and land development regulations in the Waccamaw Neck into conformity with the current Georgetown County Comprehensive Plan as specifically required by Sections 6-29-720 and 6-29-1120 of the Planning Act; (b) immediately bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the Georgetown County Comprehensive Plan as a condition of approval pursuant to Sections 6-29-540, 6-29-720, and 6-29-1120 of the Planning Act; and (c) defer any zoning or land development decisions until the above matters are brought into compliance. The county neither acknowledged nor responded to that letter.
9. Parkersville PDA received notice in January 2023, about a land development subdivision application proposing “high density” multi-family housing on a vacant parcel of land designated as “medium density” by the comprehensive plan, and located in Parkersville/Fraserville. This application is representative of the issues outlined in the September 2, 2022, letter to the county.
10. The subdivision application proposed 12 high density, multi-family duplex units on 1.5 acres of land, designated as “Medium Density” by the comprehensive plan.
11. A representative of Parkersville PDA attended the Planning Commission meeting on January 19, 2023, and spoke in opposition of these high density developments on medium density parcels on behalf of adjoining landowners and other neighboring landowners. Planning Commission denied the application.
12. Thereafter, Parkersville PDA was notified that County Council had to approve the Planning Commission decision at a meeting on February 14, 2023. A representative of Parkersville PDA attended and spoke in opposition. County Council reversed the Planning Commission decision and voted to approve the subdivision application.
13. Parkersville PDA is challenging that decision along with other citizens groups and adjoining landowners. The two proposed high density subdivisions at issue in this case threaten to continue a pattern of permanent and detrimental impact to this historical minority community.
14. Parkersville PDA represents the interests of landowners who reside in the immediate vicinity of affected parcels, many of whom would have standing in their own right to challenge the matters in question. Neither the claims asserted nor the relief requested requires the participation of the individual landowners. The interests of these landowners are germane to and fall squarely within Parkersville PDA’s purpose and mission.

15. The county's refusal to bring zoning ordinances and land use decisions into compliance with the Planning Act and comprehensive plan and the county's decisions to approve the Petigru and Parkersville subdivision applications has caused injury to the landowners represented by Parkersville PDA as follows:
- Negative impact on character, aesthetics and enjoyment of property owned by landowners represented by Parkersville PDA.
 - Sets a precedent for future land development that does not comply with the comprehensive plan.
 - Increase in traffic on roads and highways that are not adequate to handle additional volumes of traffic.
 - Increase in existing stormwater and flooding problems.
 - Decrease in the value of property.
 - Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - Sets a precedent for other medium density land in immediate neighborhood of the Petigru and Parkersville parcels to be approved for high density development.

The statements contained herein are true and correct to the best of my knowledge, information and belief.

I hereby set my hand and seal this 8th day of March, 2023.

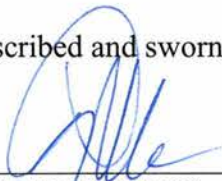
PARKERSVILLE PLANNING &
DEVELOPMENT ALLIANCE, INC.



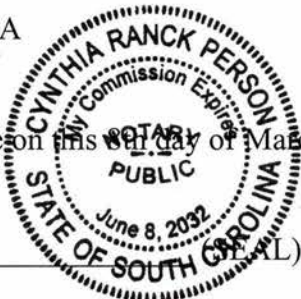
Johnny A. Ford
President

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 8th day of March, 2023.



NOTARY PUBLIC



My commission expires: 6/8/2032

ROA 68

STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, DUANE DRAPER, do hereby swear under oath as follows:

1. I am an adult individual residing in Pawleys Island, Georgetown County, SC.
2. I am the Chairman and a member of the Board of Directors of Keep It Green, Inc., (hereinafter "KIG"), a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of P.O. Box 3312, Pawleys Island, Georgetown County, SC. I am authorized to make this Affidavit.
3. KIG is a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
4. KIG is a citizens' organization comprised of more than 2,800 residents of the Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life and other matters of safety and general welfare in the Waccamaw Neck.
5. Part of the mission of KIG involves monitoring county land use decisions, zoning change requests, and proposed development in the Southern Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan, Land Use Element for the purpose of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck.
6. KIG began as a grassroots response by citizens of the South Waccamaw Neck to a number of zoning changes, approved and/or recommended for approval by Georgetown County, that increased residential density in conflict with the Comprehensive Plan and had a negative impact on the safety and general welfare of surrounding landowners and citizens. KIG ultimately became a nonprofit corporation managed by a volunteer Board of Directors and represents the interests of thousands of landowners of the Waccamaw Neck who are affected by the matters herein.
7. For several years, KIG has communicated with Georgetown County officials in an effort to have the county follow the comprehensive land use plan as required by state law.
8. On September 2, 2022, legal counsel for KIG and other citizens groups directed a letter to the Georgetown County formally requesting the county to comply with the mandates of the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Planning Act"),

S.C. Code Ann., Section 6-29-310, et seq., and other applicable law, and (a) immediately bring all residential zoning ordinances and land development regulations in the Waccamaw Neck into conformity with the current Georgetown County Comprehensive Plan as specifically required by Sections 6-29-720 and 6-29-1120 of the Planning Act; (b) immediately bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the Georgetown County Comprehensive Plan as a condition of approval pursuant to Sections 6-29-540, 6-29-720, and 6-29-1120 of the Planning Act; and (c) Defer any zoning or land development decisions until the above matters are brought into compliance. The county neither acknowledged nor responded to that letter.

9. There are many parcels of land in the Waccamaw Neck that are affected by zoning ordinances and land use decisions that do not comply with the comprehensive plan.
10. KIG received notice in January 2023, about a land development subdivision application proposing "high density" multi-family housing on a vacant parcel of land designated as "medium density" by the comprehensive plan and maps, and located in the heart of a traditional African American community known as "Fraserville," one of the oldest and most historically significant neighborhoods of Pawleys Island, Georgetown County, South Carolina. This subdivision application is representative of the issues outlined in the September 2, 2022, letter to the county.
11. The subdivision application proposed 12 high density, multi-family dupliex units on approximately 1.5 acres of land, designated as "Medium Density" by the comprehensive plan.
12. KIG attended the Planning Commission meeting on January 19, 2023, and spoke in opposition to this high density development on a medium density parcel on behalf of affected landowners. Planning Commission denied the subdivision applications.
13. Thereafter, KIG was notified that County Council had to approve the Planning Commission decisions at a council meeting on February 14, 2023. County Council reversed the Planning Commission decision and voted to approve the subdivision application. KIG is challenging that decisions along with other citizens groups and adjoining landowners.
14. KIG represents the interests of all landowners affected by these issues, and landowners who reside in the immediate vicinity, many of whom would have standing in their own right to challenge the matters in question.
15. The interests of these landowners are germane to and fall squarely within KIG's purpose and mission. Neither the claims asserted nor the relief requested requires the participation of the individual landowners.

16. The County's refusal to bring zoning ordinances and land use decisions into compliance with the Planning Act and comprehensive plan and the County's decision to approve the subdivision application has caused injury to landowners represented by KIG as follows:
- a. Negative impact on character, aesthetics and enjoyment of property owned by landowners represented by KIG.
 - b. Sets a precedent for future land development that does not comply with the comprehensive plan.
 - c. Increase in traffic on roads and highways that are not adequate to handle additional volumes of traffic.
 - d. Increase in existing stormwater and flooding problems.
 - e. Decrease in the value of property.
 - f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.
 - g. Sets a precedent for other medium density land to be approved for high density development.

The statements contained herein are true and correct to the best of my knowledge, information and belief.

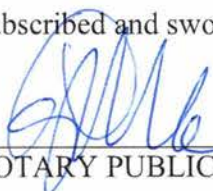
I hereby set my hand and seal this 8th day of March, 2023.

KEEP IT GREEN, INC.


 Duane Draper
 Chairman

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 8th day of MARCH, 2023.


 NOTARY PUBLIC

Cynthia R. Person
 My commission expires: June 8, 2032.



STATE OF SOUTH CAROLINA :
 : S.S.
 COUNTY OF GEORGETOWN :

AFFIDAVIT

I, LEON L. RICE, III, do hereby swear under oath as follows:

1. I am an adult individual residing in Murrells Inlet, Georgetown County, SC.
2. I am the President and a member of the Board of Directors of Preserve Murrells Inlet, Inc., (hereinafter "PMI"), a nonprofit corporation organized and existing under the laws of the State of South Carolina, having an address of 4510 Richmond Hill Drive, Murrells Inlet, Georgetown County, SC.
3. I am authorized to make this Affidavit.
4. PMI is a Plaintiff in the Complaint to which this Affidavit is attached. I have read the Complaint and the matters contained therein are true and correct to the best of my knowledge, information, and belief.
5. PMI is a citizens' organization comprised of residents of the Northern Waccamaw Neck, Georgetown County, South Carolina, who are concerned about the impact of zoning changes, increased residential density, and inappropriate development on traffic, flooding, environment, overburdened infrastructure, natural character, quality of life and other matters of safety and general welfare in the Northern Waccamaw Neck.
6. Part of the mission of PMI involves monitoring county land use decisions, zoning change requests, and proposed development in the Northern Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan, Land Use Element for the purpose of protecting and preserving the land, quality of life, and natural character of the Northern Waccamaw Neck.
7. PMI began as a grassroots response by the citizens of the Northern Waccamaw Neck to a number of zoning changes and land use decisions that conflicted with the Comprehensive Plan and had a negative impact on the safety and general welfare of surrounding landowners and citizens. PMI ultimately became a nonprofit corporation managed by a volunteer Board of Directors and represents the interests of landowners of the Northern Waccamaw Neck who are affected by the matters herein.

8. For several years, PMI has communicated with Georgetown County officials in an effort to have the county follow the comprehensive land use plan as required by state law.

9. On September 2, 2022, legal counsel for PMI and other citizens groups directed a letter to the Georgetown County formally requesting the county to comply with the mandates of the South Carolina Comprehensive Planning Enabling Act, (hereinafter "Planning Act"), S.C. Code Ann., Section 6-29-310, et seq., and other applicable law, and (a) immediately bring all residential zoning ordinances and land development regulations in the Waccamaw Neck into conformity with the current Georgetown County Comprehensive Plan as specifically required by Sections 6-29-720 and 6-29-1120 of the Planning Act; (b) immediately bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the Georgetown County Comprehensive Plan as a condition of approval pursuant to Sections 6-29-540, 6-29-720, and 6-29-1120 of the Planning Act; and (c) Defer any zoning or land development decisions until the above matters are brought into compliance.

10. The county neither acknowledged nor responded to that letter.

11. There are many parcels of land in the Northern Waccamaw Neck that are affected by zoning ordinances and land use decisions that do not comply with the comprehensive plan.

12. PMI represents the interests of these landowners and other landowners who reside in the immediate vicinity, many of whom would have standing in their own right to challenge the matters in question.

13. The interests of these landowners are germane to and fall squarely within PMI's purpose and mission.

14. Neither the claims asserted nor the relief requested requires the participation of the individual landowners.

15. The County's refusal to bring zoning ordinances and land use decisions into compliance with the Planning Act and comprehensive plan has caused injury to PMI's members as follows:

- a. Negative impact on character, aesthetics and enjoyment of property owned by landowners represented by PMI.
- b. Sets a precedent for future land development that does not comply with the comprehensive plan.

- c. Increase in traffic on roads and highways that are not adequate to handle additional volumes of traffic.
- d. Increase in existing stormwater and flooding problems.
- e. Decrease in the value of property.
- f. Increased burden on severely over-burdened infrastructure that is operating beyond capacity and is a serious safety hazard – streets and highways, insufficient numbers of fire, police, and emergency services personnel and equipment, flooding and stormwater, evacuation routes.

The statements contained herein are true and correct to the best of my knowledge, information and belief.

I hereby set my hand and seal this 9th day of March, 2023.

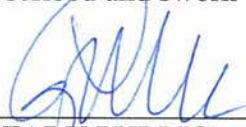
PRESERVE MURRELLS INLET, INC.



Leon L. Rice, III
President

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Subscribed and sworn before me on this 9th day of March, 2023



(SEAL)
NOTARY PUBLIC



My commission expires: 6/8/2032

3/10/15
Page 23

- Update the Buffer Ordinance.

UPDATE: The County's buffer ordinance was amended to include additional requirements for buffer areas along major thoroughfares for industrial properties as well as provide additional buffer protection in NC zones and across from minor residential streets.

Additional Land use Goals for the Waccamaw Neck

The overriding issue in the Pawleys-Litchfield area is population density. The general concept of allowing higher density to prevent sprawl is no longer applicable in this area. The key now is to limit the number of new residential units that are added, so that the impacts of additional development (i.e. increased traffic congestion, increased storm water runoff, greater pressures on our overall infrastructure) are minimized as much as possible. In addition, some potential changes in commercial uses could have significant adverse impacts on adjoining properties, and others could seriously impair the efficiency of U.S. Highway 17. The South Waccamaw Neck is the area south of Brookgreen Gardens and the North Waccamaw is the area north of Brookgreen Gardens.

PROPOSED GOALS – SOUTH WACCAMAW NECK

- Protect low and medium density residential neighborhoods from commercial/high density encroachment.
 - Review rezonings and subdivisions that increase residential density.
 - Review the Comprehensive Plan's Future Land Use Map on an annual basis.
 - Examine zoning ordinances that allow an increase in density by circumventing regulations and intent of County.
 - Encourage County government to adopt and implement impact fees in order to pay for expansion of new government agencies, infrastructure, land acquisition, and services required by new development (police/EMS, parks, libraries, land fills, etc.)
UPDATE: Impact fees were passed in 2010. Since then \$3,277.250 has been collected from both residential and commercial developments.
 - For neighborhood and non-neighborhood areas that are currently developed with low-medium density, change the future land use map to match the existing density particularly in areas currently zoned "General Residential".
UPDATE: Several existing GR areas with lots larger than the required minimum were down-zoned to reflect the existing lot sizes. Examples include the Bellamy subdivision and a neighborhood north of Wachesaw Drive near the Wacca Wacche Marina which was rezoned from GR to R-10 after soliciting input from residents.

Exhibit 8

3/10/15
Page 25

- Establish a landscape ordinance for the highway 17 Overlay Zone
 - Add signs to the architectural requirements for the Waccamaw Neck Commercial Corridor Overlay Zone
 - UPDATE: The sign ordinance was amended to place more stringent requirements on new main identification signs in the Overlay Zone.
 - Consider expanding boundaries of the Overlay Zone
 - Encourage underground utilities
 - Expand the overlay district to all commercial and multi-family properties
- Identify areas that may offer future public beach/river access and public parking or transit facilities.
- Protect existing trees by updating the tree ordinance. Consider:
 - Encourage replanting of native species
 - Establish tree protection overlay zone
 - Adding pine trees to the tree ordinance
 - Increasing fines for violations
 - UPDATE: The County's tree ordinance was amended to strengthen protection for specimen trees within the buildable area for commercial and other non-single family properties. Also, new subdivisions are required to indicate larger specimen trees on conceptual plans so that infrastructure can be placed in a way that protects such trees.
- Monitor the potential impact of I-73 on the Waccamaw Neck
- Pursue walkways, bikeways in existing neighborhoods in order to promote a more equitable distribution of infrastructure in neighborhoods.
- Pursue obtaining funding or grants to address traffic issues on Martin Luther King and Turntable Roads.
- Maintain the following current Density Limits:
 - 0 – 2.0 – Low Density
 - 2.1 – 5.0 – Medium Density
 - 5.1 – 16.0 – High Density

*These figures apply to "Net Density" (size of property minus wetlands, ponds, and road divided by the number of units)
- Maintain Georgetown County's height limit of 35 feet.
- Density increases in new development should only be allowed if open space is provided by use of planning tools: As part of a Planned Development District, Transfer Development Rights, Cluster Development, or land placed in a Conservation Easement, etc. Open space should be clearly defined to include "usable" open space.

Council Members

District 1: Clint A. Elliott
 District 2: Bob Anderson
 District 3: Everett Carolina
 District 4: Lillie Jean Johnson, *Vice Chair*
 District 5: Raymond L. Newton
 District 6: Stella Mercado
 District 7: Louis R. Morant, *Chairman*



County Administrator
 Angela Christian

Clerk to Council
 Theresa E. Floyd

County Attorney
 Jay Watson

February 14, 2023

5:30 PM

GEORGETOWN COUNTY COUNCIL
 Council Chambers, 129 Screven Street, Suite 213, Georgetown,
 SC

AGENDA

1. INVOCATION
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA
4. SPECIAL PRESENTATIONS / REPORTS
 - 4.a [Nonprofit Spotlight - Birthright of Georgetown](#)
 - 4.b [Request to Name County Park](#)
 - 4.c [Clemson University Cooperative Extension Service - Recognition of 4-H/Youth Development Contest Winners](#)
5. PUBLIC COMMENT
6. CONSENT AGENDA
 - 6.a [Procurement #22-030, RFQu for Geotechnical Engineering Services, Construction Materials Testing and Special Testing Services, IDIQ](#)
 - 6.b [Procurement #22-084, Spring Gully Blight Removal and Demolition Project](#)
 - 6.c [Procurement #22-100 Rebid, Bulk \(Transport\) Delivery of Ultra Low Sulfur \(ULS\) Diesel Fuel](#)
 - 6.d [Procurement #23-001, Motorola Solutions Data Extraction Services](#)
 - 6.e [Procurement #23-007, Final Engineering Services for Wachesaw Road & Mallory Avenue - Drainage Improvements](#)
7. PUBLIC HEARINGS
 - 7.a [Ordinance No. 22-44 - An amendment to the Georgetown County Comprehensive Plan, Natural Resources Element \(NRE\).](#)
8. APPOINTMENTS TO BOARDS AND COMMISSIONS
9. RESOLUTIONS / PROCLAMATIONS
10. THIRD READING OF ORDINANCES
 - 10.a [Ordinance No. 23-01 - To amend the Georgetown Estates Planned Development located on the north side of Hwy 521 west of nine mile curve between Indian Hut Road and Kent Road, identified as TMS No. 02-0420-001](#)

01-00, to decrease the commercial acreage along Hwy 521, add residential lots along the front of the PD, and increase open space.

11. SECOND READING OF ORDINANCES

- 11.a Ordinance No. 22-44 - An amendment to the Georgetown County Comprehensive Plan, Natural Resources Element (NRE).

12. FIRST READING OF ORDINANCES

- 12.a Ordinance No. 23-02 - Amendment of the FY2022/23 Budget Ordinance
 12.b Ordinance No. 23-03 - To amend the Future Land Use (FLU) map to re-designate 1.9 acres of a parcel, TMS# 03-0408-009-00-00, located on Choppee Road, from High Density Residential to Commercial.
 12.c Ordinance No. 23-04 - To rezone one (1) parcel on Choppee Road, totaling approximately 1.9 acres, TMS# 03-0408-009-00-00, from General Residential to General Commercial.
 12.d Ordinance No. 23-05 - To amend the Plantation Federal Planned Development (PD) located on the west side of Highway 17 in Pawleys Island, Tax Map Number 04-0155-001-01-12, to add open-storage to the list of uses for Parcel B2 located along the rear of the PD adjacent to Library Lane.

13. COUNCIL BRIEFING AND COMMITTEE REPORTS

14. REPORTS TO COUNCIL

- 14.a Site Plan Review-12 Unit Development on Petigru Drive, TMS 04-0204-025-03-00

15. MINUTES

- 15.a Regular Council Meeting - January 10, 2023

16. DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

17. LEGAL BRIEFING / EXECUTIVE SESSION

- 17.a Executive Session to Discuss Economic Development Projects pursuant to S.C. Code Ann. § 30-4-70(a)(5).

18. OPEN SESSION

19. ADJOURNMENT

Item Number: 14.a
Meeting Date: 2/14/2023
Item Type: REPORTS TO COUNCIL

AGENDA REQUEST FORM
 GEORGETOWN COUNTY COUNCIL



DEPARTMENT: Planning / Zoning

ISSUE UNDERCONSIDERATION:

A request from Bryan Lenertz as agent for Covington Homes for site plan review of a 6 building duplex (12 units) development located on the west side of Petigru Drive between Inkwood Court and Ferguson Drive in Pawleys Island. TMS# 04-0204-025-03-00. Case# MAJOR2022-00012.

CURRENT STATUS:

The site contains a total of 2.01 acres and is zoned General Residential (GR).

POINTS TO CONSIDER:

1. The property is located west of Petigru Drive approximately 35 feet south of Inkwood Drive and 350 feet north of Ferguson Drive in Pawleys Island. The site is bordered by General Commercial to the east and General Residential to the north, west and south. Existing uses include single family and duplexes.
2. Single family, two-family and multifamily uses are all permitted in the General Residential Zoning District. Section 607.306 of the GR section requires a site plan review by the Planning Commission and County Council for all two-family developments containing more than ten (10) dwelling units with a net density of five units or more per acre. Adjacent property owner notices were sent out and the property was advertised as required in this section of the ordinance. The review by the Planning Commission and County Council is limited to compliance with the land use regulations of the County as the use has already been properly designated by establishment of the zoning district.
3. The applicant is proposing a six building development consisting of a total of 12 paired ranch duplexes. There is an existing duplex development consisting of 6 buildings (12 units) located directly to the north off of Inkwood Court.
4. The gross density is 5.97 units per acre and the net density is 7.74 units per acre. The net density as shown complies with the GR zoning district density limits for two-family dwellings. The land area for each duplex contains a minimum of 8,000 sf.
5. The proposed plan complies with the 25 foot front yard setback, as well as the 10' side yard setback and the 20' rear setback. The plan indicates a pervious/impervious ratio of 45%/55%. Total building coverage is 14% of the site.
6. The Zoning Ordinance requires two spaces per unit for a total of 24 spaces. A total of 30 spaces are provided.

7. Section 1201.9 of the Zoning Ordinance requires buffers between differing land use types. A buffer is not required between the proposed two-family development and the existing GR zoning to the north, west and south. The applicant is proposing a Level 1, fifteen foot streetscape buffer along Petigru Drive. The applicant is also including a 10' future easement for the Petigru bike/ped plan as shown in the Georgetown County Bike Path/Primary Sidewalks and Trails Master Plan 2017-2027.

A landscape plan will need to be reviewed and approved by planning staff that meets the minimum requirements of Article XI.

8. The site contains a total of 10 protected trees. No trees over 24" shall be removed and the applicant will be required to retain 20 trees or 200" DBH on the site after development. The applicant will need to provide a tree removal/replacement plan for Staff review prior to land disturbance.

9. Stormwater will be collected in a series of catch basins and pipes that will flow to (3) stormwater retention ponds. The stormwater ponds will be designed to control the post development runoff rates which shall be equal to or lower than the predevelopment runoff rates and will be controlled by an outlet structure. Please see Letter of Coordination from stormwater.

10. A Utility Coordinating Committee was conducted on January 4th. GCWSD has no issues with serving the development; however, the applicant will be required to comply with GCWSD extension policy. Midway Fire was contacted and commented that the fire access is acceptable.

11. The proposed project is expected to generate an additional 72 ADT's per day; therefore, does not meet the threshold for a Traffic Impact Analysis.

12. Access for the site will be provided by a single curb cut off of Petigru Drive. Petigru Drive is a state maintained road so the applicant would have to apply for an SCDOT encroachment permit for the access drive. A 26' private R/W will be utilized in the development and two new road names will need to be reviewed and approved by Planning Commission.

13. Signage has not yet been addressed. The Zoning Ordinance allows two signs with a total of 40 square feet for each development entrance. The height may not exceed 12 feet.

14. The property is located in flood zone X.

15. No new amenities are shown.

16. Staff recommended approval of the site plan conditional on the following:

- A. Final approvals from GCWSD, Midway Fire and Georgetown County Stormwater;
- B. Street name application to be submitted and approved;
- C. Submittal and approval of a tree replacement plan and landscaping plan;
- D. Encroachment permit from SCDOT.

17. Planning Commission held a public hearing at their January meeting. Six people spoke opposing the project. Major issues that were presented by the public were: Stormwater and Drainage, High Density, Traffic and Compatibility with the Comp Plan.

After significant discussion regarding high density, stormwater, drainage and compliance with the Comprehensive Plan, a motion was made to deny the site plan. The motion to deny the site plan passed with a vote of 4-2.

FINANCIAL IMPACT:

Not Applicable

OPTIONS:

1. Approve
2. Deny
3. Defer Action
4. Remand to PC for further study.

STAFF RECOMMENDATIONS:

Staff recommends approval for the site plan based on its compliance with the GR zoning designation with the conditions as stated in number 16 above.

ATTORNEY REVIEW:

Yes

ATTACHMENTS:

Description	Type
☐ Application and Attachments	Backup Material
☐ Location	Backup Material
☐ Zoning	Backup Material
☐ Aerial	Backup Material
☐ Current Flood Zone	Backup Material
☐ Proposed Flood Zone	Backup Material
☐ Site Plan	Backup Material
☐ Correspondence	Cover Memo
☐ Correspondence2	Cover Memo
☐ Correspondence	Backup Material
☐ Correspondence Petigru 2	Backup Material
☐ KIG Correspondence Petigru	Backup Material

1234



129 Screven St. Suite 222
 Post Office Drawer 421270
 Georgetown, S. C. 29440
 Phone: 843-545-3158
 Fax: 843-545-3299

FOR INTERNAL USE ONLYCase Number: 00012Fee Paid: CK#1076Date Submitted: 12/20/22Received By: LMAMAJOR 2022-00012

APPLICATION FOR MAJOR/MINOR SUBDIVISION

*(MAJOR SUBDIVISIONS ONLY: COMPLETED APPLICATIONS MUST BE
 SUBMITTED ALONG WITH THE REQUIRED FEE, AT LEAST THIRTY (30) DAYS
 PRIOR TO A PLANNING COMMISSION MEETING).*

Name of Proposed Subdivision: Petigru Place

Please check the appropriate box:

(x) Major subdivision: More than 10 lots. () Preliminary Plat

() Minor subdivision: 10 lots or less. () Final Plat

Property Information:

TMS Number: 04-0204-025-03-00

Street Address: 319 Petigru Dr.

City / State / Zip Code: Pawleys Island, South Carolina 29585

Lot / Block / Number: Lot 3 Waverly Rd.

Current Zoning Classification: GR

Existing Use: Undeveloped

Proposed Use: Commercial Townhomes See second sheet

1234



**129 Screven St. Suite 222
Post Office Drawer 421270
Georgetown, S. C. 29440
Phone: 843-545-3158
Fax: 843-545-3299**

FOR INTERNAL USE ONLY

Case Number: _____ Fee Paid: _____
Date Submitted: _____ Received By: _____

APPLICATION FOR MAJOR/MINOR SUBDIVISION

*(MAJOR SUBDIVISIONS ONLY: COMPLETED APPLICATIONS MUST BE
SUBMITTED ALONG WITH THE REQUIRED FEE, AT LEAST THIRTY (30) DAYS
PRIOR TO A PLANNING COMMISSION MEETING).*

Name of Proposed Subdivision: _____ Petigru Place

Please check the appropriate box:

- (x) Major subdivision: More than 10 lots. () Preliminary Plat
() Minor subdivision: 10 lots or less. () Final Plat

Property Information:

TMS Number: _____ 04-0204-025-03-00

Street Address: _____ 319 Petigru Dr.

City / State / Zip Code: _____ Pawleys Island, South Carolina 29585

Lot / Block / Number: _____ Lot 3 Waverly Rd.

Current Zoning Classification: _____ GR

Existing Use: _____ Undeveloped

Proposed Use: _____ 6 (six) Duplexes - 12 Units

Property Owner of Record:

Name: Covington Homes, LLC

Address: 5305 Culross Ct,

City/ State/ Zip Code: Myrtle Beach, South Carolina 29577

Telephone/Fax: 843-855-1339

E-mail: bobo7yankees@gmail.com

Signature of Owner / Date *Bryan Lenertz* 1-4-22

I have appointed the individual or firm listed below as my representative in conjunction with this matter related to the subdivision of my property.

Agent of Owner:

Name: Bryan Lenertz

Address: 5305 Culross Ct.

City / State / Zip Code: Myrtle Beach, South Carolina 29577

Telephone/Fax: 843-855-1339

E-mail: bobo7yankees@gmail.com

Signature of Agent/ Date: *Bryan Lenertz* 1-4-22

Signature of Owner /Date: *Bryan Lenertz* 1-4-22

Contact Information:

Name: Bryan Lenertz

Address: 5205 Culross Ct. Myrtle Beach, South Carolina 29577

Phone / E-mail: 843-855-1339

Submittal Requirements for Major Developments:

1. Sketch Plan:

- Boundary survey
- A surveyors certification indicating a lot of record

- Lot of record include deed book and page number (s)
- Resurvey include plat book and page number (s)
- Scaled not less than 1" = 100'
- Maximum size 24" x 36"
- Location map
- North arrow
- Title block
- Existing site data
- Proposed site data to include tentative street and lot arrangements along with lot sizes and number of lots

2. Development Plat / Plan

- One large 24 x 36 and one 11 x 17 small set of plans
- One specified digital copy (PDF)
- Required supplemental materials
 - Approval Letters from Georgetown Water and Sewer, DHEC, Fire, and any other agencies necessary.
- Traffic impact analysis as required by Georgetown County Code Chapter 15, Article V.
- Grading Plan
- Tree Survey showing new lot lines
- Site Data to include
 - Lot lines
 - Minimum building setback
 - Engineered preliminary plans
 - Indicate all easements and right-of-ways
 - Designated public areas
 - Location of soil bearings
 - Time schedule
- Supplemental Data
 - Draft of any restrictions
 - Cross section of all proposed streets
 - Full set of construction plans
 - Alterations of Conservation Preservation or Flood –Prone area

3. Final Plan / Plat: Everything listed above plus the following:

- Radii, central angles, tangents, lengths of arcs and curvatures of all street lines
- Location of all existing and proposed street monuments
- Six (6) copies of scaled plats

Submittal Requirements for Minor Developments:

- One large 24 x36, one small 11x17
- One specified digital copy (PDF)
- Boundary survey
 - A surveyors certification indicating a lot of record
 - Lot of record include deed book and page number (s)

- Resurvey include plat book and page number (s)
 - Scaled not less than 1" = 100'
 - Maximum size 24" x 36"
 - Location map
 - North arrow
 - Title block
 - Existing site data
 - Proposed site data to include tentative street and lot arrangements along with lot sizes and number of lots
- Site Data to include
 - Existing land uses
 - Current zoning classification
 - Owners names and tax map numbers of adjoining properties
 - Tract boundaries of the property being developed showing bearings and distances
 - Existing property lines, right-of-ways, easements, etc.
 - Existing municipal boundaries
 - Distances which accurately describe the location of the plat
 - Names, widths, and lines of all streets within or on the perimeter of the development.
 - Indicate all easements and right-of-ways

TYPES OF UTILITIES PROPOSED:

- (x) Public Water
- (x) Public Sewer
- () Sanitary Water
- () Septic System

TYPE OF ACCESS ROAD:

- (x) Proposed Private
- () Proposed County (Attach letter of acceptance or financial guarantee).
- () Existing Road (s) (Check the appropriate one).
 ___ County ___ State ___ Private.

Fee Schedule:

Major Sub-division (11 lots or more)

Preliminary Review (Residential)	Base: \$400.00 + \$10.00 per lot
Final Review (Residential)	Base: \$200.00 + \$10.00 per lot
Required Revision	Flat Fee: \$50.00

Preliminary Review (Commercial)	Base: \$400.00 + \$10.00 per acre
Final Review (Commercial)	Base: \$200.00 + \$10.00 per acre
Required Revisions	Flat Fee: \$50.00

Minor Sub-division (10 lots or less) Base: \$40.00 + \$10.00 each lot

Adjacent Property Owners Information required:
(only for Major Subdivisions)

1. The person requesting approval for a **major** subdivision must submit to the Planning office, at the time of application submittal, stamped envelopes for each resident within **Four Hundred Feet (400)** of the subject property. The following return address must appear on the envelope: **"Georgetown County Planning Commission, 129 Screven St. Suite 222, Georgetown, SC 29440."**

2. A list of all persons (and related Tax Map Numbers) to whom envelopes are to be addressed must also accompany the application.

Please submit this **completed application** and appropriate **fee** to **Georgetown County Planning Division at 129 Screven St. Suite 222, Georgetown, S. C. 29440**. If you need any additional assistance, please call our office at 843-545-3158.

Site visits to the property, by County employees, are essential to process this application. The owner\applicant as listed above, hereby authorize County employees to visit and photograph this site as part of the application process.

For major subdivisions, a sign will be placed on your property informing residents of the upcoming meeting concerning this particular property. These signs belong to Georgetown County and will be picked up from your property within five (5) days of the hearing.

All information contained in this application is public record and is available to the general public.

MAK 2022-0012- Cwynghn homes

Precid	StreetNum	StreetName	Owner1	Owner2	BillingAddress	BillingAddress2	City	State	ZipCode
04-0204-025-03-00	339	PETIGRU DR	CONINGTON HOMES LLC		4210 RIVER DAKS DR	SUITE 5	MIDDLE BEACH	SC	29579
04-0204-025-07-00	65	INKWOOD CT	MILLER WILLIAM M		2117 NEEDLE PALM DR		EDGEWATER	FL	32141
04-0416-020-01-00	281	PETIGRU DR	SHERMAN KESHA B ET AL	BROWN VERA B	281 PETIGRU DR		PAWLEYS ISLAND	SC	29585
04-0204-025-06-00	47	INKWOOD CT	LIU YAN	TAO TAO	5205 SPRINGWOOD DRIVE		ALSTIN	TX	78750-2632
04-0204-025-08-00	75	INKWOOD CT	NUNES-FAUST, ERMAN S	FAUST ASHLEY H	75 INKWOOD COURT		PAWLEYS ISLAND	SC	29585
04-0416-020-00-00	300	PETIGRU DR	SHERMAN KESHA B ET AL	BROWN VERA B	300 PETIGRU DR		PAWLEYS ISLAND	SC	29585
04-0204-025-05-00	53	INKWOOD CT	MARSHALL JESSE J ET AL	MARSHALL MARGARET G	PO BOX 654		PAWLEYS ISLAND	SC	29585
04-0204-025-00-00	361	PETIGRU DR	CHAMPAGNE EDWARD		361 PETIGRU DR		PAWLEYS ISLAND	SC	29585
04-0204-025-09-00	56	INKWOOD CT	THOMPSON BRANDON L	PANTUSO NATALIE N	568 INKWOOD COURT		PAWLEYS ISLAND	SC	29585
04-0204-025-10-00	44	INKWOOD CT	N & A CARDINAL HOLDINGS LLC		P O BOX 4		MILTON	IN	47357
04-0157-005-00-00	328	PETIGRU DR	GRATE LUCILLE S		PO BOX 322		PAWLEYS ISLAND	SC	29585
04-0204-025-11-00	32	INKWOOD CT	MCANNIN KAREN A	MCANNIN JOHN A	12740 WETSELL RIDGE RD		EDINBOROUGH	PA	15412
04-0204-025-00-00	361	PETIGRU DR	CHAMPAGNE EDWARD		361 PETIGRU DR		PAWLEYS ISLAND	SC	29585
04-0416-020-02-00	42	FERGUSON DR	SHERMAN KESHA B ET AL	BROWN VERA B	281 PETIGRU DRIVE		PAWLEYS ISLAND	SC	29585
04-0161-001-01-01	391	PETIGRU DR	CARROLL WILLIAM H		PO BOX 995		PAWLEYS ISLAND	SC	29585
04-0204-025-04-00	17	FERGUSON DR	WINGALL MARGARET J		PO BOX 422		PAWLEYS ISLAND	SC	29585
04-0204-025-01-01	376	PETIGRU DR	YOUNG THEODORE HRS	C/O SHIRLEY LEWIS & WANNELL	135 W 42ND ST APT 12		NEW YORK	NY	10020-1547
04-0204-025-02-00	376	PETIGRU DR	LANCE TERESA		7015 TERRACE DR		CHARLESTON	SC	29406-4517
04-0416-019-00-00	452	PETIGRU DR	MARSHALL JESSE		C/O IMAMIE G WRIGHT	P O BOX 2732	PAWLEYS ISLAND	SC	29585
04-0204-025-02-01	256	PETIGRU DR	MATTOX MARK A	BRYANT WAYNE	3300 SCHOONER LANE		PAWLEYS ISLAND	SC	29585
04-0161-004-00-00	47	FERGUSON DR	BRYANT LEVI HRS		305 WHITESCREAK RD		LAKE WILIE	SC	29710
04-0161-017-00-00	47	FERGUSON DR	EDWARDS ALBERT HRS		C/O JAMES E EDWARDS	PO BOX 1503	GEORGETOWN	SC	29440
04-0161-005-00-00	47	FERGUSON DR	DENNISON ALBERT HRS		47 HARROW LN		PAWLEYS ISLAND	SC	29585
04-0160-005-00-00	57	FERGUSON DR	DENNISON CELESTINE		84 FERGUSON DR		PAWLEYS ISLAND	SC	29585
04-0157-019-00-00	132	FERGUSON DR	DENNISON CHARLES JR ET AL	ASKEW THOMAS D	C/O JOE C DENNISON	2543 N MYRTLEWOOD ST	PHILADELPHIA	PA	19132
04-0157-008-00-00	132	FERGUSON DR	MCCLEARY JESSIE S III	MCCLEARY SUSAN F	3250 SOUTH FRASER ST		GEORGETOWN	SC	29440
04-0416-018-00-00	132	FERGUSON DR	DENNISON LITERICK HRS		C/O WILLE DREFF JR	1327 FERGUSON ST	PAWLEYS ISLAND	SC	29585

ROA 88

29 Notices
Verified - UMA
12/2/2022 9:59 AM



November 7th, 2022

Georgetown County
Attn: Tracy D. Jones, P.E.
Department of Public Services
Stormwater Division

Via Email: stormwater@gtcounty.org

Re: Petigru Place (6 Duplexes – 12 Total Units)
Letter of Coordination Request for Planning Commission
Submittal G3 Project #: 22071

Dear Ms. Jones,

G3 Engineering & Surveying, LLC respectfully requests a letter of coordination for our Planning Commission submittal for the Petigru Place project. Petigru Place is a 2.01 ac. development located in Georgetown County that proposes to construct six (6) 45'x 45' (2,025 SF) envelopes that contain 2 units each and a total of 12 units for the entire site. The development is currently zoned GR and is shown as TMS #04-0204-025-03-00. The site is in Georgetown, South Carolina in Pawleys Island.

The site is bounded by developed single family homes to the North, Petigru Dr. to the East, and undeveloped woods to the West and South. The development will be served by proposed roads and utilities. Stormwater management will be provided on-site utilizing three (3) detention ponds and one (1) outlet control structure that will release treated stormwater into an existing pond onsite.

The proposed stormwater management plan indicates runoff from the project will be collected, detained, and treated by a stormwater conveyance system on site. The system is comprised of a series of catch basins, underground pipes, three (3) detention ponds, and one stormwater outlet control structure. The system will outfall at one primary location into the existing pond at the rear portion of the site. The existing pond on the west side of the site will bring the stormwater downstream to the West ultimately reaching the Waccamaw River.

Three (3) stormwater detention ponds are proposed for the site and the pond will utilize one outlet control structure that will work to control the post-development flows and staging in the pond. The detention ponds will have adequate storage capacity; therefore, minimizing the effects of the design storm event on the current downstream conditions.



Page 2 of 2

The proposed storm drainage system will control the peak discharge for the post-developed area to be less than the peak discharge for the pre-developed area. This project will meet the minimum requirements of the Georgetown County Stormwater Management Ordinance including meeting the 20% discharge reduction as required by Georgetown County for the 25-year storm event. As a result, the post-developed portion of the site should not have an adverse impact on downstream areas.

Following Planning Commissions approval, we will submit a full Georgetown County Land Disturbance Permit submittal for your full review.

If you have any questions or need any additional information, please feel free to contact our office at (843) 237-1001.

Respectfully,

Michael Genovese E.I.T
Project Coordinator



Georgetown County
Department of Public Services
Innovative Leadership & Teamwork!



January 6, 2023

Holly Richardson
Planning, Building, and Zoning Director
Georgetown County

Via Email: hrichardson@gtcounty.org

Re: Georgetown County Planned Development Letter of Coordination (LOC):
Petigru Place in Pawleys Island- TMS #04-0204-025-03-00

Dear Mrs. Richardson:

The referenced project has submitted a conceptual plan to the Georgetown County Stormwater Division. The applicant proposes several options to manage the stormwater runoff from this project. The design engineers stated that their intent is to meet the minimum requirements of the Georgetown County Stormwater Management Ordinance, 2014-44. Please submit this LOC to the Planning Department in preparation for the upcoming Planning Commission Meeting.

The Georgetown County Stormwater Division will conduct a full review of a complete submittal for a Georgetown County Land Disturbance Permit following Planning/Zoning approval. Land disturbing activities shall not commence until the Georgetown County Land Disturbance Permit is issued at the on-site SWPPP pre-construction meeting.

If we can be of further service, please let us know.

Sincerely,

Harley D. Walker

Harley Walker
Billing/Office Coordinator
Stormwater Division
Department of Public Services
Georgetown County

Administration

108 Screven Street • PO Drawer 421270 • Georgetown, SC 29440
Phone: 843-545-3325 • Fax: 843-545-3648 • email: rcfunnye@gtcountysc.org

ROA 91



NOTICE OF PUBLIC HEARING

The Planning Commission will a request from Bryan Lenertz as agent for Covington Homes for site plan review of a 6 building duplex (12 units) development located on the west side of Petigru Drive between Inkwood Court and Ferguson Drive in Pawleys Island.

TMS# 04-0204-025-03-00. Case# MAJOR2022-00012.

The Planning Commission will be reviewing this request on:

***Thursday, January 19th, 2023 at 5:30 p.m. in the Council Chambers at 129 Screven St. in
Georgetown, South Carolina.***

If you wish to make public comments on this request, you are invited to attend this meeting.
If you cannot attend and wish to comment please submit written comment to:

Georgetown County Planning Commission

PO Box 421270

Georgetown, South Carolina 29440

Telephone (843) 545-3158

Fax (843) 545-3299

E-mail: larmstrong@gtcounty.org

Petigru Place
Property Location
MAJOR 2022-00012

ROA 93

Legend

Streets

<all other values>

Maintained By

County

Private

State

Petigru Place

Lot Lines

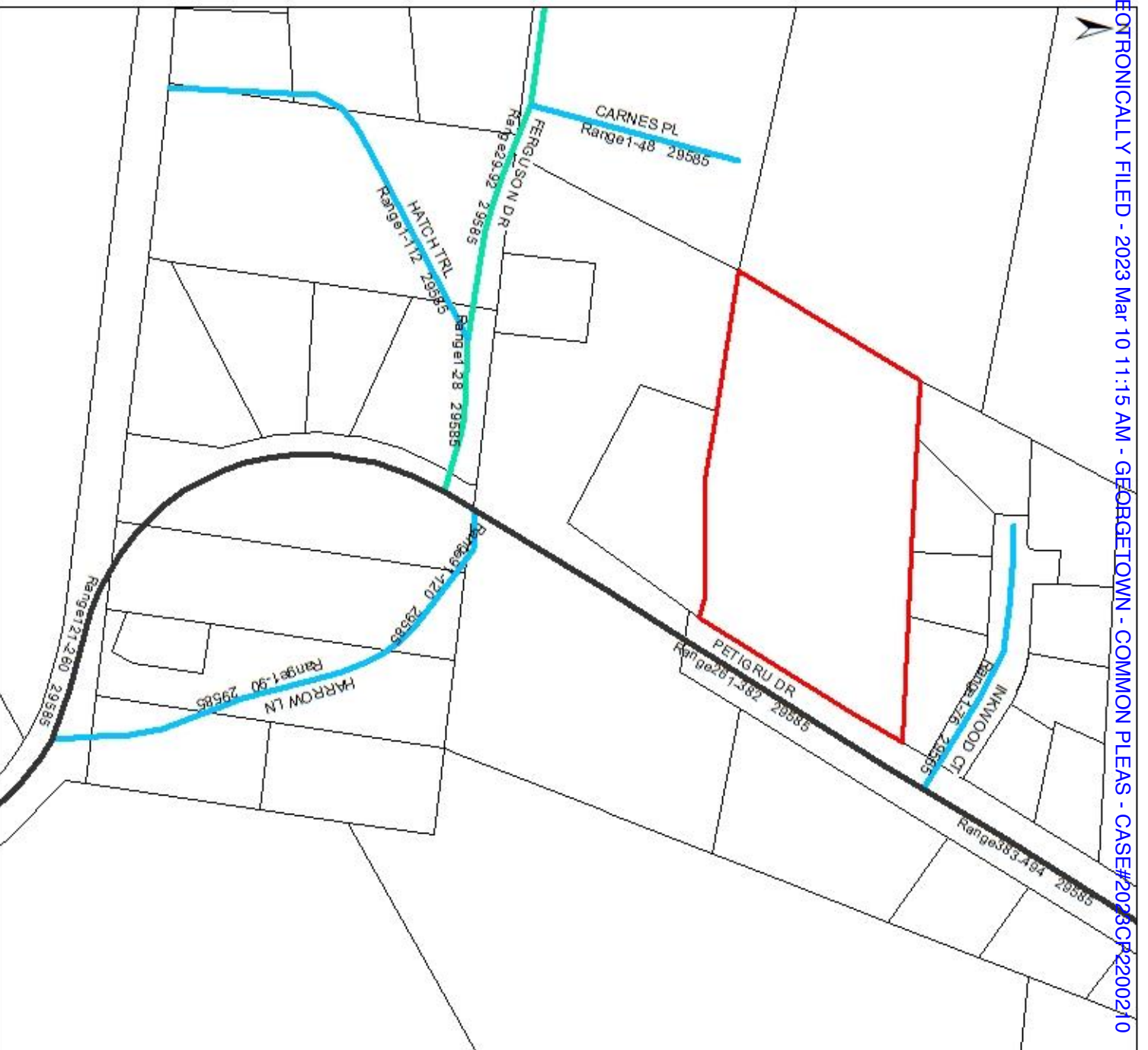
Railroads

Landmarks

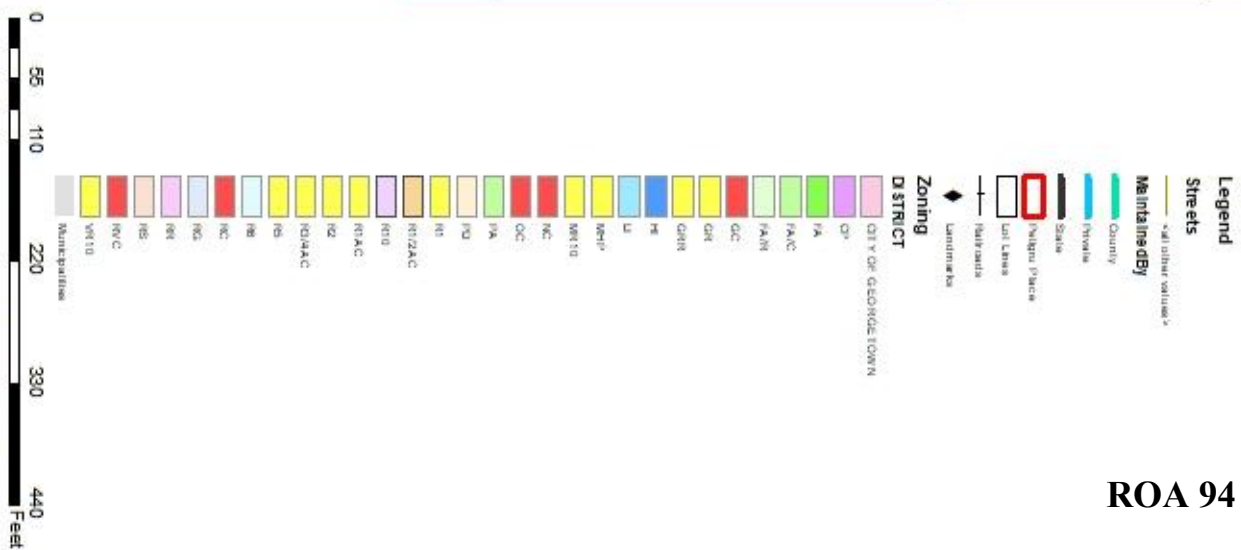
Municipalities

0 55 110 220 330 440 Feet

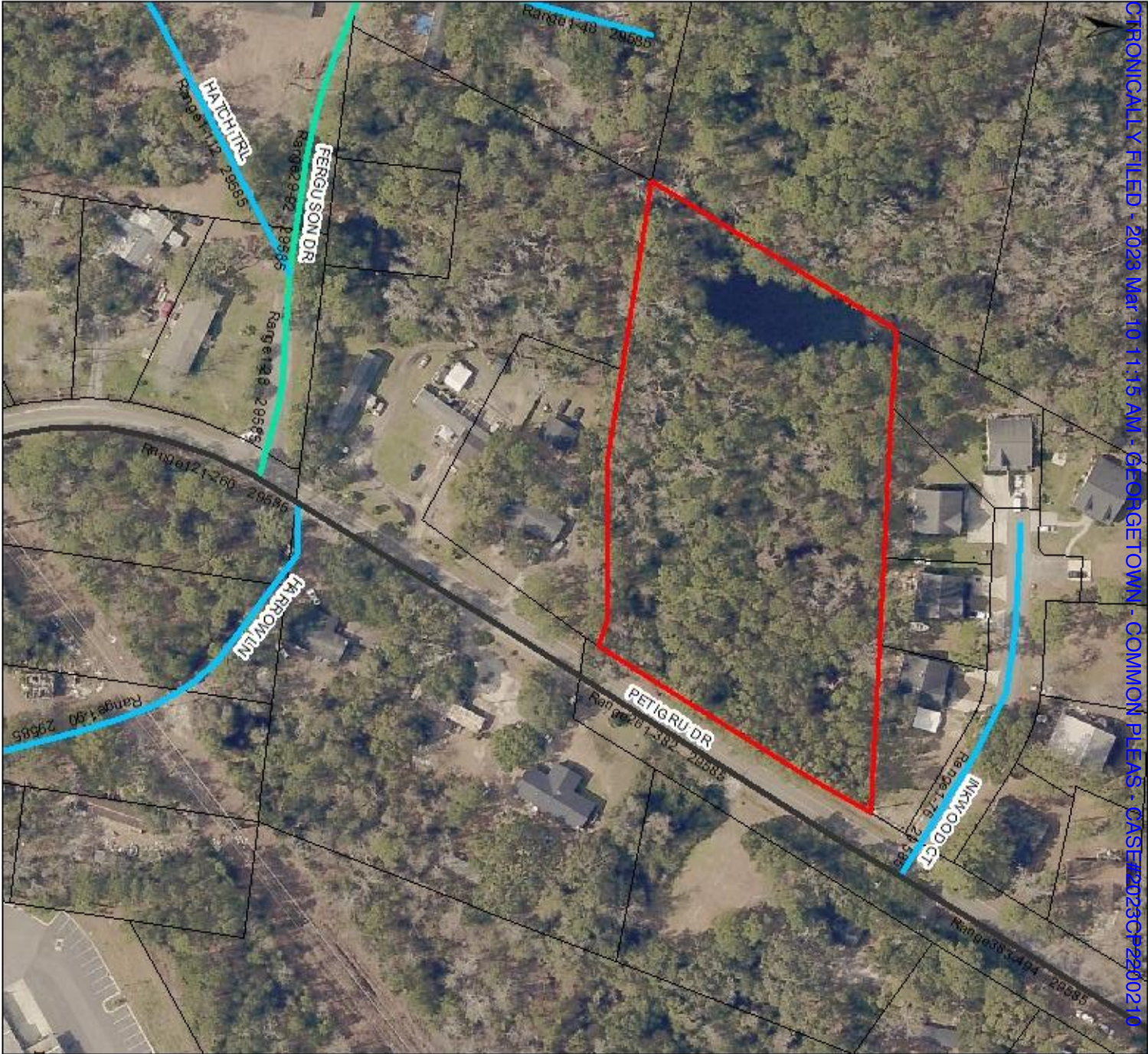
DISCLAIMER: This map is a graphic representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, Georgetown County disclaims all responsibility and liability for the use of this map.



ROA 94



DISCLAIMER: This map is a graphic representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, Georgetown County disclaims all responsibility and liability for the use of this map.



Petigru Place
Property Aerial
MAJOR 2022-00012
ROA 95

Legend

Streets

<all other values>

MaintainedBy

County

Private

State

Lot Lines

Railroads

Landmarks

Imagery2017Med

RGB

Red: Band_1

Green: Band_2

Blue: Band_3

Municipalities



DISCLAIMER: This map is a graphic representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, Georgetown County disclaims all responsibility and liability for the use of this map.



Petigru Place

Property Current Flood Zone

MAJOR 2022-00012

Legend

ROA 96

Streets

<all other values>

Maintained By

County

Private

State

Petigru Place

Lot Lines

Railroads

Landmarks

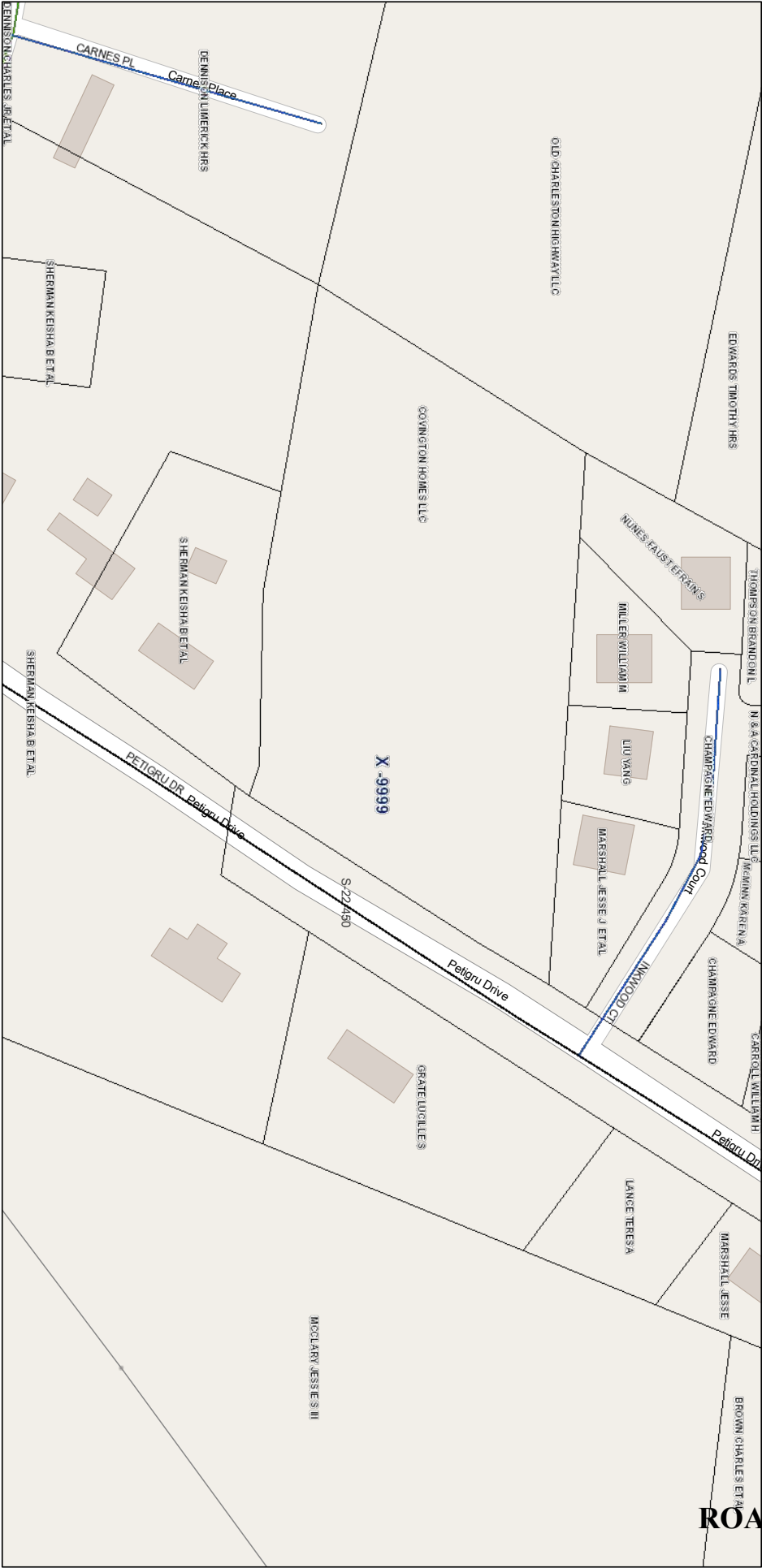
Current Flood Zones

Municipalities

0 55 110 220 330 440 Feet

DISCLAIMER: This map is a graphic representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, Georgetown County disclaims all responsibility and liability for the use of this map.

ArcGIS Web Map



12/21/2022, 9:00:43 AM
FEMA Flood Zones - Prop. Effective 5/9/2023

X Shaded - 0.2 % Chance (500yr)

A

AE - 1% Chance (100yr)

AO

Open Water

VE

X

Lots with Ownership

Streets

County Road

Private Road

State Road

Other

GEOTECH DATA
DRAWING # INTERSECTION AT RICHMOND DR.
N = 30°
W 100.00' ±
L 178.00' ± 7.5'

1. STANDARD CURB SHALL BE USED AT DRIVEWAY ENTRANCE
2. STANDARD CURB SHALL BE USED AT DRIVEWAY EXIT
3. STANDARD CURB SHALL BE USED WHERE DRIVEWAY
CROSSES DRIVEWAY

GENERAL NOTES
1. ALL AT GRADE UTILITIES ARE TO BE LOCATED OUT OF CURB
LINE AND ALL ABOVE GRADE UTILITIES ARE TO BE LOCATED
2. NO SLOPE CONSTRAINTS OR RESTRICTIONS EXIST FOR THE
PROPOSED PROPERTY
3. TRASH BY PRIVATE OWNER WITH ROLL OFF CANS AND
SCREENING

UTILITY INFORMATION
THIS PROJECT WILL BE SERVED BY GEORGETOWN COUNTY
WATER AND SEWER DISTRICT (GCSWD).

THE UTILITIES INFORMATION
1. ALL UTILITY CANS 3' DIA. OR GREATER SHALL NOT BE DAMAGED,
REMOVED, OR DESTROYED
2. THE PRESERVATION REQUIRED ON SITE SHALL BE THE
AMOUNT OF 6' RISES OR 100' DIA. PIPE AROUND

▲



KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

February 13, 2023

VIA EMAIL

Georgetown County Council
129 Screven Street
Georgetown, SC 29442

RE: Covington Homes, LLC
Application for Major High Density Subdivision – Petigru Place
Case No. MAJOR 2022-00012; TMS 04-0204-025-03-00

Dear County Council Members:

As we begin a new year, I want to thank you all for your service to our county. As council members you are responsible for difficult decisions on a broad range of issues that require a great deal of time, effort, and attention. Your dedication and commitment are very much appreciated.

The above referenced application for subdivision approval is on your agenda for February 14, 2023. This proposed high density development is located in the minority neighborhood of Parkersville in Pawleys Island on a parcel of land owned by Covington Homes, LLC, a Myrtle Beach developer, and designated as "medium density" by the comprehensive plan and maps.

I am writing on behalf of adjoining heirs' property landowners that include members of the Grate, Sherman, Bryant, Brown, Dennison, and Ford families, the Pawleys Island Civic Club (Vincent Davis, President), the Parkersville Planning & Development Alliance (Rev. Johnny Ford, President), and other neighboring residents who have lived and owned land in this neighborhood for generations, all of whom respectfully oppose this application and request Council to follow the decision of Planning Commission.

Planning Commission properly denied this subdivision site plan application on the basis that it conflicts with the comprehensive plan and is otherwise detrimental to the neighborhood. Rev. Robert Davis made the motion to deny that was supported by a majority of the commission.

My clients' position is summarized as follows:

- Under South Carolina state law, the Planning Commission decision on land development applications is final unless appealed to the Circuit Court. (Planning Act, Sec. 6-29-1150).

- State law requires that zoning and land development be in accordance with the comprehensive plan. (Planning Act, Sec. 6-29-720, 540, 1120). This high density proposal conflicts with the comprehensive plan medium density designation.
- Georgetown County ordinances provide that when there are conflicting zoning or land development regulations, the most restrictive applies. *i.e.*, in this case, medium density is more restrictive than high density. (Zon. Ord. 1800, Land Dev. Reg., Sec. 10)
- General Residential zoning is not required to be high density and by its own definition is appropriate for medium density. (Zon. Ord. 607)

The specific details upon which these landowners, residents, and groups oppose this high density project are as follows:

1. Georgetown County is bound by South Carolina state law.

It is axiomatic that Georgetown County may not act, legislate or make decisions in a manner that is inconsistent with South Carolina state law or the Constitution. If council enacts ordinances that are inconsistent with state law, those ordinances will be declared void if challenged.

In order to avoid decisions that conflict with state law, the first step in any county decision should be to review whether state law speaks to the issue. In this case, it does.

2. State law designates Planning Commission as decision-maker.

South Carolina Planning Act, Section 6-29-1150, specifically confers authority for land development decisions to the Planning Commission or designated staff. Planning Commission decisions are appealable to the Circuit Court. The Planning Act grants no authority to County Council, a legislative body, to approve or disapprove land development site plan applications or to review, modify, or reverse land development decisions of the Planning Commission.

The Georgetown County Planning Commission properly denied this application after public hearing on January 19, 2023, on the basis that it conflicts with the Comprehensive Plan and is otherwise detrimental to the neighborhood. Under state law, that decision stands as final unless appealed to the Circuit Court.

3. State law requires compliance with Comprehensive Plan.

The following are direct quotes from the South Carolina Planning Act on the issues of zoning and land development regulation and decisions:

- SC Planning Act, Section 6-29-720(B): “[Z]oning regulations must be made in accordance with the comprehensive plan for the jurisdiction”
- SC Planning Act, Section 6-29-720(A): The purpose of a zoning ordinance is to “implement the comprehensive plan.”
- SC Planning Act, Section 6-29-540: No new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.”
- SC Planning Act, Section 6-29-1120: “[T]he regulation of land development by ... counties ... is authorized for the following purposes, among others: ... to assure ... the wise and timely development of new areas ... in harmony with the comprehensive plan”

The language of the Planning Act is clear and unambiguous. It is not subject to multiple interpretations. South Carolina law plainly requires zoning and land development to be in accordance with the comprehensive plan of the jurisdiction. The language is mandatory: "must be" and "to assure." It is not conditional and it does not provide for exceptions.

There is nothing in the Planning Act that permits zoning or land development that is not in accordance with the comprehensive plan. Thus, decisions that are not in accordance with the comprehensive plan maps conflict with state law. Indeed, as has often been pointed out by county officials, the comprehensive plan is a "guide;" however, it is a guide that is required by state law to be followed.

4. Comprehensive Plan Designates Parcel as Medium Density

Georgetown County Council enacted the Comprehensive Plan Land Use Element and related Future Land Use (FLU) Maps by Ordinance 2015-05 which specifically designates the land at issue and surrounding parcels as “Medium Density.”

Approval of high density land development that is inconsistent with the comprehensive plan medium density designation would be contrary to state law.

5. General Residential (GR) Zoning is Compatible with Medium Density.

The GR zoning ordinance states at 607 that “[i]t is the intent of this section that the General Residential District be established for medium-to-high density residential purposes.” There is no requirement that a use within GR zoning be high density.

The determination of the appropriate density within the GR District depends on a number of factors including the Comprehensive Plan FLUM designation, compliance with other

conditions of the GR ordinance itself, compliance with all other applicable land development regulations, and a variety of other factors that state and local law designate as relevant, including flooding, stormwater, traffic, compatibility with the character of the neighborhood, and impact on the community.

Georgetown County Council made the decision in 2015 to designate this parcel as medium density which means the GR permitted use of multi-family duplex units is limited to a maximum density of 5 units per acre.

6. Conflicts Resolved By Applying Most Restrictive Standard.

Georgetown County ordinances require that where there is a conflict between or among zoning or land development ordinances, the most restrictive one applies. In this case, the more restrictive medium density controls.

- Section 1800 of the Georgetown County Zoning Ordinance:

“[I]n case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future ordinance of the County of Georgetown, the most restrictive shall *in all cases* apply.”

- Section 10 of the Georgetown County Development Regulations:

“Whenever this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements, the provisions of this Ordinance shall govern. When the provisions of any other statute impose higher standards, the provisions of such statute shall govern.

7. Other Legitimate Bases for Denial

Regardless of the comprehensive plan violation, the county is not obligated to approve a high density project just because it is zoned as General Residential. General Residential is appropriate for either medium or high density and there are a multitude of factors required to be taken into consideration in addition to the comprehensive plan designation as set forth in the state and local land development regulations.

Some examples of those factors include traffic, flooding, infrastructure, stormwater, incompatibility with the character of the neighborhood, tree protection, crowding, safety, and other factors that affect public health, welfare and safety, all of which are legitimate considerations under the law.

8. Impact on Minority Communities

Traditional minority communities in Pawleys Island and elsewhere in Georgetown County are experiencing attrition at alarming rates due to approval of development on former heirs' property that conflicts with the comprehensive plan and/or does not fit into the character of these longstanding neighborhoods.

This proposal is not affordable or workforce housing and the price is beyond the reach of current residents. These kinds of high density projects typically displace current residents resulting in gentrification and the loss of a longstanding traditional African American communities along with their valuable culture and history. Once made, these decisions cannot be undone and they set a devastating precedent that has a permanent impact on our future.

In addition to displacement of current residents, these high density projects often cause serious problems with flooding, stormwater and traffic which are also legitimate considerations and valid reasons to deny a proposal.

Georgetown County appreciates the necessity of having zoning conform to the Comprehensive Plan FLUM in the context of zoning changes by requiring a map amendment when a proposed zoning change conflicts. Yet, the county allows existing inconsistencies to persist throughout the county which have had a negative impact on the entire community and have been particularly devastating to minority neighborhoods.

By knowingly allowing this inconsistency and intentionally approving land development that is known to be inconsistent with the comprehensive plan, we believe the county is exposing itself to potential liability and the possibility of class action lawsuits by negatively impacted members of minority and other communities.

9. Parcel and Location Not Suitable for Proposed Purpose

Section 5 of the Georgetown County Development Regulations states that:

“The Planning Commission shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.”

In this case, County Council, specifically designated this parcel as “Medium Density.” By virtue of that enactment and designation, our County Council has made the determination that “in the best interest of the public, the site is not suitable for” high density development.

10. Stormwater Study Results

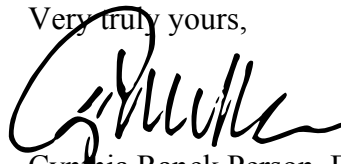
As the President of Pawleys Island Civic Club has repeatedly pointed out, the county has invested substantial funds to have a county-wide stormwater study conducted. We know that it has been completed for the Waccamaw Neck, yet the county has failed to release the results notwithstanding citizen demand.

We know that Parkersville has been designated in this study as a problem area. High density developments such as the one proposed, in a neighborhood that is already experiencing serious problems with stormwater and flooding, should not be considered until the results of that study have been received, reviewed and analyzed.

For all the reasons set forth above, we respectfully request you to (a) allow the decision of the Planning Commission to stand as final, or in the alternative, (b) deny this proposed high density subdivision on the basis that it does not conform to our comprehensive plan and is otherwise detrimental to the neighborhood.

Thank you for your kind attention and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Ranck Person', written over a horizontal line.

Cynthia Ranck Person, Esquire

KIG Advocacy, Inc.

P.O. Box 1922
Pawleys Island, SC 29585

A nonprofit public interest law firm.

Cynthia Ranck Person, Esquire
Chief Legal Counsel & Executive Director

Email:
kig.advocacy@gmail.com

September 2, 2022

VIA EMAIL AND CERTIFIED MAIL

Elizabeth Krauss, Chairman
Georgetown County Planning Commission
129 Screven Street
Georgetown, SC 29442

Louis Morant, Chairman
Georgetown County Council
129 Screven Street
Georgetown, SC 29442

RE: REQUEST FOR COMPLIANCE WITH SOUTH CAROLINA PLANNING ACT

Dear Ms. Krauss & Mr. Morant:

I am writing on behalf of minority landowners in the Parkersville community of Pawleys Island, members of the Pawleys Island Civic Club (Vincent Davis, President), the Parkersville Planning & Development Alliance, Inc., (Rev. Johnny A. Ford, President), a nonprofit organization formed by long-time residents of this traditional African American community for the purpose of protecting and preserving its history, culture, and character, and to promote housing, land use, and economic development that fits within the character and needs of the community, as well as citizens' groups Keep It Green, Inc., Preserve Murrells Inlet, Inc., and other landowners in the Waccamaw Neck. These groups represent thousands of concerned citizens.

Background

Residents of the Waccamaw Neck have tried for many years to work together with our county to bring our comprehensive planning process, zoning & land development regulations, and land use decision-making processes into compliance with state law. Although we have developed excellent working relationships with many county employees and officials, we have encountered deeply-rooted resistance at the decision-making levels of our county government.

Recognizing that our county planning department is overworked and understaffed, we have offered to provide needed resources to assist the county on a volunteer basis. Our offers have consistently been rejected or met with no response from county officials. There seems to be an unwillingness to consider that some longstanding policies and practices in Georgetown County may not comply with current state law mandates.

This failure to address and correct noncompliance has resulted in land development and zoning change decisions that have caused harm to the taxpaying citizens of this county, especially those in minority communities.

Elizabeth Krauss, Chairman
 Louis Morant, Chairman
 September 2, 2022
 Page 2 of 5

Request

As a final attempt to amicably resolve these matters, we are formally requesting the county to comply with the mandates of the South Carolina Comprehensive Planning Enabling Act, (hereinafter “Planning Act”), S.C. Code Ann., Section 6-29-310, *et seq.*, and other applicable law, as follows:

1. Immediately bring all residential zoning ordinances and land development regulations in the Waccamaw Neck into conformity with the current Georgetown County Comprehensive Plan as specifically required by Sections 6-29-720 and 6-29-1120 of the Planning Act.
2. Immediately bring the decision-making processes in land development and zoning change requests into compliance with state law which requires review for compatibility with the Georgetown County Comprehensive Plan as a condition of approval pursuant to Sections 6-29-540, 6-29-720, and 6-29-1120 of the Planning Act.
3. Defer any zoning or land development decisions until the above matters are brought into compliance.

We have reviewed this matter with our Charleston legal counsel and consulted with independent experts on South Carolina land use and zoning law. We are confident that our requests are reasonable and consistent with the requirements of the Planning Act.

South Carolina State Law

The following are the specific provisions from the South Carolina Planning Act that support these requests:

1. Section 6-29-720(B) provides that “[zoning] regulations must be made in accordance with the comprehensive plan for the jurisdiction.”
2. Section 6-29-1120 authorizes and governs county land development regulations, and states that one of the purposes of having development regulations is “to assure ... wise and timely development ... in harmony with the comprehensive plan”
3. Section 6-29-540 requires that no new development should be permitted “until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community.”
4. Section 6-29-720(A) provides that the purpose of a zoning ordinance is to “implement the comprehensive plan.”

Elizabeth Krauss, Chairman
 Louis Morant, Chairman
 September 2, 2022
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5. Section 6-29-530 confirms that the elements of the comprehensive plan are adopted by county ordinance after public hearing.
6. Section 6-29-960 provides that in the case of conflicting land development regulations, the most restrictive applies.
7. Section 6-29-340 mandates that it is the “duty” of the local planning commission to put these processes into place for the benefit and welfare of the public which it serves.

Georgetown County Law

The following provisions of Georgetown County Ordinances and Planning Commission Bylaws further support these requests:

1. Georgetown County Development Regulations, Section 4, states that one of the specific purposes of the county development regulations is “to assure that development is compatible with adopted comprehensive plan”
2. Georgetown County Planning Commission Bylaws, Article V, Section 2, states that “[a]ll zoning and development regulation amendments shall be reviewed first for conformity with the comprehensive plan.”
3. Section 1800 of the Georgetown County Zoning Ordinance and Section 10 of the Georgetown County Development Regulations clearly require application of the most restrictive regulation in the case of conflicts.

Effect of Failure to Comply

There are many zoning ordinances in the Waccamaw Neck that are in direct conflict with the comprehensive land use plan and future land use maps (FLUM) that are part of the comprehensive plan, particularly as they relate to residential density. These conflicting ordinances should have been brought into compliance with the comprehensive plan immediately upon its enactment.

Instead, conflicting zoning ordinances have been permitted to exist despite their inconsistency with the comprehensive plan. The county has repeatedly approved development pursuant to these conflicting zoning ordinances without regard to their inconsistency with the comprehensive plan FLUM designation and density limitations. There are many instances of high density developments that were approved on parcels that were and continue to be designated by the comprehensive plan as low or medium density.

Likewise, many non-conforming zoning changes have been approved as a result of the county’s failure to consider compatibility with the comprehensive plan as a mandatory part of the decision-making process.

Elizabeth Krauss, Chairman
Louis Morant, Chairman
September 2, 2022
Page 4 of 5

Impact on Minority Communities

In addition to the overall harm caused by the county's failure to comply, there appears to be a substantially greater negative impact on minority neighborhoods. Not only are conflicting zoning ordinances more prevalent in minority communities, there appears to be a pattern of approval of projects that conflict with the comprehensive plan or otherwise allow undesirable commercial or other encroachment such as garbage dumps, recycling centers, storage facilities, electric substations, transformers and the like in minority communities. This has had a devastating and permanent detrimental effect on these traditional neighborhoods.

At best, this may be construed as discriminatory impact; at worst, discriminatory intent. Either way, we would submit that all zoning discrepancies and decision-making processes should immediately be brought into compliance with the comprehensive plan, and zoning and land use decisions should be put on hold until that happens.

Discussion

Citizens routinely hear from our county officials that the comprehensive plan is "just a guide," that it is "not law," it "does not need to be followed," and "zoning takes precedence over the comprehensive plan."

There is no language in the South Carolina Planning Act to suggest the comprehensive land use plan is an optional guide to be followed or not followed at the whim or convenience of county government, nor is there language suggesting that less restrictive zoning takes precedence over the more restrictive comprehensive plan in cases of conflict. To the contrary, it is exactly the opposite.

The plain and unambiguous language of the Planning Act, as set forth above, requires South Carolina counties to (1) have a regularly updated comprehensive land use plan that is enacted by way of ordinance (ordinances are laws), (2) sets forth the parameters of land use and development by geographic area, and (3) is implemented by zoning ordinances that are required to be "in accordance with the comprehensive plan." The South Carolina Supreme Court has confirmed this interpretation on multiple occasions. It is a logical and straightforward concept that planning commissions and departments in other coastal counties across the state understand and follow.

It is curious that in the context of a zoning change, Georgetown County appears to appreciate the necessity of having zoning conform to the comprehensive plan FLUM, and requires a FLUM amendment prior to a zoning change approval when there is a conflict. Yet, the county does not recognize the necessity for existing zoning ordinances to conform to the comprehensive plan FLUM.

Elizabeth Krauss, Chairman
Louis Morant, Chairman
September 2, 2022
Page 5 of 5

Proposed Resolution

Our sincere intention has always been and continues to be amicable resolution of these important issues. We are frustrated that our concerns remain unaddressed and have now reached a critical point. More than a year ago, General Counsel for the South Carolina Environmental Law Project issued a formal letter to the Planning Commission on behalf of citizens raising similar concerns about the county's noncompliance with the Planning Act and threatening mandamus. Those issues remain unresolved. Many other land use issues involving regulatory enforcement and compliance have been raised and remain unacknowledged and unaddressed.

We recognize the county is under-resourced and may not have personnel available to undertake this task. As a first step toward resolution, we have drafted several proposed revisions to existing ordinances that would bring them into compliance. This has not been an exhaustive effort, but we would be happy to share what we have for your review and consideration.

Please advise me within the next week whether or not the county is willing to consider these requests. I am available to meet with any representative of the county at the earliest available date. We request the county to defer all land use decisions until provisions are in place that bring the zoning ordinances and decision making processes into compliance.

In the event the county is not willing to engage in good faith discussion about possible avenues of amicable resolution, we will have no choice but to consider a Declaratory Judgment action on the issue of the county's noncompliance, seeking all available legal and equitable relief, including injunction, mandamus, and a claim for attorneys' fees pursuant to S.C. Code 15-77-300. If zoning or land development decisions are made that we believe violate state, local or federal law, or the United States Constitution, causing harm to minority or non-minority landowners, please be on notice that suit will be filed seeking relief, including attorneys' fees.

Citizens should not be forced to spend time and money or engage the services of lawyers in order to obtain the county's compliance with law. Likewise, the county should not incur unnecessary attorneys' fees at the taxpayers' expense when it could simply comply with the law.

Thank you for your attention and kind consideration. We sincerely hope to resolve these matters by working together without the necessity of legal action, and look forward to hearing from you promptly in this regard.

Very truly yours,



Cynthia Ranck Person, Esquire

cc: Angela Christian, County Administrator
Holly Richardson, Planning Director
John Watson, Esquire

ROA 109

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL
COUNTY OF GEORGETOWN	)	CIRCUIT
	)	CIVIL ACTION NO.: 2023-CP-22-00210
Kendrick A. Bryant and Keisha Bryant	)	
Sherman on behalf of the heirs of Ernest	)	
Bryant; Benjamin Dennison and Willie	)	
Dereef, Jr. on behalf of the heirs of Limerick	)	
Dennison; Lucille Grate; Parkersville	)	
Planning & Development Alliance; Keep It	)	
Green; and Preserve Murrells Inlet, Inc.	)	
	)	NOTICE OF MOTION
	)	AND MOTION TO DISMISS
	)	PLAINTIFFS' COMPLAINT ON
	)	BEHALF OF DEFENDANT
Plaintiffs,	)	GEORGETOWN COUNTY
	)	
vs.	)	
	)	
Georgetown County; Covington Homes, LLC	)	
	)	
Defendants.	)	
	)	

TO: CYNTHIA RANCK PERSON, ESQUIRE, ATTORNEY FOR PLAINTIFFS, AND PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Georgetown County (hereinafter the "Defendant"), by and through its undersigned attorneys, will move before this Honorable Court at such time and place as the court may direct, for an Order granting Dismissal as to this Defendant. This Motion is made pursuant to Rules 8, 12, and 19 of the South Carolina Rules of Civil Procedure, but is not limited to, the following grounds:

1. Plaintiffs' Complaint fails to comply with the pleading requirements of Rule 8, SCRCF.
2. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCF.
3. Plaintiffs' Complaint incorrectly and erroneously cites the laws of both the State of South Carolina, including, but not limited to, the South Carolina Declaratory Judgments Act and the South Carolina Comprehensive Planning Enabling Act, as well as the ordinances of

Georgetown County, as it relates to the underlying allegations of Plaintiffs' Complaint. Thus, any requested relief is impossible, impractical as a matter of law, and outside of the laws of the State of South Carolina such that dismissal with prejudice is the only proper action by the Court.

Defendants' Motion will further be based on the pleadings herein, memorandums to be submitted as part of this Motion, rules of court, statutes and ordinances as judicially noticed by the Court as being the law of the case, and any such other evidence as may be accepted by the Court.

For the reasons herein, this Defendant asks the Court to dismiss Plaintiffs' Complaint in its entirety and forever end this action against this Defendant.

Respectfully submitted,

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

By: s/H. Thomas Morgan, Jr.
H. Thomas Morgan, Jr., SC Bar #73585
Georgetown County Attorney
Sydney Douglas, SC Bar #105744
ATTORNEYS FOR DEFENDANT GEORGETOWN
COUNTY
935 Broad Street
Post Office Drawer 39
Camden, South Carolina 29021
(803) 432-1992
tommy@smithrobinsonlaw.com
sydney.douglas@smithrobinsonlaw.com

April 11, 2023
Camden, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) **IN THE COURT OF COMMON PLEAS**
) **FIFTEENTH JUDICIAL CIRCUIT**
) **Civil Action No. 2023-CP-22-00210**

Kendrick A. Bryant and Keisha Bryant Sherman on)
 behalf of the heirs of Ernest Bryant; Benjamin)
 Dennison and Willie Dereef, Jr. on behalf of the)
 heirs of Limerick Dennison; Lucille Grate;)
 Parkersville Planning & Development Alliance;)
 Keep It Green; and Preserve Murrells Inlet, Inc.,)

Plaintiffs,)

v.)

Georgetown County; Covington Homes, LLC,)

Defendants.)

) **NOTICE OF MOTION AND MOTION TO**
) **DISMISS PLAINTIFFS' COMPLAINT ON**
) **BEHALF OF DEFENDANT COVINGTON**
) **HOMES, LLC**

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

PLEASE TAKE NOTICE that Defendant Covington Homes, LLC (hereinafter the "Covington Homes"), by and through its undersigned attorneys, will move before this Honorable Court at such time and place as the Court may direct, for an Order granting Dismissal as to Covington Homes. This Motion is made pursuant to Rules 8, 12, and 19 of the South Carolina Rules of Civil Procedure, but is not limited to, the following grounds:

1. Plaintiffs' Complaint fails to comply with the pleading requirements of Rule 8, SCRPC.
2. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRPC.
3. Plaintiffs' Complaint fails to join necessary parties under Rule 19, SCRPC and should be dismissed pursuant to Rule 12(b)(7), SCRPC.

4. Plaintiffs' Complaint incorrectly and erroneously cites the laws of both the State of South Carolina and Georgetown County as it relates to the underlying allegations of Plaintiffs' Complaint such that any requested relief is impossible, impractical as a matter of law, and outside of the laws of the State of South Carolina such that dismissal with prejudice is the only proper action by the Court.

Covington Homes' Motion will further be based on the pleadings herein, memoranda to be submitted as part of this Motion, rules of court, statutes, and ordinances as judicially noticed by the Court as being the law of the case, and any such other evidence as may be accepted by the Court.

For the reasons herein, Covington Homes asks the Court to dismiss Plaintiffs' Complaint in its entirety and forever end this action against Covington Homes.

BURR & FORMAN LLP

s/Amanda A. Bailey
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***Attorneys for Defendant Covington Homes,
 LLC***

April 13, 2023
 Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL
COUNTY OF GEORGETOWN	)	CIRCUIT
	)	CIVIL ACTION NO.: 2023-CP-22-00210
Kendrick A. Bryant and Keisha Bryant	)	
Sherman on behalf of the heirs of Ernest	)	
Bryant; Benjamin Dennison and Willie	)	
Dereef, Jr. on behalf of the heirs of Limerick	)	
Dennison; Lucille Grate; Parkersville	)	
Planning & Development Alliance; Keep It	)	MEMORANDUM OF LAW IN
Green; and Preserve Murrells Inlet, Inc.	)	SUPPORT OF DEFENDANT
	)	GEORGETOWN COUNTY’S MOTION
Plaintiffs,	)	TO DISMISS
	)	
vs.	)	
	)	
Georgetown County; Covington Homes, LLC	)	
	)	
Defendants.	)	
	)	

Defendant Georgetown County (hereinafter “Defendant”) has moved for dismissal in the above-captioned matter and submits this Memorandum of Law in support of that motion.

STATEMENT OF THE CASE

Plaintiffs, a collection of individuals whose properties adjoin the property at issue in this case, along with several activist organizations whose goals are to quash growth in certain areas of Georgetown County, filed the above-captioned matter on March 10, 2023.

This case arises out of the approval of a major subdivision application in Georgetown County, South Carolina. The parcel of land in the proposed development is Tax Map No. 04-0204-025-03-00 and includes 2.01 acres of vacant land and is located at 319 Petigru Drive in Pawleys Island, South Carolina. Compl. ¶ 24. The land was purchased by Defendant Covington Homes, LLC (“Defendant Covington Homes”) on April 7, 2022. Compl. ¶ 26. On December 20, 2022, Defendant Covington submitted a major subdivision application to the Georgetown County Planning Commission. Compl. ¶¶ 27–28. The application was considered by the Planning

Commission at a public hearing held January 19, 2023. Compl. ¶ 3, 66. At the public hearing, the Planning Commission voted to recommend denial of the application before forwarding the application and its recommendation to the Georgetown County Council for review, as is required under Georgetown County Ordinances concerning multifamily developments like the one being proposed. Compl. ¶¶ 3, 5, 69. At a council meeting held February 14, 2023, the County Council voted to approve the application. Compl. ¶ 4.

Plaintiffs then brought suit seeking declaratory judgment upon the following: (1) that the Georgetown County ordinances requiring site plan review by County Council are void and unenforceable; (2) County Council had no authority to render the February 14, 2023 decision approving the major subdivision application; (3) the Planning Commission's decision to deny subdivision application on January 19, 2023 was final, valid, and binding; (4) Georgetown County Zoning Ordinances allowing high density on land parcels designated by the Comprehensive Plan as medium density are void and unenforceable; (5) the approval of the major subdivision application was a violation of state and county law; (6) Georgetown County has a statutory mandate to bring zoning ordinances and land use regulations into compliance with the Comprehensive Plan; (7) and Georgetown County has a statutory mandate to consider compliance with the Comprehensive Plan in decision making processes. Compl. 29–35. In the event the court finds the County Council did have the authority to review and approve the application, Plaintiffs assert an appeal of that approval. Compl. ¶ 134. In response, Defendant moved to have this case dismissed. *See* Def. Georgetown County's Mot. to Dismiss. For the reasons contained herein, Defendant's Motion to Dismiss must be granted.

ANALYSIS

- I) Georgetown County Zoning Ordinance 607 is valid and Plaintiffs' challenges as to the validity of its provisions are statutorily barred.**

The long-practiced principle in South Carolina is that courts should exercise a policy of judicial restraint in reviewing the zoning decisions of a governing body. “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 County*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965)); *McMaster v. Columbia Bd. Of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 663 (2011) (stating that courts may only find a municipal ordinance unconstitutional “when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.”) (internal quotations omitted); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010) (“This State’s constitution provides that the powers of local governments should be liberally construed.”) (citing S.C. Const. art. VIII, § 17); *Historic Charleston Foundation v. City of Charleston*, 400 S.C. 181, 185, 734 S.E.2d 306, 308 (2012) (“Zoning ordinances are presumed valid.”).

In reviewing an ordinance’s validity, a court “must make every presumption in favor of the constitutionality of a legislative enactment.” *See Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals*, No. 2021-001074, 2023 WL 2996979, at *3 (S.C. Apr. 19, 2023). A court cannot overturn the decision of a county’s governing body if the decision is “fairly debatable” because the county’s decision is presumed to be a “valid exercise of power and it is not the prerogative of the Court to pass upon the wisdom of the decision.” *Id.*; *see also Knowles*, 305 S.C. at 223, 143 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.” *Knowles*, at 224, 143 S.E.2d at 643 (internal quotations omitted). A zoning decision does not infringe upon or destroy a citizen’s constitutional rights where there is no deprivation of property without due process of law. *See McClanahan v.*

Richland County Council, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002).

Plaintiffs do not allege with any specificity any constitutional infringements in their Amended Complaint, other than a glancing reference to Article III standing under the United States Constitution. *See* Compl. ¶ 116. While Plaintiffs claim Article III affords them alternative and additional grounds to establish their standing, they have failed to allege any concrete injuries in fact which would provide them with constitutional standing in this case. Plaintiffs only reference to any injury appears a handful of times in the vaguest of pretenses; Plaintiffs do not provide any explanation, specificity, or factual support as to their vague conclusions alleging injury.¹ *See* Compl. ¶¶ 98, 103, 108, 116.

The ordinance complained of, Georgetown Zoning Ordinance 607, sets out the requirements for areas zoned General Residential. Specifically, Plaintiffs make challenges to two provisions of that ordinance: (1) the site plan review provisions for certain multifamily developments, Compl. ¶5, and (2) the density provisions, Compl. ¶ 18. Plaintiffs allege that the site plan review provisions allowing for County Council to review with final approval power certain multifamily developments is not permitted under the Planning Act. The specific provision at issue is Ordinance 607.306 which requires all multi-family developments of “more than ten (10) dwelling units with a net density of five units per acre or greater” to have a site plan “reviewed by the Planning Commission, [and] approved by County Council.” Georgetown County Zoning Ordinance 607.306. The creation and regulation of zoning districts is within the purview of the governing body of the county. S.C. Code § 6-29-720(A). Plaintiffs reference a section of the

¹ The landowners “in the Waccamaw Neck” referenced in the Complaint, Compl. ¶¶ 98, 103, 108, have no constitutional standing in this case as no concrete injuries in fact have been alleged as to them or any named Plaintiff, nor do these unnamed landowners have statutory standing as they are not adjoining landowners as contemplated by the Planning Act. *See ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195–96, 669 S.E.2d 337, 339 (2008).

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. *See* S.C. Code § 6-29-1120. Plaintiffs assert that this section of the Planning Act limits the final approval of *all* development plans to come from the Planning Commission or designated staff. Compl. ¶ 6. This interpretation is overly narrow and ignores both the legislative purposes of both Article Seven and Five of the Planning Act and the determinations of the County’s governing body in enacting the procedures for approving development plans in a general residential district.

First, it is apparent from the plain language of Section 6-29-1120 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 § 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 ordinance provides the procedural process for development plans to be approved through submission to the planning commission. *See* Georgetown County Zoning Ordinance 607. Second, the intended purpose of Article Seven of the Planning Act, authorizes counties with the ability to create regulations with broad authority in order to carry out the stated purposes, such as public health and safety, good order, and “progressive development of land.” S.C. Code § 6-29-1120. The provisions of Article Five of the Planning Act states that zoning ordinances are to serve similar purposes in addition to and purpose which “further[s] the public welfare in any other regard *specified by the governing body.*” S.C. Code § 6-29-710. These are purposes directly within the purview and responsibility of the governing body of a county.

The County Council ultimately determines the terms of the land use regulations and zoning ordinances to be used in Georgetown County to carry out the purposes enumerated in the Planning

Act. *See* S.C. Code § 6-29-760, 1130. Although County Council may permit the Planning Commission to review and approve a development plan, it is also within the authority of the County Council to enact zoning ordinances which include procedural safeguards, such as additional approval for larger developments, in order to protect and promote the intended purposes of the Planning Act and good land use principles of the County. Ordinance 607 allows medium-to-high density residential uses, and it is apparent from the ordinance itself that the County intended to provide County Council with final approval authority over larger and/or more densely populated development proposals. This procedural process is not prevented by the terms of the Planning Act – rather, the opposite is true. Such a procedure is in keeping with good zoning practices to better ensure the purposes of the Planning Act are being promoted by allowing the County’s governing body appropriate discretion in furthering the welfare of its citizens in their housing.

As for Plaintiffs’ argument that the allowance of high-density housing in a general residential district is void as a matter of law, that conclusion is patently false and based upon incorrect assumptions and interpretations of South Carolina law. It is argued that Ordinance 607, which permits medium-to-high density housing in areas zoned general residential, is in conflict with the County’s Comprehensive Plan and is therefore invalid. First and foremost, as will be discussed in Section II, *infra*, the Comprehensive Plan is not the law, and its terms are not required to be strictly adhered to. Just because the future land use maps recommend the area as medium density, does not strictly limit it to medium density where the County’s zoning maps designate that same land as general residential and allow for use as high density residential. The County has authority to create zoning districts as it determines necessary and has legislative discretion in doing so. It would not be appropriate for the courts to now pass judgment upon that discretion where

there has been no constitutional violation.

Furthermore, even if the providence of the challenged ordinances were to be in question, the “validity of a regulation or map, or amendment to it” cannot be challenged after sixty days from the date of the decision of the governing body, granted there has been compliance with the notice requirements of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Planning Act”) or “with the established procedures of the governing authority or the planning commission.” S.C. Code § 6-29-760(D). Ordinance 607 was adopted long before it came under challenge by Plaintiffs.² The validity of the ordinance cannot be challenged by Plaintiffs at this juncture and their claims that its provisions are invalid must be dismissed as they are statutorily barred.

II) The Complaint incorrectly and erroneously cites and misinterprets the laws of both the State of South Carolina and Georgetown County such that the relief sought is improperly asserted as a cause of action and the case should be dismissed.

The crux of Plaintiffs’ entire suit is that the Comprehensive Plan is to be adhered to in making land use decisions and may be used as justification to deny development applications. It is alleged that the land use decisions, including zoning, and the procedures for approving a development are restrained by the terms of the Comprehensive Plan. This assertion is based upon a misinterpretation and misapplication of the provisions of the Planning Act and ordinances of Georgetown County. The Comprehensive Plan is intended purely as an expression of goals, objectives, and policies for current and future land use in the County, which are to be implemented

² Plaintiffs admit that “at all times pertinent,” the land was zoned General Residential, and that Ordinance 607 allows maximum residential density of sixteen units per acre, which would constitute high-density. Compl. ¶¶ 13,15. This necessitates Ordinance 607 having been in effect at the date of the property’s acquisition on April 7, 2022, and the date of the application submitted on December 20, 2022, making the filing date of March 10, 2023, beyond the sixty-day limit. *See* Compl. ¶¶ 26–27; Pls.’ Ex. 11, at 4.

by the zoning ordinances and land use regulations. By its own terms, the Comprehensive Plan is intended to act as a forward thinking set of *goals* for the County's land development decisions. *See, e.g.,* Pls.' Ex. 8.

Conformity with the zoning ordinances and state law is what is required here. Abiding by every dictate of the Comprehensive Plan is not required. *See McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002) (reiterating that "the Plan is only a guideline"). In fact, to require the County to treat every goal in the entirety of the Comprehensive Plan as a strict requirement would be simply unfeasible in practice, as the many goals and different elements commonly conflict with each other in some form or fashion. Yet Plaintiffs attempt to pick out very specific paragraphs from the Comprehensive Plan and insist on the idea that they are strict requirements to be followed in their entirety in every land use decision. It is offered, in the Complaint, that this interpretation is supported by Sections 6-29-540, 720, and 1120 of the Planning Act. Compl. ¶¶ 16, 51, 90, 130. This narrow reading is simply not possible or reasonable to carry out in practice. While land use and planning decisions must seek guidance from the Comprehensive Plan, the governing body is not bound by every letter on the page. One cannot both limit all major development while at the same increase land use to account for current and future population growth, yet this is essentially what the Plaintiffs would have the County do. A reasonable mind can find, and the law of South Carolina provides, that such an interpretation is simply not feasible.

Additionally, it is asserted by Plaintiffs that County Council was without authority to review and approve the application at issue or reverse the findings of the Planning Commission. Compl. ¶ 71. Georgetown County Ordinance 607.306 requires that a multi-family development plan, such as this, is required to be "reviewed by the Planning Commission, [and] approved by

County Council.” Georgetown County Zoning Ordinance 607.306. This procedure is an authorized application of the governing body’s authority to govern the County’s zoning and development. *See* Section I, *supra*. County Council is not restricted to the findings of the Planning Commission’s review. *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). Such a limitation is not provided for in the ordinance, nor can it be reasonably inferred to allow such a restriction to be placed on County Council. Moreover, such a limitation would undermine the purpose of this valid additional procedural step.

Ultimately, the intent of the General Assembly in the adoption of the Planning Act and statutes providing counties with certain powers is key in determining the breadth of powers afforded to a county’s governing body. In this instance, while the Planning Commission is afforded certain powers to review development applications, the findings of those reviews are not the final determination for multifamily development plans of the type at issue here. That authority lies with the County Council. The Planning Commission acts as the gatekeeper in these types of applications, but the County Council retains the keys when it comes to determining whether to approve an application or not.

III) The Complaint fails to meet the pleading requirements of Rule 8, SCRCP.³

Defendant asserts that the purported claims in Plaintiffs’ Complaint are merely a collection of conclusory allegations, which fail to comply with the requirements of Rule 8, SCRCP, and therefore must be dismissed. A claim for relief is required to include,

“(1) a short and plain statement of the grounds including facts and

³ Defendant’s Motion to Dismiss included a reference to Rule 19, SCRCP. Defendant is not pursuing a defense under Rule 19, SCRCP and any prior reference may be deemed inadvertent.

statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled."

SCRCP Rule 8(a). The fundamental purpose of pleading is to provide fair notice to a defendant and the court. *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240 550 S.E.2d 869, 871 (Ct. App. 2001). Defendant would submit that the statutes and other authorities relied upon are presented in such an incomplete and disjointed manner, that the bald conclusory allegations made from those representations constitutes a failure of Plaintiffs to plead actual facts or grounds for their entitlement to relief in this case.

Defendant and the Court are without fair notice as the grounds upon which Plaintiffs seek relief. First, Plaintiffs have not plead facts to support any sort of assertion that Plaintiffs have been injured or are in imminent danger of being injured in this case and have not demonstrated through their pleadings how their claims are properly before this Court. Second, Plaintiffs have failed to plead facts which demonstrate a justiciable controversy, which is required to be pleaded to establish a cause of action under the Uniform Declaratory Judgments Act. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2 844, 845 (1995). "Before a court may render a declaratory judgment, an actual, justiciable controversy must exist." *Pee Dee Elec. Co-op v. Carolina Power and Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). In other words, there must be a "real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." It is required that a plaintiff presents facts indicating that there is an imminent violation of rights for their case to be ripe for review. *Waters v. South Carolina Land Res. Conservation Comm'n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 917 n.7 (1996).

Although the Complaint is extensive in its form, it is without meaningful substance to establish a justiciable controversy. Plaintiffs have failed to plead any facts to support any sort of injury or imminent threat of injury to the Plaintiffs. Simply saying there is some vague and inexplicable injury which has occurred is not enough to satisfy the pleading requirements. Plaintiffs' attempt to plead as much is an incomplete and irrational inference endeavored to be drawn from a collection of equally unsupported conclusions and facts devoid of usefulness. The Complaint is completely absent of any concrete controversy presenting an actual or imminent violation of rights and therefore fails to satisfy the pleading requirements of Rule 8, SCRCPP, and should be dismissed accordingly.

a. Plaintiffs have failed to state facts sufficient to constitute a cause of action and this case should be dismissed pursuant to Rule 12(b)(6), SCRCPP.

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a plaintiff's complaint based on its failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). In determining whether to grant a motion to dismiss, the Court should "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). 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 *Flatueau 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), 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 16, 617 (Ct. App. 1989) (“[B]y virtue of Rule 10(c), SCRCP, the attachment became a part and parcel of the complaint.”).

Furthermore, cases that lend themselves to questions of law, and do not necessarily involve the resolution of 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).

As discussed extensively above, the Complaint fails to provide facts which can establish their entitlement to relief in this case. The causes of action asserted are purportedly declaratory judgment in nature, yet Plaintiffs have not met their burden under the pleading requirements to advance or support those claims. Therefore, their claims should be dismissed as they have failed to state facts sufficient to constitute a cause of action.

CONCLUSION

Wherefore, based on the foregoing, Defendant asserts that Plaintiffs have failed to meet the burden of their pleading requirements, well-established legal principles, and the Laws of South Carolina that dictate ordinances are presumptively valid and may not be overturned by the courts unless in the rarest of circumstances that are not present here. Therefore, Defendant asks this Honorable Court to dismiss this case in its entirety pursuant to Rules 8 and 12(b)(6).

<<<Signature on following page>>>

Respectfully submitted,

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May 31, 2023
Camden, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2023-CP-22-00210

Kendrick A. Bryant and Keisha Bryant Sherman on)
behalf of the heirs of Ernest Bryant; Benjamin)
Dennison and Willie Dereef, Jr. on behalf of the)
heirs of Limerick Dennison; Lucille Grate;)
Parkersville Planning & Development Alliance;)
Keep It Green; and Preserve Murrells Inlet, Inc.,)

Plaintiffs,

v.

Georgetown County; Covington Homes, LLC,

Defendants.

) **MEMORANDUM OF LAW IN SUPPORT**
) **OF DEFENDANT COVINGTON HOMES,**
) **LLC’S MOTION TO DISMISS**

Defendant Covington Homes, LLC (“**Covington Homes**”) has moved for dismissal in the above-captioned matter and submits this Memorandum of Law in support of that motion.

STATEMENT OF THE CASE

This case is one in a series of lawsuits attempting to stop residential development in the Waccamaw Neck of Georgetown County. This particular lawsuit centers on the approval by Georgetown County Council (“**County Council**”) of a major subdivision application submitted by Covington Homes. Covington Homes’ approved subdivision application allows construction of six new duplexes (twelve units total) on Pawley’s Island. Plaintiffs do not allege that Covington Homes or County Council did not follow the prescribed process for approving the subdivision application under the local zoning ordinance; rather, Plaintiffs allege that Georgetown County’s zoning ordinance itself is unlawful and therefore County Council’s approval of Covington Homes’ application in conformity with the zoning ordinance is null and void.

Ultimately, this lawsuit is a thinly-veiled attempt to circumvent the local political process and has no legal merit. For reasons that will be explained below, Covington Homes respectfully requests the Court to dismiss Plaintiffs' lawsuit in its entirety.

BACKGROUND

I. KIG Lawsuits

Plaintiff Keep It Green (“**KIG**”) is a non-profit public interest law firm that opposes land use and zoning changes that increase residential density in the Waccamaw Neck of Georgetown County. (Compl., ¶¶ 37, 39-43). As attested to in its affidavit, KIG “monitor[s] county land use decisions, zoning change requests, and proposed development in the Southern Waccamaw Neck for compliance with proper law, procedure, and the Georgetown County Comprehensive Plan.” (Compl., Ex. 6, ¶ 5.).

KIG has opposed many residential projects in Georgetown County upon the assertion that they do not comply with the law. (Compl., Ex. 6, ¶¶ 6-7). Currently, KIG is named as Plaintiff in four pending Georgetown County lawsuits filed in 2022 and 2023 challenging development projects (“**KIG Lawsuits**”).¹ In addition, KIG has opposed other proposed developments at the Georgetown County Planning Commission (“**Planning Commission**”) and County Council meetings that have been withdrawn or denied. The executive director for KIG is counsel for all of the plaintiffs in the KIG Lawsuits. The complaints in those matters raise other technical arguments, but the gist among all the lawsuits is that multi-family residential development in the Waccamaw Neck is incompatible with the Georgetown County Comprehensive Plan (“**Comprehensive Plan**”).

¹ The KIG Lawsuits include this action and C.A. Nos. 2022-CP-22-00032, 2022-CP-22-00912, and 2023-CP-22-0007. Since 2019, KIG has challenged approximately 10 other projects on the basis of non-compliance with the Georgetown County Comprehensive Plan.

Plaintiff Preserve Murrells Inlet, Inc. (“**PMI**”) is a non-profit organization that protects and preserves the Northern Waccamaw Neck from “inappropriate development.” (Compl., ¶¶ 38-43 & Ex. 7, ¶¶ 5-6.) Plaintiff Parkersville Planning and Development Alliance (“**Parkersville PDA**”) is yet another non-profit organization that has joined PMI and KIG to oppose developments in the Waccamaw Neck. (Compl., ¶¶ 32-36 & Ex. 5, ¶¶ 5-6). PMI and Parkersville PDA have been named as Plaintiffs in this lawsuit, as well as other KIG Lawsuits.

The individual Plaintiffs allegedly own property near the Covington Homes Parcel. (Compl. ¶¶ 29-31). They have each signed nearly identical affidavits attesting that they own property in the vicinity of the Covington Homes Parcel and that they are opposed to the development of the land. (Compl., Exs. 1-3).

II. Covington Homes Parcel

Covington Homes purchased the parcel of land at issue on April 7, 2022. (Compl., ¶ 24). The parcel consists of 2.01 acres of vacant land on Pawley’s Island at 319 Petigru Drive, Tax Map No. 04-0204-025-03-00, recorded in the Georgetown County Deed Book 4332, Page 243 (hereinafter the “**Covington Homes Parcel**”). (Compl., ¶ 24). At all relevant times to this case, the Covington Homes Parcel was zoned General Residential. (Compl., ¶ 13).

On or around December 20, 2022, Covington Homes submitted an application for a major subdivision on the Covington Homes Parcel. (Compl., ¶ 27). The Planning Commission held a public hearing on Covington Homes’ application on January 19, 2023, at which Plaintiffs KIG and Parkersville PDA were present and spoke against the application. (Compl., ¶ 28; Compl., Ex. 5, ¶ 11; Compl., Ex. 6, ¶ 12). The Planning Commission voted to deny the application. (Compl., ¶ 66). The application next went to County Council for consideration at its February 14, 2023 meeting,

at which time County Council approved Covington Homes' application. (Compl., ¶¶ 4, 69; Compl, Ex. 10; Compl., Ex. 11).

On March 10, 2023, Plaintiffs filed this lawsuit, requesting several declaratory judgments, as well as appealing County Council's decision to approve the Covington Homes application and requesting attorneys' fees. (Compl., ¶¶ 119-137). While Plaintiffs request seven different forms of relief from the Court, the requests are duplicative and boil down to the following three declarations: (1) Plaintiffs ask the Court to declare Georgetown County Zoning Ordinance Section 607 ("**Ordinance 607**") invalid because it conflicts with the Local Government Comprehensive Planning Enabling Act of 1994 at S.C. Code § 6-29-310 *et seq.* ("**Planning Act**"); (2) Plaintiffs ask the Court to declare County Council's decision vis-à-vis the Covington Homes Parcel invalid because the decision relies on Ordinance 607 and conflicts with the Comprehensive Plan; and, (3) Plaintiffs ask the Court to declare that Georgetown County has a statutory mandate to amend Ordinance 607 to comply with the Comprehensive Plan.

III. KIG Lawsuit Recently Dismissed

As previously mentioned, KIG, PMI, and Parkersville PDA are plaintiffs in the KIG Lawsuits opposing housing development in the Waccamaw Neck. In one such case, C.A. 2023-CP-22-0007, Judge Seals recently heard the defendants' motions to dismiss. Notably, counsel for the plaintiffs and defendants in that case are the exact same counsel for Plaintiffs and Defendants in this case. On May 1, 2023, after considering the parties' memoranda of law and hearing oral arguments, Judge Seals granted defendants' motions to dismiss the lawsuit entirely. Judge Seals issued a formal order of dismissal on May 31, 2023. (Ex. A, Order Granting Defendants' Motion to Dismiss in C.A. 2023-CP-22-0007). In that case, the plaintiffs requested a declaratory judgment that an ordinance adopted by County Council was null and void because it conflicted with the

Comprehensive Plan. That is the *exact same* declaratory judgment Plaintiffs seek in this case with regard to Ordinance 607.

Simply put, like the sister KIG Lawsuit Judge Seals recently dismissed, Plaintiffs in this case do not state any claims upon which this Court can grant relief and the case should be dismissed.

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), 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 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), 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.”).

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).

ARGUMENT

Despite the length of the Complaint, each of the seven causes of action where Plaintiffs seek declaratory relief relies on invalidating Ordinance 607. If Plaintiffs have no basis to invalidate Ordinance 607, all of their causes of action for declaratory judgment fail as a matter of law. Further, Plaintiffs have no right to appeal County Council’s decision to approve Covington Homes’ subdivision application. Thus, Plaintiffs have not stated any claims for which this Court can grant relief.

I. Ordinance 607 is Not at Odds with the Planning Act & Plaintiffs are Statutorily Precluded from Challenging Ordinance 607

The crux of Plaintiffs’ case is that a county zoning ordinance is at odds with state law. More specifically, Plaintiffs argue that Ordinance 607 violates provisions of the Planning Act in two ways. First, Plaintiffs argue that Ordinance 607 provides County Council final decision-making authority to approve or deny subdivision applications when the Planning Commission is given exclusive authority under the Planning Act to have the final say. Second, Plaintiffs argue that Ordinance 607 allows high-density development in areas designated by the Comprehensive Plan as medium-density, but the Planning Act requires the designation in the Comprehensive Plan to control.

a. Planning Act

Under the Planning Act, South Carolina counties are authorized to create local planning commissions “to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction.” S.C. Code § 6-29-320 & -340. The enumerated powers and duties of planning commissions include (in their

entirety): (1) prepare and periodically revise comprehensive plans, and (2) prepare and recommend for adoption by the governing body zoning ordinances, land development regulations, official maps, landscaping ordinances, capital improvements programs, and policies and procedures related to implementation of the planning elements. S.C. Code § 6.29-340(B). The Planning Act *allows, but does not require*, counties to provide for reference of any other matters to the local planning commission so long as final action will not be taken by the governing body on a referred matter until the planning commission has submitted a report to the governing body or had a reasonable period of time to do so. S.C. Code § 6-29-370. Notably, under the Planning Act, counties retain the discretion as to whether to create a planning commission and which matters to refer to the planning commission. Further, planning commissions are empowered to make recommendations to counties for creating laws (*i.e.*, regulations and ordinances), but planning commissions are not empowered to enact law.

An important function of planning commissions is the creation of a local comprehensive plan, which is “desirable to *guide* the development and redevelopment of its area of jurisdiction.” S.C. Code 6-29-510(A) (emphasis added). “All planning elements [of a comprehensive plan] must be an expression of the planning commission *recommendations* to the appropriate governing bodies” S.C. Code § 510(E) (emphasis added). Once a county has adopted comprehensive plan elements recommended by the planning commission, no new construction may be authorized by the county without first submitting the proposal to the planning commission for *review and comment* as to the compatibility of the proposal with the comprehensive plan. S.C. Code § 6-29-540 (emphasis added).

From a zoning perspective, once a county has adopted the land use element of a local comprehensive plan, a “county *may* adopt a zoning ordinance to help implement the

comprehensive plan.” S.C. Code § 6-29-720(A) (emphasis added). As part of its zoning ordinance, “the ***governing body may regulate***: . . . (3) the density of development, use, or occupancy of buildings, structures, or land.” S.C. Code § 6-29-720(A)(3). The General Assembly provided counties with discretion as to whether to adopt a zoning ordinance implementing the comprehensive plan and authorized counties (not planning commissions) to regulate the density of development.

Finally, Article 7 of the Planning Act addresses land development regulations. The General Assembly provided the public with an explanation of its legislative intent in adopting this Article. The General Assembly intended to authorize “the regulation of land development by municipalities, counties, or consolidated political subdivisions” for purposes including “to encourage the development of economically sound and stable municipalities and counties.” S.C. Code § 6-29-1120. Article 7 states that after a county has adopted certain elements of the comprehensive plan, the planning commission may “***prepare and recommend*** to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction.” S.C. Code § 6-29-1130 (emphasis added). Article 7 states that once a county has adopted land development regulations, “no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded . . . and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by ***the designated authority***.” S.C. Code § 6-29-1140 (emphasis added). A county’s land development regulations must “include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff.” S.C. Code § 6-29-1150(A) (emphasis added).

b. Analysis

Despite the numerous provisions in the Planning Act providing counties discretion on whether and how to implement their planning commissions **and** reiterating that counties remain the governing body responsible for implementing local laws governing land development **even after** a planning commission is implemented, Plaintiffs seek to invalidate Ordinance 607 as being in conflict with the Planning Act.

Invalidating an ordinance is a two-step process: first, a court must determine whether the county had the power to adopt the ordinance; 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)). “If either is silent where the other speaks, there is no conflict.” *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)).

Plaintiffs simply do not have a leg to stand on from a Planning Act perspective. Plaintiffs do not assert that County Council lacked the authority to adopt Ordinance 607; they only allege conflict with state law. Plaintiffs’ assertions about the alleged conflict between Ordinance 607 and the Planning Act are simply incorrect, and certainly do not amount to irreconcilable conditions. Plaintiffs may not like County Council’s ability to overrule the Planning Commission or to deviate

from the Comprehensive Plan, but Plaintiffs' available recourse is through the political process, not the court system.

i. The Planning Act Does Not Preclude County Council from Issuing Land Development Decisions

Under Ordinance 607, "a multi-family development of more than ten (10) dwelling units with a net density of five units per acre or greater shall have a site plan reviewed by the Planning Commission, approved by County Council" ZONING ORDINANCE OF GEORGETOWN COUNTY, S.C. § 607.306. Plaintiffs argue that the Planning Act "conferred specific authority for making the decision to approve or disapprove development plans on the Planning Commission or designated staff." (Compl., ¶ 6). As such, Plaintiffs argue the provision in Ordinance 607 requiring County Council to give final approval for development plans is invalid under the Planning Act. But that is an inaccurate and selective reading of the Planning Act.

Article 7 clearly states that the "*designated authority*" must approve subdivisions and land development plans. S.C. Code § 6-29-1140. The General Assembly refers to "planning commissions" specifically numerous times throughout the Planning Act. Had the General Assembly intended to confer exclusive power on planning commissions to approve or deny subdivision and development plans, the General Assembly could have easily done so. It did not. Accordingly, the Planning Act simply does not support Plaintiffs' assertion that the General Assembly conferred specific authority to approve or deny land development plans on planning commissions. *See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003), *citing S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 412 S.E.2d 377 (1991) ("The terms [of a statute] must be construed in context and their meaning determined by looking at the other terms used in the statute.").

Plaintiffs' argument relies solely on the fact that the Planning Act requires a county's land development regulations to set forth procedures for submission and approval or disapproval of development plans by the planning commission. (Compl., ¶ 6). The Planning Act also sets forth the process for appealing a planning commission's decision on a development plan. S.C. Code § 6-29-1150(D). Of course, it makes sense that these provisions are mandatory *if* a planning commission has been empowered by a governing authority to render the final decision on a development plan. But this does not *require* planning commissions to be the sole issuers of development plan decisions. Again, the Planning Act states that development plans must be approved by a "*designated authority*," which is not necessarily a planning commission. Plaintiffs cite no statutory authority establishing planning commissions as the "designated authority." Whereas, establishing the land development approval process, including which entity has final say, is clearly left to the discretion of the county establishing the planning commission and adopting the local regulations and ordinances.

Ultimately, planning commissions have only two enumerated powers: preparing/revising comprehensive plans and recommending laws/policies/procedures to local governing authorities. S.C. Code § 6-29-340(B). Counties *may, but not must*, refer other matters to planning commissions. S.C. Code § 6-29-370. Georgetown County decided to reserve to County Council final say on multi-family developments of more than ten dwelling units (*i.e.*, County Council is the "designated authority"). Because the Planning Act does not confer exclusive jurisdiction over land development decisions on the Planning Commission, and is silent on what entity may be the "designated authority," Ordinance 607 is not inconsistent and irreconcilable with the Planning Act. *See 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)) ("If either is silent where the other speaks,

there is no conflict.”). Thus, Ordinance 607 is valid and Plaintiffs’ claims for declaratory judgment on this basis fail.

ii. The Comprehensive Plan is Not Law and Cannot Override a Validly-Enacted Zoning Ordinance

Plaintiffs argue that Ordinance 607 is not identical to the Comprehensive Plan, and is therefore unlawful under the Planning Act. More specifically, Plaintiffs allege that land parcels designated as medium-density in the Comprehensive Plan are limited to no more than five dwelling units per acre. (Compl., ¶ 54). But under Ordinance 607, parcels within a General Residential zoning district are allowed to have up to sixteen dwelling units per acre. (Compl., ¶ 62). Because some parcels designated as medium-density within the Comprehensive Plan are located in General Residential zoning districts, Plaintiffs argue that allowing up to sixteen dwelling units for all parcels in a General Residential zoning district places Ordinance 607 “in direct conflict with the Comprehensive Plan,” and therefore violates the Planning Act. (Compl., ¶¶ 95-97). Plaintiffs misapprehend the purpose and reach of a comprehensive plan under the Planning Act.

As explained above, comprehensive plans are intended to “*guide*” a county’s development and reflect a planning commission’s “*recommendations*” for future land and development. S.C. Code § 6-29-510. Nothing in the Planning Act indicates that a comprehensive plan has the force of law. In fact, the South Carolina Supreme Court has acknowledged that the Comprehensive Plan is only a guideline. *See McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (noting the trial court’s finding that the comprehensive plan was only a guideline, and as such, there had not been an impairment of the appellant’s rights, so such claims were not ripe for adjudication).

In line with the purpose of comprehensive plans under the Planning Act, Georgetown County's Comprehensive Plan states the following:²

- 1) "The purpose of the chapter is to **guide** future development and redevelopment within the County. The chapter is intended to **assist the County** when determining the proper use of land," and to "identify and **recommend** locations where different types of uses are encouraged to grow." (Comprehensive Plan, Ch. 9 "Land Use Element," p. 1 (Mar. 10, 2015)) (emphasis added).
- 2) "The [Future Land Use] maps will **assist the County** when determining the appropriate and highest and best use of land It is important to recognize that future land use policy is not an exact science and is influenced by many factors that are difficult to account for" *Id.* at 13 (emphasis added).
- 3) In the section discussing South Waccamaw Neck specifically (where the Covington Homes Parcel is located), which Plaintiffs cite throughout the Complaint, the title of the section is "**Proposed Goals**." *Id.* at 23 (emphasis added).

The Comprehensive Plan is meant to be a tool for County Council in regulating land development in Georgetown County. But Plaintiffs want this Court to declare that a medium-density classification applied to the Covington Homes Parcel in the Comprehensive Plan is tantamount to a legal decree that overrides County Council's intent via Ordinance 607 to allow high-density development in General Residential zoning districts.

² Notably, the Comprehensive Plan states that "[h]igh density multi-family developments over 10 units should be reviewed by the Planning Commission **and** County Council." (Comprehensive Plan, Ch. 9 "Land Use Element," p. 15 (Mar. 10, 2015)) (emphasis added). This provision is identical to the process required under Ordinance 607. Presumably in this instance, Plaintiffs would not command County Council to follow the strictures of the Comprehensive Plan.

In support of their contention that the Comprehensive Plan controls, Plaintiffs argue that the Planning Act states that a county's land development "regulations must be made in accordance with the comprehensive plan for the jurisdiction." (Compl., ¶ 16); S.C. Code § 6-29-720(B). Again, the General Assembly clearly intended for the Comprehensive Plan to be an aspirational document, using words like "guide" and "recommendations" in the Planning Act. It does not follow that the General Assembly intended for every statement or provision in the Comprehensive Plan to govern the ordinances and regulations lawfully enacted by a county.

Courts will not construe statutes in a manner leading to an absurd result. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 SE.2d 578, 82 (2000) (citing *S.C. Bd. of Dental Examiners v. Breeland*, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946)). Reading the Planning Act as limiting counties from enacting ordinances and regulations that do not conform in all aspects to an aspirational document explicitly intended to "guide development," not control it, would lead to an absurd result. Further, under Plaintiffs' proffered reading of the Planning Act, comprehensive plans would be tantamount to law, which the Supreme Court has already acknowledged they are not. *See McClanahan*, 350 S.C. at 441, 567 S.E.2d at 243.

The Planning Act provides counties with the discretion to adopt zoning ordinances in line with the goals set forth in the Comprehensive Plan. But the Planning Act does not bestow comprehensive plans with the force of law. Because allowing the Comprehensive Plan to overrule a validly-enacted county ordinance would be an absurd result, the Court cannot provide the relief Plaintiffs seek. And if there were any doubt, Judge Seals made this same determination just one month ago in a sister KIG Lawsuit seeking the same declaratory judgment. *See* (Ex. A, Order Granting Defendants' Motion to Dismiss in C.A. 2023-CP-22-0007, at 9) ("In sum, the

Comprehensive Plan is not the law; it is a guideline and cannot work to invalidate the 2022 Ordinances enacted by Georgetown County . . .”).

iii. Courts Give Significant Deference to the Validity of Zoning Ordinances

In addition to the fact that Plaintiffs seek an absurd result from this Court, Plaintiffs also ask this Court to ignore consistent precedent wherein South Carolina courts show significant deference to municipal ordinances. *See, e.g., Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 300, 37 S.E.2d 601, 611 (2013) (“It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances or regulations.”); *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965) (“There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application”); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003) (“In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives.”).

The law greatly limits the power of the judicial branch to invalidate ordinances. The Court cannot (and should not) substitute its judgment for that of the legislative body of Georgetown County. The Plaintiffs quite clearly disagree with the political decisions made by County Council as it relates to the zoning decisions affecting General Residential Districts and the Covington Homes Parcel specifically. Political disagreement, however, is an insufficient basis to invalidate ordinances. The Plaintiffs remedy in such instance does not rest in court, but through the democratic process.

iv. Plaintiffs Are Statutorily Prohibited from Challenging Ordinance 607

Even assuming Plaintiffs had reasonable arguments for invalidating Ordinance 607 (they do not), the Planning Act explicitly precludes Plaintiffs’ challenge to Ordinance 607. “No

challenge to the . . . validity of a regulation or map, or amendment to it . . . may be made sixty days after the decision of the governing body if there has been substantial compliance with . . . established procedures of the governing authority or the planning commission.” S.C. Code § 6-29-760(D). The enactment of Ordinance 607, as well as the zoning of the Covington Homes Parcel as General Residential, pre-dates this lawsuit by far more than sixty days. For this reason, Plaintiffs are barred from challenging Ordinance 607 and their claims must be dismissed. *See* (Ex. A, Order Granting Defendants’ Motion to Dismiss in C.A. 2023-CP-22-0007, at 10) (“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.”).

II. Additional Defects in Plaintiffs’ Requests for Relief

Plaintiffs’ requests for declaratory relief all generally rely on invalidating Ordinance 607, which Plaintiffs cannot do for the reasons explained above. In addition, there are other defects with Plaintiffs’ claims that preclude the Court providing the relief requested.

a. Plaintiffs Arguments Regarding the “Most Restrictive Regulation” Are Incorrect

In Plaintiffs’ fifth cause of action, Plaintiffs seek a declaratory judgment from the Court that even if County Council had authority to issue a decision on Covington Homes’ subdivision application under Ordinance 607, County Council’s decision was nonetheless null and void. The basis for this request is generally the same as Plaintiffs’ other causes of action that seek to invalidate Ordinance 607 and decisions relying thereon (*i.e.*, the Comprehensive Plan controls and County Council should have deferred to the Comprehensive Plan). But in this cause of action, Plaintiffs also assert that “the decision failed to consider Zoning Ordinance 1800 and Land

Development Regulations, Article 1, Section 10, which requires application of the most restrictive regulation.” (Compl., ¶ 128.d.).

The Georgetown County Zoning Ordinance states “[i]n case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future *ordinance* of the County of Georgetown, the most restrictive in all cases apply.” ZONING ORDINANCE OF GEORGETOWN COUNTY, S.C. § 1800 (emphasis added). Similarly, the Georgetown Land Development Regulations state “[w]henver this Ordinance imposes a higher standard than that required by other resolutions, ordinances, rules or regulations, easements, covenants or agreements, the provisions of this Ordinance shall govern. When the provisions of any other *statute* impose higher standards, the provisions of such statute shall govern.” DEVELOPMENT REGULATIONS OF GEORGETOWN COUNTY, S.C., Art. 1, § 10 (emphasis added).

Plaintiffs argue that the Comprehensive Plan constitutes a more restrictive regulation when compared to Ordinance 607 because the Comprehensive Plan limits development to five units per acre on the Covington Homes Parcel while Ordinance 607 allows up to sixteen units per acre. (Compl., ¶¶ 64-65). *Plaintiffs ignore that the Comprehensive Plan is not a regulation, ordinance, or statute.* Plaintiffs note that the Comprehensive Plan was adopted by County Council through Ordinance 2015-05. (Compl., ¶ 54). But adoption of the Comprehensive Plan via ordinance does not mean the Comprehensive Plan itself is an ordinance. And Plaintiffs do not even attempt to explain how the Comprehensive Plan could be viewed as a regulation or statute, which it clearly cannot. For these reasons, even if the most restrictive regulation, ordinance, or statute should apply when compared to Ordinance 607, the Comprehensive Plan is none of those things and does not override Ordinance 607.

b. Several of Plaintiffs’ Causes of Action Related to Invalidating Ordinance 607 Are Not Justiciable Under the Declaratory Judgment Act

The South Carolina Declaratory Judgment Act, Section 15-53-10 et seq., provides that “[a]ny person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code § 15-53-30. “Before the Court can render a declaratory judgment, an actual, justiciable controversy must exist.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). “In other words, there must be a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical, or abstract dispute.” *Id.*

Plaintiffs’ request that the Court make several broad declarations about the legality of Ordinance 607 and what the Planning Act requires generally of Georgetown County, without any specific reference to the facts of this case or the rights between the parties. In other words, Plaintiffs seek an advisory opinion. If the Court were to enter the declarations as pled, the controversy with respect to this specific subdivision application will not have been declared. As is the case here, Courts must dismiss declaratory judgment actions that do not “terminate the uncertainty or controversy giving rise to the proceeding.” S.C. Code § 15-53-70. These pleading failures not only violate the pleading requirements set forth in Rule 8, SCRCP, but also entitle Covington Homes to dismissal of Plaintiffs’ claims per Rule 12(b)(6), SCRCP for Plaintiffs’ failure to establish an actual, justiciable controversy for which the Court could declare a judgment.

c. Plaintiffs Have No Right to Appeal County Council’s Decision to Approve Covington Homes’ Subdivision Application

Plaintiffs’ eighth cause of action states “[i]n the event this court finds that County Council had authority to render the February 14, 2023 decision on the subdivision applications, Plaintiffs

appeal this decision for the reasons set forth hereinabove.” (Compl., ¶ 134). Plaintiffs cite no legal authority or basis for their appeal. Presumably, Plaintiffs seek to appeal under Article 7 of the Planning Act, which governs land development regulations and appeals of land development decisions. But Plaintiffs have no right to appeal under Article 7.

Article 7 of the Planning Act limits the right to appeal a land development decision to the circuit court to “a property owner whose land *is the subject of* a decision.” S.C. Code § 6-29-1150(D)(2). None of the Plaintiffs in this case own property that was the subject of County Council’s decision to issue Covington Homes’ subdivision application. For this reason, Plaintiffs have no right to appeal County Council’s decision.

d. Plaintiffs’ “Arbitrary and Capricious” Analysis of County Council’s Decision Fails

Plaintiffs spend significant time in the Complaint arguing that County Council’s decision to approve Covington Homes’ subdivision application was “arbitrary and capricious.” Plaintiffs cite no legal basis for applying this standard of review to County Council’s decision. Regardless, Plaintiffs cannot prevail under this rubric.

When zoning is challenged, the South Carolina Supreme Court has instructed that “[i]n order to successfully assault a city’s zoning decision, a citizen must establish that the decision was *arbitrary* and *unreasonable*.” *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (emphasis added). The Supreme Court warned, however, “[z]oning is a legislative act which will not be interfered with by the courts unless there is a clear violation of citizen's constitutional rights.” *Id.* “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 citizen's constitutional rights; and the decision should not be overturned by a court so long as the decision

is *fairly debatable*.” *Id.* (citing *Hampton v. Richland County*, 292 S.C. at 503, 357 S.E.2d at 465 (Ct.App.1987)) (internal quotations omitted).

As a start, Plaintiffs make no allegation that Ordinance 607 or County Council’s decision to approve Covington Homes’ subdivision application impaired their constitutional rights. Rather, Plaintiffs assert that Ordinance 607 (and therefore County Council’s reliance on it) conflicts with state law. As already discussed, Ordinance 607 is not in conflict with state law and thus County Council’s reliance upon and conformity with Ordinance 607 is not arbitrary or unreasonable.

Moreover, Plaintiffs have not adequately demonstrated that County Council violated or disregarded the applicable law governing its decision-making process. For example, Plaintiffs complain that County Council did not provide opportunity for public comment on its decision to approve Covington Homes’ subdivision application. (Compl., ¶ 88). But there is nothing in the Planning Act that requires a public hearing on decisions to approve or deny land development plans. *See* S.C. Code § 6-29-760(A) (in contrast, a public hearing *is* required for enacting or amending a zoning ordinance). Plaintiffs also complain that County Council allegedly did not consider compatibility with the Comprehensive Plan in issuing its approval of Covington Homes’ subdivision application. (Compl., ¶ 128.c.). But there is nothing in the Planning Act requiring a designated authority’s plan development decision to consider compatibility with the Comprehensive Plan. *See* S.C. Code § 6-29-540 (the Planning Commission must simply be given the opportunity to *comment* on the development plan’s compatibility with the Comprehensive Plan, which happened here). Nor is there any requirement in Ordinance 607 requiring County Council to engage in any specific considerations of the Comprehensive Plan or otherwise in issuing its land development decision for multi-family homes in a General Residential zoning district.

Plaintiffs have simply not pled any facts that would enable the Court to find that County Council's decision to approve Covington Homes' subdivision application was arbitrary and unreasonable under the applicable law. This is especially true considering that County Council's decision to approve Covington Homes' subdivision application was, at a minimum, "fairly debatable" under the governing laws. *See Knowles*, 305 S.C. at 224, 407 S.E.2d at 642.

CONCLUSION

Because Ordinance 607 is not in conflict with the Planning Act and is therefore enforceable, all of Plaintiffs' requests for declaratory relief must fail. Further, Plaintiffs have no right to appeal County Council's decision to this Court, and have no entitlement to attorneys' fees because all of their bases for relief fail as a matter of law.

For the reasons herein, Covington Homes asks the Court to dismiss Plaintiffs' Complaint in its entirety and forever end this action against Covington Homes.

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May 31, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
	:	CASE NO. 2023 CP-22-00210
Kendrick A. Bryant, <i>et al.</i>	:	
	:	PLAINTIFFS' PRELIMINARY
	:	MEMORANDUM OF LAW IN
	:	OPPOSITION TO DEFENDANTS'
	:	MOTIONS TO DISMISS
Georgetown County; Covington	:	
Homes, LLC	:	Declaratory Judgment
	:	Appeal from Georgetown County Council
	:	
	:	Jury Trial Demanded
	:	

PLAINTIFFS' PRELIMINARY MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs submit this Preliminary Memorandum in opposition to the Motions to Dismiss filed by Defendants Georgetown County and Defendant Covington Homes, LLC, (hereinafter "Developer"). Plaintiffs learned only late yesterday the specific bases for Defendants' motions.

A considerable portion of Defendants' arguments are improper in the context of a Motion to Dismiss and inappropriately reference numerous matters not of record, many of which are inaccurate and/or irrelevant. The only facts of record at this stage of the proceeding are those alleged in Plaintiffs' Complaint, all of which must be accepted as true for purposes of Motions to Dismiss. In addition to arguing matters not of record, Defendants also make negative comments about the character and mission of Plaintiffs, which is also improper in the context of Motions to Dismiss.

These unwarranted pejorative comments directed toward Plaintiffs, as well as the reference to other cases or lawsuits, have nothing to do with the issue before the court, are not matters of record, and have no relevance to the sufficiency of Plaintiffs' Complaint. Under the

law, the court's review is limited to the face of the complaint and whether it states a cause of action.

BACKGROUND

Plaintiffs in this case fall into two categories: (1) individual landowners who own property that directly adjoins a parcel of land owned by Developer upon which Plaintiffs claim a land development subdivision application was improperly approved by Defendant Georgetown County, and (2) several community organizations who represent these and other landowners. The mission of the community organizations is very simply to insure that growth and development in the Waccamaw Neck is approved in accordance with state and local law.

Georgetown County, like all other counties in South Carolina, is obligated to follow the provisions of the South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-310, *et seq.*, (hereinafter "Planning Act"). Georgetown County, unlike most other counties in South Carolina, has zoning ordinances on its books that predate the enactment of the Planning Act and were never updated to be in compliance with the Planning Act. To the extent that these ordinances conflict with state law, they are void. This is one of several matters to be determined in this lawsuit. There is no statute of limitations that applies to prevent the declaration of an ordinance as "void" if it conflicts with state law.

Many of these noncompliant zoning ordinances have resulted in approval of development in Georgetown County that is not in accordance with the Planning Act either substantively or procedurally. The land development approval in the present case is an example of this; hence, Plaintiffs' Complaint challenging that approval on a number of bases including, but not limited to, the invalidity of underlying ordinance provision upon which it is based and the improper procedure.

SUMMARY OF ARGUMENT

The narrow issue before the court is the sufficiency of Plaintiffs' Complaint, and examination is limited to the four corners of the Complaint itself.

Plaintiffs' Complaint was filed on March 10, 2023, and consists of (1) a Declaratory Judgment action alleging that two existing Georgetown County ordinance provisions are void as conflicting with South Carolina state law, rendering the land development decision based upon the ordinances as invalid; and (2) an appeal of a non-legislative land development decision by Georgetown County Council on February 14, 2023, approving a land development subdivision application. The Complaint contains nine counts supported by 137 paragraphs of detailed factual and legal averments incorporating 13 exhibits.

It should be noted that this case is not a zoning change by County Council that would involve a presumption of legislative validity. This case is about a land development approval (a non-legislative decision) made by County Council that Plaintiffs allege was improper for a variety of reasons, including conflict with state law. These are factual issues to be determined by the fact-finder after evidence is presented.

Defendants' memoranda and arguments in support of their Motions to Dismiss assert grounds of insufficient pleading, lack of standing, failure to establish a cause of action, and failure to join necessary parties, in addition to matters that are not appropriately considered in a Motion to Dismiss.

For the reasons set forth herein, Plaintiffs respectfully submit that their Complaint constitutes a well-organized pleading sufficient to notify Defendants of Plaintiffs' claims, establishes standing for all Plaintiffs, sets forth a cause of action for Declaratory Judgment, *i.e.*, a justiciable controversy, and names all necessary and indispensable parties.

ARGUMENT

III. STANDARD OF REVIEW

A. Merits may not be addressed.

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

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

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

B. Defendants argue merits of underlying claim.

1) "Fairly Debatable" and "Legislative Presumption"

Defendants spend considerable time arguing that the ordinances in question are "fairly debatable," and that legislative acts are accorded wide latitude and/or presumptive validity in

zoning matters. These are not relevant arguments to the issue of whether or not the ordinance provisions in question conflict with state law. This case is not a zoning change case, it is a case about an improper non-legislative approval of land development.

Even if Defendants' arguments were legitimate in this context, the questions of whether the ordinances are "fairly debatable" or whether Defendant Georgetown County exceeded its legislative authority and violated state law in approving the zoning amendments are issues of fact to be determined by the trier of fact after evidence is presented, not by Defendants in the context of a Motion to Dismiss. Defendants' arguments in this regard are relevant only to the merits of Plaintiffs' claims, not the sufficiency of the Complaint itself.

Notably, the cases cited by Defendants in support of their arguments about broad legislative latitude and "fairly debatable" ordinances were decided after evidence was presented and a factual determination was made on the merits of the case. See Knowles v. City of Aiken, 305 S.C. 219, 407 S.E.2d 639 (1991); Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (2003); Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965); Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (1995); Town of Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1991); McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002). They are not cases that were decided in the context of a Motion to Dismiss where sufficiency of the Complaint is the only issue. Accordingly, the cases cited by Defendants do not address the issue before the court and are not relevant or determinative at this stage of the proceeding where evidence has not yet been taken.

2) **Defendants Raise and Argue Defenses to Plaintiffs' Claims**

Defendants spend significant time defending against and arguing the merits of claims raised in Plaintiffs' Complaint, i.e., that the Georgetown County Comprehensive Plan is "just a guideline," that the Planning Commission made a proper "recommendation," that Plaintiffs' claims are statutorily barred.

These arguments and defenses are issues of fact that go to the merits of Plaintiffs' claims and are not properly considered in the context of a Motion to Dismiss where the only issue is the sufficiency of the complaint.

3) **Role of Comprehensive Plan**

Defendants argue that the Georgetown County Comprehensive Plan is not "law," and that this somehow justifies dismissal of the action. Defendants mischaracterize Plaintiffs' claims.

Plaintiffs have never suggested nor does their Complaint allege that the Comprehensive Plan is law. What Plaintiffs' Complaint does allege is that Georgetown County is required to follow South Carolina state law, including the Planning Act, and other state laws, and that it violated a number of specific mandatory provisions of state law in approving this land development application. One of several alleged state law violations is the Planning Act requirement that zoning regulations "must be made in accordance with the Comprehensive Plan of the jurisdiction." (Plaintiffs' Complaint, citing the South Carolina Planning Act, Section 6-29-760(B)).

The question whether or not Defendant Georgetown County's existing ordinances, actions and decisions violated this state law mandate is an issue of fact to be determined after evidence

has been produced and evaluated, not upon a Motion to Dismiss where the issue is limited to the sufficiency of the Complaint.

C. Defendants argue matters not of record.

The only facts of record at this stage of the proceeding are those alleged in Plaintiffs' Complaint, all of which must be accepted as true for purposes of Motions to Dismiss. The court may not consider matters not of record that have no relevance to the sufficiency of Plaintiffs' Complaint.

The facts alleged in the Complaint, which must be accepted as true in the context of these Motions to Dismiss, set forth that the individual Plaintiffs are adjoining landowners in the African American neighborhood of Parkersville which has been a longstanding target of inappropriate county land use decisions that do not comply with state and local law. These named adjoining landowners along with other adjoining landowners, neighboring landowners, and thousands of concerned citizens of the Waccamaw Neck, all of whom are represented by the three nonprofit Plaintiffs, have been harmed by the repeated failure of Georgetown County to follow the mandates of state and local law, including the zoning change on the parcel in the present case. (Plaintiffs' Complaint and supporting Affidavits). These are not matters of argument, they are pleaded facts that must be accepted as true for the purpose of examining the sufficiency of the pleading.

II. Sufficiency of Pleading

Defendants claim that Plaintiffs' Complaint should be dismissed as an insufficient pleading. According to the South Carolina Supreme Court in Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 574-575, 743 S.E.2d 778, 785 (2013), "Pleadings are to be liberally construed" Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369,

371 (2000) (quoting Rule 8(f), SCRCPP). 'It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial.' S.C. Nat'l Bank v. Joyner, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct.App.1986); see also Langston v. Niles, 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975) ('The purpose of pleadings is to place the adversary on notice as to what the issues are.')."

Shirley's Iron Works, supra, involved a pleading that lacked precision and detail. Notwithstanding the lack of specificity in the pleading, the court found that "[a] fair reading of the Complaint leads to the reasonable conclusion that the first cause of action is one for breach of contract," even though the word "contract" did not even appear in the pleading. Id. at 575, 785. The court in that case held that the pleading was sufficient to put the Defendant on notice of the claim.

Interestingly, the cases cited by Defendants in support of their contention of insufficient pleading found pleadings to be sufficient in cases with far less specificity than the present Complaint. By sharp contrast to this vague and unspecific pleading, Plaintiffs' Complaint enumerates the particulars and sets forth the specific factual bases.

The facts set forth in Plaintiffs' Complaint set forth far more than the minimum required to "notify" Defendants of the issues in this case.

III. STANDING

Defendants also contend that Plaintiffs lack standing. "In its most basic sense, standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right ... and may be acquired (1) by statute, (2) under the principle of constitutional standing, or (3) via the public importance exception to general standing requirements." Preservation Society of

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

A. Statutory Standing

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

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

In Preservation Society of Charleston, the South Carolina Supreme Court reviewed a long list of South Carolina cases confirming that “it is unnecessary to address constitutional standing or the public importance exception when the basis for the independent concept of statutory standing exists.” *Id.* at 210, 486 (citations omitted). One of the most frequently cited cases in support of this principle is Freemantle v. Preston, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (S.C. Supreme Ct. 2012), which held that “[t]he traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.”

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

The following statutes confer standing upon Plaintiffs in this case:

1. Standing Under Declaratory Judgments Act

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

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

Plaintiffs’ rights and legal relations have been and are substantially affected by the County Council decision of February 14, 2023, the Planning Commission decisions of January 19, 2023, Georgetown County’s Zoning Ordinances, Land Development Regulations and Comprehensive Plan, and the South Carolina Planning Act. Plaintiffs have standing to ask the court to determine rights, status, validity and other legal relations with regard to these statutes, ordinances and decisions. Plaintiffs have specifically set forth in the Complaint and supporting Affidavits that they and those they represent have been and will be “affected” in the following ways: decrease in property values; increase in stormwater and flooding problems; negative impact on character, aesthetics and enjoyment of land; increase in traffic on secondary roads and

highways that are not adequate to handle additional volumes of traffic; precedent for future land development in the immediate neighborhood that does not comply with state law or the Comprehensive Plan; increased burden on severely over-burdened infrastructure that is operating beyond capacity creating a serious safety hazard – streets and highways, fire, police, and emergency services personnel and equipment, evacuation routes; detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood. (Complaint and supporting Affidavits).

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

Plaintiffs have established standing with respect to all their claims under the Declaratory Judgments Act.

2. Standing Under Planning Act

In addition to statutory standing conferred by the Declaratory Judgments Act, the South Carolina Comprehensive Planning Enabling Act, S.C. Code Ann., Section 6-29-1150 and 6-29-1155, states that any party in interest may appeal land development decisions. Rule 74, SCRCP (“Procedure on Appeal to the Circuit Court”) governs appeals from “an inferior court or decision of an administrative agency or tribunal” to circuit court. Plaintiffs are parties in interest under the Planning Act.

Complaint and supporting Affidavits and Exhibits establish that the individual Plaintiffs are owners of land that directly adjoins the parcel in question. Furthermore, the Affidavits of each of the individual adjoining landowners confirm that the nonprofit Plaintiffs, Parkersville Planning & Development Alliance (Parkersville PDA), Keep It Green (KIG), and Preserve Murrells Inlet, Inc. (PMI), have represented and continue to represent them.

Complaint and Affidavit of Reverend Johnny Ford (President of Parkersville PDA), establish that Plaintiff Parkersville PDA, has the mission of protecting and preserving the land, history, culture, and character of the traditional African American community in which the parcel in question is located, and specifically represents the interests of the named individual Plaintiffs as well as all adjoining landowners, even those not specifically named in the Complaint.

Complaint and Affidavit of Duane Draper, (Chairman of KIG), and Affidavit of Leon Rice, (President of PMI), establish that KIG and PMI represent the interests of the named individual Plaintiffs as well as all adjoining landowners, even those not specifically named in the Complaint.

Accordingly, Plaintiffs have established their right to appeal as parties in interest under the Planning Act.

B. Associational Standing

In addition to traditional statutory standing conferred upon organizations, the South Carolina Supreme Court has adopted the associational standing criteria set forth by the United States Supreme Court in Friends of the Earth, Inc., supra. at 170, 697.

[A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the

organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

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

In addition to and independent of statutory standing, Plaintiffs Parkersville PDA, KIG, and PMI have met the criteria for associational standing as follows: (1) at least one of its members is an affected person who has standing in his or her own right (Complaint and supporting Affidavits); (2) the interests at stake fall squarely within Plaintiff Associations' purposes of protecting and preserving the land, quality of life, and natural character of the Waccamaw Neck by monitoring county land use decisions, zoning change requests and proposed development for compliance with proper law and procedure (Complaint and supporting Affidavits); and (3) neither the claim asserted nor the relief requested requires the participation of individual landowners as monetary damages are not being requested (Complaint and supporting Affidavits).

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

There are many sound public policy reasons behind the concept of associational standing. “[I]t promotes judicial economy and efficiency by avoiding repetitive and costly independent actions by individual members, and it allows members who would have standing in their own right to pool their financial resources and legal expertise to help ensure complete and vigorous litigation of the issues.” Preservation Society of Charleston, *supra.*, at 211, 487.

C. Constitutional Standing

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

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

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

Id. at 210, 486 (citations omitted).

As set forth above, Plaintiffs' Complaint alleges the following injuries in fact: decrease in property values; increase in stormwater and flooding problems; negative impact on character, aesthetics and enjoyment of land; increase in traffic on secondary roads and highways that are not adequate to handle additional volumes of traffic; precedent for future land development in the immediate neighborhood that does not comply with state law or the Comprehensive Plan; increased burden on severely over-burdened infrastructure that is operating beyond capacity creating a serious safety hazard – streets and highways, fire, police, and emergency services personnel and equipment, evacuation routes; detrimental and discriminatory impact on the Parkersville minority community resulting in further gentrification, displacement and destruction of this important historical African American neighborhood. (Complaint and supporting Affidavits). Plaintiffs' Complaint alleges that these injuries were caused by the improper approval of the land development application, and that the injury is redressable by a favorable decision of this court.

D. Public Importance Standing

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

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

Freemantle, *supra*. at 44, 193.

In the present case, it has been pleaded that future guidance by the court is necessary to determine the validity of ordinances and decisions which involve and are evidence of Georgetown County's repeated disregard of explicit language in the South Carolina Planning Act

The issues in this case have potentially far-reaching, widespread, devastating and irreversible negative impact on the public welfare by serving as a precedent for similar rezoning of many acres in the Waccamaw Neck. Furthermore, a decision on these issues would provide guidance for future land use and zoning decisions statewide. Accordingly, public importance standing is appropriate.

IV. Justiciability

Defendants argue that Plaintiffs Complaint does not establish a cause of action. "A cause of action under the Declaratory Judgment Act is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Farmer v. CAGC Insurance Company, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. of App. 2018) (citations omitted). See also Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 354 815 S.E.2d 446, 452(S.C. Supreme Ct.

2018). “The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (S.C. Supreme Ct. 2013) (citations omitted).

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

As set forth above, wherein Plaintiffs listed the paragraphs and subject matter of their Complaint relative to the issue of sufficient pleading, Plaintiffs' Complaint clearly and unequivocally sets forth far more than the minimum required to establish an “actual controversy” as contemplated by the Declaratory Judgments Act. There is nothing contingent, hypothetical or abstract about the controversy in this case.

V. Request for Additional Time

Defendants Georgetown County and Developer filed separate but identical Motions to Dismiss on April 11, 2023, and April 13, 2023, respectively, consisting of 1-1/2 pages stating they are “made pursuant to Rules 8, 12, and 19 of the South Carolina Rules of Civil Procedure.” Defendants’ Motions to Dismiss do not state grounds with particularity sufficient to advise Plaintiffs of the basis for the motions or to allow Plaintiffs to file a meaningful response, contrary to Rule 7(b)(1), SCRCF, which requires that motions “shall state with particularity the grounds therefor.”

Slightly more than one day before the scheduled hearing, counsel for Plaintiffs received memoranda from Defendants advising Plaintiffs for the first time of the bases for Defendants'

motions, leaving insufficient time for Plaintiffs' counsel to properly review the briefs and arguments contained therein, research the cases cited and issues raised, prepare for argument, and provide a meaningful response to defend against the motions which are serious matters of constitutional significance.

Plaintiffs should not be put in the position of unfair surprise the day before a scheduled hearing by learning for the first time the grounds for Defendants' Motions, and accordingly, ask the court for additional time after argument to prepare a formal supplemental written response.

VI. Conclusion

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the Motions to Dismiss of Defendants Georgetown County and the Developer and allow this case to proceed on the merits.

Respectfully submitted,

/s/ Cynthia Ranck Person

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June 1, 2023

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	:	FIFTEENTH JUDICIAL CIRCUIT
	:	
Kendrick A. Bryant <i>et al.</i>	:	CASE NO. 2023 CP 22-00210
	:	
v.	:	PLAINTIFFS' RULE 59(e) MOTION TO
	:	ALTER OR AMEND JUDGMENT
	:	
Georgetown County, Covington	:	Declaratory Judgment
Homes, LLC	:	Appeal from Georgetown County Council
	:	
Defendants	:	Jury Trial Demanded
	:	

PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT
PURSUANT TO SCRPC, RULE 59 (e)

Pursuant to SCRPC, Rule 59(e), Plaintiffs respectfully request this court to alter and/or amend its Order of September 19, 2023, granting the Motions to Dismiss of Defendants Georgetown County and Covington Homes, LLC. The grounds in support of this motion are that the Order does not address the following issues:

- (1) 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.
- (2) The *ultra vires* nature of the adoption of the amendments to Section 607 resulting in the denial of rights set forth in Sections 6-29-1150 and 6-29-1155 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (hereinafter "Enabling Act").
- (3) The lack of application of South Carolina Code, Section 6-29-760, where amendments to Section 607 deny due process and are *ultra vires*.

(4) The interpretation and application of the Enabling Act provision, Section 6-29-720(B), that “regulations must be made in accordance with the comprehensive plan for the jurisdiction.”

(5) The elements that properly constitute a cause of action for Declaratory Judgment.

I. The 2011 Amendments Deny Plaintiffs’ Right to Due Process

The 2011 amendments to Section 607 deny Plaintiffs’ right to due process because the amendments contain no controls or guides for the discretion granted to the Georgetown County Council. An example of this concern was addressed in *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442, 445 (1999). The court noted, “When deciding whether to grant a variance, *a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary.*” *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 762 (1953); *Schloss Poster Adv. Co. v. City of Rock Hill*, 190 S.C. 92, 2 S.E.2d 392 (1939).” (emphasis added). Because the ordinance at issue in *Restaurant Row Associates* was sufficiently specific, the decision of the trial court was upheld.

The cited case of *Schloss Poster Advertising Co.* involved an ordinance providing as follows: “Hereafter it shall be unlawful to erect or maintain any billboard facing on any public street or other public place within the incorporate limits of the city of Rock Hill without having first obtained from the city council a permit to do so.” In effect, the Rock Hill City Council had delegated to itself an unrestrained power to grant or deny permits to construct billboards. In holding that this “delegation” was unconstitutional, the court noted:

The ordinance before us is in no sense a zoning ordinance as provided in Sections 7390-7398, Code 1932, nor does it prescribe rules or conditions for the issuance of permits for the erection of billboards to which all

persons similarly situated may conform. *It does not profess to prescribe regulations for their location, construction, or maintenance, but it commits to the unrestrained will of the city authorities, for any reason deemed satisfactory to them,* the right and power to absolutely prohibit the use of property for the erection of billboards.

The ordinance in question in no way controls or guides the discretion vested thereby in the respondents. It prescribes no uniform rule upon which the special permission is to be granted.

2 S.E.2d at 394 (emphasis added).

The scheme adopted in the 2011 Georgetown County amendments is invalid. Like the ordinance in *Schloss Poster Advertising Co.*, that “commits to the unrestrained will of the city authorities, for any reason deemed satisfactory to them, the right and power to absolutely prohibit the use of property for the erection of bill boards,” the amended ordinance requiring County Council approval results in a denial of due process to persons seeking or opposing approval of a site plan.

II. The adoption of the amendments to Section 607 denied Plaintiffs’ rights to procedures set forth in Sections 6-29-1150 and 6-29-1155 of the South Carolina Comprehensive Planning Enabling Act (hereinafter “Enabling Act”).

A. The Two Roles of the Planning Commission

The Enabling Act adopts a scheme where the Planning Commission has two different roles. First, the Planning Commission is responsible for developing and recommending plans, policies, and regulations for adoption by the City or County Council. Second, the Planning Commission and its staff are responsible for administering the regulatory schemes adopted in Article 7 of the Enabling Act.

One central part of this administrative role is the approval or disapproval of “site plans.” *See, e.g.*, Section 6-29-1150. The effect of the amendments of Section 607 was to substitute the County Council for the Planning Commission and its staff in the administration of the review of plans. As indicated in Part I above, this substitution resulted in an administrative scheme with no standards for application.

B. Rights Granted by Sections 6-29-1150 and 6-29-1155

Sections 6-29-1150 and 6-29-1155 provide a framework for plan approvals and disapprovals by the Planning Commission and its staff and for the judicial appeals from the grant or denial of an application. The first sentence of 6-29-1150(A) states: “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.” (emphasis added). The remainder of this subsection and subsection (B) grant important rights to applicants for plan approval. Subsection (C) grants a right of appeal to the Planning Commission “by any party in interest.”

Subsection 6-29-1150(D) and Section 6-29-1155 address appeals to the circuit court. *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission*, 426 S.C. 97, 825 S.E.2d 721 (S.C. Ct. App. 2019) held that subsections 6-29-1150(C) and 6-29-1150(D) (1) granted “any party in interest” a right to appeal a decision by the Planning Commission to the Circuit Court.

C. Role of Enabling Act

The Rhode Island Supreme Court stated the general principle for applying an enabling act as follows: Where a local government “purports to restate that for which provision is made in the enabling act, any attempt to expand or abridge in the zoning ordinance rights granted by the

enabling act is *ultra vires* of the jurisdiction conferred upon such a local legislature by the General Assembly and, therefore, is void.” *Hardy v. Zoning Board of Review of the Town of Coventry*, 321 A.2d 289, 290-29 (R.I. 1974).

The South Carolina Supreme Court applied this principle in *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2 777 (2010). At issue was the rezoning of a large parcel of land from the classification AG-15 (agricultural with minimum lot area of three acres) to PD ("planned development district"). This PD district would have 107 dwellings, which was the same number as would be allowed under AG-15. However, the minimum lot size for the PD was reduced to one acre.

Sinkler noted that Section 6-29-720(C)(4) of the Enabling Act explicitly authorizes the use of planned development schemes and quoted the following language:

“[P]lanned development district” or a development project comprised of *housing of different types and densities and of compatible commercial uses*, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development *and is characterized by a unified site design for a mixed-use development*.

690 S.E.2d at 781 (emphasis in original). *Sinkler* also quoted Section 6-29-740, which contains additional details concerning a PD district. This section provides:

In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that *will result in improved design, character, and quality of new mixed use developments* and preserve natural and scenic features of open spaces, the local governing authority

may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. *The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts.*

690 S.E.2d at 779 (emphasis in original).

The Supreme Court, relying on the statutory language quoted above, held:

[T]he [zoning] ordinance [with only residential uses] did not meet the parameters of a PD [H]aving invoked that technique, it could not arbitrarily fail to meet the requirements for a PD. Consequently, we hold *the circuit court correctly ruled the ordinance is invalid because it did not properly establish a PD as contemplated by the terms of the Enabling Act.*

Sinkler, 690 S.E.2d at 781,782 (emphasis added).

D. Amendments to the Zoning Ordinance

In 2011, Georgetown County amended Section 607 of its “General Residential District” (GRD) provisions at several points (see attached copy of the Ordinance). These revisions had the following effects:

- (1) County Council was granted an unrestricted power to approve or deny certain site plans.
- (2) The Planning Commission had its role reduced from having the power to approve or disapprove site plans to a role of merely reviewing site plans.
- (3) Rights granted to developers in Subsection 6-29-1150(B) were eliminated.

- (4) Rights of appeal to the Planning Commission granted to applicants and other parties in interest by Subsection 6-29-1150(C) were eliminated.
- (4) Rights of appeal to Circuit Court granted by Subsection 6-29-1150(D) and by Section 6-29-1155 (property owner's right to prelitigation mediation) were eliminated.

E. The 2011 Amendments are *ultra vires*

The Order of the Court relies on the principle that courts should be deferential to legislative decisions by local governments. However, this deference is not applicable herein because, as in *Sinkler v. County of Charleston*, the 2011 amendments are *ultra vires*. The South Carolina Legislature adopted a procedural scheme for addressing site plan review in Sections 6-29-1150 and 6-29-1155. Georgetown County lacks the power to adopt the 2011 amendments because, as indicated in Part D above, the amendments eliminate rights provided by the Enabling Act.

III. Section 6-29-760 is not applicable to this challenge to the amendments because the amendments to Section 607 deny due process and are *ultra vires*.

Article V, Section 11 of the South Carolina Constitution provides: "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have appellate jurisdiction as provided by law." Because this grant of general jurisdiction supports the filing of an *ultra vires* action in Circuit Court, it has been the basis of many South Carolina *ultra vires* cases.

In addition, it is clear that where a governmental entity engages in an *ultra vires* act, the remedy is to void the act involved. *See, e.g., South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) (holding that

expenditure of public funds for inspection of private bridges was *ultra vires*); *Sinkler v. Boyd, supra* (holding circuit court properly invalidated rezoning); *O'Brien v. South Carolina ORBIT*, 380 S.C. 38, 668 S.E.2d 396 (2008) (filed in the original jurisdiction of the Supreme Court and holding that city's decision to fund a trust in a particular manner was *ultra vires* because it violated the S.C. Constitution, ordering that trust be dissolved, and ordering that funds must be returned to investors); *Evins v. Richland Historic Preservation Commission*, 341 S.C. 15, 532 S.E.2d 876 (2000) (holding that conveyance by commission was *ultra vires* and affirming voiding of conveyance by Circuit Court); *City of North Charleston v. North Charleston District*, 346 S.E.2d 712 (1986) (holding that provision in contract concerning assessment of *ad valorem* taxes was *ultra vires* and, therefore, unenforceable), *Sloan v. School District of Greenville*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000) (recognizing claim for declaratory judgement that certain contracts entered into by school district were *ultra vires* and, therefore, invalid).

Because elimination of the rights to due process addressed in Part I above and rights in Sections 6-29-1150 and 6-29-1155, the amendments to Section 607 were *ultra vires*, and the amendments must be declared void.

IV. The requirement in the Enabling Act, Section 6-29-720(B) that zoning “regulations *must be made in accordance with the comprehensive plan for the jurisdiction*” is not adequately addressed. (emphasis added)

The Order of Dismissal interprets the requirement that zoning “regulations must be made in accordance with the comprehensive plan” as follows: “[B]ecause the Comprehensive Plan is not a legally binding standard, a perceived violation of its terms cannot substantiate a legal claim for relief.” (Court Order, p. 12).

The concern for requiring that zoning “regulations be made in accordance with a comprehensive plan” has been in the South Carolina Enabling Act since the original Act was

adopted in 1926.¹ The requirement was in the two predecessor acts in effect before the current Enabling Act was adopted.² A similar requirement is contained in the land development regulations.³

For nearly a century, the requirement of “in accordance with a comprehensive plan” has been a basic part of the South Carolina approach to planning and zoning. Despite the long-standing nature of the requirement, the Order of Dismissal treats the requirement as a mere “guideline” rather than a “legally binding standard” to be interpreted and applied. This approach conflicts with the requirement that “[F]ull effect must be given to each section of a statute and words should not be added or taken away.” *South Carolina National Bank v. Cook*, 354 S.E.2d 562, 563 (S.C. 1987); *Hartford Accident and Indemnity, Co. v. Lindsay*, 254 S.E.2d 301, 304 (S.C. 1979) (“Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.”)

The Order cites *McClanahan v. Richland County Council*, 350 S.C. 433, 441, 567 S.E.2d 240, 243 (2002) as support for the following interpretation: “The Comprehensive Plan is a guideline, not binding law.” (Court Order, p. 11). However, *McClanahan* does not contain any discussion of the basis for concluding the “Comprehensive Plan is a guideline.”

McClanahan actually supports Plaintiffs' position. The case states: “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended

¹ S.C. CODE § 1924 (33) 1066.

² See *Johnston v. City of Myrtle Beach*, 321 S.E.2d 627, 629 (S.C. Ct. App. 1984) (discussing the two statutes).

³ Section 6-29-1120(5) (Land development regulations should be “in harmony with the comprehensive plan . . .”).

purpose of the statute.” 350 S.E.2d at 242. One basic purpose of the Enabling Act is to guide regulation by planning. The purpose of the “in accordance with” language is to align zoning regulations with planning.

The Order states that “a county’s comprehensive plan exists to guide the land use decisions of a county.” However, the refusal to view the “in accordance with” language as legally binding in any way, would allow a county to simply ignore the guidance in the comprehensive plan. This result is contrary to “the intended purpose of the statute,” and would render this longstanding statutory language meaningless.

V. The Complaint states a cause of action for Declaratory Judgment

A. Elements of Declaratory Judgment Action

The South Carolina Uniform Declaratory Judgments Act (hereinafter “Declaratory Judgments Act”), S.C. Code Ann., Section 15-53-30, states:

“[A]ny person . . . whose rights, status or legal relations are affected by a *statute, municipal ordinance*, contract or franchise may have determined *any* question of construction or validity arising under the instrument, *statute, ordinance*, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” (emphasis added).

The framework for applying the Act has been set forth as follows: “A cause of action under the Declaratory Judgments Act is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” *Farmer v. CAGC Insurance Co.*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (S.C. Ct. App. 2018) (citation omitted). “The Act is to be liberally construed and administered to

achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781 (2013) (citations omitted).

The Declaratory Judgments Act extends to any person whose rights are “affected.” Courts have consistently interpreted the word “affected” very liberally to include residents in the vicinity of a land use issue who are impacted by traffic, enjoyment, recreational uses, and aesthetics, as well as organizations whose members are affected in these ways. *Citizens for Quality Rural Living, Inc.*, *supra* at 113, 731; *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (S.C. Supreme Ct. 2020); and *Friends of the Earth, Inc. v. Laidlaw Environmental Services Inc.*, 528 U.S. 167, 170, 120 S.Ct. 693, 697, 145 L.Ed.2d 610 (2000).

Page 6 of the Order of Dismissal states, "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" It is well settled in South Carolina that when the right to bring an action exists pursuant to a statute, it is not necessary to demonstrate traditional notions of constitutional deprivation as an additional requirement. *Preservation Society of Charleston, supra*; *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (S.C. Supreme Ct. 2012). In dismissing Plaintiffs' Complaint, the Order improperly considers traditional constitutional deprivation rather than addressing the elements of a cause of action under the Declaratory Judgments Act.

In any event, the Complaint alleges violations of rights, including denial of due process (See, *e.g.*, Complaint, Paragraph 70), and specific violations are addressed at Part I, above.

B. Plaintiffs' Complaint states a cause of action

Plaintiffs' Complaint sets forth an actual controversy involving statutes and municipal ordinances, (*i.e.*, the claims addressed in Parts I, II, and III, above, in this motion), that is not “contingent, hypothetical, or abstract” and should be “liberally construed.” Plaintiffs' Complaint further alleges that Plaintiffs have been “affected” by these statutes and municipal ordinances.

In considering a Motion to Dismiss, “[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states *any* valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Doe v. Marion*, 373 S.C. 390, 398, 645 S.E.2d 245, 247–48 (2007) (emphasis added) (citations omitted). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on *any* theory, then dismissal under Rule 12(b)(6) is *improper*.” *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). (emphasis added).

The Order addresses the merits of the disputes raised in Plaintiffs' Complaint by weighing evidence and considering facts beyond those alleged in the Complaint itself. “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling *solely on allegations set forth in the complaint. . . .*” *Skydive Myrtle Beach, supra* at 180, 826 S.E.2d at 587 (emphasis added). The purpose of a Motion to Dismiss under Rule 12(b)(6) is for “the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim.” *Id. See also Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

“The purpose of pleadings is to place the adversary on notice as to what the issues are.” *Langston v. Niles*, 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975). “The principal purpose of

pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." *S.C. National Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (S.C. Ct. App. 1986). "Pleadings are to be liberally construed. . . ." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574–75, 743 S.E.2d 778, 785 (2013).

In effect, the Order reads like a grant of summary judgment rather than a grant of a motion to dismiss. Pages 4–9 conclude that Plaintiffs have no claim because "the Court finds no conflict between Ordinance 607 and the Planning Act and therefore finds it is valid" (Court Order p. 8), and because "any challenges to the validity of Ordinance 607 are now statutorily barred." (Court Order, p. 9). Pages 9–12 conclude that "all of Plaintiffs' claims must be dismissed with prejudice as a matter of law." (Court Order p. 12). Page 14 concludes "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."

The Court Order improperly applies an evidentiary presumption without giving Plaintiffs an opportunity to present evidence and without addressing arguments to rebut the presumption. In finding that Georgetown County Zoning Ordinance 607 does not violate the Enabling Act, the Court Order states that, "[a] municipal ordinance is a legislative enactment and is *presumed* to be constitutional . . . [z]oning ordinances must be upheld so long as the propriety of the local governing body's decision is 'fairly debatable.'" (Court Order, p. 5) (emphasis added).

A claim cannot be properly dismissed for failure to overcome an evidentiary presumption *before* Plaintiffs have been given the opportunity to present evidence to rebut that presumption. The question whether the ordinance is "fairly debatable," or "arbitrary and capricious" is an issue of fact to be determined after evidence is presented and weighed and arguments have been

considered. These evidentiary conclusions are relevant to the *merits* of Plaintiffs' claims, not the *sufficiency* of the Complaint.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to alter or amend the Court Order dated September 19, 2023, as set forth above and allow this case to proceed on the merits.

Respectfully submitted,

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September 29, 2023
Pawleys Island, SC

ATTORNEY FOR PLAINTIFFS

RECEIVED

Nov 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Circuit Court Case No. 2023-CP-22-00210

Kendrick A. Bryant and Keisha Bryant Sherman on behalf of the heirs of Ernest Bryant; Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison; Lucille Grate; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.

Appellants,

v.

Georgetown County; Covington Homes, LLC

Respondents.

NOTICE OF APPEAL

Kendrick A. Bryant and Keisha Bryant Sherman on behalf of the heirs of Ernest Bryant; Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison; Lucille Grate; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc., appeal the final order and judgment of the Honorable Kristi F. Curtis dated October 23, 2023, attached. Appellants received written notice of entry of final order and judgment on October 23, 2023.

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November 14, 2023

ROA 180

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RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

The undersigned hereby certifies that the NOTICE OF APPEAL was served this 14th day of November, 2023, upon Respondents by emailing a copy of same to the primary email address of counsel of record listed in the AIS system as set forth below. Copies of said emails are attached hereto in accordance with SC Appellate Court Rules and related orders.

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Transcript

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
COUNTY OF GEORGETOWN CASE NO.:2023-CP-22-01210

July 13, 2023

BEFORE: The Honorable Kristi F. Curtis

KENDRICK A. BRYANT, et.al,

Plaintiffs,

vs.

GEORGETOWN COUNTY, et. al,

Defendants.

APPEARANCES:

Cynthia Person, Esq.
(Patrick Hubbard)
Appearing for the Plaintiffs.

H. Thomas Morgan, Jr., Esq.
Sydney Douglas, Esq.
Appearing on behalf of Georgetown County

James Gilliam, Esq.
Taylor Voegel, Esq.
Appearing on behalf of Covington Homes, LLC

Also appearing: John "Jay" Watson, Esq.

Recorded by: WebEx Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

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EXHIBITS

(None)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: That brings us to Bryant, et. al versus Georgetown County, et. al.

MR. MORGAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. MORGAN: Tommy Morgan here with Smith Robinson. I'm coming to you this morning on behalf of and in my capacity as the assistant Georgetown County attorney.

Also I have with me John Watson. That's how it's listed, but Jay Watson is the county attorney, and he is participating or following along on behalf of the county.

I also have with me this morning my associate, Ms. Sidney Douglas, who has assisted on brief.

Other attorneys are also present for the parties. I don't know if the Court wants them to announce their presence and who they represent before we get started. I'll obviously defer to you, Your Honor.

THE COURT: Ms. Person, you are here -- is it Pearson (pronouncing) or Person (pronouncing)?

MS. PERSON: It's Person, Your Honor.

THE COURT: Ms. Person, you are here on

1 behalf of one of the plaintiffs -- several of the
2 plaintiffs?

3 MS. PERSON: I am here on behalf of all of
4 the plaintiffs, along with my co-counsel, Patrick
5 Hubbard, who will be taking the lead in this
6 argument this morning.

7 THE COURT: Good morning, Mr. Hubbard.

8 And I see we have Mr. Gilliam.

9 MR. GILLIAM: Yes, Your Honor. Jim Gilliam
10 and Taylor Voegel. We're here for Covington Homes,
11 LLC, who is the co-defendant to Georgetown County.

12 THE COURT: And, Ms. Douglas.

13 MS. DOUGLAS: Good morning, Your Honor.
14 Yeah, as Mr. Morgan said, I'm here on behalf of
15 defendant Georgetown County, along with himself.

16 THE COURT: Got you. Okay.

17 So I see that we have motions to dismiss.

18 Mr. Morgan, I'll turn it over to you, sir.

19 MR. MORGAN: All right. Thank you, Your
20 Honor. If it pleases the Court. We're here on
21 defendant Georgetown County's motion to dismiss
22 pursuant to Rule 12(b)(6), Your Honor. This is one
23 of several lawsuits that have been filed by some of
24 the plaintiffs in this particular case, the Keep It
25 Green Preserve Murrells Inlet and the Parkersville

1 Planning and Development Alliance. These are one
2 of several cases that have been brought before the
3 court, specifically as it pertains to zoning
4 decisions made by Georgetown County Council.

5 Ultimately, Your Honor, we're going to ask
6 the Court to dismiss this action in its entirety
7 for the very same reasons that the two previous
8 cases that have been argued within the past month
9 or two, both Judge Seals and Judge Culbertson also
10 dismissed those cases for the reasons we're going
11 to outline this morning.

12 Just for a real brief background of what is
13 going on here, Your Honor. This case arises out of
14 an approval of a major subdivision application in
15 Georgetown County. The co-defendant, Covington
16 Homes, purchased some property and submitted a
17 major subdivision application to the Georgetown
18 County planning commission back in December of 22.

19 The planning commission had its meeting on
20 January 19 of 2023 and recommended denial of the
21 application before forwarding the application up to
22 the Georgetown County Council for its final review
23 as the governing body, as is required under the
24 ordinances of Georgetown County Council.

25 At the Georgetown County Council meeting on

1 February 14th of this year, they disregarded the
2 recommendation of the planning commission and voted
3 to approve the application of Covington Homes.

4 Subsequently, the plaintiffs have filed this
5 lawsuit, and they seek multiple causes of action
6 based upon declaratory judgment, Your Honor. I'll
7 try to go through those briefly.

8 They are asking that the Court declare that
9 the ordinances requiring the site plan reviewed by
10 council are void and unenforceable; that the county
11 council had no authority to render its decision
12 approving the major subdivision application; the
13 planning commission's decision to deny is
14 actually -- they want the Court to deny that to be
15 the final and binding decision; they want the Court
16 to declare that the -- any alleged conflict between
17 these ordinances and the comprehensive plan must be
18 resolved in favor of restricting or not allowing
19 this particular development; that the approval of
20 this development was in violation of both state and
21 county law; that the county has a statutory mandate
22 to bring its zoning ordinances and land use
23 regulations into compliance with the comprehensive
24 plan; and, finally, that the county has a statutory
25 mandate to consider compliance with the

1 comprehensive plan in its decision-making process.

2 In the alternative, Your Honor, they throw --
3 plaintiffs throw in almost like a throw-away, hey,
4 we also want to appeal the decision. That's the
5 final cause of action before the Court, Your Honor.

6 I know that is a lot, but I think if we break
7 it down into two main points, it will be much
8 easier for the Court to understand the reasons why
9 this particular cause of action should be denied.

10 The first is the challenge that the
11 plaintiffs are making to the ordinance that is at
12 issue, which is Ordinance No. 607 of the Georgetown
13 County zoning ordinances. The plaintiffs are
14 trying to challenge that saying that that is not a
15 proper ordinance and that it shouldn't be followed
16 and should be declared void and unenforceable.

17 I know the Court is aware, but it is the long
18 practice principle in South Carolina that courts
19 should exercise a policy of judicial restraint in
20 reviewing the zoning decisions of a governing body,
21 such as Georgetown County Council, because -- and
22 I'm quoting from the Knowles versus City of Aiken
23 case -- "Courts have no prerogative to pass upon
24 the wisdom of the municipality's decision, unless
25 such decision is so unreasonable as to impair or

1 destroy a citizen's constitutional rights."

2 Going further, Your Honor, in reviewing an
3 ordinance's validity, such as this one, a Court
4 must make every presumption in favor of the
5 constitutionality of the legislative enactment,
6 okay.

7 Again, this just stands for the long
8 principle that the governing body is the elected
9 officials. It is the people that the citizens have
10 voted into office to effectuate their will, and
11 it's most appropriate for those individuals, those
12 elected officials, to make the decisions that
13 affect the entirety of the citizens of the county,
14 as opposed to interject the court into what is most
15 properly, basically, a political problem or a
16 political issue, and that is exactly what is going
17 on here.

18 That is why the courts have said repeatedly
19 that a court cannot overturn the decision of a
20 county's governing body if the decision is -- I'm
21 using the phrase here, fairly debatable -- because
22 the County's decision is presumed to be a valid
23 exercise of its power, and it is not the
24 prerogative of the court to pass upon the wisdom of
25 the decision, and that is also from the Knowles

1 case.

2 So what we're talking about here is the
3 zoning decision, and a zoning decision does not
4 infringe upon or destroy a citizen's constitutional
5 rights where there is no deprivation of property
6 without due process of law, and that is from the
7 McClanahan versus Richland County case, Your Honor.

8 So these are all long-standing principles of
9 law. These cases go back to the 1990s and 2000s,
10 and they are basically applying the court's wisdom
11 and discretion as it relates to decisions that are
12 made by a county, such as Georgetown County in this
13 instance, based upon the South Carolina Planning
14 Act -- Enabling Planning Act, Your Honor.

15 And so if we step back and we start looking
16 at the ordinance itself through this lens, first
17 and foremost, Your Honor, we have to question
18 whether or not the plaintiffs have any standing by
19 which to bring their case because this is a series
20 of activist groups and citizens that live around
21 the property, but it's not the property owners
22 themselves, Your Honor. So we reference this in
23 our brief, and I don't want to take too much time
24 focusing on that, but that is definitely one of the
25 things we wanted to point out for the Court.

1 Looking specifically at Ordinance 607, that
2 ordinance, which was enacted pursuant to the State
3 Enabling Planning Act, allows that all multifamily
4 developments of more than ten dwelling units, which
5 is what applies in this particular instance, have a
6 site plan that is, quote, "reviewed by the planning
7 commission and then approved by county council."
8 That is Zoning Ordinance 607.306.

9 We know that the creation and regulation of
10 such zoning is within the purview of the governing
11 body, and that is provided for in the law in
12 Section 6-29-720(a). And so what happens in this
13 particular instance, Your Honor, is there is going
14 to be an argument that's made that, well, no, the
15 county isn't allowed to make this ordinance, isn't
16 allowed to enact this ordinance because the
17 plaintiffs perceive that there is some type of
18 conflict with the state law, but that's clearly not
19 the case. All throughout Article 5 and Article 7
20 of the Planning Enabling Act it points out that the
21 general assembly expressly intended to leave the
22 crafting of the process to each individual
23 governing body, and that's found at 6-29-1120(a),
24 okay.

25 What happens is plaintiffs are saying, well,

1 no, we think that it's the planning commission, and
2 the planning commission alone that should have this
3 authority. The county, when they tried to draft
4 their ordinances, they shouldn't have done that.
5 But that is clearly not what the general assembly
6 has specified, because it goes, again, further --
7 and I'm quoting from the statute -- that the zoning
8 ordinances are to serve purposes that are passed by
9 the council or the governing body, quote, "to
10 further the public welfare in any other regard as
11 specified by the governing body."

12 And so it manifests that we all -- and we all
13 make notice of this fact, that the governing body
14 in this instance is not the planning commission,
15 it's the county council. The county council is the
16 one pursuant to the statute that is to have the
17 ultimate say in decisions that are -- such as this
18 one -- that are being contested today.

19 And, Your Honor, this particular provision of
20 Ordinance 607 has been on the books for years, and
21 so any type of challenge that needs to be made has
22 to be done within 60 days pursuant to six dash --
23 6-29-760(d). This ordinance in and of itself has
24 been on the books much longer than that, even this
25 particular case. The idea that the property was

1 bought and was brought before the commission for a
2 decision clearly is even outside of the 60 days in
3 and of itself. So there's no way at this point in
4 time that the plaintiffs can even challenge the
5 validity of this ordinance.

6 So, first and foremost, Your Honor, we want
7 to point out that that is the first pillar; that
8 Ordinance 607 is a valid exercise of the governing
9 body's decision-making process, that being
10 Georgetown County Council, as provided for by the
11 general assembly.

12 So with that in mind, Your Honor, we're also
13 going to turn to the second pillar and the second
14 main point. This, quite frankly, is really the
15 crux of the plaintiffs' case in this particular
16 instance, is that they maintain that any type of
17 conflict between a comprehensive plan and the
18 ordinance must be resolved in favor of the
19 comprehensive plan. That is the crux of their case
20 if you look through their complaint, Your Honor.

21 They maintain that the comprehensive plan is
22 the overriding, overarching document. Well, Your
23 Honor, it's clear, first off, just by its name.
24 The comprehensive plan is intended purely as an
25 expression of goals. It is a plan. It is a

1 guideline document which allows the county to take
2 the recommendations of the planning commission that
3 are expressed in the comprehensive plan, and then
4 the county uses those to enact the ordinances which
5 then are the law by which the decisions are made.
6 And that is Black letter law in South Carolina. As
7 in McClanahan versus Richland County Council,
8 conformity with the zoning ordinance is -- and the
9 state law is what is required, not necessarily
10 abiding by every dictative plan.

11 As I'm sure Your Honor is aware, a
12 comprehensive plan has multiple elements, and there
13 is all kinds of guidelines and wishes and desires
14 for potential -- whether it is the regulation of
15 growth or what type of growth is wanted, but it is
16 nothing more than just a guideline. Again, quote,
17 "the plan is only a guideline." That, Your Honor,
18 is one of the main reasons why in these types of
19 cases that -- again, it's previously already been
20 dismissed by both Judge Seals and Judge Culbertson,
21 it's because the comp plan is just that. It is
22 just a guideline. It is not the law that is at
23 issue here. Not only that, but as, for example,
24 the appellant courts have taken that position, and
25 not only have other local trial courts -- and, Your

1 Honor, just to be frank, it is not just here in
2 Georgetown County. There is a recent case out of
3 Greenville County. The same thing the -- Judge
4 Bentley Price ruled that the challenge based upon a
5 conflict and a comprehensive plan, that wasn't the
6 guideline document. It was the ordinance that is
7 at issue here.

8 Your Honor, not only that, the Attorney
9 General's Office in an opinion back in 2021, it
10 indicated that the general assembly intended the
11 county's governing body -- again, the county
12 council -- to consider a local planning
13 commission's recommendations, but they are not
14 bound with that.

15 So with those two pillars in mind, Your
16 Honor, the fact that the county has validly
17 exercised its authority granted to it by the
18 general assembly to enact the ordinance, and that
19 any perceived conflict between an ordinance and a
20 comp plan, it's the ordinance that controls,
21 because that's the law.

22 So if you take those two pillars and then you
23 apply it to the remainder of the declaratory
24 judgment actions, it's clear they all fail as a
25 matter of law. This is nothing more than the

1 plaintiffs asking the Court to substitute its
2 interpretation and its decision and override the
3 will of the elective officials to try to enforce
4 mandates for you to comply with this, that, and the
5 other. We know that in a declaratory judgment
6 action it has to present a justiciable controversy.
7 These are not justiciable controversies at this
8 point in time. The law is manifestly clear. There
9 is not a real and substantial controversy which is
10 ripe and appropriate for judicial determination.
11 These are just questions that they are asking the
12 Court to go around and do an end-run on the
13 decision of the elected officials to approve this,
14 Your Honor.

15 THE COURT: There's been no appeal from the
16 county council's vote to approve the application?

17 MR. MORGAN: Your Honor, I believe this is
18 what is purported to be the appeal. Like we talked
19 about, there is seven causes of action for the
20 declaratory judgment, and then there is an
21 eighth cause of action. It's on the very face of
22 the amended complaint that says appeal from the
23 Georgetown County Council's decision.

24 Well, Your Honor, to address that point, if
25 you look at that and the appeal, you have to go

1 back and you have to figure out whether this is
2 even a proper appeal. If we look at the Enabling
3 Act, it provides for three instances for example in
4 which an appeal can be taken. Under 6-29-820, it
5 allows for an appeal from the zoning board of
6 appeals. That is not what is at issue here.

7 6-29-890 is an appeal from the board of
8 architectural review. That's not what we have
9 here.

10 6-29-1150 allows for an appeal decision of
11 the planning commission. This isn't an appeal of a
12 decision of a planning commission. This is an
13 appeal from a decision of county council.

14 Moreover, under Subsection D, it provides
15 that the property owner who is subject to the
16 decision is the one who can appeal, not the
17 associated, whether it is the neighborhood,
18 neighborhood groups, adjoining landowners.

19 So even if, Your Honor, we try to look at the
20 nature of an appeal, it's still not properly before
21 this court, Your Honor.

22 So, again, our brief is extensive, and I know
23 Mr. Gilliam will also have a very learned argument
24 as it relates to this particular case, so I'll try
25 to bring this in for a landing, Your Honor. This

1 is a situation wherein it's an appropriate case for
2 this Court to issue a decision to dismiss this
3 case. It is not a question about the facts. We
4 know manifestly what took place. We have the
5 dates, records, times, the decisions. It is not a
6 question of fact.

7 This is nothing more than applying the
8 appropriate law to the case, which we have outlined
9 that the county council has a right to enact its
10 ordinances, and those ordinances are what controls;
11 it is not the comp plan. This is nothing more than
12 a decision that the individual and/or the community
13 plaintiffs -- they just don't like it. They are
14 trying to bring the court into their dislike and
15 try to get this court to act, but that is not the
16 proper role for the court, Your Honor. That is a
17 decision that has been made properly by the elected
18 officials, Your Honor.

19 So, for that reason, we would deposit that
20 this case should be dismissed, just like it has
21 been previously done in the other cases, Your
22 Honor, and that's the reasons for our argument.

23 And, Your Honor, I want to bring up one minor
24 housekeeping issue, and I apologize for the
25 lateness of this. It just came through. As it

1 relates to Professor Hubbard, and it's good to see
2 him. I'm quite certain he has blocked out the fact
3 that I had attended one of his classes probably in
4 a PTSD moment, and I don't blame him for that.

5 But, Your Honor, we do have a question about the
6 professor's appearance today. We -- Ms. Person
7 filed a notice of appearance with the Court two
8 days ago. Correct me if I'm wrong, Cindy, I
9 apologize, but I believe it was two days ago. I
10 don't have a copy of what was filed, but it
11 purports to be a notice of appearance allowing for
12 Professor Hubbard to enter into and make an
13 appearance as counsel in this case. I know -- and
14 I'm reaching for my phone here not to play on it,
15 but I have information that there was an e-mail
16 that Keep It Green sent out last night at 8:50 to
17 -- an e-mail distribution group saying Professor
18 Hubbard was going to make an appearance and going
19 to be lead counsel in today's argument.

20 We went and looked -- and I want to clarify
21 this -- I see where Professor Hubbard has a limited
22 admission to practice law pursuant to Rule 405, and
23 it is my understanding that Rule 405 is what
24 relates to business representation of an individual
25 to represent or present cases before the court in a

1 capacity as a business.

2 And, Your Honor, again, I'm not trying to be
3 disrespectful to the Professor, but I want to bring
4 this as an officer of the court to the Court's
5 attention, because when I go through and read the
6 rule, Rule 405(a) talks about the qualifications
7 for the admission, but then Subsection B talks
8 about the application that is necessary, and I'm
9 reading that it says that that application has to
10 be filed with the clerk of the supreme court and,
11 quote, "a statement of assigned representative the
12 attorney's business that they meet the requirements
13 of Sections A-7 through 9."

14 Moreover, Your Honor, if you look at Rule
15 Subsection E about the scope of practice, that copy
16 of the certificate has to be presented to the
17 tribunal of which that individual is going to
18 appear. And, Your Honor, we're not aware of
19 Mr. Hubbard being an employee of Keep It Green.

20 I looked and I saw where the admission was
21 dated back to 1991. This is information I pulled
22 off of the South Carolina Bar website for the
23 limited admission. Keep It Green didn't come into
24 existence, pursuant to the South Carolina Secretary
25 of State's website, until 2021. So I'm not aware

1 where the 1991 application could apply to a
2 business that was, you know, established some 30
3 years later.

4 And, moreover, Your Honor, the certificate
5 hasn't been presented.

6 And, finally, even if Professor Hubbard was
7 available and up to the Court's discretion about
8 being able to make an argument this morning, we
9 would take the position that would only apply to
10 Keep It Green. It would not apply to any of the
11 other plaintiffs in this particular action, unless,
12 again, there is something that I'm not aware of
13 that the professor is now an employee of all of
14 these other individuals as well.

15 So, Your Honor, again, I'm bringing that.
16 Obviously, we have the 1992 supreme court case that
17 talks about the requirements of the bar and stuff
18 regulating the profession, talks about such
19 instances like this, and I just wanted to bring
20 that to the Court's attention on top of our
21 arguments and reasons for why we think the case
22 should be dismissed.

23 I appreciate you letting me be so long-winded
24 this morning, Your Honor. I'm done. Thank you.

25 THE COURT: Thank you.

1 Mr. Hubbard, I do see the notice of
2 appearance filed. There is an entry in the
3 E-filing system that says notice of appearance
4 dated July 11th, but there is no document. There
5 is no image attached to that, so I can't actually
6 see the notice of appearance. But I do see -- it
7 looks like one was filed recently.

8 Mr. Hubbard, I'm glad to hear from you.

9 MS. PERSON: Your Honor, are you wanting us
10 to address the notice of appearance, because I
11 would be happy to do that?

12 THE COURT: Sure.

13 And I've un-muted you, Professor Hubbard.
14 So, if you will, first --

15 MR. HUBBARD: Can you hear me?

16 THE COURT: Yes, I can.

17 MR. HUBBARD: Good. Thank you.

18 When this was done, it was in 1991, as was
19 pointed out. At that time the supreme court had
20 changed its approach to admission of faculty to the
21 law school. I was admitted pursuant to rules
22 governing how one was admitted. I practiced a
23 while, a long time in Texas, I've done a lot of
24 litigating there before I eventually wound up here.
25 The catch in all of this was there was a view on

1 part of the court that the faculty admission --
2 there was a rule about having to go attend a bunch
3 of hearings to the completion at that time. I
4 don't know how many of you -- I might be the only
5 one who is aware of all of this that was going on
6 when Justice Littlejohn and Justice Ness were chief
7 justices of the court.

8 When Justice Gregory came along, he
9 reinstated the rule, which the other two justices
10 had abolished, but required us to go to
11 appearances. But what the rule said was that we
12 could go and practice under the (audio and video is
13 lost).

14 THE COURT: Did you all lose his video feed
15 or am I the only one?

16 MS. PERSON: I lost it.

17 MR. MORGAN: I lost it, Your Honor.

18 THE COURT: Of course it was working
19 perfectly until we needed to hear from him. This
20 is the bang of my Webex existence.

21 (A brief pause in the proceedings.)

22 MS. PERSON: Your Honor, let me telephone him
23 and see what is going on.

24 THE COURT: Sometimes if we give it a moment
25 the connection will reestablish, but....

1 (A brief pause in the proceedings.)

2 MR. MORGAN: It is like the proverbial
3 Etcha-Sketch, if you shake it a time or two, maybe
4 it will come back.

5 MR. HUBBARD: You've lost my video?

6 THE COURT: Now, I have you back. Professor
7 Hubbard, we lost you. You went dark on us.

8 MR. HUBBARD: Okay. I'm still dark on my
9 screen.

10 THE COURT: You are back. We can see and
11 hear you now, but we lost you right at the point
12 where you said Justice Littlejohn had reinstated
13 the rule.

14 MR. HUBBARD: Right. And so long as I
15 practice with an attorney, okay, I have no limits
16 on what I can do. All right.

17 And, again, I've done this for 30 years.
18 I've done it in criminal cases. I've done it in
19 civil cases, and there's never been such an
20 objection as we're encountering today.

21 If we want to find the rule, we have to go
22 back to what the rule was in 1991, all right, and I
23 don't see how we can do that today.

24 THE COURT: But your understanding is that
25 you can be associated in a case and you can

1 practice as long as you are not the sole attorney?

2 MR. HUBBARD: Correct.

3 THE COURT: Okay.

4 Well, I'll be glad to hear from you
5 substantively, sir.

6 MR. HUBBARD: Did you want to hear the
7 developer's arguments first, or did you want me to
8 speak?

9 THE COURT: However you all want to handle
10 it. If you would like me to hear from Covington
11 first, I'm glad to do that.

12 MR. GILLIAM: Your Honor, Jim Gilliam on
13 behalf of Covington Homes, LLC.

14 Professor Hubbard or Ms. Person, if you want
15 to say differently, let me know, but I think it
16 would make the most sense since it's our motion to
17 dismiss as well as Georgetown County's that we go
18 first. That is what I would propose; is that
19 agreeable to you guys?

20 MS. PERSON: I think so.

21 MR. GILLIAM: Okay. Thank you.

22 Thank you, Your Honor, for taking time.

23 Again, my name is Jim Gilliam. I represent
24 Covington Homes, LLC.

25 So what the plaintiffs are trying to do in

1 this case is they are trying to invalidate an
2 ordinance, a zoning ordinance that was enacted by
3 Georgetown County Council. That zoning ordinance
4 is Ordinance 607.

5 In a nutshell, what Ordinance 607 does is it
6 allows -- it allows for the development that my
7 clients, Covington Homes, proposed in this
8 particular case. There is no -- what's important
9 to understand is there is no argument in this case
10 that Georgetown County Council didn't comply or
11 failed to comply with Ordinance 607 and, likewise,
12 there is no argument that my clients failed to
13 comply with Ordinance 607 in submitting their
14 application.

15 Again, Ordinance 607 allows for the
16 development that is the subject of this lawsuit.
17 So what the plaintiffs are trying to do in this
18 particular case is they are trying to invalidate an
19 ordinance. Whenever that is the issue in a case,
20 there's a two-step analysis that the court employs,
21 and the first thing that the court asks itself is
22 whether the county has the power to adopt the
23 ordinance, and that also is not an issue here
24 because the plaintiffs aren't alleging that the
25 county doesn't have the power to adopt the

1 ordinance.

2 So that brings us to step two. The only way
3 to invalidate this ordinance is if this Court finds
4 that Ordinance 607 conflicts with state law. The
5 state law that plaintiffs are alleging that
6 Ordinance 607 conflicts with -- Mr. Morgan calls it
7 the Enabling Act, and sometimes I call it the
8 Planning Act, but it is the same thing. So that is
9 the allegation in this case.

10 I'll point out that, you know, that is a pure
11 question of law. There is not facts in dispute in
12 this case, so it is ripe for an adjudication and a
13 motion to dismiss setting.

14 If the Court is going to find that there is a
15 conflict between a county ordinance, such as
16 Ordinance 607, and state law, the Court has to find
17 that the conflict is, quote, unquote,
18 "irreconcilable." There is not going to be a
19 conflict in a situation like this if the state law
20 is silent and the ordinance speaks. There is no
21 conflict. And I'll talk about that a little later
22 on.

23 But with the Planning Act, that is really
24 what we have. We have a situation where the
25 Planning Act is silent as to who the decision maker

1 is for the site application, and the county
2 ordinance, Ordinance 607, speaks, and that is not a
3 conflict. That's how government works.

4 Mr. Morgan talked about this. Obviously,
5 when we are looking at an ordinance, there is a
6 strong presumption of validity, and courts have
7 said time and time again that they are not going to
8 substitute their judgment for a legislative body.

9 To talk about the facts a little bit, and
10 they are not in dispute, but they are worthwhile to
11 talk about, my client, Covington Homes, they own a
12 parcel of property that is 2.01 acres in Pawleys
13 Island. The proposed development is to construct
14 six duplexes, a total of 12 units.

15 The parcel of property is zoned general
16 residential. General residential allows for this
17 type of development. They allow for development up
18 to 16 acres per unit.

19 So Covington Homes complied with Ordinance
20 607. Nobody says otherwise. They submitted their
21 application first to the planning commission,
22 because that is what Ordinance 607 says. Ordinance
23 607 doesn't say that the planning commission is the
24 final decision maker, they just get to make a
25 recommendation.

1 So the planning commission made a
2 recommendation, and they recommended denial of
3 Covington Homes' application, and that is their
4 prerogative, but then it goes to county council.
5 What Ordinance 607 says is that county council is
6 the final decision maker. So then the application
7 went to county council. County council is free to
8 take a fresh look at it, and they can approve or
9 disapprove the application, and they chose to
10 approve of it, and then this lawsuit was born.

11 I do want to take a second to orient us about
12 what has gone on in the past because I think it is
13 informative. This is not the first time we're
14 making these arguments; in fact, we have had the
15 same collection of attorneys making these
16 arguments. Just to tell you a little bit who the
17 plaintiffs are and what they have done as it
18 relates to the challenging zoning ordinances in
19 Georgetown County, and this is all a matter of
20 public record, the non-profit plaintiff entities,
21 they filed four lawsuits to challenge zoning
22 decisions that have been made in Georgetown County.

23 Since 2019, they've challenged ten different
24 zoning decisions in Georgetown County. There is a
25 constant theme in their arguments. One of those

1 themes we're going to see resurrected here today,
2 but it was something that we all argued to Judge
3 Seals in the Powers case. One thing to point out
4 about the Powers case is the collection of
5 attorneys was the same. Again, Ms. Person
6 represented the plaintiffs, Mr. Morgan represented
7 Georgetown County, and in that case I didn't
8 represent the developer, but the Georgetown
9 Economic Alliance. That was a challenge to a
10 zoning order, just like this case -- or an attempt
11 to invalidate a zoning ordinance.

12 One of the arguments that was made in that
13 case is that the plaintiffs argued that the zoning
14 ordinance was invalid because it conflicted with
15 the county's comprehensive plan. As you heard from
16 Mr. Morgan, that is an argument that is being made
17 yet again today.

18 Judge Seals considered that argument, and he
19 found that the comprehensive plan doesn't have a
20 force of law. He cited to the Planning Act in
21 support of that, and also took precedent from our
22 state supreme court.

23 When we look at the causes of action that
24 have been alleged in this case, there's a total of
25 seven counts for declaratory relief. There is kind

1 of an overlap there, so just for purposes of ease
2 of talking about it, I've sort of concisely boiled
3 those down to three issues, and there is also the
4 issue with the appeal. So those are the four
5 issues we'll talk about today.

6 The first issue that is raised and what we'll
7 talk about is the plaintiffs allege that Ordinance
8 607 is invalid because it conflicts with the
9 Planning Act. That is issue one. The Planning
10 Act, again, being part of state law that was
11 enacted by the general assembly.

12 The second issue is the plaintiffs allege
13 that Ordinance 607 is invalid because it allegedly
14 conflicts with a comprehensive plan.

15 Number three, what the plaintiffs ask the
16 Court to do is to order Georgetown County Council
17 to amend Ordinance 607 to comply with the
18 comprehensive plan.

19 The fourth argument is the appellant
20 argument. What the plaintiffs say in that argument
21 is they say, well, you know, even if the Court were
22 to find that Ordinance 607 is valid, i.e., does not
23 conflict with state law, then what we would like to
24 do is appeal county council's decision to approve
25 Covington Homes' subdivision application. So those

1 are the four arguments.

2 So let's start by talking about the Planning
3 Act. One of the things really to understand about
4 the Planning Act is the flexibility and discretion
5 that it gives to local government in terms of
6 making zoning decisions. Really, the Planning Act
7 acts as pretty broad guardrails. It gives local
8 government the ability to make a lot of its own
9 decisions as to what the appropriate zonings are
10 for that locality.

11 I'm coming to you from Greenville, South
12 Carolina. We're near the mountains. Our problems
13 in Greenville are different than Georgetown
14 County's problems on the coast, and the general
15 assembly recognized that.

16 In the planning acts passed in the '90s, and
17 going back to Home Rule in the '70s, the way the
18 general assembly has always viewed requiring local
19 governments to do something, is they said, you
20 know, ever since Home Rule, we want to take power
21 away from Columbia and the state house, and we want
22 to restore it to county government because we
23 believe that county government is in the best
24 position to solve these problems.

25 So that is really what you see with the

1 Planning Act. If you hear plaintiffs' arguments,
2 in reading their arguments and memo, and certainly
3 reviewing the complaint, they would tell you that
4 the Planning Act gives some sort of exalted status
5 to the planning commission. Well, if we look at
6 the Planning Act, that is not the case at all. If
7 we look at the Planning Act it really supports what
8 I'm telling you in terms of the flexibility and
9 discretion that is afforded to the county.

10 The Planning Act doesn't even require
11 Georgetown County or any county to have a planning
12 commission. You can if you want to, but you are
13 not required to. There is some counties in South
14 Carolina that operate without a planning
15 commission. That is not illegal.

16 What the Planning Act says is to the extent
17 you are a county and you've decided to have a
18 planning commission, that the planning commission
19 has to be able to review and comment on any
20 proposed new construction -- not make final
21 decision, but review and comment, okay.

22 So when we get to the real meat of the
23 purported or alleged conflict between Ordinance 607
24 and the Planning Act, what the plaintiffs are
25 arguing is that the Planning Act makes the planning

1 commission the final decision maker as it relates
2 to these site plans, such that Covington Homes
3 submitted in this case. But that's not what the
4 statute says. 6-29-1150(a) says that decision is
5 going to be made by, quote, unquote, "the
6 designated authority."

7 Designated authority is not defined, and it
8 is not defined by design. The general assembly
9 didn't define who the designated authority is
10 because they wanted to leave that power to the
11 local government, the county to decide who is going
12 to be the decision maker, the final decision maker,
13 on these site applications.

14 Now, if the county wanted to say the planning
15 commission is the final decision maker, they could
16 have done that. But that's not what Georgetown
17 County did. In Ordinance 607, they clearly say
18 that the final decision-making authority rests
19 solely within Georgetown County Council.

20 If we look at the Planning Act, one of the
21 things we'll see is that the general assembly uses
22 the term "planning commission" time and time again.
23 Well, what does that tell us if we know our rules
24 of statutory construction? When the general
25 assembly wants to use the words "planning

1 commission," they know how to do it. If the
2 general assembly wanted to say in 6-29-1150(a) the
3 planning commission makes the final decision on
4 site applications, they surely could have done
5 that, but they didn't. They said "designated
6 authorities."

7 Back to what I said at the beginning. Again,
8 we're looking at conflict with state law to
9 invalidate Ordinance 607. State law, the Planning
10 Act, is silent here. It doesn't say who the
11 designated authority is. So if it's silent, the
12 ordinance can speak. That is no conflict with
13 state law, and that is exactly what Ordinance 607
14 does, it speaks where state law is silent. That is
15 no conflict.

16 So when Ordinance 607 says the county council
17 is the final decision maker as it relates to these
18 site applications, that is not conflicting with the
19 Planning Act. So that is issue number one.

20 Issue number two is this idea that Ordinance
21 607 must be invalidated because it allegedly
22 conflicts with the county's comprehensive plan.
23 The way the plaintiffs get there is they say,
24 again, that the Planning Act requires counties with
25 respect to all zoning decisions to comply with the

1 comprehensive plan. The problem with that
2 argument, as Mr. Morgan stated, is the
3 comprehensive plan is not the law.

4 If we look at the Planning Act itself,
5 6-29-510, it says quite clearly that the
6 comprehensive plan is intended to guide county's
7 development.

8 There is a case, and we cited it in our
9 brief, McClanahan versus Richland County, 2002,
10 from the state supreme court. In that case, the
11 Court said the comprehensive plan is only a
12 guideline.

13 Judge Seals also considered the same
14 argument, and here is what he wrote in his order.
15 "In sum, the comprehensive plan is not the law. It
16 is a guideline and cannot work to invalidate a 2022
17 ordinances enacted by Georgetown County."

18 When we see a comprehensive plan, what we see
19 is aspirational guidelines. It is not something
20 that is the law. So the only way to invalidate
21 Ordinance 607 is to demonstrate that it conflicts
22 with state law. Because the comprehensive plan
23 doesn't have the force of law, the plaintiffs can't
24 use the comprehensive plan to try to invalidate
25 Ordinance 607.

1 That brings us to the third issue, and the
2 third issue is a little bit of an unusual request
3 from a declaratory perspective. What is typical in
4 declaratory request is to say, you know, Court,
5 strike down an ordinance, strike down a statute.
6 That is not this request. It is to say it is an
7 affirmative request. They are asking the court to
8 require Georgetown County Council to pass an
9 ordinance to amend its Ordinance 607 to comply with
10 the comprehensive plan.

11 So I think most fundamentally, as I just
12 argued, the comprehensive plan doesn't have the
13 force of law. So because it doesn't have the force
14 of law, the court cannot require Georgetown County
15 to abide by the comprehensive plan. The law was
16 clear. It is only a guide. That is what the
17 Planning Act says. That is what our state supreme
18 court has said. That is what Judge Seals has said.
19 That is what Judge Culbertson has said. No judge
20 in the state or general assembly has said
21 otherwise.

22 Even more so than that, with all due respect
23 to the court system, the court can certainly review
24 statutes or ordinances that have been enacted by
25 legislative bodies and determine whether or not

1 they are constitutional, but the court can't
2 require a general assembly or county council in
3 this case to pass an ordinance. To do that would
4 invalidate -- would invade the legislative --
5 invade the legislative body's to pass laws and
6 would, you know, usurp that function. So that is
7 Argument No. 3.

8 Argument No. 4 is this appellant argument,
9 okay. So what the plaintiffs say there is they
10 say, well, to the extent the court is going to find
11 that Ordinance 607 is valid, i.e., it does not
12 conflict with state law, well, then, what we want
13 to do is we want to appeal the decision of
14 Georgetown County Council to approve Covington
15 Homes' application. So there are both procedural
16 and substantive problems with that.

17 Number one out of the gate, the plaintiffs
18 don't cite to any authority that would give them
19 the ability to directly appeal county council's
20 decision to this court. I would submit to the
21 Court they don't cite to any, because there is
22 none.

23 When we look at Article 7 of the planning
24 commission -- or Planning Act, excuse me, it
25 defines the party or the parties that may appeal

1 county council's decision. It states a property
2 owner whose land is the subject of a decision may
3 appeal. Well, who is the property owner in this
4 case whose land was the subject of a decision?
5 Covington Homes. No one else. Covington Homes
6 submitted this application. So to the extent that
7 any party could appeal, it would only be Covington
8 Homes. No one else is a property owner that was
9 the subject of county's council's decision.

10 No. 2, even if we were to assume there was
11 some sort of procedural avenue for the plaintiffs
12 to directly appeal county council's decision, what
13 would the substance of their arguments be? Well,
14 the substance of their arguments would be what we
15 talked about today, and as we've discussed today,
16 their substantive arguments fail as a matter of
17 law; so, therefore, we have procedural and
18 substantive arguments as to why county council's
19 request for an appeal can't go forward.

20 Last thing I want to hit on, and Mr. Morgan
21 talked about this as well, the Planning Act sets
22 forth a very tight timeline in which to challenge
23 zoning decisions. What the Planning Act says is
24 that zoning decisions must be challenged within 60
25 days of the governing body.

1 So, here, when we look at Ordinance 607, it
2 was enacted long ago, more than 60 days before the
3 complaint. When we look at Covington Homes' zoning
4 designation as general residential, it was
5 designated that way long ago, more than 60 days
6 before the filing of the complaint.

7 In this 60-day requirement, it is something
8 that our supreme court cited over and over again.
9 Most recently there is an April 19, 2023 case from
10 the supreme court, and it's captioned Ani, A-N-I,
11 Creation versus City of Myrtle Beach Board of
12 Zoning Appeals. In that case, the court again
13 cited the 60-day challenge. It said, you know, if
14 you are not challenging a zoning decision within 60
15 days, you are out of luck. That is the time frame
16 you have to challenge that zoning decision. On
17 Page 10 of Judge Seals' order, he said the same
18 thing.

19 You know, just to conclude, Your Honor, at
20 bottom what we have in this case is we have a case
21 of political disagreement, just cut and dry. That
22 is what we have. We live in a country and a place
23 where people can disagree about issues, and that's
24 fine, but because there is political disagreement
25 doesn't mean you can have a lawsuit and try to

1 dress up that political disagreement as a grounds
2 to invalidate what is a validly enacted ordinance.

3 Thank you, Your Honor.

4 THE COURT: Thank you. Okay.

5 Mr. Hubbard, I'll unmute you.

6 MR. HUBBARD: It's interesting to hear all of
7 these arguments we're supposedly making. I would
8 like to start all over again and express exactly
9 what the argument is. I want to hit five points
10 mainly.

11 The first is that the Enabling Act is like a
12 constitution. It grants a wide range of powers,
13 but it also puts limits on those powers. I think
14 we need to be careful about where those limits show
15 up. If a county council -- to give you an example,
16 the County of Charleston adopted what is called a
17 PUD, Planned Unit Development. The provisions made
18 in the Enabling Act is about what you have to do to
19 have a planned unit development, one of which it
20 had to be mixed uses, and they described this in
21 the provision of the act.

22 Well, the County of Charleston decided that
23 we're just going to make it a PUD, but it will all
24 be residential. Well, there was a lawsuit brought,
25 Sinkler versus County of Charleston, and the South

1 Carolina Supreme Court said you did not follow the
2 rules for a PUD, therefore, this PUD is invalid.
3 So there are guardrails, and they do bite, and this
4 is an example of when they bite.

5 Now, as to the -- and the cite to Sinkler is
6 387, South Carolina 67. It is a 2010 case.

7 The crucial language -- and it's interesting
8 the way we've been quoting things here. I want to
9 quote from 6-29-1150 of the Enabling Act. "The
10 land development regulations adopted by the
11 governing authority must -- M-U-S-T -- include a
12 specific procedure for the submission for approval
13 or disapproval by the planning commission or
14 designated staff."

15 It doesn't say recommendation. It says
16 approval or disapproval, must.

17 Now, to make it clear that the drafters
18 understand the difference between "may" and "must,"
19 the very next sentence says, "These procedures may
20 include requirements," and it gives you permission
21 to do other things. But the clear language says
22 the planning commission doesn't. All right.

23 Now, partly this requires some going back to
24 what planning commissions do. There have been a
25 lot of quotes. There is two functions of a

1 planning commission. One is, as the name suggests,
2 they plan. They make studies. They do this, make
3 recommendations. All of this happens, and that is
4 usually almost always done in cooperation with the
5 duly elected representatives of the city or county.
6 So that is one set of things they do. They do lots
7 of studies and things.

8 But they also wear another hat. And what
9 happens is after we've adopted all of these things,
10 set up rules and regulations, these rules and
11 regulations are administered by the planning
12 commission and its staff. So when you get to
13 things like site plans, which is part of the
14 administrative task of the planning commission, you
15 are really into administrative law. There is no
16 free floating rike of a county council to come down
17 and reverse what the planning commission has said.
18 The planning commission said we disapprove.

19 Now, 607 came into account and, of course,
20 everybody said that's fine. By the way, I'll flag
21 you here. I'll tell you why we don't worry about
22 the 60-day period, okay. Put that aside.

23 All right. So site plan review is
24 administered administratively subject to rules and
25 regulations by the planning commission. Going on

1 in terms of the provisions, there is a series of
2 things about how the site plans are processed, time
3 lines, how if you don't like what the staff does,
4 you have to appeal to the planning commission, and
5 if you don't like what the planning commission
6 does, you appeal to a court. You don't get the
7 county council to say, oh, we're going to grab it
8 and do what we want.

9 Now, there is a term for what the county
10 council has done, and it's called "ultra vires."
11 As in Sinkler versus Boyd (*sic*), the county didn't
12 have the authority to adopt a particular provision,
13 and that makes a very big difference. They did not
14 have the power to do it. It must be done by the
15 planning commission.

16 So now going on from here, where do we go?
17 There's a bigger problem here, and it shows up in
18 more general principle of just how much the
19 political body can do administratively that
20 matters. In a case, 1939 -- decided in 1939,
21 Schloss Poster Company -- Schloss Poster
22 Advertising Company versus City of Rock Hill, the
23 city adopted an ordinance providing as follows:
24 "Hereafter, it should be unlawful to erect or
25 maintain any building facing on any public street

1 or other public place within the corporate limits
2 of the City of Rock Hill without having first
3 obtained from the city council a permit to do so."

4 So what did they do? They delegated to
5 themselves the power to decide who can build a
6 billboard.

7 The South Carolina Supreme Court said, "The
8 ordinance before us is in no sense a zoning
9 ordinance as provided" -- and they cite the old
10 Enabling Act -- "nor is it prescribed rules or
11 conditions for the instance for permits for the
12 erections of billboards to which all persons
13 similarly situated. It does not profess to
14 prescribe regulations for the location,
15 construction, or maintenance, but commits to the
16 unrestrained will of the city authorities for any
17 reason deemed satisfactory to them the right and
18 power to absolutely prohibit the use of property
19 for the creation of billboard. The ordinance in
20 question in no way controls or guides the
21 discretion vested thereby. It doesn't prescribe
22 uniform rules upon which special permission is to
23 be granted."

24 So an additional problem, and one hopes it
25 never is going to come up, but there is some

1 criminal provisions floating around about invalid
2 approvals of site plans, subdivision plans, that
3 type of thing. And to some extent, we have a
4 problem in terms of viewing what is going on in
5 Charleston County to the extent that the conduct of
6 the county council -- absolutely no bias -- nowhere
7 in 607 do you see standards setting out how they
8 are supposed to do it, how it is supposed to be
9 studied. They just do it however they want, and I
10 think we need to worry about that to some extent.

11 Okay. I promised you timeliness of
12 challenge. We're not appealing the decision made
13 years ago, okay. We're proceeding on the basis
14 that if it's ultra vires it really doesn't matter.
15 We're proceeding on the basis that we're under the
16 original jurisdiction in civil and criminal cases
17 under Article 5, Section 11.

18 Article 5, Section 11, was involved in the
19 Sinkler case, and it's been involved in a number of
20 other cases over the years, okay. So we don't have
21 a problem with that. We're just going at it in a
22 way that you didn't understand, and I'm sorry if
23 that wasn't clear.

24 Standing. I think -- I didn't draft the
25 standing parts of the memo for the plaintiffs, but

1 it was done very well, covering all of the possible
2 grounds, but I want to stress in terms of specific
3 decisions. The case of Citizens for Quality of
4 Rural Living, Inc., which is in the memorandum,
5 what happened was there was a question as to
6 whether persons who were not formerly somehow
7 parties to planning commission decisions could be
8 involved in an appeal of some sort. And what the
9 court of appeals said was 6-29-1150 referred to a
10 person or any party in interest. It then went to
11 6-29-1150(d)(1) dealing with appeal, and it said
12 that if you are any party in interest at the point
13 of the administrative proceedings, you are a party
14 as well for the appeal of that matter. So we have
15 a clear case telling us what we can do.

16 Now, finally, the role of the comprehensive
17 plan. The statute does say that zoning has to be
18 in accordance with the plan. We don't have any
19 facts in front of us. This is a motion to dismiss.
20 I mean, I could come up with all sorts of
21 hypotheticals where a zoning thing clearly had
22 nothing to do with a comp plan, whatsoever, and it
23 should be thrown out on that ground. That would be
24 just a hypothetical, but there are no facts in
25 front of us. It would be improper to grant a

1 motion to dismiss without having any facts to show
2 how far and in what ways this is or is not -- it
3 may not be -- in accordance with.

4 If there are questions, I would be glad to
5 answer.

6 THE COURT: Do you want to reply, briefly,
7 Mr. Morgan or Mr. Gilliam?

8 MR. MORGAN: Yes, Your Honor. If it please
9 the Court. I'll be very, very brief on my reply.

10 Again, I think our arguments, as well as our
11 memorandum, clearly lay out the guidelines and the
12 law of the State of South Carolina. I use that
13 word "guideline" because, obviously, we keep
14 talking about the comp plan, and that is exactly
15 what the courts have said it is. It is a
16 guideline; it is not the law.

17 The law of the ordinances, which are presumed
18 valid as passed by the county council, which was
19 done in this particular case.

20 To Professor Hubbard's point, and I'm glad he
21 cites the Sinkler case, because if the Court in
22 Sinkler wanted to follow his line of logic and say,
23 well, it's always the planning commission, and the
24 planning commission alone is the one that has any
25 type of authority to make any decisions, they would

1 have done so; but they did not. They were
2 addressing the actions of county council just as
3 was done in Richland versus -- the McClanahan
4 versus Richland County case.

5 All of the case law in South Carolina that
6 we've cited stands for the proposition that the
7 designated authority -- in other words, the
8 governing body -- is the one who has the ultimate
9 decision-making authority, and that is exactly what
10 took place in this case. It is not a question of
11 fact. The facts are straight before the Court
12 about what decisions are made as it relates to what
13 property, at what point in time, by what vote. It
14 is all within the four corners of the complaint as
15 provided by Ms. Person and the plaintiffs in this
16 case.

17 So we think that this is exactly the reasons
18 why these cases continue to be decided against the
19 plaintiffs, whether it is in this particular case
20 or in other parts of the state, because it all
21 boils down to those two main points: County
22 council, as the governing body, has the authority
23 to pass the laws by which zoning decisions are made
24 in its jurisdiction or territory as granted to it
25 by the general assembly in both the Enabling Act,

1 as well as the Home Rule Act.

2 So for those reasons, and as we cited before,
3 we believe this is fully appropriate for the Court
4 to decide and issue an order granting our motion to
5 dismiss and striking all the causes of action.

6 I appreciate the Court's indulgence.

7 THE COURT: Mr. Gilliam?

8 MR. GILLIAM: You broke up a little bit, Your
9 Honor. I'm assuming you are asking me if I had
10 something to say? Yes, ma'am, and I know everyone
11 is a little bit leery when a lawyer says he or she
12 will be brief, but I'll be brief.

13 You know, first of all, in response to one of
14 the arguments that the plaintiffs made was to say,
15 well, you know, we're going to get around the
16 60-day statutory requirement to challenge the
17 zoning decision because we're going to allege that
18 this simply wasn't a zoning decision, so there you
19 go. I mean, that doesn't cut it. I mean,
20 Ordinance 607 clearly contemplates that the county
21 council can make zoning decisions, and in this
22 particular case, what happened is Covington Homes
23 submitted an application to county council to make
24 a zoning decision. There is no question that a
25 zoning decision was made. I mean, you can't just

1 call it something that it's not and try to get
2 around that 60-day requirement. There is a zoning
3 decision that was made in this case.

4 It also -- to plaintiffs' argument that they
5 need additional facts as it relates to their
6 argument about the comprehensive plan, well, no
7 amount of facts are going to change the reality,
8 the legal reality, that the comprehensive plan
9 doesn't have the force of law. The only way to
10 invalidate Ordinance 607 is to show a conflict with
11 state law. Because the comprehensive plan doesn't
12 have the effect of state law, Ordinance 607 --
13 Ordinance 607 cannot be invalidated by the
14 comprehensive plan, and there is no amount of
15 discovery that is going to change that legal
16 reality.

17 I'll also point out that Judge Seals already
18 made that decision in this case. That is a case
19 that is pending with the 59(e) in front of Judge
20 Seals, and it's very likely going to be a case, I
21 would suspect, based on the manner in which
22 plaintiffs have fought zoning decisions
23 historically, I would assume they are going to
24 appeal that.

25 Also, when the plaintiffs cite the provision

1 in the Planning Act or the Enabling Act about the
2 planning commission's authority, there's no -- they
3 haven't suggested that there is any provision in
4 the Planning Act that would make the planning
5 commission the designated authority or the final
6 decision maker. Sure, they can make
7 recommendations one way or the other, and that is
8 what the Planning Act says, but it doesn't say they
9 are going to be the final decision maker. The only
10 way they can invalidate Ordinance 607 is if there
11 is a conflict with state law. State law doesn't
12 say that the planning commission has to be the
13 final decision maker in this context. It gives the
14 county the freedom to decide who that decision
15 maker will be, and that is what the county did in
16 this instance, and they said county council will be
17 the final decision maker, so you don't have the
18 conflict with state law.

19 I would echo what Mr. Morgan said, and thank
20 you for your time and attention.

21 THE COURT: Okay. You all have given me a
22 good bit to think about. I'll read carefully over
23 all of your materials before I issue a ruling, and
24 I'll e-mail you all my ruling.

25 MR. MORGAN: Thank you, Your Honor.

1 MS. PERSON: Thank you, Your Honor.

2 MR. GILLIAM: Thank you, Your Honor.

3 (The hearing concluded.)

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CERTIFICATE OF TRANSCRIBER

Case Name: Kendrick Bryant, et. al v. Georgetown
County, et. al

Case No.: 2023-CP-22-00210

Date of Hearing: July 13, 2023

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
WebEx audio/video recording.**

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

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

Other



Georgetown County Fifteenth Judicial Circuit Public Index



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Switch View					
Kendrick A Bryant , plaintiff, et al VS Georgetown County , defendant, et al					
Case Number:	2023CP2200210	Court Agency:	Common Pleas	Filed Date:	03/10/2023
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	09/19/2023	Disposition Judge:	Curtis, Kristi F.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
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Covington Homes Llc	Notice/Withdrawal of Counsel	Filing		01/12/2024-11:32		
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Bryant, Kendrick A	Appeal/Notice of Appeal to Court of Appeals	Filing		11/14/2023-12:23		
Bryant, Kendrick A	Service/Certificate Of Service	Filing		11/14/2023-12:23		
Bryant, Kendrick A	NEF(10-23-2023 08:38:32 AM) Order/Electronic Form 4	Filing		10/23/2023-08:38		
Bryant, Kendrick A	Order/Electronic Form 4/Motion to Amend Denied	Order		10/23/2023-08:38		
Bryant, Kendrick A	ADR/Alternative Dispute Resolution (Workflow)	Action		10/06/2023-11:15	09/19/2023-11:15	
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Bryant, Kendrick A	NEF(09-29-2023 11:01:40 AM) Motion/Alter and/or Amend	Filing		09/29/2023-11:50		
Bryant, Kendrick A	Certificate of Compliance	Filing		09/29/2023-11:09		
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Bryant, Kendrick A	Service/Affidavit Of Service on Georgetown County	Filing		03/22/2023-11:00	09/19/2023-11:00	
Bryant, Kendrick A	Summons & Complaint	Filing		03/10/2023-11:15	09/19/2023-11:15	   

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Jul 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Circuit Court Case No. 2023-CP-22-00210

Kendrick A. Bryant and Keisha Bryant Sherman on behalf of the heirs of Ernest Bryant; Benjamin Dennison and Willie Dereef, Jr. on behalf of the heirs of Limerick Dennison; Lucille Grate; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.

Appellants,

v.

Georgetown County; Covington Homes, LLC

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal contains all material proposed to be included by all of the parties hereto and not any other material.

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/s/ Cynthia Ranck Person
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July 10, 2024

ROA 242